Press Release

Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong

Introduction of Model Mortgage Documents

The Hong Kong Mortgage Corporation (HKMC), Convenor of the Steering Committee of the Project on the Standardization of Mortgage Origination Documents in Hong Kong (the Steering Committee), announced on behalf of the Steering Committee today (Thursday) the introduction of the Model Mortgage Deed and Model Deed of Guarantee and Indemnity (Model Documents), the two most important mortgage origination documents in Hong Kong.

The two Model Documents are the products of a project launched by the HKMC in 2000 that aims to raise the industry standard in mortgage origination by developing a set of model mortgage origination documents that represents the best market practice. The project has two main objectives:

(a) to develop a set of model documents that clearly prescribes balanced rights and obligations between the banks and the homebuyers and is easily understood by the contracting parties through the use of user-friendly language in drafting the documents; and

(b) to reduce the lead time and cost for the issuance of mortgage-backed securities by removing the need for investors and credit rating agencies to conduct due diligence on the mortgage origination documents.

The HKMC formed the Steering Committee in May 2000 to co-ordinate implementation of the project. Its members include the major mortgagee banks, mortgage reinsurers, credit rating agencies, the Law Society of Hong Kong (Law Society), the Hong Kong Bar Association (Bar Association) and the Law Faculty of the University of Hong Kong. Membership of the Steering Committee is at Annex A.

With the generous support of the participants of the mortgage industry and the legal profession, the Steering Committee completed the drafting of the two Model Documents in July 2001 after extensive consultation with the organizations listed in Annex B.

The two Model Documents contain the following features:

(a) **user-friendly language:** with the objective of facilitating the mortgagors/guarantors to clearly understand their legal obligations, the two Model Documents are drafted in plain English. The English versions are each accompanied by a Chinese translation. This will enable the majority of homebuyers in Hong Kong to read and understand the contents of the documents;

(b) **balanced rights and obligations:** the provisions in the Model Documents are in full compliance with the Code of Banking Practice issued jointly by the Hong Kong Monetary Authority (HKMA) and the Hong Kong Association of Banks (HKAB). The key provisions in the Model Documents that aim to achieve a fair and balanced description of the relationship between the borrowers/guarantors and the lending institutions are highlighted in Annex C; and

(c) **legal robustness:** other than the direct involvement of the Law Society and the Bar Association in drafting the Model Documents, the HKMC has obtained the valuable assistance of the Honourable Mr. Justice Henry Litton to review the Model Documents in order to ensure that they will not present difficulties in interpretation by the judiciary. The Chinese translation of the Model Documents is prepared by Clifford Chance, a major international legal firm, and has incorporated the comments from the Law Drafting Division of the Department of Justice.

The Model Documents will be made available for public review at the Home Affairs Department Public Enquiry Service Centres, offices of the Consumer Council and public libraries shortly. The public may also view the Model Documents at the website of the HKMC (www.hkmc.com.hk) starting from 27 July 2001 or contact the HKMC for general enquiries (hotline number: 2536 0031).

Mr. Antony Leung, Chairman of the HKMC, said, "I am very grateful to the members of the Steering Committee, the key participants of the mortgage industry and the legal fraternity, in particular Mr. Justice Henry Litton, for contributing their valuable time and efforts in this important project." "The introduction of the Model Documents will benefit both the homebuyers and the banks. It will also facilitate the development of the MBS market by simplifying and speeding up the securitization process," he added.

Mr. Joseph Yam, Chief Executive of the HKMA said, "the HKMA welcomes the introduction of the Model Mortgage Documents. They will help to raise industry standard in mortgage origination as the documents reflect best market practice and are in full compliance with the Code of Banking Practice. The Chinese translation of the documents also helps the bank to comply with the recommendation of the Code to make available the terms and conditions of banking facilities in both English and Chinese."

Mr. Peter Pang, CEO of the HKMC and Chairman of the Steering Committee said, "we are very encouraged by the positive response of the mortgagee banks. 39 of the HKMC's 44 Approved Sellers, including major bank groups such as HSBC, Bank of China, Standard Chartered Bank and Bank of East Asia have indicated that they intend to adopt the Model Documents for future mortgage origination."

Mr. Peter Wong, Chairman of HKAB said, "the model documents that we see today are the result of a great deal of thought and discussion between the parties involved, under the guidance of the HKMC. The Association applauds their simplicity and user-friendliness and believe they will be of benefit to users."

Mr. Cliff Forster, Chairman of The DTC Association said, "I support the introduction of standard residential mortgage documentation. This will improve transparency and efficiency. As a result, homebuyers, lenders and the HKMC should all benefit."

Mr. Justice Henry Litton said, "I congratulate the Steering Committee on a fine piece of work. The aim must be, in the long run, to make legal documents short, simple and easy to read. I hope that with the model Mortgage and Guarantee documents now completed, this will set a trend for all legal documents generally and ease the task of those having to translate them into Chinese."

Mr. Herbert Tsoi, President of the Law Society said, "on behalf of the Law Society of Hong Kong I would like to congratulate the HKMC and the Steering Committee in preparing a set of model mortgage origination documents. I am confident that these will very soon be recognised as representing the best market practice for such documentation and will prove to be of very significant benefit not only to the public but also to those lawyers, banks and others who have occasion to use them. It is refreshing to see documents of such importance drafted bi-lingually in terms which all can readily understand. That is a valuable achievement for which those participating deserve the thanks of the community. The Law Society is proud to have been associated with the project."

Mr. Alan Leong, SC, Chairman of the Bar Association said, "the efforts made by the HKMC and the Steering Committee to standardize the mortgage origination documents are laudable. In any system that practices the rule of law, the law must be predictable and certain. Mortgage Deed and Guarantee are two legal documents that are most often used and therefore what people expect to come across on a daily basis. There is everything to be said for such commonly used documents to be drafted in just one standard form and in as user-friendly a manner as practicable so that, with the wealth of precedent cases decided by our courts on meanings of provisions contained therein, parties signing them will know as a matter of certainty what their rights and obligations are. Litigation made necessary by variations in the drafting owed to different styles or personal likings of individual lawyers can be avoided. This helps to instill confidence in people who use or have to deal with these documents. The Hong Kong Bar Association has advocated for simplification of the legal process so as to make it not only more accessible but also more affordable to the public. Initiatives of HKMC in this regard sit well with the Bar's belief and have had our support from the start. May I congratulate HKMC and the Steering Committee on what it has accomplished and wish it every success in promoting adoption of the standard Mortgage Deed and Guarantee Form by banks and other financial institutions in Hong Kong."

Steering Committee of the
Project on Standardization of Mortgage Origination Documents
in Hong Kong
26 July 2001

Annex A

Membership of Steering Committee on Standardization of Mortgage Origination Documents

	Convenor	Represented by
1.	Hong Kong Mortgage Corporation	Mr. Peter Pang, Chief Executive Officer (Chairman of the Steering Committee) Ms. Susie Cheung, General Counsel Ms. Grace Lee, Counsel
	Banks	
2.	American Express Bank	Mr. Ruskin Chow, Director, Consumer Loans Business, Personal Financial Services
3.	Bank of America	Mr. Simpson Sin, Vice President and Team Head, Consumer Banking
4.	Bank of China	Ms. Lian Chin, Manager, Loans Department
5.	Bank of East Asia	Ms. Jenny Cheung, Legal Counsel
6.	Chekiang First Bank	Mr. Gerami Cheng, Senior Assistant Chief Manager and Principal Legal Counsel
7.	Dao Heng Bank	Mr. Anthony Somerset, Senior Manager Legal
8.	First Pacific Bank	Mr. Peter Choy, Senior Vice President
9.	HSBC	Ms. Suanne Hou, Legal Adviser
10.	Standard Chartered Bank	Ms. Doris Ma, Legal and Compliance Adviser
	Credit Rating Agencies	
11.	Fitch	Mr. Ben McCarthy, Director, Head of Asia International Structured Finance
12.	Moody's	Mr. Michael Ye, Managing Director, Asian Structured Finance

Mortgage Reinsurers

13.	Hang Seng Insurance	Ms. Josephine Tsang, Senior Manager
14.	United Guaranty Mortgage Indemnity Company	Ms. Sandie Kwan, Associate Director of Insurance Operations

Professional / Academic Bodies

15.	Hong Kong Bar Association	Mr. Ronny Tong, Senior Counsel
16.	The Law Faculty of The University of Hong Kong	Ms. Judith Sihombing, former Associate Professor of Law
17.	The Law Society of Hong Kong	Mr. Peter Aherne, Partner, Deacons

Annex B

List of Consultative Parties

Industry Associations

The Hong Kong Association of Banks
The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies
The Hong Kong Capital Markets Association

Consumer Council

Regulators

Hong Kong Monetary Authority
Department of Justice
Financial Services Bureau
Planning and Lands Bureau
The Land Registry
Securities and Futures Commission
Hong Kong Exchanges and Clearing Limited

Professional Bodies / Academic Institutions

The Law Society of Hong Kong
Hong Kong Bar Association
The University of Hong Kong
City University of Hong Kong

HKMC's Business Partners

All Approved Sellers/Servicers
All Approved Reinsurers

Rating Agencies

FITCH (Hong Kong) Limited
Moody's Asia Pacific Limited
Standard & Poor's

Annex C

Key Features of Model Mortgage Deed and Model Deed of Guarantee and Indemnity Form

Model Mortgage Deed

The Mortgage Model Deed is drafted as an "all monies" 2-party mortgage deed designed for use by mortgage lenders and homebuyers in connection with residential properties. The Steering Committee is aware that 3-party mortgage deeds, loan-specific mortgage deeds etc. are also commonly used by mortgage lenders. For the purpose of this Project, the Steering Committee intends to concentrate on the more commonly used "all monies" 2-party Model Mortgage Deed. Once the standard 2-party Model Mortgage Deed becomes commonly adopted by mortgage lenders in Hong Kong, other forms of the mortgage deed could be prepared on the basis of the standard form.

The Code of Banking Practice states that one way of promoting good banking practice is to increase transparency in the provision of banking services so as to enhance the understanding of the customers of what they can reasonably expect of the services provided by the institutions. The following provisions in the Model Mortgage Deed reflect the Steering Committee's considerations of this objective:

(a) Repayment on Demand

Some of the existing mortgage deeds contain both a repayment "on demand" clause as well as an "event of default" clause the happening of which will entitle the mortgage lender to demand the immediate repayment by the borrower of all money and liabilities due or owing by the borrower to the mortgage lender under the mortgage.

From the perspective of the mortgage lenders, it is unlikely that they would exercise the right to call for immediate repayment if the mortgage is being serviced properly (i.e. there is no event of default). In case an event of default has happened, the mortgage lenders would already have the right to call for immediate repayment under the "event of default" clause.

In view of the above, the model Model Mortgage Deed and Guarantee Form does not contain a stand-alone "on demand" clause, and the relevant provisions tie the right of the mortgage lender to demand immediate repayment from the mortgagor/guarantor to the specified events of default.

(b) Default Interest Rate

The Code of Banking Practice recommends that terms and conditions should, where applicable, highlight any fees, charges, penalties and

relevant interest rate (or the basis on which these will be determined). Most mortgage deeds typically used by the mortgage lender do not specify the default rate of interest charged by the mortgage lender on overdue instalment payment, and provide that this will be charged at such rate as the mortgage lender may from time to time determine at "its absolute discretion".

The Steering Committee recommends mortgage lenders to specify the default rate of interest in the facility letter. Additionally, Section G and Section H of the Model Mortgage Deed also specify the default interest rates on unpaid "Expenses" and "Secured Liabilities" (as defined in the Model Mortgage Deed) respectively.

(c) "Reasonable" Costs and Expenses

Most mortgage deeds typically used by the mortgage lenders provide that the mortgagor is liable for "all costs and expenses" irrespective of whether or not they are reasonably incurred by the mortgage lenders. Whilst such type of provisions is not by itself against public policy, the enforcement of such clauses is always subject to the Court's discretion. The Steering Committee considers that in light of the Court's decision on the Hang Seng Credit Card case (1999), it would be more prudent for the Model Mortgage Deed to adopt the "reasonable" indemnity as opposed to the more conventional "full" indemnity provision.

Model Deed of Guarantee Formand Indemnity (Model Guarantee Form)

(a) Prior Consent to Additional Guaranteed Amount

Most of the existing gGuarantee fForms contain an "all monies" provision that allows the mortgage lender to extend the guarantee to cover any type of banking facilities or loans, in addition to the mortgage loan, even without the guarantor's prior consent. The draft Mmodel Guarantee Form is structured on the basis that the liability of the Guarantor is, initially, only in respect of the mortgage loan plus interest, related costs and expenses which may be due or owing by the borrower/mortgagor to the mortgage lender. If the mortgage lender wishes to have the liability of the guarantor increased under the Model Guarantee Form, it must seek the express consent of the guarantor. The Steering Committee considers that an "all monies" gGuarantee under which the guarantor's liability could be increased only with his express consent will strike a reasonable balance between ensuring that the guarantor is made fully aware of the obligations that he/she is assuming under the Model Guarantee Form, whilst at the same time preserving the efficacy of banking operations.

(b) Information on the Underlying Mortgage Loan

In accordance with the recommendations set out in the Code of Banking Practice, the mortgage lender is obliged to provide the guarantor with a copy of the Model Mortgage Deed, the Mortgage Conditions and any agreement in relation to the loan. This is to ensure that the guarantor is provided with all the information in relation to the legal obligations which he/she will be assuming on executing the Model Guarantee Form.

In addition, the interest rate payable on the loan, default interest rate and other late charges etc. for which the guarantor may become liable are clearly set out in the Schedule to the Model Guarantee Form for his ease of reference.

(c) Termination of Guarantee Liability

The circumstances under which the guarantor is able to terminate his guarantee liability are also clearly spelt out in the Important Notice. In this case, one month's termination notice under the Model Guarantee Form is required. The guarantor's liability will also be capped at the amount which the borrower/mortgagor is owing to the mortgage lender on expiry of the 1-month notice period.

(d) "Reasonable" Costs and Expenses

Arrangements under the draft Mmodel Mortgage Deed are also applicable in the case of the Model Guarantee Form.