

# **CAP 219 CONVEYANCING AND PROPERTY ORDINANCE**

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### **Cap 219 Long title**

To make provision relating to conveyancing and the law of property; to make provision concerning agreements and deeds relating to land and other agreements; to make provision for the acquisition and holding of land and other property; to provide for standard agreements and deeds relating to land; to imply certain covenants and other provisions in agreements and deeds relating to land; to revise and consolidate certain miscellaneous provisions relating to land and other matters; and for connected purposes.

[1 November 1984]

(Originally 62 of 1984)

### **Cap 219 Part I PRELIMINARY**

#### **Cap 219 s 1 Short title**

This Ordinance may be cited as the Conveyancing and Property Ordinance.

#### **Cap 219 s 2 Interpretation**

In this Ordinance, unless the context otherwise requires-  
"assignment" (轉讓、轉讓契) includes-

- (a) the transfer of the whole of the interest in land held under a Government lease; (Amended 31 of 1988 s. 2; 29 of 1998 s. 105)
- (b) a legal charge;
- (c) a lease (other than a Government lease); (Amended 29 of 1998 s. 105)
- (d) a surrender;
- (e) an assent; and
- (f) every other assurance or conveyance of land by any instrument;

"bankruptcy" (破產) includes winding up;

"borrower" (借款人), where used in the First, Second and Third Schedules, includes "mortgagor";

"encumbrance" (產權負擔) includes a legal and equitable mortgage, a trust for securing money, a lien, a charge of a portion, annuity, or other capital or annual sum; and

"encumbrancer" (產權負擔人) has a meaning corresponding with that of "encumbrance" and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof; (Added 32 of 2000 s. 6)

"equitable interest" (衡平法權益) means any estate, interest or charge in or over land which is not a legal estate or a freehold;

"instrument" (文書) means any document having legal effect except a will;

"land" (土地) includes-

- (a) land covered by water;
- (b) any estate, right, interest or easement in or over any land;
- (bb) the whole or part of an undivided share in land and any estate, right, interest or easement in or over the whole or part of an undivided share in land; and (Added 31 of 1988 s. 2)
- (c) things attached to land or permanently fastened to anything attached to land;

"legal charge" (法定押記) means a mortgage expressed to be a legal charge;

"legal estate" (法定產業權) means-

- (a) a term of years absolute in land;
- (b) the legal interest in any easement, right or privilege in or over land for an interest equivalent to a term of years absolute; and
- (c) a legal charge;

"lender" (貸款人), where used in the First, Second and Third Schedules, includes

"mortgagee";

"mortgage" (按揭) means a security over land for securing money or money's worth;

"mortgage money" (按揭金) means the money, or money's worth, secured by a mortgage;

"mortgagee" (承按人) includes any person claiming under a mortgagee;

"mortgagor" (按揭人) includes any person claiming under a mortgagor;

"sale" (售賣), in relation to the sale of land, includes the disposition of all or part of the vendor's estate and interest under a Government lease; (Amended 29 of 1998 s. 105)

"term of years absolute" (絕對年期) includes a term for less than a year, for a year or years and a fraction of a year and from year to year.

## **Cap 219 Part II GENERAL RULES AFFECTING PROPERTY**

### **Cap 219 s 3 Land contracts to be in writing**

(1) Subject to section 6(2), no action shall be brought upon any contract for the sale or other disposition of land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged or by some other person lawfully authorized by him for that purpose.

(2) This section applies to contracts or other dispositions whenever made and does not affect the law relating to part performance or sales by the court.

[cf. 1925 c. 20 s. 40 U.K.]

### **Cap 219 s 4 Legal estate to be disposed of etc. by deed**

(1) A legal estate in land may be created, extinguished or disposed of only by deed.

(2) This section does not apply to-

- (a) an assent in writing by a personal representative;
- (b) a disclaimer made in accordance with section 59 of the Bankruptcy Ordinance (Cap 6) or section 268 of the Companies

Ordinance (Cap 32);

(c) a surrender by operation of law, including a surrender which may, by law, be effected without writing;

(d) the grant, disposal or surrender of a lease taking effect in possession for a term not exceeding 3 years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without a premium;

(e) other assurances not required by law to be made in writing;

(f) a receipt not required by law to be under seal;

(g) a vesting order or vesting declaration by a court or other competent authority;

(h) a creation, extinguishment or disposal of a legal estate in land by operation of law.

[cf. 1925 c. 20 s. 52 U.K.]

## **Cap 219 s 5 Certain instruments to be in writing**

(1) Subject to section 6-

(a) no equitable interest in land can be created or disposed of except by writing signed by the person creating or disposing of the same, or by his agent thereunto lawfully authorized in writing, or by will, or by operation of law;

(b) a declaration of trust respecting land or any interest therein shall be manifested and proved in writing signed by the person who is able to declare such trust or by his will. (Amended 31 of 1988 s. 3)

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.

[cf. 1925 c. 20 s. 53 U.K.]

## **Cap 219 s 6 Creation of interest in land by parol**

(1) All interests in land created by parol and not put in writing and signed by the persons creating the same, or by their agents thereunto lawfully authorized in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

(2) Nothing in section 3 or 5 or in subsection (1) shall affect the creation by parol of leases taking effect in possession for a term not exceeding 3 years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without a premium.

[cf. 1925 c. 20 s. 54 U.K.]

## **Cap 219 s 7 Savings in regard to sections 5 and 6**

Nothing in section 5 or 6 shall-

(a) invalidate dispositions by will;

(b) affect any interest validly created before the commencement of this section;

- (c) affect the right to acquire an interest in land by virtue of taking possession; or
  - (d) affect the operation of the law relating to part performance.
- [cf. 1925 c. 20 s. 55 U.K.]

### **Cap 219 s 8 Severance of joint tenancy**

- (1) A joint tenancy of an estate or interest in land may be severed at law only by-
- (a) a notice served by a joint tenant on the other joint tenants; or
  - (b) an instrument.
- (2) A joint tenancy of an estate or interest in land may be severed in equity by a notice served by a joint tenant on the other joint tenants or by any other method that is effective in equity or that would, but for subsection (1), be effective at law.
- (Replaced 31 of 1988 s. 4)

### **Cap 219 s 9 Presumption in favour of tenancy in common**

- (1) Where a tenancy in the same estate or interest in land vests in 2 or more persons under an instrument or a will, it shall be presumed, unless the contrary intention is expressed in that instrument or will, that the tenancy vests in those persons as tenants in common rather than as joint tenants.
- (2) This section shall not apply to any instrument or will made before the commencement of this section.
- (3) This section shall not apply to a tenancy vesting in trustees or personal representatives. (Added 31 of 1988 s. 5)

### **Cap 219 s 10 Corporation may hold as joint tenant**

- (1) A corporation shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual.
- (2) Where a corporation is a joint tenant of any property, on its dissolution, that property shall devolve on the other joint tenant.

[cf. 1899 c. 20 s. 1 U.K.]

### **Cap 219 s 11 Presumption of survivorship**

- (1) Except for the purposes of section 4(11) of the Intestates' Estates Ordinance (Cap 73), where, after the commencement of this section, 2 or more persons die in circumstances rendering it uncertain that any one of them, or which of them, survived the other or others, such deaths shall, for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.
- (2)-(3) [Amendments incorporated]

[cf. 1925 c. 20 s. 184 U.K.]

### **Cap 219 s 12 Application to court by vendor and purchaser**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 61 of 1999 s. 3

(1) A vendor or purchaser of land may apply by petition or by originating summons to the court in respect of any question arising out of or connected with any contract for the sale or exchange of land (not being a question affecting the existence or validity of the contract or relating to compensation payable by the Government or a public body), and the court may make such order upon the petition or originating summons and as to costs as to the court appears just. (61 of 1999 s. 3)

(2) In this section, "court" (法院) means the Court of First Instance unless the vendor and purchaser submit to the jurisdiction of the District Court. (Amended 25 of 1998 s. 2)

[cf. 1925 c. 20 s. 49 U.K.]

### **Cap 219 s 12A Discharge of encumbrances by the court**

(1) Where land is subject to any encumbrance, whether immediately realizable or payable or not, and the encumbrancer is out of the jurisdiction, cannot be found or is unknown, or if it is uncertain who the encumbrancer is, the court may, if it thinks fit, on the application of the party for the time being entitled to redeem the encumbrance, direct or allow payment into court of a sum of money sufficient to redeem the encumbrance and any interest thereon.

(2) Upon payment into court of the sum referred to in subsection (1), the court may, if it thinks fit, and either after or without any notice to the encumbrancer, as the court thinks fit, declare the land to be free from the encumbrance, and make any order for conveyance or vesting order as appropriate, and give directions for the retention and investment of the sum of money paid into court and for the payment or application of the income thereof, and for the payment of an amount certified by the court to be the reasonable costs of the applicant in making the application, such amount to be deducted from the sum of money paid into court.

(3) On application by the encumbrancer or any person entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4) In this section, "court" (法院) means the Court of First Instance unless the party to the application submits to the jurisdiction of the District Court.

(Added 32 of 2000 s. 7)

### **Cap 219 s 13 Proof of title and recitals**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

(1) Unless the contrary intention is expressed, a purchaser of land shall be entitled to require from the vendor, as proof of title to that land, only production of the Government lease relating to the land sold and- (Amended 29 of 1998 s. 105)

(a) proof of title to that land-

(i) where the grant of the Government lease was less than 15 years before the contract of sale of that land, extending for the period since that grant; or (Amended 29 of 1998 s. 105)

(ii) in any other case, extending not less than 15 years before the contract of sale of that land commencing with an assignment, a mortgage by assignment or a legal charge, each dealing with the whole estate and interest in that land; (Replaced 31 of 1988 s. 6)

(b) production of any document referred to in the assignment, mortgage or charge mentioned in paragraph (a) creating or disposing of an interest, power or obligation, which is not shown to have ceased or expired and subject to which any part of that land is disposed of; and

(c) production of any power of attorney under which any document produced is executed where that document was executed less than 15 years before the contract of sale of that land. (Amended 31 of 1988 s. 6)

(2) Where this section requires the production of any document, it shall be sufficient to produce a copy-

(a) attested, before 1 November 1984, by 2 solicitors' clerks; or

(b) certified by a public officer or a solicitor,

to be a true copy. (Amended 31 of 1988 s. 6)

(3) Subject to subsection (1), where any document produced as proof of title to any land contains a recital of any document dated or made before the date from which a vendor is required to prove title, the purchaser of that land shall assume, unless the contrary is proved, that-

(a) the recital is correct;

(b) the recital gives all the material contents of the document recited; and

(c) the document recited was duly executed and perfected.

(4) A recital, statement, and description of any fact, matter or party contained in any document of title, mortgage, declaration or power of attorney relating to any land and dated or made not less than 15 years before the contract of sale of that land shall, for the purposes of any question as to proof of title concerning the parties to that contract and unless the contrary is proved, be sufficient evidence of the truth of that recital, statement and description.

(4A) Where any document is or has been produced by a vendor as proof of title to any land and that document purports to have been executed, not less than 15 years before the contract of sale of that land, under a power of attorney, it shall for the purposes of any question as to the title to that land be conclusively presumed-

(a) as between the parties to that contract; and

(b) in favour of the purchaser under that contract as against any other person,

that the power of attorney-

(i) was validly executed;

(ii) was in force at the time of the execution of that document; and

(iii) validly authorized the execution of that document.

(Added 31 of 1988 s. 6)

(5) This section affects only the rights and obligations of the parties to a contract for the sale of land entered into after the commencement of this section.

### **Cap 219 s 13A Delivery of original deeds or documents of title**

(1) Unless the contrary intention is expressed, a purchaser of land shall be entitled to require the vendor to deliver to him, for the purpose of giving title to that land, the original of both of the following only-

(a) if there is a Government lease that relates exclusively to the land, the lease; and

(b) any document that relates exclusively to the land and is required to be produced by the vendor as proof of title to that land under section 13(1)(a) and (c).

(2) Subsection (1) does not affect any rule of common law under which the vendor may discharge his obligation to give title to that land otherwise than by delivering the Government lease or document to the purchaser.

(3) If the vendor is not required to deliver to the purchaser a document in giving title to that land, the purchaser has no proprietary right or ownership in the document.

(4) The fact that-

(a) the vendor is not required to deliver to the purchaser a document in giving title to that land; and

(b) the purchaser has no proprietary right or ownership in the document,

does not affect the right or interest of any other person in that land.

(Added 25 of 2008 s. 10)

### **Cap 219 s 14 Conversion of equitable interest to legal estate where right to Government lease**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

(1) Where a person has a right to a Government lease of any land upon compliance with any conditions precedent, then, upon compliance with those conditions-

(a) the equitable interest under that right shall become a legal estate in that land as if held under a Government lease issued in accordance with that right; and (Amended 31 of 1988 s. 7)

(b) for the purposes of section 42 and any other law, such a Government lease shall be deemed to have been issued upon compliance with those conditions.

(2) Where, under an agreement for a Government lease entered into before 1 January 1970, a person has a right to a Government lease upon compliance with any conditions precedent he shall be deemed, for the purposes of this section, to have complied with those conditions on the commencement of this section.

(3) Where under an agreement for a Government lease entered into on or after 1 January 1970, a person has a right to a Government lease upon compliance with any conditions precedent, he shall be deemed, for the purposes of this section, to have complied with those conditions-

- (a) upon the issue by the Government of a certificate that those conditions have been complied with and the registration of that certificate in the Land Registry under the Land Registration Ordinance (Cap 128); or
  - (b) upon the endorsement by the Government on the Government lease of a note to the effect that those conditions have been complied with and the registration of a copy of that endorsement in the Land Registry under the Land Registration Ordinance (Cap 128); or
  - (c) upon the entry on the register kept in the Land Registry under the Land Registration Ordinance (Cap 128) relating to the land of a note to the effect that those conditions have been complied with.
- (Amended 31 of 1988 s. 7; 8 of 1993 s. 2)

(4) Where a person has a right to a Government lease of any land and that right is not subject to any conditions precedent-

- (a) the equitable interest under that right shall become a legal estate in that land as if held under a Government lease issued in accordance with that right; and
- (b) for the purposes of section 42 and any other law, such a Government lease shall be deemed to have been issued on the commencement of the Conveyancing and Property (Amendment) Ordinance 1988 (31 of 1988) or on the date of the grant of that right, whichever is the later. (Added 31 of 1988 s. 7)

(5) Where a person has a right to a Government lease of any land and that land is partitioned by assignment or otherwise by deed, this section shall apply to each part of that land constituted by that partition, as it applies to the whole of that land, as if there were a right to a Government lease of each such part. (Added 31 of 1988 s. 7)

(6) Where a person has a Government lease, or a right to a Government lease, of any land and additional land is granted to that person with the intent that he should hold it as part of the land leased, this section shall apply to that additional land as if that additional land were part of the land originally leased and held subject to any further conditions precedent imposed when that additional land was granted. (Added 31 of 1988 s. 7)

(Amended 29 of 1998 s. 105)

## **Cap 219 s 14A Modification of Government lease**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

(1) Any modification in writing by the Government of the covenants, terms or conditions of a Government lease shall have the same effect as if made by deed. (Amended 29 of 1998 s. 105)

(2) Subsection (1) applies to a modification made before or after the commencement of the Conveyancing and Property (Amendment) Ordinance 1988 (31 of 1988).

(Added 31 of 1988 s. 8)

## **Cap 219 Part III INSTRUMENTS**

### **Cap 219 s 15 Construction of words and expressions**



Remarks:

Adaptation amendments retroactively made - see 26 of 1998 s. 44; 61 of 1999 s. 3

Unless the contrary intention appears, in any instrument affecting land made after the commencement of this section-

- (a) any definition used in, or, by this section, incorporated into, that instrument shall extend to the grammatical variations and cognate expressions of the word or expression defined;
- (b) words and expressions importing the masculine gender include the feminine; (Amended L.N. 387 of 1987)
- (c) words and expressions in the singular include the plural and words and expressions in the plural include the singular; (Amended L.N. 387 of 1987)
- (d) Chinese words and terms shall be construed according to Chinese language and custom and, if there is any conflict between Chinese words and terms and English words used in the instrument, the meaning of the English words shall prevail; and
- (e) "act" (作為) includes a series of acts, an omission or a series of omissions;

"contravene" (違反) includes failure to comply;

"court" (法院、法庭) means any court of Hong Kong of competent jurisdiction;

"Crown lease" (官契) means a Government lease; (Replaced 26 of 1998 s. 44)

"document" (文件) means any matter written, expressed or described upon any substance by means of letters, characters, figures or marks or by a combination of these;

"general holiday" and "public holiday" (公眾假期、公眾假日) mean a general holiday within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1); (Added 26 of 1998 s. 44)

"Government" (政府) means the Government of the Hong Kong Special Administrative Region; ( Amended 61 of 1999 s. 3)

"Government lease" (政府租契) means a Government lease within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1); (Added 26 of 1998 s. 44)

"Hong Kong" (香港) means Hong Kong within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1); (Added 26 of 1998 s. 44)

"Kowloon" (九龍) means Kowloon within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1); (Replaced 26 of 1998 s. 44)

"law" (法律、法例、法) means any law for the time being in force in, having legislative effect in, extending to or applicable to Hong Kong;

"month" (月) means calendar month;

"New Kowloon" (新九龍) means the area specified in the Fifth Schedule to the Interpretation and General Clauses Ordinance (Cap 1);

"New Territories" (新界) means New Territories within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1); (Replaced 26 of 1998 s. 44)

"occupy" (佔用) includes use, inhabit, be in possession of or enjoy the land to which the word relates otherwise than as a mere servant or for the mere purpose of the care, custody or charge thereof;

"or" (或), "other" and "otherwise"

(其他、以其他形式、在其他情況下) shall be construed disjunctively and not as implying similarity, unless the word "similar" (相類) or some other word of like meaning is added;

"per cent" (釐、百分之), when used in relation to a rate of interest payable in any circumstances, means the rate of interest specified payable in respect of a year, unless it is expressly provided that it is payable in respect of any other period;

"person" (人、人士、個人、人物、人選) includes any public body or body of persons, corporate or unincorporate;

"power" (權、權力) includes any privilege, authority or discretion;

"registered" (註冊), in relation to a document, means registered under any law applicable to the registration of that document;

"sign" (簽名、簽署) includes, in the case of a person unable to write, the affixing or making of his seal, mark, thumbprint or chop;

"year" (年) means a year according to the Gregorian calendar.

(Amended 26 of 1998 s. 44)

## **Cap 219 s 16 What an assignment is deemed to include**

(1) Unless the contrary intention is expressed in the assignment, an assignment shall operate to assign, with the land, all rights, interests, privileges, easements or appurtenances in, over, belonging or appertaining to that land or at the time of the assignment used, held, occupied or enjoyed with that land and things attached to the land or permanently fastened to anything attached to the land. (Amended 31 of 1988 s. 9)

(2) This section shall not operate to give to any person a better title than that assigned or any better title than that enjoyed by the assignor.

[cf. 1925 c. 20 s. 62 U.K.]

## **Cap 219 s 17 Assignment passes whole estate**

Unless the contrary intention is expressed in the assignment, an assignment shall operate to assign all the estate, right and interest in the land assigned which the assignor has in that land and which he has the power to assign.

[cf. 1925 c. 20 s. 63 U.K.]

### **Cap 219 s 18 Receipt in body of an instrument**

(1) A receipt for consideration in the body of an instrument shall be a sufficient discharge to the person paying the consideration and, in favour of any other person acting on the faith of the receipt, shall be sufficient evidence of payment.

(2) A solicitor producing an instrument containing a receipt for consideration shall be deemed to be authorized to receive that consideration unless the person liable to pay that consideration is served with a notice in writing stating that the solicitor is not so authorized.

[cf. 1925 c. 20 ss. 67, 68 & 69 U.K.]

### **Cap 219 s 19 Execution of deed by individual**

(1) A deed by an individual shall be signed by him.

(2) A document shall be presumed to have been sealed by an individual if the document signed by him-

- (a) describes itself as a deed; or
- (b) states that it has been sealed; or
- (c) bears any mark, impression or addition intended to be or to represent a seal or the position of a seal.

(3) Subsection (1) applies only to documents executed after the commencement of this section.

(4) Subsection (2) applies to a document executed before or after the commencement of this section.

(5) This section does not affect any other law by which an individual may authorize another person to sign a deed on his behalf. (Added 31 of 1988 s. 10)

### **Cap 219 s 20 Execution of deed by corporation**

(1) In favour of a person dealing with a corporation aggregate in good faith, his successors in title and persons deriving title under or through him or them, a deed shall be deemed to have been duly executed by the corporation if the deed purports to bear the seal of the corporation affixed in the presence of and attested by its secretary or other permanent officer of the corporation and a member of the corporation's board of directors or other governing body or by 2 members of that board or body. (Amended 31 of 1988 s. 11)

(2) Where a person is empowered to execute a deed by a corporation, he may execute the deed as agent by signing the name of the corporation or his own name and by affixing his own seal. (Amended 31 of 1988 s. 11)

(3) Where a corporation aggregate is empowered to execute a deed by another person, an officer appointed for that purpose by the board of directors or other governing body of the corporation may execute the deed in the name of such other person; and where a deed purports to be so executed then the deed shall, in favour of a person dealing with the corporation in good faith, be deemed to have been executed by an officer duly authorized.

(4) This section applies to transactions wherever effected, but only to deeds executed after

the commencement of this section; except that, in the case of powers of appointment of an officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this section.

[cf. 1925 c. 20 s. 74 U.K.]

### **Cap 219 s 21 Rights as to execution**

A person shall be entitled, at his own cost, to require that an assignment to him be executed in the presence of his agent.

[cf. 1925 c. 20 s. 75 U.K.]

### **Cap 219 s 22 Presumption as to capacity**

A party to any instrument shall be presumed, until the contrary is proved, to have full legal capacity to execute that instrument, to bind himself in terms of that instrument and to dispose of or hold any property or rights assigned under that instrument.

### **Cap 219 s 23 Presumption as to due execution**

An instrument appearing to be duly executed shall be presumed, until the contrary is proved, to have been duly executed.

### **Cap 219 s 23A Proof of title and presumptions of due execution of deed by corporation**

(1) A deed purporting to be-

- (a) executed prior to the commencement\* of section 9 of the Law Amendment and Reform (Miscellaneous Provisions) Ordinance 2003 (14 of 2003) by or on behalf of a corporation aggregate; and
- (b) attested by a signatory or more than one signatory, where the signatory or each of the signatories, if more than one, is a person who could have been authorized under the articles of association or other instruments of the corporation,

shall, until the contrary is proved, be presumed for the purposes of proof of title to any land to have been duly executed by the purported signatory or signatories, as the case may be, with the authority conferred by the articles of association or other instruments of the corporation, whether or not the source of the authority or the means by which such authority was purportedly conferred is apparent from the deed.

(2) Where any deed is or has been produced by a vendor as proof of title to any land and that deed purports to have been executed by a corporation aggregate not less than 15 years before the contract of sale of that land, it shall for the purposes of any question as to the title to that land be conclusively presumed-

- (a) as between the parties to that contract; and
- (b) in favour of the purchaser under that contract as against any other person,

that the deed was validly executed.

(3) This section applies only to deeds produced as proof of title to any land pursuant to

contracts for the sale of such land entered into on or after the commencement\* of section 9 of the Law Amendment and Reform (Miscellaneous Provisions) Ordinance 2003 (14 of 2003).

(Added 14 of 2003 s. 9)

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**Note:**

**\* Commencement date: 9 May 2003.**

## **Cap 219 s 24 Reservation of rights**

A reservation of any rights or interests in land may be effected in an assignment of the land in respect of which those rights are exercisable or interests are vested and a regrant of the rights or interests reserved shall not be necessary.

## **Cap 219 s 25 Agreements, assignments etc. by person with or to himself**

(1) A person may, in one legal capacity, assign to, or agree or covenant with, himself in another legal capacity.

(2) An assignment, agreement or covenant-

(a) by a person to, or with, himself and another or others; or

(b) by a person and another or others to, or with, himself,

shall, unless the contrary intention is expressed and otherwise without prejudice to its effect in law, be enforceable between the parties as if that assignment, agreement or covenant were made-

(i) in the case of paragraph (a), to, or with, the other or others alone; or

(ii) in the case of paragraph (b), by the other or others alone.

(3) This section shall not prevent any assignment, agreement or covenant being set aside on the grounds of fraud or breach of trust or other fiduciary relationship.

(4) This section shall apply to an assignment, agreement and covenant made or entered into before or after the commencement of this section.

(5) This section shall apply to assignments, agreements and covenants relating to land and other property.

[cf. 1925 c. 20 ss. 72 & 82 U.K.]

## **Cap 219 s 26 Benefits to non-parties**

A person may take an immediate or other interest granted to him in land or the benefit of any condition, right of entry, covenant or agreement granted to him over or in respect of land, although he may not be named as a party to the instrument.

[cf. 1925 c. 20 s. 56 (1) U.K.]

## **Cap 219 s 27 Description of deeds**

(1) A deed between parties, to effect its objects, has effect as an indenture although not indented or expressed to be an indenture.

(2) A deed, whether or not an indenture, may be described as a deed simply or according to the nature of the transaction intended to be effected.

[cf. 1925 c. 20 ss. 56 (2) & 57 U.K.]

## **Cap 219 s 28 Supplemental instruments**

Any instrument (whether executed before or after the commencement of this section) expressed to be supplemental to a previous instrument shall be read and have effect as if the supplemental instrument contained the full recital of the previous instrument.

[cf. 1925 c. 20 s. 58 U.K.]

## **Cap 219 s 29 Effect of licences or permits granted to lessees**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 54

(1) Where a licence or permit is granted to a lessee to do any act, the licence or permit, unless otherwise expressed, extends only to-

- (a) the permission actually given; or
- (b) the specific breach of any provision or covenant referred to; or
- (c) any other matter thereby specifically authorized to be done,

and the licence or permit does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence or permit.

(2) Notwithstanding any such licence or permit-

- (a) any right of re-entry contained in the lease remains in full force and is available as against any subsequent breach of covenant, condition or other matter not specifically authorized or waived, in the same manner as if no licence or permit had been granted; and
- (b) any right of re-entry remains in force in all respects as if the licence or permit has not been granted, except in respect of the particular matter authorized to be done.

(3) Where in any lease there is a right of re-entry on the lessee assigning, subletting or doing any other specified act without a licence or permit, and a licence or permit is granted

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- (a) to any one of 2 or more lessees to do any act, or to deal with his share or interest; or
- (b) to any lessee, or to any one of 2 or more lessees to assign or underlet part only of the land, or to do any act in respect of part only of the land,

the licence or permit does not operate to extinguish the right of re-entry in case of any breach of covenant or condition by the co-lessee of another share or interest in the land, or by the lessee of the rest of the land (as the case may be) in respect of such share or interest or remaining land, but the right of re-entry remains in force in respect of the share, interest or land not the subject of the licence or permit.

(4) This section applies to a licence or permit granted before or after the commencement of this section.

(5) Nothing in this section shall affect the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126). (Amended 29 of 1998 s. 54)

[cf. 1925 c. 20 s. 143 U.K.]

## **Cap 219 s 30 Apportionment of conditions on severance**

(1) Notwithstanding the severance by assignment or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the terms whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) In this section "right of re-entry" (重收權) includes a right to determine the lease by notice to quit or otherwise or to give notice or make an application under any law which may result in the determination of the lease or the grant of a new lease; but where the notice or application is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice effective at the same time as the notice or application served by the person entitled to the severed part of the reversion is effective to determine the lease of that part.

(3) This section applies to leases made before or after the commencement of this section and whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before or after such commencement.

[cf. 1925 c. 20 s. 140 U.K.]

## **Cap 219 s 31 Rent and benefit of lessee's covenants to run with the reversion**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 54

(1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

(2) Any rent, covenant or provision mentioned in subsection (1) shall be capable of being recovered, received, enforced, and taken advantage of, by the person from time to time entitled, subject to the term granted by the lease, to the income of the whole or any part, as the case may require, of the land leased.

(3) Where the person mentioned in subsection (2) becomes entitled as mentioned in that subsection by assignment or otherwise, the rent, covenant or provision mentioned in subsection (1) may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as

aforesaid.

(4) This section applies to leases made before or after the commencement of this section, but does not affect the operation of-

- (a) any severance of the reversionary estate; or
- (b) any acquisition by assignment or otherwise of the right to receive or enforce any rent covenant or provision,

effected before the commencement of this section.

(5) Nothing in this section shall affect the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126). (Amended 29 of 1998 s. 54)

[cf. 1925 c. 20 s. 141 U.K.]

## **Cap 219 s 32 Obligation of lessor's covenants to run with reversion**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 54

(1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by assignment, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and entered against any person so entitled.

(2) This section applies to leases made before or after the commencement of this section, whether the severance of the reversionary estate was effected before or after such commencement.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

(4) Nothing in this section shall affect the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126). (Amended 29 of 1998 s. 54)

[cf. 1925 c. 20 s. 142 U.K.]

## **Cap 219 s 33 Lessor or mortgagee to have benefit of informal insurance**

The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured which has been effected by the lessee or mortgagor in respect of his interest under the lease or in the property or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

## **Cap 219 s 34 Protection of purchaser against forfeiture under covenant for insurance**

Remarks:



Amendments retroactively made - see 29 of 1998 s. 54

(1) Where, on the bona fide purchase of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability, by way of forfeiture or damages or otherwise, in respect of any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had no notice before the completion of the purchase; but this provision is not to take away any remedy which the lessor or his personal representatives may have against the lessee or his personal representatives for breach of covenant.

(2) Nothing in subsection (1) shall affect the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126). (Amended 29 of 1998 s. 54)

### **Cap 219 s 34A Provision requiring purchaser to pay costs of vendor void**

(1) This section applies to an agreement for the sale and purchase of undivided shares in land, together with a right to exclusive occupation of a unit or other interest-

- (a) in an uncompleted development of the land; or
- (b) in a completed development of the land where-
  - (i) the vendor is the developer of the whole development; and
  - (ii) no assignment of the unit or interest has been executed since the date on which the relevant occupation permit or certificate of compliance was issued in respect of the development.

(2) This section also applies to an agreement for the sub-sale and sub-purchase of undivided shares in land, together with a right to exclusive occupation of a unit or other interest in an uncompleted or completed development referred to in subsection (1), but only where a solicitor or solicitor corporation, or 2 or more solicitors practising in partnership or association, is or are authorized, by or under the Legal Practitioners Ordinance (Cap 159), to act for both the sub-vendor and the sub-purchaser of those undivided shares.

(3) Any provision of an agreement to which this section applies is void in so far as it would, but for this section, have the effect of requiring the purchaser or sub-purchaser of the undivided shares in the relevant land to pay the costs of the vendor or sub-vendor in or in relation to-

- (a) preparing, completing, stamping and registering the agreement; or
- (b) preparing, obtaining approval for and executing any instrument that gives effect to the agreement; or
- (c) preparing and executing any relevant preliminary agreement.

(4) Subsection (3) has effect only where the vendor and purchaser, or the sub-vendor and sub-purchaser, under the agreement have separate legal representation.

(5) In this section-

"building" (建築物) has the same meaning as in the Buildings Ordinance (Cap 123);

"certificate of compliance" (完工證) means, in relation to land that is the subject of a Government grant, a document signed by or on behalf of the Director of Lands certifying

that all of the positive obligations imposed on the grantee, and the grantee's successors and assignees, have been complied with to the satisfaction of that Director;

"completed development" (已完成的土地發展項目) means-

- (a) a development in respect of which an occupation permit or a temporary occupation permit is issued under section 21(2) of the Buildings Ordinance (Cap 123) after the commencement of this section; or
- (b) a development that is completed after that commencement, and in respect of which any relevant certificate of compliance has been issued or is taken to have been issued, or the requisite consent has been obtained from the Director of Lands;

"development" (發展項目) means a development involving the construction of a new building;

"preliminary agreement" (初步協議) means an agreement (whether in writing or not) that is entered into with a view to making an agreement for sale and purchase to which this section applies;

"stamping" (加蓋印花), in relation to an agreement for sale and purchase to which this section applies, does not include the stamp duty payable in respect of the agreement or any document relating to the agreement;

"uncompleted development" (未完成的土地發展項目) means a development-

- (a) for which neither a temporary occupation permit nor an occupation permit has been issued under section 21(2) of the Buildings Ordinance (Cap 123); or
- (b) that is otherwise uncompleted; or
- (c) where applicable, for which a certificate of compliance has not been issued or is taken not to have been issued.

(Added 94 of 1997 s. 14)

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**Note:**

**This section does not apply to an agreement for the sale and purchase of undivided shares in land if the agreement was entered into before 8 August 1997. See s. 4 of Schedule 2 to 94 of 1997.**

## **Cap 219 Part IV FORMS, COVENANTS AND CONDITIONS**

### **Cap 219 s 35 Implied covenants**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

(1) There shall be implied-

- (a) in any assignment of the whole of the interest in land held under a Government lease, the covenant by a person who assigns, and the covenant by a person to whom an assignment is made, mentioned in Part I of the First Schedule; (Amended 31 of 1988 s. 12; 29 of 1998 s. 105)
- (b) in an assignment to a purchaser for valuable consideration, the covenants, by a person who is expressed to assign as beneficial

owner, mentioned in Part II of the First Schedule;

(c) in an assignment by way of voluntary disposition, the covenant, by a person who is expressed to assign as donor, mentioned in Part III of the First Schedule;

(d) in any assignment, the covenant, by a person who is expressed to assign as trustee, confirmor, mortgagee, legal chargee, personal representative of a deceased person or under an order of court, mentioned in Part IV of the First Schedule; and

(e) in a legal charge, the covenants, by a person who is expressed to charge as beneficial owner, mentioned in Part V of the First Schedule.

(1A) The covenants implied under subsection (1)(a) shall be covenants to which section 41 applies. (Added 31 of 1988 s. 12)

(1B) The benefit of the covenants implied under this section shall run with the land and shall be enforceable by the covenantee and his successors in title and persons deriving title under or through him or them. (Added 31 of 1988 s. 12)

(1C) In paragraphs (a) to (d) of subsection (1), "assignment" (轉讓) does not include a legal charge. (Added 31 of 1988 s. 12)

(1D) Unless the contrary intention is expressed, the liability of joint parties to any assignment or legal charge in respect of the covenants mentioned in subsection (1) shall be joint and several. (Added 31 of 1988 s. 12)

(2) The covenants implied under this section may be excluded, varied or extended in the assignment or legal charge.

(3) This section shall not affect any assignment or legal mortgage executed before the commencement of this section.

[cf. 1925 c. 20 s. 76 U.K.]

## **Cap 219 s 36 Other covenants and conditions**

The covenants and conditions mentioned in the Second Schedule, or any of them, may be incorporated into any instrument by reference.

## **Cap 219 s 37 Standard forms**

A deed, agreement or receipt in the appropriate form given in the Third Schedule shall, in regard to form and expression, be sufficient.

[cf. 1925 c. 20 s. 206 U.K.]

## **Cap 219 s 38 Protection of solicitors etc.**

(1) The powers given by this Ordinance to any person and the covenants and conditions implied by, or incorporated by reference under, this Ordinance in any instrument shall be deemed in law proper to be included in the appropriate instrument and a solicitor, acting in good faith and with reasonable diligence, shall not be liable for failing to exclude those powers, covenants or conditions or to insert others in their place:

Provided that this subsection shall not imply that the inclusion of other powers, covenants or conditions is improper.

(2) A person acting in a fiduciary position, whether with or without a solicitor, shall be entitled to the protection afforded to a solicitor by subsection (1).

[cf. 1925 c. 20 s. 182 U.K.]

### **Cap 219 s 39 Benefit of covenants relating to land**

- (1) A covenant relating to any land of the covenantee shall be deemed, unless the contrary intention is expressed, to be made with the covenantee and his successors in title and persons deriving title under or through him or them. (Amended 31 of 1988 s. 13)
- (2) This section shall apply to covenants entered into before or after the commencement of this section.

[cf. 1925 c. 20 s. 78 U.K.]

### **Cap 219 s 40 Burden of covenants relating to land**

- (1) A covenant relating to any land of a covenantor or capable of being bound by him, shall be deemed, unless the contrary intention is expressed, to be made by the covenantor on behalf of himself, his successors in title and persons deriving title under or through him or them.
- (2) This section extends to a covenant to do some act relating to the land, notwithstanding that the subject matter may not be in existence when the covenant is made.
- (3) This section shall apply to covenants entered into before or after the commencement of this section.

[cf. 1925 c. 20 s. 79 U.K.]

### **Cap 219 s 41 Enforcement of covenants**

- (1) This section applies to an express covenant and a covenant implied by or under this Ordinance or any other law.
- (2) This section applies to any covenant, whether positive or restrictive in effect -
- (a) which relates to the land of the covenantor;
  - (b) the burden of which is expressed or intended to run with the land of the covenantor; and
  - (c) which is expressed and intended to benefit the land of the covenantee and his successors in title or persons deriving title to that land under or through him or them.
- (3) Notwithstanding any rule of law or equity but subject to subsection (5), a covenant shall run with the land and, in addition to being enforceable between the parties, shall be enforceable against the occupiers of the land and the covenantor and his successors in title and persons deriving title under or through him or them by the covenantee and his successors in title and persons deriving title under or through him or them.
- (4) (a) For the purposes of the enforcement of a covenant, the following remedies shall be available-
- (i) proceedings for an injunction (including a mandatory injunction) or other equitable relief;
  - (ii) an action for money due under the covenant;
  - (iii) an action for damages (whether in respect of pecuniary or non-pecuniary kinds of damage).

(b) For the purposes of ascertaining the existence, nature and effect of a covenant, a court of competent jurisdiction may make a declaration relating to those matters.

(5) A positive covenant shall not, by virtue only of this section, be enforceable against-

(a) a lessee from the covenantor or from a successor in title of the covenantor or from any person deriving title under or through the covenantor or a successor in title of the covenantor; or

(b) any person deriving title under or through such a lessee; or

(c) any person merely because he is an occupier of land.

(6) A positive covenant is a covenant to expend money, do something or which is otherwise positive in nature.

(7) A covenant shall be enforceable under this section whether or not the covenant is between owners of the same land.

(8) A covenant shall not bind a person after he has ceased to have any estate or interest in the land affected by that covenant except in respect of a breach of that covenant committed by him before that cessation.

(9) A covenant in an instrument registered in the Land Registry under the Land Registration Ordinance (Cap 128) against the land affected by the covenant shall bind the successors in title of the covenantor and the persons deriving title under or through him or them whether or not they had notice of the covenant. (Amended 8 of 1993 s. 2)

(10) This section shall apply to covenants whether entered into before or after the commencement of the Conveyancing and Property (Amendment) Ordinance 1988 (31 of 1988).

(Replaced 31 of 1988 s. 14)

## **Cap 219 s 42 Saving of covenants, terms and conditions**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

(1) Any instrument entered into and taking effect after an agreement for the Government lease of the land affected by the instrument but before the issue of the Government lease of that land shall have the same force and effect in relation to that land after the issue of that Government lease as it had immediately before that issue. (Amended 31 of 1988 s. 15)

(2) Where any instrument referred to in subsection (1) is registered under the Land Registration Ordinance (Cap 128), that registration shall continue in force after the issue of, and in relation to, the Government lease of the land affected by the instrument with effect from the date of registration; and the Land Registrar may make an entry directing attention to the provisions of this section in the Land Registry registers relating to any land affected by that instrument. (Amended 31 of 1988 s. 15; 8 of 1993 ss. 2 & 3)

(3) Where a Government lease expires and is either renewed or replaced by a new Government lease relating to the same land, any covenant relating to that land shall, unless the contrary intention is expressed, continue to have effect.

(Amended 29 of 1998 s. 105)

## **Cap 219 s 43 Effect of agreement with 2 or more jointly**

- (1) Any agreement or covenant relating to land or other property, express or implied, with 2 or more persons jointly to do any act for their benefit shall be deemed, unless the contrary intention is expressed, to include an obligation to do that act for the benefit of the survivor or survivors of them and for the benefit of any other person to whom the right to sue on the agreement devolves; and shall be construed as being made with each of them.
- (2) This section applies only to agreements entered into after 22 June 1979.

[cf. 1925 c. 20 s. 81 U.K.]

## **Cap 219 Part V MORTGAGES**

### **Cap 219 s 44 Mortgage of legal estate**

- (1) After the commencement of this section, a mortgage of a legal estate, including any second or subsequent mortgage of that legal estate, may be effected at law only by a charge by deed expressed to be a legal charge.
- (2) Under a mortgage effected by a legal charge, the mortgagor and the mortgagee shall, subject to this Ordinance, have the same protection, powers and remedies (including but not limited to those relating to foreclosure and the equity of redemption but excluding the power of the mortgagee to enter into possession before any default by the mortgagor) as if the mortgage had been effected by way of assignment of the legal estate before the commencement of this section.
- (3) Upon the commencement of this section, a mortgage of a legal estate effected by way of assignment of the legal estate before the commencement of this section shall be deemed, for the purposes of this Ordinance, to be reassigned and discharged and replaced by a legal charge in the same terms and having the same validity and priority, subject to this Ordinance, as the mortgage which it replaces.
- (4) Subsection (3) does not affect-
- (a) the mortgagee's right to the possession of any documents; or
  - (b) any rights or obligations, under any guarantee, suretyship or otherwise, ancillary to the mortgage replaced under that subsection.
- (5) Subject to any agreement between the mortgagor and the mortgagee, where the mortgaged land is mortgaged by way of legal charge, the mortgagor may execute a second or subsequent charge against the mortgaged land by a legal charge.
- (6) Unless the contrary intention is expressed, the mortgagee under the first mortgage of a legal estate shall be entitled to possession of the deeds of title relating to the mortgaged land.
- (7) This section does not affect any mortgage, including a mortgage by sub-demise, effected before the commencement of this section which is not replaced under subsection (3).
- (8) This section does not affect any mortgage, charge or lien arising under any Ordinance or by operation of law.
- (9) This section does not affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land.

### **Cap 219 s 45 Tacking**

(1) A mortgagee under prior mortgage may make a further advance or re-advance to rank in the same priority over a subsequent mortgage as the original advance under that prior mortgage-

- (a) if the subsequent mortgagee so consents; or
- (b) where the further advance or re-advance does not exceed, with any other outstanding advance or re-advance, the specified maximum amount secured under that prior mortgage; or
- (c) where that prior mortgage is in favour of an authorized institution (as defined in the Banking Ordinance (Cap 155)) and is expressed to secure all money which may, from time to time, be owing to the prior mortgagee, (Amended 27 of 1986 s. 137)

and paragraphs (b) and (c) shall have effect whether or not the prior mortgagee had notice of the subsequent mortgage at the time when the further advance or re-advance was made by the prior mortgagee.

(2) The priority to which a prior mortgagee is entitled under subsection (1) shall extend, in addition to the amount secured under the prior mortgage, to interest on that amount and to all costs, charges and expenses secured under the mortgage.

(3) Subject to subsection (1), the right to tack in relation to land is abrogated: (Amended 31 of 1988 s. 16)

Provided that nothing in this section shall affect any priority acquired before the commencement of this section.

### **Cap 219 s 46 Conversion of equitable mortgage**

(1) Where an equitable interest becomes a legal estate under section 14, any equitable mortgage by deed over that equitable interest shall become a legal charge over that legal estate in the same terms, subject to this Ordinance, as are contained in that deed.

(2) This section applies to equitable mortgages by deed executed before or after the commencement of this section.

### **Cap 219 s 47 Inspection of title deeds**

(1) A mortgagor and a mortgagee not having possession of the deeds of title relating to the mortgaged land, for so long as they have an interest in that land, shall be entitled at any reasonable times to inspect and make copies of those deeds in the possession of a mortgagee.

(2) This section applies to a mortgage made before or after the commencement of this section and notwithstanding any agreement to the contrary.

### **Cap 219 s 48 Mortgage to 2 or more jointly**

Where any mortgage effected after the commencement of this section is expressed to be made to 2 or more persons jointly, the mortgage money shall (if and so far as the contrary intention is not expressed in the mortgage), as between them and the mortgagor, be deemed to be owing to these persons on a joint account and the receipt of the survivors or the last survivor of them or of the successor or personal representative of the last survivor shall be a complete discharge.

### **Cap 219 s 49 Action for possession of land by mortgagor**

(1) A mortgagor under any mortgage (whether effected before or after the commencement of this section) entitled for the time being to the possession or receipt of the rents or profits of any land in respect of which no notice has been given by the mortgagee of his intention to take possession or to enter into the receipt of the rents and profits of that land may sue for such possession, or for the recovery of the rents and profits, or to prevent or recover damages in respect of any trespass or other wrong relating to that land, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

(2) This section does not affect the power of the mortgagor, apart from this section, in right of the legal estate or otherwise, to take proceedings in his own name.

[cf. 1925 c. 20 s. 98(1) U.K.]

### **Cap 219 s 50 Power to appoint a receiver**

(1) There shall be implied in any legal charge or equitable mortgage by deed, where the mortgage money has become due, a power exercisable in writing by the mortgagee and any person entitled to give a receipt for the mortgage money on its repayment to appoint a receiver or receivers of the mortgaged land and the income thereof, to remove any receiver appointed and appoint another in his place.

(2) Any receiver so appointed will be deemed the agent of the mortgagor and the mortgagor will be solely responsible for the receiver's acts and defaults.

(3) Any receiver so appointed may act in his own name or the name of the mortgagor.

(4) Where 2 or more receivers are appointed, the appointment shall be deemed to be a joint and several appointment.

(5) The mortgagee may, from time to time, fix the remuneration of the receiver and the receiver shall be entitled to retain out of any money received by him that remuneration and all costs, charges and expenses properly incurred by him as a receiver.

(6) Without prejudice to the powers mentioned in the Fourth Schedule, the receiver shall have power to demand and recover all the land of which he is appointed receiver and the income thereof, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same. (Amended 31 of 1988 s. 17)

(7) A person paying money to the receiver shall not be concerned to inquire whether any event has happened to authorize the receiver to act.

(8) The provisions of this section are subject to contrary intention expressed in the mortgage deed and may be varied or extended by the mortgage deed, and, as so varied or extended, shall have effect as if contained in this Ordinance.

(9) This section shall not apply to any mortgage executed before the commencement of this section.

### **Cap 219 s 51 Powers of mortgagee and receiver**

(1) Unless the contrary intention is expressed, there shall be implied in any legal charge or equitable mortgage by deed, the powers, exercisable by the mortgagee, a receiver (acting personally or through their agents) and any person entitled to give a receipt for the mortgage money on its repayment, mentioned in the Fourth Schedule.

(2) Any power exercisable under a mortgage shall be subject to any prior estates, interests and rights to which the mortgaged land is subject.

(3) No power of sale shall empower a mortgagee or a receiver under an equitable



mortgage, by virtue of that mortgage only, to assign the legal estate in the mortgaged land.

(4) The powers implied by subsection (1), and the provisions of the Fourth Schedule relating to the exercise of those powers may be varied or extended by the mortgage deed and, as so varied or extended, shall have effect as if contained in this Ordinance.

(5) This section shall not apply to any mortgage executed before the commencement of this section.

### **Cap 219 s 52 Protection of purchaser**

Where a sale is made under a mortgage, the title of the purchaser shall not be affected by the fact that no case had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised; but any person who suffers loss through an unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising the power.

### **Cap 219 s 53 Sale by mortgagee**

(1) Where a mortgagee or receiver sells under an express or statutory power of sale, the assignment shall operate- (Amended 31 of 1988 s. 18)

(a) to assign to the purchaser the mortgagor's estate in that land, subject to any other mortgage having priority to the mortgage under which the sale is made; and

(b) to discharge that land from the mortgage under which the sale is made and any subsequent mortgage.

(2) Where a mortgagee obtains an order of foreclosure absolute, that order shall (unless it otherwise provides) operate-

(a) to assign to the mortgagee the mortgagor's estate in the mortgaged land, subject to any other mortgage having priority to the mortgage under which the foreclosure order was obtained; and

(b) to discharge that land from the mortgage under which the foreclosure order was obtained and any subsequent mortgage.

[cf. 1925 c. 20 s. 89 U.K.]

### **Cap 219 s 54 Application of money received**

Any money received by a mortgagee or a receiver from the sale or other dealing with the mortgaged land or any security comprised in the mortgage shall be applied according to the following priority-

(a) in discharge of all rent, taxes, rates and other outgoings due and affecting the mortgaged land;

(b) unless the mortgaged land is sold subject to a prior incumbrance, in discharge of that prior incumbrance;

(c) in payment of the receiver's lawful remuneration, costs, charges and expenses and all lawful costs and expenses properly incurred in the sale or other dealing;

(d) in payment of mortgage money, interest and costs due under the mortgage,

and any residue shall be paid to the person who, immediately before any sale or other dealing, was entitled to the mortgaged land or authorized to give a receipt for the proceeds of the sale of that land.

[cf. 1925 c. 20 ss. 105 & 107(2) U.K.]

### **Cap 219 s 55 Mortgagee's receipt**

(1) A receipt in writing of a mortgagee or a receiver shall be a sufficient discharge for any money arising under a power of sale or for any money or security comprised in the mortgage or arising under it; and a person paying that money or transferring that security shall not be concerned to inquire whether any money remains due under the mortgage.

(2) A receipt mentioned in subsection (1) need not be under seal.

[cf. 1925 c. 20 s. 107 U.K.]

### **Cap 219 s 56 Discharge of mortgage by signed receipt**

(1) A receipt, written on or annexed to a mortgage deed, for all money secured by that mortgage, which is executed by the mortgagee or the person in whom the mortgage is vested and who is legally entitled to give a receipt for the mortgage money, shall operate, without any surrender or release as a discharge and, where applicable, reassignment of the mortgaged property from all principal money and interest secured by, and from all claims under, that mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgage is vested. (Amended L.N. 387 of 1987; 31 of 1988 s. 19)

(2) Upon performance of the terms of a mortgage, a mortgagor shall be entitled, at his cost and charge, to a receipt mentioned in subsection (1).

(3) In a receipt mentioned in subsection (1), there shall be implied, unless the contrary intention is expressed, a covenant by the person who executes the receipt that such person has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the mortgaged property or any part thereof is or may be impeached, charged, affected or incumbered in title, estate or otherwise.

(4) Where the mortgage is contained in more than one deed, a receipt may, for the purposes of this section, refer to all those deeds and be written on or annexed to one of those deeds.

(5) A receipt under this section need not be under seal.

(6) This section applies to the discharge of any mortgage by deed, whether that deed was executed before or after the commencement of this section, but only to discharges effected after the commencement of this section.

[cf. 1925 c. 20 s. 115 U.K.]

### **Cap 219 s 56A Floating charges**

(1) A floating charge over property (whether or not it purports to restrict the chargor's right to alienate the property) shall not affect any estate or interest in any land, being part of the property, acquired by any other person before crystallisation of the floating charge, whether or not the other person had actual or constructive notice of the floating charge or of any such purported restriction.

(2) This section applies to any floating charge granted on or after 1 November 1984.

## **Cap 219 s 57 (Amendment incorporated)**

(Amendment incorporated)

## **Cap 219 Part VI RELIEF AGAINST FORFEITURE**

### **Cap 219 s 58 Restrictions on and relief against forfeiture of leases and under-leases**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 54

(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice-

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
- (c) specifying the compensation, if any, which the lessor requires in respect of the breach,

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

(3) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this section.

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case may think fit, but in no case shall any such

under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

(5) For the purposes of this section-

(a) "lease" (租契) includes an original or derivative under-lease; also an agreement for a lease where the lessee has become entitled to have his lease granted;

(b) "lessee" (承租人) includes an original or derivative under-lessee, and the persons deriving title under a lessee;

(c) "lessor" (批租人) includes an original or derivative under-lessor, and the persons deriving title under a lessor;

(d) "under-lease" (分租租契) includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

(e) "under-lessee" (分租人) includes any person deriving title under an under-lessee.

(6) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease under any Ordinance.

(7) For the purposes of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(8) This section does not extend to a covenant or condition against assigning, underletting, parting with the possession, or disposing of the land leased or any part thereof where the breach occurred before the commencement of this section.

(9) Except in subsection (4), this section does not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest. (Amended 31 of 1988 s. 21)

(10) This section does not, save as mentioned in subsection (4), affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(11) This section has effect notwithstanding any stipulation to the contrary.

(12) Nothing in this section shall affect the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126). (Amended 29 of 1998 s. 54)

(13) In this section, "court" (法院) includes the Lands Tribunal.

(14) This section shall have effect subject to the Landlord and Tenant (Consolidation) Ordinance (Cap 7) and the District Court Ordinance (Cap 336).

[cf. 1925 c. 20 s. 146 U.K.]

## **Cap 219 Part VII VOIDABLE DISPOSITIONS**

### **Cap 219 s 59 Purchase not voidable for undervalue**

(1) No purchase, made bona fide and without fraud, of any interest in property of any kind within Hong Kong shall be opened or set aside merely on the ground of undervalue.

(2) For the purpose of this section, "purchase" (購買) shall include every kind of disposition under or by which any beneficial interest in any kind of property may be acquired.

[cf. 1868 c. 4 s. 1 U.K.]

## **Cap 219 s 60 Voidability of dispositions to defraud creditors**

(1) Subject to subsections (2) and (3), every disposition of property made, whether before or after the commencement of this section, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.

(2) This section does not affect the law of bankruptcy for the time being in force.

(3) This section does not extend to any estate or interest in property disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the disposition, notice of the intent to defraud creditors. (Amended 31 of 1988 s. 22)

[cf. 1925 c. 20 s. 172 U.K.]

## **Cap 219 s 61 Voluntary disposition of land: how far voidable as against purchasers**

(1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(2) For the purposes of this section, no voluntary disposition shall be deemed to have been made with intent to defraud by reason only that a subsequent disposition for valuable consideration was made.

[cf. 1925 c. 20 s. 173 U.K.]

## **Cap 219 Part VIII MISCELLANEOUS**

### **Cap 219 s 62 Service of notices**

(1) Any notice relating to land required or authorized by this Ordinance to be served or given shall be in writing.

(2) Any notice required or authorized by this Ordinance to be served on a mortgagor or lessee shall be sufficient, although only addressed to the mortgagor or lessee by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Any notice required or authorized by this Ordinance to be served shall be sufficiently served if it is left at the last-known place of abode or business in Hong Kong of the mortgagee, mortgagor, or lessee or other person to be served, or, in case of a notice required or authorized to be served on a mortgagor or lessee, is affixed or left for him on the land comprised in the mortgage or lease. (Amended 31 of 1988 s. 23)

(4) Any notice required or authorized by this Ordinance to be served shall also be sufficiently served if it is sent by post. (Amended 31 of 1988 s. 23)

(5) Unless the contrary intention is expressed, the provisions of this section shall extend to-

- (a) notices required to be served by any instrument affecting land;
- and
- (b) notices to terminate any lease.

(6) This section does not apply to notices served in proceedings in any court or tribunal.  
[cf. 1925 c. 20 s. 196 U.K.]

## **Cap 219 s 63 (Amendment incorporated)**

(Amendment incorporated)

## **Cap 219 s 64 Amendment of Schedules**

The Legislative Council may by resolution amend the First, Second, Third and Fourth Schedules.

## **Cap 219 Sched 1**

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

[section 35]

### **PART I**

#### **IMPLIED COVENANTS IN ANY ASSIGNMENT OF LAND**

(Replaced 31 of 1988 s. 24)

##### **A. BY A PERSON WHO ASSIGNS**

That, in the event of the land being partitioned by assignment, the assignor shall from the date of the assignment or other date therein stated pay the balance of the Government rent on the due dates and observe and perform all the covenants (other than the covenant to pay the whole of the Government rent) agreements and conditions contained in the Government lease and any Deed of Mutual Covenant and on the part of the lessee to be observed and performed so far as the same relate to the portion of the land remaining vested in the assignor.

(Amended 31 of 1988 s. 24; 29 of 1998 s. 105)

##### **B. BY A PERSON TO WHOM AN ASSIGNMENT IS MADE**

That the assignee and any person deriving title under the assignee shall at all times from the date of the assignment or other date therein stated pay the Government rent or as the case may be the apportioned Government rent and observe and perform all the covenants (other than the covenant to pay the whole of the Government rent if the Government rent has been apportioned) agreements and conditions contained in the Government lease and any Deed of Mutual Covenant and on the part of the lessee to be observed and performed so far as the same relate to the land assigned.

(Amended 31 of 1988 s. 24; 29 of 1998 s. 105)

### **PART II**

#### **COVENANTS FOR TITLE IMPLIED IN AN ASSIGNMENT OF LAND TO A PURCHASER FOR VALUABLE CONSIDERATION BY A PERSON WHO IS EXPRESSED TO ASSIGN AS BENEFICIAL OWNER ("THE VENDOR")**

That the liability of the vendor in respect of a breach of any of the following covenants shall extend and shall extend only to such a breach arising from anything made, done, executed or omitted, or knowingly suffered-

- (a) by the vendor;
- (b) by any person through whom the vendor derives title otherwise than by purchase for value;
- (c) by any person assigning by the direction of the vendor;
- (d) by any person rightfully claiming through, under or in trust for the vendor or any person assigning by his direction;
- (e) by any person rightfully claiming by, through or under any person (other than in respect of an estate or interest subject to which the assignment is expressly made) through whom the vendor derives title otherwise than by purchase for value.

1. That the Government lease is good, valid and subsisting.

2. That, so far as the same relate to the land assigned-

- (a) the premium or other money (if any) and the Government rent payable under and reserved by the Government lease have been paid; and
- (b) the covenants, terms and conditions contained in the Government lease and any Deed of Mutual Covenant have been observed and performed,

up to the date of the assignment.

(Replaced 31 of 1988 s. 25)

3. That the vendor now has good right and title to assign the land free from encumbrances save as specified in the assignment and subject to the manner in which the assignment is expressed to be made.

4. That the land may be quietly entered into and during the residue of the term of years created by the Government lease (and any renewal thereof) held and enjoyed by the person to whom the assignment is expressed to be made ("the purchaser") and any person deriving title under him without any lawful interruption or disturbance.

5. That all such lawful acts, assurances and things for further or more perfectly assuring the land and every part thereof to the purchaser and to those deriving title under the purchaser shall, from time to time and at all times at the request and cost of the purchaser or any person deriving title under him, be executed and done (subject to the manner in which the assignment is expressed to be made) as by the purchaser or any such person may be reasonably required.

(Amended 29 of 1998 s. 105)

### PART III

#### COVENANT FOR TITLE IMPLIED IN AN ASSIGNMENT BY WAY OF VOLUNTARY DISPOSITION BY A PERSON WHO IS EXPRESSED TO ASSIGN AS DONOR

That the donor and any person assigning the land by his direction and any person deriving title under him by deed or act or operation of law in his lifetime subsequent to that

assignment, or by testamentary disposition or devolution in law, on his death, shall from time to time after the date of that assignment, at the request and at the cost of the person to whom the land is expressed to be assigned or any person deriving title under such person execute and do all such lawful acts, assurances and things for further or more perfectly assuring the land and every part thereof to the person to whom the land is expressed to be assigned and to those deriving title under him (subject to the manner in which the assignment is expressed to be made) as by him or any such person may be reasonably required.

#### PART IV

##### COVENANT FOR TITLE IMPLIED IN AN ASSIGNMENT BY A PERSON WHO IS EXPRESSED TO ASSIGN AS TRUSTEE, CONFIRMOR, MORTGAGEE, LEGAL CHARGE, PERSONAL REPRESENTATIVE OR UNDER AN ORDER OF COURT

That the person so assigning has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the land or any part thereof, is or may be impeached, charged, affected or incumbered in title, estate or otherwise or whereby or by means whereof the person who so conveys is in any way hindered from assigning the land or any part thereof in the manner in which it is expressed to be assigned.

#### PART V

##### COVENANTS FOR TITLE IMPLIED IN A LEGAL CHARGE BY A PERSON WHO IS EXPRESSED TO CHARGE AS BENEFICIAL OWNER ("THE BORROWER")

1. That the Government lease is good, valid and subsisting.
2. That, so far as the same relate to the land mortgaged-
  - (a) the premium or other money (if any) and the Government rent payable under and reserved by the Government lease have been paid; and
  - (b) the covenants, terms and conditions contained in the Government lease and any Deed of Mutual Covenant have been observed and performed,up to the date of the legal charge and will continue to be paid, observed and performed during the subsistence of the legal charge.

(Replaced 31 of 1988 s. 26)
3. That the borrower now has good right and title to charge the land free from incumbrances save as specified in the legal charge and subject to the manner in which the charge is expressed to be made.
4. That, upon the lender being entitled so to do under the terms of the legal charge, the land may be quietly entered into and during the residue of the term created by the Government lease (and any renewal thereof) held and enjoyed by the lender without any lawful interruption or disturbance by the borrower, any person charging by his direction or any person rightfully claiming through, under or in trust for the borrower (other than in respect of an estate or interest subject to which the legal charge is expressly made).



5. That the borrower and any person charging the land by his direction and any person deriving title under them and any other person having or rightfully claiming any estate or interest in the land or any part thereof (other than an estate or interest subject whereto the legal charge is expressly made) shall from time to time and at all times at the request of the lender or any person deriving title under him at the cost, until sale of the land in accordance with the legal charge, of the borrower and, after such sale, at the cost of the person making the request execute and do all such lawful acts assurances and things for further or more perfectly assuring the land and every part thereof to the lender and to those deriving title under him (subject to the manner in which the legal charge is expressed to be made) as by the lender or any such person may be reasonably required.  
(Amended 29 of 1998 s. 105)

## **Cap 219 Sched 2 COVENANTS AND CONDITIONS WHICH MAY BE INCORPORATED BY REFERENCE**

[section 36]

### **PART A**

(In an Agreement for Sale of a Residential, Commercial, Industrial  
or Other Unit in a Completed Building)

#### **1. RENTS, OUTGOINGS AND APPORTIONMENTS**

The rents and profits shall be received and all outgoings shall be discharged by the vendor up to and inclusive of the actual day of completion, and as from but exclusive of that day all outgoings shall be discharged by the purchaser. All such rents, profits and outgoings shall, if necessary, be apportioned between the vendor and the purchaser and paid on completion.

#### **2. INSURANCE**

- (1) As from the date of this agreement, the vendor shall hold in trust for the purchaser the benefit of any existing policy of insurance relating to the property.
- (2) The vendor does not warrant that any or any adequate policy of insurance exists relating to the property or, if any such policy exists, that it will be renewed on expiration.
- (3) The vendor shall, if required, and at the expense of the purchaser obtain or consent to an endorsement of notice of the purchaser's interest on the policy of insurance relating to the property and in such case the vendor (keeping such policy in force) may require the purchaser to pay on completion a proportionate part of the premium from the date of this agreement.

#### **3. CONDITION OF PROPERTY**

The purchaser purchases with full knowledge of the physical condition of the property and takes it as it stands.

#### **4. EASEMENTS, RIGHTS AND LIABILITIES**

- (1) The vendor warrants that the property is not adversely affected by any easement, right,

privilege or liability of which he is aware or could have ascertained on reasonable inquiry other than-

- (a) those disclosed in this agreement; or
- (b) those of which the purchaser is aware or could have ascertained on reasonable inspection of the property.

(2) Subject to subclause (1), the property shall be conveyed subject to all easements, rights, privileges and liabilities adversely or beneficially affecting it.

## 5. TENANCIES

(1) This condition applies if the property is sold subject to any tenancy and shall have effect notwithstanding any partial or incomplete reference in the agreement to any tenancy.

(2) Full particulars of all tenancies not vested in the purchaser having been furnished to him, the purchaser shall be deemed to purchase with full knowledge thereof and shall take the property subject to the rights of the tenants thereunder or by reason thereof.

(3) The vendor gives no warranty as to the amount of rent lawfully recoverable from any tenant, as to the effect of any legislation in relation to any tenancy or as to compliance with any legislation affecting the same.

(4) The vendor shall inform the purchaser of any change in the disclosed terms and conditions of any tenancy.

(5) If a tenancy subject to which the property is sold terminates for any reason, the vendor shall inform the purchaser and, on being indemnified by the purchaser against all consequential loss, expenditure or liability, shall act as the purchaser directs.

(6) Subclauses (4) and (5) shall not entitle the vendor to agree to, or permit, any change in the terms and conditions of any tenancy or its termination.

## 6. ERRORS, OMISSIONS AND MISSTATEMENTS

(1) No error, omission or misstatement herein or in any plan furnished or any statement made in the course of the negotiations leading to the contract shall annul the sale or entitle the purchaser to be discharged from the purchase.

(2) Any such error, omission or misstatement shown to be material shall entitle the purchaser to proper compensation, provided that the purchaser shall not in any event be entitled to compensation for matters falling within clause 3 or 5(3) hereof.

(3) No immaterial error, omission or misstatement (including a mistake in any plan furnished for identification only) shall entitle either party to compensation.

(4) Subclause (1) shall not apply where compensation for any error, omission or misstatement shown to be material cannot be assessed nor enable either party to compel the other to accept or convey property differing substantially (in quantity, quality, tenure or otherwise) from the property agreed to be sold if the other party would be prejudiced by the difference.

(5) The Misrepresentation Ordinance (Cap 284) applies to this agreement.

## 7. REQUISITIONS

(1) Any requisition or objection in respect of the title shall be delivered in writing to the vendor's solicitors as soon as practicable after delivery of the title deeds and, in any event, not later than 14 days prior to the date of completion.

(2) If the purchaser shall make and insist on any objection or requisition either as to title or any matter appearing on the title deeds or otherwise which the vendor shall be unable or

(on the grounds of difficulty, delay or expense or on any other reasonable ground) unwilling to remove or comply with, or if the title of the vendor shall be defective, the vendor shall notwithstanding any previous negotiation or litigation be at liberty to annul the sale in which case the purchaser shall be entitled to the return of the deposit but without costs or compensation and, if that return is made within 7 days, without interest.

## 8. DOCUMENTS OF TITLE

Such of the documents of title as are required for the purpose of giving title to the property shall be delivered to the purchaser. All other documents of title in the possession of the vendor shall be retained by the vendor who shall, if so required on completion of the sale, give to the purchaser a covenant for safe custody thereof and for production and delivery of copies thereof, such covenant to be prepared by the purchaser.

(Amended 25 of 2008 s. 11)

## 9. GOOD TITLE

The vendor shall give title to the property in accordance with section 13A of the Conveyancing and Property Ordinance (Cap 219). The vendor shall, in accordance with section 13 of that Ordinance, prove his title to the property at the vendor's own expense and shall at the like expense make and furnish to the purchaser such copies of any deeds or documents of title, wills and matters of public record as may be necessary to prove such title. The costs of verifying the title by inspection and examination, including search fees, shall be borne by the purchaser who shall also, if the purchaser requires copies of any documents in the vendor's possession relating to other premises retained by the vendor as well as to the property pay the cost of such copies.

(Amended 31 of 1988 s. 27; 25 of 2008 s. 11)

## 10. FAILURE OF THE PURCHASER

If the purchaser shall fail to comply with any of the terms and conditions of the agreement the deposit money shall be absolutely forfeited as and for liquidated damages (and not as a penalty) to the vendor who may (without being obliged to tender an assignment to the purchaser) rescind the agreement and either retain the property the subject of the agreement or any part or parts thereof or resell the same, either as a whole or in lots, and either by public auction or by private contract, or partly by the one and partly by the other, and subject to such conditions and stipulations as to title or otherwise as the vendor may think fit. Any deficiency arising from such resale and all expenses attending the same or any attempted resale shall be made good and paid by the purchaser as and for liquidated damages, and any increase in price realized by any such resale shall belong to the vendor. This clause shall not preclude or be deemed to preclude the vendor from taking other steps or remedies to enforce the vendor's rights under the agreement or otherwise. On the exercise of the vendor's right of rescission under the agreement the vendor shall have the right, if the agreement shall have been registered in the Land Registry, to register at the Land Registry an instrument to rescind the sale of the property. This clause shall not prevent the vendor recovering, in addition to liquidated damages, damages representing interest paid or lost by him by reason of the purchaser's failure.

(Amended 8 of 1993 s. 2)

## 11. FAILURE OF THE VENDOR

In the event of the vendor failing to complete the sale in accordance with the terms of the agreement it shall not be necessary for the purchaser to tender an assignment to the vendor for execution before taking proceedings to enforce specific performance of the agreement or for damages for breach of the agreement.

## 12. PROPER ASSURANCE

Upon completion of the sale the vendor and all other necessary parties (if any) shall execute a proper assurance to the purchaser (or his nominee or sub-purchaser) in accordance with the agreement but otherwise free from incumbrances.

## 13. RECEIPT OF MONEY

(1) The vendor's solicitors are the vendor's agents for the purposes of the receipt of any money due under this agreement and any payment made under the agreement to the vendor's solicitors shall be a full and sufficient discharge of the purchaser's obligation in respect of that payment.

(2) Any revocation of the authority of the vendor's solicitors under this clause shall be effective only if it-

- (a) is in writing addressed to the purchaser;
- (b) is delivered to the purchaser care of his solicitors at least 7 days before completion; and
- (c) specifically identifies this agreement.

(Added 31 of 1988 s. 27)

## PART B

(In an Equitable Mortgage of a Residential, Commercial, Industrial  
or Other Unit in an Uncompleted Building)

(a) That the Government lease is good, valid and subsisting. (Amended 29 of 1998 s. 105)

(b) That the borrower shall pay all and every sum or sums of money (if any) and perform and observe the terms conditions and stipulations mentioned or contained in the agreement and on the part of the borrower to be paid performed and observed.

(c) That if default shall be made by the borrower in the performance and observance of the terms conditions and stipulations mentioned or contained in the agreement it shall be lawful for the lender to pay the said sum or sums of money and perform and observe the said terms conditions and stipulations and the borrower shall on demand repay to the lender all money expended by the lender for that purpose and that until such repayment the same shall be a charge upon the property as if the same had formed part of the loan and bear interest accordingly.

(d) That the borrower shall not without the prior consent in writing of the lender exercise any option or other right conferred on the borrower under the agreement which would result in the security created by the equitable mortgage being nullified diminished impeached or otherwise affected.

(e) That when the borrower shall be entitled under the agreement to call for an assignment of the property the borrower shall at once notify that fact to the lender and at his own cost and expense (including stamp duty) procure the execution of such assignment to himself (and not to a nominee) and pending the execution of a legal charge thereof to the lender shall hold the legal estate in the property in trust for the lender and shall deposit the assignment forthwith with the lender.

(f) That upon performance of the agreement and execution of the assignment in favour of the borrower provided the security be still at that time subsisting the borrower shall at his own cost and expense (including stamp duty) execute and complete a legal charge of the property to secure the loan such legal charge to be in the form of legal charge prescribed in the Third Schedule to the Conveyancing and Property Ordinance 1984 and contain the covenants mentioned in Part C of the Second Schedule to that Ordinance or such other form and containing such other covenants as the lender shall have required.

(g) That the borrower shall not without the prior written consent of the lender at any time during the continuance of the equitable mortgage assign charge underlet or in any manner otherwise deal with or dispose of the property or any interest therein or the equity of redemption in respect thereof or enter into any agreement so to do.

## PART C

### (In a Legal Charge)

(a) That the borrower shall during the continuance of the legal charge pay the premium and other moneys (if any) and Government rent and perform and observe the covenants terms and conditions by and in the Government lease reserved and contained and shall pay the property tax (if any) rates charges outgoings and impositions from time to time assessed charged or imposed on or payable in respect of the property or any part thereof and shall at all times keep the lender indemnified therefrom and from and against all actions suits expenses and claims which may be incurred or sustained on account of the non-payment of the said premium or other moneys (if any) or Government rent property tax rates charges outgoings and impositions or any part thereof or the breach or non-performance or non-observance of the said covenants terms and conditions or any of them. (Amended 29 of 1998 s. 105)

(b) That moneys due under any covenant relating to the property have been paid and any other covenants, terms and conditions relating to the property have been duly observed and performed.

(c) That the borrower shall at all times during the continuance of the legal charge-

- (i) keep and maintain the property in good and tenantable repair and condition to the satisfaction of the lender and Government;
- (ii) comply with all Government or other legal requirements and notices whether statutory or otherwise in respect of the property;
- (iii) allow the lender and his servants or agents to enter and view the state of repair of the property at all reasonable times without the lender by so doing only being deemed to have taken possession of the property; and
- (iv) pay all moneys due from time to time under and observe and perform the covenants terms and conditions contained in the deed of mutual covenant (if any).

(d) That the borrower shall during the continuance of the legal charge insure and keep insured the property with some insurance company in Hong Kong to be first approved in writing by the lender against loss or damage from fire and such other risks as the lender shall think fit in the full insurable value thereof for the time being and if so required by the lender in the joint names of the borrower and the lender and duly and punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance immediately upon the same becoming due and shall forthwith endorse over and deliver to the lender the policies and all current receipts for premium for the time being.

(e) That if the borrower shall make default in payment of the said premium and other moneys (if any) or the Government rent or any part thereof or in the performance or

observance of the said covenants terms and conditions or any of them or in effecting such insurance or in paying the insurance premiums or in so repairing as aforesaid or in duly complying with all such requirements and notices as aforesaid or shall fail to endorse over and deliver such policies and receipts then and in such case and so often as the same shall happen it shall be lawful for the lender to pay such premium or other moneys (if any) or Government rent and so perform and observe such covenants terms and conditions effect such insurance or repairs pay such insurance premiums or comply with all such requirements and notices as aforesaid and the borrower shall forthwith repay to the lender on demand all moneys expended by the lender in so doing and until such repayment such moneys shall be a charge upon the property as if the same had formed part of the loan and bear interest accordingly. (Amended 29 of 1998 s. 105)

(f) That the borrower shall not without the prior written consent of the lender at any time during the continuance of the legal charge assign sub-divide charge underlet part with possession or in any manner otherwise deal with or dispose of the property or any part thereof or any interest therein or enter into any agreement or arrangement so to do.

### Cap 219 Sched 3

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

[section 37]

#### FORM 1

Assignment of a Lot or Section of a Lot or of a Residential, Commercial,  
Industrial or Other Unit in a Completed Building

THIS ASSIGNMENT is made the day of 19

BETWEEN

(1)

("the Vendor") and

(2)

("the Purchaser").

In consideration of the sum of \$ paid by the Purchaser to the Vendor (receipt whereof is acknowledged) the Vendor as [ ] ASSIGNS to the Purchaser the land described in the Schedule hereto ("the Property") TO HOLD the same unto the Purchaser [as ] for the residue of the term of years created by the Government lease referred to in the Schedule subject to the payment of the [apportioned] yearly Government rent reserved by and the covenants conditions and provisos contained in the Government lease [and subject to and with the benefit of the Deed of Mutual Covenant registered in the Land Registry by Memorial No. ].

#### SCHEDULE

##### 1. The Property-

- (a) Description and address:
- (b) Lot number, sections, undivided shares etc.:
- (c) Exceptions and reservations, etc.:
- (d) Easements and other appurtenant rights, if any:

##### 2. The Government Lease-

- (a) Date:
- (b) Parties:
- (c) Term:
- (d) Lot number:

SIGNED SEALED AND DELIVERED etc.

L.S.

(Amended 31 of 1988 s. 28; 8 of 1993 s. 2; 29 of 1998 s. 105)

## FORM 2

### Agreement for Sale of a Residential, Commercial, Industrial or Other Unit in a Completed Building

THIS AGREEMENT is made the day of 19  
BETWEEN

(1)

("the Vendor") and

(2)

("the Purchaser").

1. The Vendor sells and the Purchaser purchases the land described in the Schedule hereto ("the Property") for the residue of the term of years created by the Government lease referred to in the Schedule.

2. The purchase price is the sum of \$ .

3. A deposit of \$ shall be paid by the Purchaser to [ the Vendor's solicitors, Messrs , as stakeholders] on the signing of this Agreement and the balance of the purchase price shall be paid on completion. The deposit shall be paid to the Vendor on completion.

4. Completion shall take place at the offices of the Vendor's solicitors at , or as they may direct, on the day of 19 .

5. [Vacant possession of the Property shall be given to the Purchaser on completion].

6. [Time shall in every respect be of the essence of this Agreement].

7. The Vendor shall assign the Property as [ ].

8. The title shall commence with the Government lease and [ ].

9. The Property is sold subject to and with the benefit of .

10. There are incorporated into this Agreement as if they were herein written the conditions respectively on the part of the Vendor and the Purchaser set out in Part A of the Second Schedule to the Conveyancing and Property Ordinance.

11. The stamp duty and land registration fees payable on the assignment made pursuant to this Agreement shall be borne by [ ].

## SCHEDULE

1. The Property-

- (a) Description and address:
- (b) Lot number, sections, undivided shares etc.:
- (c) Exceptions and reservations etc.:
- (d) Easements and other appurtenant rights, if any:

2. The Government Lease-

- (a) Date:
- (b) Parties:
- (c) Term:
- (d) Lot number:

SIGNED etc.

RECEIVED the day and year first above written of and from the Purchaser the above mentioned deposit of \$

[Messrs

\_\_\_\_\_ as stakeholders]

(Amended 31 of 1988 s. 28; 29 of 1998 s. 105)

FORM 3

Equitable Mortgage of a Residential, Commercial, Industrial  
or Other Unit in an Uncompleted Building

THIS EQUITABLE MORTGAGE is made the day of 19  
BETWEEN

(1)

("the Borrower") and

(2)

("the Lender").

(A) By an Agreement dated the day of 19 made between ("the Vendor") and the Borrower ("the Agreement") the Borrower purchased the land described in the Schedule hereto ("the Property") for the sum of \$ ("the Purchase Price") subject to the terms and conditions set out in the Agreement.

(B) Upon the issue of the [Occupation Permit] [Certificate of Compliance] relating to the Property by the [Building Authority] [Government] and upon payment of the balance of the Purchase Price the Borrower will be entitled to an assignment of the Property.

1. In consideration of \$ (the whole or any part whereof and any interest thereon remaining owing for the time being is hereinafter called "the Loan") paid by the Lender to the Borrower (the receipt whereof is acknowledged) the Borrower covenants with the Lender to repay the Loan on [demand] [a date being one month next after the date hereof] together with interest thereon from the date hereof day by day at the rate [of....] [from time to time notified by the Lender to the Borrower].

2. Notwithstanding Clause 1 the Borrower may repay and the Lender shall accept repayment of the Loan by equal monthly instalments of \$ [or such other sum as may be notified from time to time by the Lender to the Borrower].

3. In consideration of the Loan and as security for the repayment thereof the Borrower



charges his interest in the Property and assigns his rights in the Agreement to the Lender by way of equitable mortgage.

4. The Borrower irrevocably appoints the Lender and any receiver or receivers appointed by the Lender by way of security jointly and each of them severally to be the attorney of the Borrower (with full power of substitution) and in the Borrower's name or otherwise and on his behalf and as his act and deed-

- (a) to comply and require compliance in all respects with the Agreement;
- (b) to accept the Assignment to the Borrower;
- (c) to execute a legal charge of the Property in favour of the Lender such legal charge to be in such form and to contain such covenants and provisions as the Lender shall require; and
- (d) to sign seal execute deliver perfect and do all other deeds instruments acts and things which may be required or which the Lender or any such receiver or receivers shall think fit for carrying out any obligation imposed on the Borrower hereunder or for carrying into effect any sale lease charge or dealing by the Lender or by any such receiver or receivers or for giving to the Lender the full benefit of this charge.

5. There are incorporated herein as if they were herein written the covenants on the part of the Borrower set out in Part B of the Second Schedule to the Conveyancing and Property Ordinance.

#### SCHEDULE

1. The Property-

- (a) Description and address:
- (b) Lot number, sections, undivided shares etc.:
- (c) Exceptions and reservations, etc.:
- (d) Easements and other appurtenant rights, if any:

2. The Government Lease-

- (a) Date:
- (b) Parties:
- (c) Term:
- (d) Lot number:

SIGNED SEALED AND DELIVERED etc.

L.S.

(Amended 31 of 1988 s. 28; 29 of 1998 s. 105)

#### FORM 4

#### Legal Charge

THIS LEGAL CHARGE is made the day of 19  
BETWEEN

(1)

("the Borrower") and

(2)

("the Lender").

1. In consideration of \$ (the whole or any part whereof and any interest thereon remaining owing for the time being is hereinafter called "the Loan") paid by the Lender to the Borrower (the receipt whereof is acknowledged) the Borrower covenants with the Lender to repay the Loan on [demand] [a date being one month next after the date hereof] together with interest thereon from the date hereof day by day at the rate [of....] [from time to time notified by the Lender to the Borrower].

2. [Notwithstanding Clause 1 the Borrower may repay and the Lender shall accept repayment of the Loan by equal monthly instalments of \$ or such other sum as may be notified from time to time by the Lender to the Borrower].

3. In consideration of the Loan and as security for the repayment thereof the Borrower as beneficial owner charges the land described in the Schedule hereto ("the Property") to the Lender by way of legal charge subject to the covenants conditions and provisos contained in the Government lease [and subject to the Deed of Mutual Covenant registered in the Land Registry by Memorial No. ].

4. The Borrower hereby irrevocably appoints the Lender and any receiver or receivers appointed by the Lender by way of security jointly and each of them severally to be the attorney of the Borrower (with full power of substitution) and in his name or otherwise and on his behalf and as his act and deed to sign seal execute deliver perfect and do all deeds instruments acts and things which may be required or which the Lender or any such receiver or receivers shall think fit for carrying out any obligation imposed on the Borrower hereunder or for carrying into effect any sale lease charge or dealing by the Lender or by any such receiver or receivers or for giving to the Lender the full benefit of this charge.

5. There are incorporated herein as if they were herein written the covenants on the part of the Borrower set out in Part C of the Second Schedule to the Conveyancing and Property Ordinance.

#### SCHEDULE

1. The Property-

- (a) Description and address:
- (b) Lot number, sections, undivided shares etc.:
- (c) Exceptions and reservations, etc.:
- (d) Easements and other appurtenant rights, if any:

2. The Government Lease-

- (a) Date:
- (b) Parties:
- (c) Term:
- (d) Lot number:

SIGNED SEALED AND DELIVERED etc.

L.S.

(Amended 31 of 1988 s. 28; 8 of 1993 s. 2; 29 of 1998 s. 105)

#### FORM 5

Legal Charge to secure General Banking Facilities

THIS LEGAL CHARGE is made the day of 19

BETWEEN

(1)

("the Borrower") and

(2)

("the Lender").

1. In consideration of the provision of general banking facilities provided or to be provided by the Lender to the Borrower ("the Facility") the Borrower covenants to pay on demand to the Lender-

- (a) all present and future indebtedness of the Borrower to the Lender according to the Books of the Lender on any current or other account together with all bank charges thereon; and
- (b) all costs charges and expenses however incurred by the Lender or by any receiver or any delegate appointed by the Lender in relation to this Legal Charge on a full indemnity basis; and
- (c) all other liabilities of the Borrower to the Lender according to the Books of the Lender whether present future actual or contingent or as principal or guarantor and whether due alone or with any other person,

and interest on all of the foregoing in accordance with the provisions of Clause 3 hereof.

2. (a) The Borrower as beneficial owner charges the land described in the Schedule

hereto ("the Property") to the Lender by way of legal charge subject to the covenants conditions and provisos contained in the Government lease [and subject to the Deed of Mutual Covenant registered in the Land Registry by Memorial No. ] as security for the repayment of the Facility up to the extent of \$ and all interest thereon and for all costs charges and expenses due from the Borrower to the Lender.

(b) The charge created by this Clause shall be a continuing security and shall not be considered satisfied or discharged by any intermediate payment or satisfaction of the whole or any part of the Facility from time to time.

3. Interest shall be calculated and shall be paid in the following manner-

- (a) at such rate as may be notified from time to time by the Lender to the Borrower from the time any part of the Facility shall have been advanced until repayment thereof;
- (b) on the daily balance from time to time outstanding with monthly rests until full discharge; and
- (c) on the last business day of each month or on such date or dates as may be determined at the sole discretion of the Lender.

4. The Borrower irrevocably appoints the Lender and any receiver or receivers appointed by the Lender by way of security jointly and each one of them severally to be the attorney of the Borrower (with full power of substitution) and in his name or otherwise on his behalf and as his act and deed to sign seal execute deliver perfect and do all deeds and instruments acts and things which may be required or which the Lender or any such receiver or receivers shall think fit for carrying out any obligations imposed on the Borrower hereunder or for performing any sale lease charge or dealing by the Lender or by any such receiver or receivers or for giving to the Lender the full benefit of this security.

5. This Legal Charge is in addition to and shall not affect or be affected by any other security or guarantee which the Lender may now or at any time hold or take from the Borrower or from any other person in respect of the Facility.

6. There are incorporated herein as if they were herein written the covenants on the part of the Borrower set out in Part C of the Second Schedule to the Conveyancing and Property Ordinance.

#### SCHEDULE

1. The Property-

- (a) Description and address:
- (b) Lot number, sections, undivided shares etc.:
- (c) Exceptions and reservations, etc.:
- (d) Easements and other appurtenant rights, if any:

2. The Government Lease-

- (a) Date:
- (b) Parties:
- (c) Term:
- (d) Lot number:

SIGNED SEALED AND DELIVERED etc.

(L.S.)

(Amended 31 of 1988 s. 28; 8 of 1993 s. 2; 29 of 1998 s. 105)

#### FORM 6

#### Receipt on discharge of a Charge

The Lender acknowledges receipt of all money secured by the annexed/within written Charge.

Dated. [Signature]

or  
[Seal]

### Cap 219 Sched 4 POWERS OF MORTGAGEE AND RECEIVER

[section 51]

1. To insure the mortgaged land or any part thereof for any sum not exceeding its full reinstatement value, and any money paid for such insurance shall be a charge on the mortgaged land in addition to the mortgage money, with the same priority, with interest at the same rate as the mortgage money; and the mortgagee shall account to the mortgagor for all money received by him on an insurance effected on the mortgaged land.

2. To take possession of the mortgaged land and, for that purpose, to take any legal proceedings.

3. To do all things necessary or desirable to preserve, maintain and manage the mortgaged land.

4. To lease, surrender and accept the surrender of leases of, the mortgaged land.
5. To exercise any powers or rights incidental to the ownership of the mortgaged land.
6. To settle, adjust, refer to arbitration, compromise and arrange any claim, demand or dispute relating to the mortgaged land.
7. To bring, prosecute, enforce, defend, compromise and abandon any claim, action, suit or proceeding in relation to the mortgaged land.
8. To sell and assign the mortgaged land, subject to any prior estates, interests and rights to which the mortgaged land is subject, but free from the mortgage and all other estates, interests and rights to which the mortgage has priority, in such manner and subject to such lawful conditions as the mortgagee or receiver thinks fit; with power to vary or rescind any contract for sale, buy in at any auction and to resell without being answerable to the mortgagor for any loss occasioned.
9. To do all things necessary or desirable for realizing the mortgaged land.
10. In the case of any equitable mortgage over the mortgagor's interest in the mortgaged land and in any agreement of purchase of that land-
  - (a) to comply and require compliance in all respects with that agreement;
  - (b) to accept the assignment of the mortgagor;
  - (c) to execute a legal charge over that land in favour of the mortgagee in such form and containing such covenants and provisions as the mortgagee may require; and
  - (d) to sign, seal, execute, deliver, perfect and do all other deeds, instruments, acts and things which may be required or which the mortgagee or receiver shall think fit for carrying out any obligation imposed on the mortgagor under the mortgage or for carrying into effect any sale, lease, charge or dealing by the mortgagee or receiver or for giving to the mortgagee the full benefit of that charge. (Amended 31 of 1988 s. 29)
11. The powers mentioned in paragraphs 2 to 9 shall not be exercisable unless-
  - (a) notice requiring payment of the mortgage money has been served on the mortgagor, or on one of the several mortgagors, and default has been made in payment of the mortgage money or part thereof for one month after such service; or
  - (b) interest under the mortgage is in arrear and unpaid for one month after becoming due; or
  - (c) there has been a breach of a provision, express or under this Ordinance, of the mortgage other than a covenant for payment of the mortgage money and interest.