

Legal Bilingualism in conveyancing documents
- An overview of the Model Mortgage Deed

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In those days when Hong Kong was still a British colony, English language was the only official language and not until the enactment of the Official Language Ordinance, Chapter 5 of the Laws of Hong Kong in 1974, was the Chinese language given the same status. The said Ordinance was the budding legislation, which gave a big boost to the use of Chinese in our community and later in 1987 it was further amended to extend bilingualism to our legislation. Prior to the reversion of Hong Kong's sovereignty to China, the promulgation of the Basic Law served to promote Chinese language in the most comprehensive manner. Article 9 of the Basic Law stipulates that 'in addition to the Chinese language, English may also be used as an official language by the relevant authorities of Hong Kong Special Administrative Region'. On the face of it, Chinese did gain a superior position but however such view was not accepted by the court¹ and both languages should rank *pari passu* in the context of law.

The Government poured in numerous resources especially after the handover, in order to achieve this objective. The Department of Justice (formerly known as Legal Department under the British regime) has then compiled almost a full set of bilingual texts of the Laws of Hong Kong. Its Law Drafting Division also worked hand in hand with the Bilingual Laws Advisory Committee to edit and publish the Chinese-English (and vice versa) Glossaries of Legal Terms. The Hong Kong Judiciary has also done a splendid job by amending or modifying relevant rules, regulations or practice directions just to include the use of Chinese in court's proceedings as well as in other areas, like supplying translation to judgments/verdicts of leading court cases. The great effort made by these authorities is praiseworthy.

Except for the administration of justice, it appears that not much has been done to promote bilingualism in other areas which have no significant concern of the public interest at large. In the commercial sector, use of

¹ Re: Cheng Kai Nam, Gary (HCAL 3568/2001), 3 December 2001.

Chinese is not popular and English is still indispensable for the fact that Hong Kong is required to retain the status of an international city and world financial centre. Banks, financial institutions, commercial corporations, and trading companies all conduct their business in English. Furthermore, commercial papers for international trades, e.g. letters of credit, bills of lading, bill of exchange, etc. are written in English.

This phenomenon is also a commonplace in the legal services sector. Many legal firms, local or foreign, use English as the usual means of communication and documentation, unless clients request otherwise. Traditionally, the great majority of lawyers have received legal education in English so it is natural that all legal documents follow the English precedents with appropriate modifications, if deemed necessary. Translators or interpreters are required to assist clients who do not understand or have little knowledge of English in the course of execution of legal papers. In particular, for a conveyancing transaction, people are usually required to execute a large volume of documents or deeds all written in English. In order to serve clients better, the firm has to provide additional service of interpretation or even translation for its non-English speaking clients.

In the last decade, property market has become one of the strongholds of Hong Kong economy and nowadays the demand from home-purchasers is much greater than the supply by land-developers. Thus, conveyancing works turn out to be the bread and butter of many lawyers. However, if the legal documents and deeds for execution can be made in bilingual texts, it will greatly relieve the additional workload of the firms. As legal bilingualism has not yet been implemented in this area of practice up to present, the interpretation/translation service is accordingly provided by the handling staff of the firm, usually a clerk (known to Chinese clients as "See Yeh" [師爺]) who may not be qualified to provide such service. Thus, the firm has to run the risk of misleading clients as a result of inaccurate or unfaithful interpretation/translation of executed documents. Thus, the situation is never satisfactory though there is no report on successful challenge on the validity of a conveyancing deed on grounds of misinterpretation.

In fact it is trite law that one cannot avoid the liability of the

document he signed just because of ignorance of its contents. In the case of Wing Hang Bank Ltd. v. Crystal Jet International Ltd. & Ors. [2002] 3 HKC 279, the defendant alleged to have no knowledge of the content of the document signed in relation to the security provided. It was nevertheless held that the defence of 'non est factum' (this is not my deed) failed and that a person elected to sign a document without bothering to read it was estopped from afterwards complaining that he did not know the contents thereof.

The situation would be different could there be a conveyancing deed of both English and Chinese versions. If so, conveyancers need not spend extra time and effort to deal with language problem therein. The Conveyancing and Property Ordinance Cap. 219 (CPO) when enacted in 1984, introduced standard forms for agreement, assignment, legal charge, etc.² Later on, the Law Drafting Division of the Legal Department provided translation, inter alia, to the said Ordinance in implementing the legal bilingualism programme in the relevant laws and legislations. Unfortunately, those formats, especially, for the legal charge, are rather simple and are seldom used by the banks or financial institutions in Hong Kong as they just could not cater for all the requirements of the lenders in connection with the grant of loan facilities to the borrowers. Thus each bank has to rely on its own legal team to develop standard formats for its own use. Needless to say, such forms are inevitably in English.

The Hong Kong Mortgage Corporation (HKMC), an organization wholly owned by the Government was set up in 1997 to assist the public in home purchases by playing the role of secondary loan facilities provider alongside with banks acting as the first mortgage providers. For the benefit of the lending industries, HKMC has devoted its effort to achieve the standardization of mortgage documents, which could minimize the varying standards of securities documents. To this end, a Steering Committee (SC) was formed in May 2000 whose members were composed of bankers, legal practitioners, academics and celebrities, to create a set of standard mortgage originating documents written in plain and simple language for defining the

² See Section 37 of the Conveyancing and Property Ordinance, Cap. 219

respective rights of the mortgagee and mortgagor. HKMC has also managed to cause the contexts thereof translated and successfully procured the major banks to adopt the bilingual forms so developed.

The first set came into existence in 2001: 'the Phase I of Standardization Project' [the 1st Edition] consisted of Model Mortgage Deed (2-parties form) and Model Deed of Guarantee and Indemnity. However in 2003 the SC was re-convened with an aim to revise the Phase I edition and to create a new 3-parties form and other related securities documents. This became the Phase II of the Project [the 2nd Edition]. The Chinese translation thereof was respectively provided by the law firms, Messrs. Clifford Chance (for Phase I documents) and Messrs. Mallesons Stephen Jaques (for Phase II documents).

Apart from HKMC, the Law Society of Hong Kong (HKLS) also shows their concern about the bilingual problem in this area of practice. As early as in 2000, the Bilingualism Committee (BC) formed by HKLS took the initiative to arrange a selected set of conveyancing documents translated by the university law students, which included sale and purchase agreement, equitable mortgage for completed and uncompleted development under both consent and non-consent schemes. The BC also made available an English-Chinese Glossary of Terms relating to the said documents for the conveyancers. However, they did not guarantee the accuracy of the translation nor did they advise their members to use the same. In this regard, the HKLS in November 2004 issued a circular, No.04-578(PA) [superseding Circular Nos. 00-299 and 04-382] informing all members that the translation materials were for reference only and repeatedly advised that members should not use it for official purpose. Save what has been done as aforesaid, the HKLS did not try to take further step to advocate bilingualism in our conveyancing domain.

Both HKMC and the HKLS have participated in promoting bilingualism in conveyancing practice, albeit only for reference. Nevertheless HKMC has managed to procure Chinese translation to form part of the mortgage deed for execution and even registration with the Land Registry. On the reverse, HKLS has not tried to make Chinese translation form part of instruments like sale and purchase agreements and assignments so far, despite

of the existence of Chinese versions of instruments specified in Section 37 of CPO.

The greatest advantage of bilingualism in conveyancing documents is to facilitate the non-English speaking party to understand the contents of the instrument, thereby eliminating unnecessary challenge on grounds of misrepresentation, non est factum or even undue influence, though this justifies heavy burden of proof on the party lodging claim as such. It is believed that HKMC has been fully aware of these legal complications. Apart from reforming the deeds by simplifying its formats in plain language, they also put in the Chinese translation, regardless for whatsoever purpose it will serve. Those leading banks representing the banking industry, like Hongkong and Shanghai Banking Corporation Limited (HSBC) and Bank of China (Hong Kong) Limited (BOC) are in favour of adopting the model forms in both languages. Since there are two editions available, the lending banks are free to choose any one. We have found that HSBC is still using the 1st Edition while BOC has ceased to use the same since July 2005. Thereafter, BOC has adopted new mortgage forms designed by its own legal team without Chinese translation.

To find out how far the legal bilingualism has been cherished in our conveyancing system, it is worth examining the most commonly used format, i.e. the Two-Parties Mortgage Deed. It is better to use the 2nd Edition, the updated version, for such purpose. For easy reference, copies of English and Chinese versions are annexed hereto and exhibited as Appendix I and II respectively. The said Deed comes in two parts (save and except the guidance notes displayed on the cover sheets) - (i) PART I [which is the operative part of the Deed itself (consisting of 4 pages)] and (ii) PART II [which contains a long list of mortgage conditions (totalling 38 clauses altogether)].

PART I of the said Deed

Page 1, under the title 'TWO-PARTY MORTGAGE DEED',
intituled 'Important Notice', 3rd paragraph, clause (a) :

Original -

"all amounts owing by you to us under the facilities which we have made

available to you; or (where there is more than one mortgagor) all amounts owing by all of you to us under the facilities which we have made available to you jointly; "

Translation -

"所有我們向該按揭人提供融資而該按揭人欠下所款項；或如超過一位按揭人，所有我們向你們提供融資而你們共同地欠下的所有款項 ...".

Observation -

Firstly, it could not be right to translate the English word "you" into "該按揭人" although this might be implied meaning. It is better to switch back to the literal translation of "你". Secondly, the original wording "under the facilities" has not been translated. Thirdly, the Chinese character "地" is a modifier regarded as tautological and should be avoided. So, the phrase "共同" holds good without the character "地". Lastly, translation of the word "facilities" to "融資" may not be right and will be discussed at length later. Meanwhile, this term, "融資" will be reserved for further consideration hereinafter.

Suggested translation -

"所有我們 ~~就融資協議~~ 向該按揭人 ~~你~~ 提供融資而 ~~你~~ 該按揭人欠下所有款項；或如超過一位按揭人，所有我們向你們提供融資而你們共同地欠下的所有款項... "

Section F: 'Charge over the Property' (Page 3 thereof):-

Original -

"You charge and assign ... the Property ... to secure the Amount Owing ... under this Mortgage, subject to your right of redemption."

Translation -

"你 ... 將你物業 ... 作押記並轉讓 ... 以作為欠款 ... 的抵押，但你有贖回物業的權利。"

Observation -

The translation of "subject to your right of redemption" to "但你有贖回物業的權利" does not accord with the one of the three principles of translation, i.e. faithfulness '信', as the translation could not bring out the true sense of

Translation -

"融資協議 按揭契據 ... 界定的融資協議。"

Observation -

"融資" in our view, tends to denote or imply a syndicate or consortium loan involving many billions of dollars for the finance of a construction project or development. According to the glossary provided by the Securities Future Commission, "facility or facilities" could also mean "貸款,信用安排,資金融通" etc., and thus "融資" may not be an appropriate term with reference to a relatively small amount of loan and in our view, this term is usually used to refer to a sizable loan. Thus, it is over-exaggerating if the loan facility made available to the mortgagor/borrower is not substantial. The words, "貸款" may be more appropriate as it can describe a loan or facility of any size; big, medium or small.

Suggested translation -

貸款協議 should be used to replace 融資協議.

15th definition -

Original (on page 5 thereof) -

"security Any instrument or collateral given to secure payment or repayment ..."

Translation (on page 4 of translation) -

"抵押 為支付或償還 ... 任何文書或抵押品 ... "

Observation -

It appears that the English word "secure" has not been translated.

Suggested translation -

"抵押 為 保証 支付或償還 ... 任何文書或抵押品 ... "

Clause 4- heading 'Indemnity' :-

Sub-clause 4.1

Original (on Page 6) -

"You agree to indemnify ... against all liabilities, reasonable losses and

damages, actions, proceedings, demands, claims and reasonable costs and expenses (including legal costs) ..."

Translation -

"你同意彌償... 因你違反 ...致使 ... 受彌償人 ... 蒙受 ...被提出所有民事責任 (包括費用及開支)"

Observation -

"所有民事責任" is used to translate the original wordings "all liabilities, reasonable losses and damages, actions, proceedings, demands, claims". In order to be faithful to the original text, those words not having been translated should be done so without any omissions.

Suggested translation - " 你同意彌償 ... 因你違反 ...致使 ...受彌償人 ... 蒙受 ... ~~被提出所有民事責任(包括費用及開支)~~ ...**所有法律責任、合理損失及損害、訴訟、司法程序、要求、索償和合理費用及開支(包括訟費)**"

Clause 5 - heading : "Release of the Mortgage" -

Sub-clause 5.3 thereof

Original (on page 7) -

"If we take ... are later obliged ... to return any money paid to us in payment of the Amount Owning, you will:"

Translation (on page 6 thereof) -

"如在我們 ... 我們後來有責任退還任何為支付欠款而支付給我們的款項、則你 :"

Observation -

It is thought that the translation, "任何為支付欠款而支付給我們的款項" sounds linguistically clumsy and unnatural. To make it more readable in Chinese, we may use "任何支付給我們作為繳交欠款的款項" to replace such wordings.

Suggested translation -

"如在我們...我們後來有責任退還任何 **支付給我們作為繳交欠款的款項**、則你**應當** :"

Sub-clause 5.3(b)

Original -

"... execute any document and do any thing necessary to charge ... or assign ... your full interest in the Property to us, ..."

Translation -

"... 將你在物業中的所有權益押記 ... 或轉讓 ... 給我們 ... 並簽立任何需要的文件和作出任何需要的事情 ..."

Observation -

With due respect, it is thought that the sequence of the sentence has not been rightly translated. According to the original text, the sequence should be that "to execute document and do anything" in order to facilitate the transfer of the full interest in the Property". The Chinese translation, however, does not follow that sequence and instead it has used the conjunction, "並" to denote that the acts of "押記 ... 或轉讓" as well as "簽立任何需要的文件和作出任何需要的事情" are parallel to and independent of each other but actually, the former is the consequence of the latter. As suggested below, the re-arrangement of the word order coupled with the deletion of the character "並" will put the translation as closely to the original meaning as possible.

Suggested translation -

"簽立任何需要的文件和作出任何需要的事情,以便將你在物業中的所有權益押記 ... 或轉讓 ... 給我們,"

Clause 6, Your representations and warranties :-

Sub-clause 6.1(a)

Original text (on page 7 thereof) -

"you ... have a good and marketable title to the Property;"

Chinese translation (on page 6 thereof) -

"你 ... 擁有妥善和有價的業權;"

Observation -

We do not think that "有價業權" is a proper translation for "marketable title" which, in law, means a title less perfect than a "good title" but is still

acceptable to the purchaser. At the outset, people thought that 'a good marketable title' should mean just the same as good title - a concept upheld in a number of judgments³ of civil cases involving landed properties. But Godfrey J. in a subsequent case, Peking Fur Store Ltd. v. Bank of Communications [HCMP 2083/93] held that marketable title was not a good title and in such circumstances, the purchaser had to take something less than a good title. Thus, in translation, it is not a question whether the title is "有價" or not. It is really the concern whether the same is 'saleable' in the property market. Thus it seems to be a better option to use 可銷售物業. Chinese characters, "有價" means "of value" and in exceptional case, even a property of defective title can still be of some value to the owners. So, it does not reflect the true sense of the original meaning.

Suggested translation -

"你 ... 擁有妥善和有價 可銷售物業 的業權;"

Sub-clause 6(b) :-

Original (on page 7 thereof) -

"... and the Property is not subject to any tenancy or licence to occupy ... in favour of any other person;"

Translation (on page 7 thereof) -

"... 而且物業不受惠及任何其他人的任何租賃或佔用特許 ... 所規限".

Observation -

With greatest respect, we do not agree to translate "in favour of" into "受惠". Semantically, there is nothing wrong with the translation "受惠" but in the context of conveyancing matters, such translation may not be appropriate. In this connection, we would like to refer to the translation made by HKLS relating to conveyancing deeds. Clause 18.7 of the Legal Charge format under the Consent Scheme stipulates "... and this Legal Charge/Mortgage shall also be construed as a full indemnity by the Borrower for the secured sum in

³ See the judgments in Lo Chi Wai Arthur v. Liu Wing Cheung Wilfred [HCA11459/82] and Cali Enterprises Ltd. v. Chongmark Ltd. [1986] HKLR 816.

favour of the Lender;" and the translation is "...而本法律押記/按揭亦需詮釋為借款人就有抵押款項 向 貸款人作出的十足彌償;". One more example is the marginal note of Clause (3.2.4) of (3.2) of the said Legal Charge, which reads "Advances facilities or credits opened *in favour of* or at request of Borrower" and the translation is "向 借款人提供或應借款人要求而提供的放貸安排". The translation of HKLS adopts the expression, "向 ... 作出/提供" and not "受惠" which literally means "to benefit" in English. If, however, the interest of a property passed in favour of one party is an encumbrance, e.g. servient tenement or restrictive covenant, it can hardly be seen what benefit the accepting party can derive from it. So, we may conclude that "受惠" does not really reflect the actual situation here. Secondly, the original meaning "not subject to" is equivalent to "without".

Suggested translation -

"... 而且物業 ~~不受惠及~~ 並未向 任何其他人 作出 ~~的任何租賃或~~ 給與任何其他 人 佔用特許... ~~所規限~~". It seems to be more straightforward and coincide with the original thought of the author.

Sub-clause 6(f) :-

Original (on page 8 thereof) -

"you have fully paid the premium ... and have observed the terms and conditions of the Government Lease ...

Translation (on page 7 thereof) -

"... 地價、...和其他款項已全數支付、而政府租契中 ... 條款和條件亦已獲遵守"

Observation -

The original is using active voice whereas the translation is in passive voice. In order to achieve faithfulness in translation, the voice must be changed. Also, there is no point or some special reason why passive voice should be used instead of the active. We will have more discussion on this topic whenever we come across such matter later.

Suggested translation -

"你已全數支付 根據政府... 地價 ... 和其他款項 ~~已全數支付~~、而 亦已遵守 政府

租契中 ... 條款和條件亦已獲遵守".

Sub-clause 6(m):-

Original (on page 8 thereof) -

"you have obtained all necessary approvals for the signing or execution of the Mortgage and the performance of your obligations under the Mortgage ..."

Translation (on page 7 thereof) -

"你已取得為簽署或簽立按揭、使按揭有效和履行其根據按揭所承擔的責任而需要的所有批准、..."

Observation -

The Chinese characters "使按揭有效" are nowhere found in the original text and therefore should be deleted from the translation.

Suggested translation -

"你已取得為簽署或簽立按揭、~~使按揭有效~~和履行其根據按揭所承擔的責任而需要的所有批准、..."

Clause 7.1 :-

Original (on page 8 thereof) -

"You must insure the Property at all times. ..."

Translation (on page 7 thereof) -

"你必須為物業投購保險、而該保險必保持有效。..."

Observation -

The original wordings "at all times" has not been translated and the Chinese translation; "而該保險必保持有效" is not found anywhere in the source language.

Suggested translation -

"你必須 **隨時隨地** 為物業投購保險、~~而該保險必保持有效~~。".

Clause 7.1(c) :-

Original (on page 9 thereof) -

"the insurance policy must : (i) cover all risks which we reasonably specify;

and (ii) be for an amount as agreed by you and us;"

Translation (on page 7 & 8 thereof) -

"為物業投購的保險你必須：(i) 就我們合理地指明的所有風險投保；和 (ii) 投購我們和你同意的保額；"

Observation -

The translation does not reflect the truthfulness of the original text. The sentence so translated is totally different from the original, e.g. it says "the insurance policy must" but it does not say "for the insurance purchased for the property you must :(i)", as the translation so indicates.

Suggest translation -

"**保單** 必須：(i) **涵蓋** 就我們合理地指明的所有風險；和 (ii) 以我們和你同意的**金額**投保；"

Clause 7.2 :-

Original (on page 9 thereof) -

"... or if you do not keep to the terms of clause 7.1, ..."

Translation (on page 8 thereof) -

"... 或如按揭人沒有遵行第 7.1 條款, ..."

Observation -

The source language does not say "if the mortgagor do not keep". There is no justification to use "mortgagor" in place of "you".

Suggested translation -

"...或如 ~~你按揭人~~ 沒有遵行第 7.1 條款, ..."

Clause 7.3 -

Original (on page 9) -

"... that the proceeds of any claims ... will be paid To the extent that any part of the Amount Owning remains outstanding, you will hold the proceeds ... on trust for us."

Translation -

"...提出申索而作出的付款...。你將以信託形式 ...為我們持有... 其中不少於未支付欠款的收益 "

Observation -

The translator has used "付款" to translate the word "proceeds" in the first sentence of the original text whereas in the following sentence thereof, "收益" has however, been employed to translate exactly the same word, "proceeds" near to the end thereof. Such inconsistency should be avoided. Further, the use of "不少於" to stand for "to the extent" might not be too appropriate.

Suggested translation -

"...提出申索而作出的付款 ~~獲得的收益~~...。你將以信託形式 ...為我們持有... 其中 ~~相當不少於~~ 未支付欠款的收益 "

Clause 7.4, -

Original (on page 9) -

"you agree to notify ..."

Translation -

"... 你必須通知 ..."

Observation -

The translation of original word "agree" to "必須" in the last part of the sentence is inaccurate. Why not use the plain and literal meaning? "同意".

Suggested translation -

"... 你 ~~必須~~ 同意 通知 ..."

Clause 7.5,

Original -

The last sentence thereof : "... you agree to sign ... "

Translation -

"..., 你須簽署 ..."

Observation -

This is an obvious mistake by translating "agree" to "須".

Suggested translation -

"..., 你須 同意 簽署 ..."

Clause 7.7 -

Original (on page 10) -

"...you must use the money for that purpose only ..."

Translation -

"...，則該筆款項只可作該用途 ..."

Observation -

The translation has reversed the order of the subject ("you) and the object ("the money") of the original sentence by way of passive voice. Such translation is equivalent to the English meaning: "the money should be used for that purpose only", inconsistent with the original expression. To preserve its sentence structure and the true meaning, the translation must follow suit.

Suggested translation -

"則你必須只可用該筆款項作為該用途".

Clause 7.8 :-

Original -

"You must not do, or allow to be done, anything which may:"

Translation -

"你不得作出任何可能引致下列後果的事情、亦不得安排或容許作出任何可能引致下列後果的事情:".

Observation -

The original does not say "... arrange or allow ..." so the translation "安排" is superfluous. Further the translation is repetitive and cumbersome, which needs to be simplified. Besides, the phrase, "後果" is not found in the original text. Thus, by crossing out a few onerous words, we can tidy up the translation as follows.

Suggested translation -

"你不得作出~~任何可能引致下列後果的事情~~、~~或~~ ~~安排~~或容許作出任何可能引致~~以下列後果的事情~~:"

Sub-clause 7.8(a) :-

Original -

"(a) reduce the scope of insurance cover or the insured amount for the Property;"

Translation -

"(a) 縮窄就物業投保的範圍或減低就物業投保的金額"

Observation -

To repeatedly use "就物業投保的" twice in this clause is unnecessary and the number of words could be cut down easily by using the possessive pronoun "its (其)".

Suggested translation -

"縮窄就物業投保的範圍或減低 ~~其~~ 就物業投保的金額"

Clause 8 :-

Original (on page 10) -

"... you agree at all times ..."

Translation -

"...你必須在按揭有效期間 ...作出 ...事宜:"

Observation -

With respect, again "agree" was wrongly translated as "必須" and "at all times", as "在按揭有效期間". Both are not the literal translation of the original words.

Suggested amendment -

"你 同意隨時隨地 ...作出 ...事宜:"

Sub-clause 8(a) :-

Original -

"(a) to remain ... and to ensure that ...a good and marketable title ..."

Translation (on page 9) -

"(a) 確保你繼續... 並持有...妥善和有價業權;"

Observation -

Please refer to clause 6 on the discussion of the "marketable title" issue.

Suggestion translation -

"~~維持~~ 確保你繼續...並 ~~確保~~ 持有...妥善和~~有價~~ 可銷售物業業權"

Sub-clause 8(c) :-

Original -

"(c) to keep the Government Lease valid and in force;"

Translation -

"使政府租契保持有效和具有效力".

Observation -

The use of words of similar meaning in pairs is the usual feature to express a special legal term, e.g. 'null and void', 'save and except', etc. As each of them is the same as the other, translation thereof could be done freely rather than literally. For instance, the said term, 'null and void' can simply be translated as "無效" since both 'null' and 'void' denote the same concept. But, in this case, the words-in-pair, "valid and in force" seems to be slightly different in meaning so the translation should reflect the difference. "有效" and "具有效力" are practically of the same meaning as "valid". So, "具有效力" may not be a good choice, which, we think, "運作" may be better.

Suggested translation

"使政府租契保持有效和~~具有效力~~ 保持運作"

Sub-clause 8(f) :-

Original -

"(f) to keep the Property in good repair and condition and to allow us ... if you fail to do so;"

Translation -

"(f) 保持物業修葺妥善和狀況良好,並在你未能保持物業修葺妥善和狀況良好...容許我們...".

Observation -

It seems that there is a repetition of "保持物業修葺妥善和狀況良好" in translating "... to do so" in the second half of the sentence. It is better to avoid such duplication and the undue lengthiness of the translation.

Suggested translation -

"保持物業修葺妥善和狀況良好,並在 ~~如~~ 你未能保持物業修葺妥善和狀況良好 ~~做~~ 到, 則...容許我們..."

Sub-clause 8(i) :-

Original (on page 11 thereof) -

"(i) to inform ... sent to or by you or your representative ..."

Translation -

"...並在收到送交你或由你送出的..."

Observation -

Translation has omitted the original words, "your representative" so Chinese characters, "或你的代表" should be added back to it.

Suggested translation

"...並在收到送交你 **或你的代表** 或由你 **或你的代表** 送出的..."

Sub-clause 8(n) :-

Original -

"... to make or join with us in making, an objection, ... or a response ... in connection with any judgment, ... or proposal issued in respect of the Property by any court, governmental authority or manager of the Building, or any dispute or complaint concerning the Property"

Translation -

"...提出與任何法庭、政府當局或與關於樓宇管理人 ... 發出的任何判決...或建議相關的或與關於物業的任何爭議或投訴相關的反對 ... 或作出如此相關的回應、或與我們共同提出如此相關的反對...或作出回應;"

Observation -

The translation is onerous and loaded with extraneous and unnecessary wordings, thereby making it difficult to understand. The expression, 相關的 or

如此相關的 was repeatedly used without necessity. We are of course aware of the significance of faithfulness in legal translation but HKMC has made it clear that the translation herein is for reference only. Please refer to clause 38 hereinafter. So, it will serve for no purpose if it does not help non-English speaking people to understand its contents. As such, we think that the translation, as opposed to the Chinese version of the legislation, should be the less technical and verbose, the better for the laymen.

Suggested translation -

"...~~提出與~~ **就**任何法庭、政府當局或與關於樓宇管理人..發出 **關於物業** 的任何判決...~~或建議相關的或與關於物業的任何爭議或投訴~~ **提出** ~~相關的~~反對...~~或作出如此相關的回應、或與我們共同提出如此相關的反對...或作出如此相關的回應;~~"

Clause 8(y) :-

Original :

"if at any time we became entitled to exercise the power of sale contained in the Mortgage, ..."

Translation -

"如按揭內所載的出售權力於任何時間成為可由我們行使, ..."

Observation -

The original words "became entitled" have not been translated. According to the official publication of English-Chinese Glossary of Legal Terms, the translation of the word "entitled" is "有權" and it implies, in law, the exercise of the right, legal or equitable, by a person under the relevant statutory provision or common law. And the word order of this translated sentence should also be changed as it is inconsistent with the original.

Suggested translation

"如於任何時間內我們 **變得有權** 行使按揭所載的出售權力, ..."

Clause 8(bb) :-

Original -

"(bb) to engage a firm... and certify your financial statements, and to provide ... financial statements to us within the period we require."

Translation (on page 11) -

"(bb) 聘請 ... 核數師行 ...核證你的財務報表 ...並於我們要求的期間內向我們提供該等經...核證的財務報表"

Observation - We have different understanding as to the phrase "within the period we require" which we presume, is referring to the period of time specified for auditing those financial statements. The translation seems to suggest "you have to submit to us those financial statements within a certain time limit specified by us", whereby a deadline for delivery is imposed by the Mortgagee. We must, however, admit that there is an ambiguity here, i.e. whether it should mean "the period specified for delivering the statements" or 'the period specified for auditing the statements'. So, it is unclear and entirely depends on the point of view of individuals. On the balance of probabilities, we believe our view is correct. Lastly, a minor point to raise is the translation for "require", which we would suggest to use "所需" rather than "要求".

Suggested translation -

"(bb) 聘請 ... 核數師行 ...核證你的財務報表 ...並 **向我們提供** 於我們要求的期間內**向我們提供** 該等經...核證的財務報表 "

Clause 9 :-

Original (on page 13) -

"..., you agree not to do, or allow to be done, ..."

Translation (on page 11 thereof) -

"..., 你同意不會作出 ..."

Observation -

There is an omission in the first sentence of the translation, i.e. the phrase 'or allow to be done'. Such missing words should also be translated.

Suggested translation

" ... 同意不會 **或不容許** 作出"

Clause 10.1 :-

Original -

"...you must not at any time:"

Translation -

"...你不得在按揭生效期間:"

Observation -

The translation, "在按揭生效期間" is not equivalent to the original, "at any time" of the source language. It is always a matter of principle that we must do the translation as faithfully to the original text as possible.

Suggested translation -

"...你不得在按揭生效期間 **任何時候**:"

Clause 11.1(c) :-

Original (on page 14) -

"(c) ... execute a mortgage of the Property under the renewed, ... in our favour ..."

Translation (on page 12) -

"(c) ...根據已續訂、...簽立一份惠及我們的物業按揭..."

Observation -

Please refer to what has been said in clause 6(b) above in respect of the customary translation of the term, "in favour of" as appeared in conveyancing documents.

Suggested translation -

So it is suggested to amend it to "...根據已續訂、...簽立一份 **惠及我們的** 物業按揭 **按與我們**..."

Clause 12(b) :-

Original (on page 15 thereof) -

"any of your representations ... made to us in the Facility Agreement, ... any other documents based on which we have made available the facilities under the Facility Agreement is breached or found to have been incorrect;"

Translation -

"你違反在融資協議、...按融資協議作出貸款的有關文件內 ... 作出的任何申述 ... 或任何該等申述被發現不正確"

Observation -

the original; " ... is breached or found to have been incorrect." are in passive voice but the translator has used active voice to translate "is breached" and then switched to passive voice for "found to have been incorrect". This is unfaithful to the original text. Again, the character "被" in translating the passive voice used should be avoided if possible. Here the translation, unlike the bilingual statutory legislation, does not have any legal effect and thus the translator has adopted a more liberal approach in this regard. "你違反" has been used to translate "is breached". Why not adopt the same style or pattern for translating "found to have been"? We may change it to "或我們發現". Also, translating "documents based on which we have made available the facilities under the Facility Agreement ..." to "按融資協議作出貸款的有關文件" is confusing and even misleading and we would think that it is better to say : "按貸款協議提供信貸所基於的文件"

Suggested translation -

"你違反在 ~~貸款~~融資協議、...按 ~~貸款~~融資協議作出貸款 ~~提供信貸所基於~~的有關文件內 ... 作出的任何申述 ... 或 ~~我們發現~~任何該等申述 ~~被發現~~不正確"

Clause 12(f) :-

Original -

"any law, rule, regulation, judgment, or any order, notice or proposal issued by any governmental authority under any law or regulation, ..."

Translation (on page 13) -

"...因任何政府當局發出的或根據任何法律、規則、規例或判決發出的命令、通知或建議..."

Observation -

Such translation is inaccurate and unfaithful to the original meaning. Be more exact, the translator has misunderstood the original text: the phrase "issued by any governmental authority under any law or regulation" is used to qualify "notice or proposal" only and has nothing to do with "any law, rule, regulation, judgment". The latter were not made by the governmental authority

and thus in any event, could not be issued by any governmental authority under any law or regulation.

Suggested translation -

"...因任何法律、規則、規例或判決或任何命令或由政府當局根據任何法律或規則發出的通知或建議..."

Clause 12(k) :-

Original -

"the Facility Agreement, the Mortgage or any other security provided to us becomes ..."

Translation -

"按融資協議而我們向你貸款的有關協議、按揭或向我們提供的任何其他抵押變成 ..."

Observation -

It is incomprehensible and rather misleading when it translates "Facility Agreement" to "按融資協議而我們向你貸款的有關協議". The characters "有關協議" are redundant and unnecessary.

Suggested translation -

"~~按融資 貸款~~ 協議而我們向你貸款的有關協議、按揭或向我們提供的任何其他抵押變成..."

Clause 12(o) :-

Original -

"you or any other security provider in respect of the Amount Owing enters into or proposes to enter into an arrangement in respect of your or the security provider's debts with or for the benefit of your or the security provider's creditors;"

Translation -

"你或任何其他就欠款提供抵押的人就其債項而與其債權人或該提供抵押的人就訂立安排或建議訂立安排，或就其債項而為其債權人的利益訂立安排或建議訂立安排:"

Observation -

Once again, the translation is difficult to understand, which may be due to the compound sentence structure of the original. We could make it more readable if we care to introduce the punctuation marks as to break up a long sentence into different smaller fractions. And also, we think that "債務" would be more idiomatic and natural to translate "債項".

Suggested translation -

"你或任何其他就欠款提供抵押的人，就你或提供抵押的人的債務而與相關債權人，訂立安排或建議訂立安排，或就其債務而為其債權人的利益，訂立安排或建議訂立安排"

Clause 16.1(i) :-

Original (on page 18) -

"appoint any person in connection with the exercise of any ...powers ... for any remuneration and on any terms as we or the Receiver consider appropriate:"

Translation (on page 15) -

"... 按我們或接管人認為合適的任何條款,委聘任何人行使以上權力並向該等人士支付我們或接管人認為合適的任何報酬:"

Observation -

Such translation is not faithful to the original. The translation, "並向該等人士支付我們或接管人認為合適的任何報酬" is redundant and excessive. The source text does not say "to pay ... any remuneration" at all. It is required to simplify and tidy it up and to make it closer to the sentence structure of the original.

Suggested translation -

"...按我們或接管人認為合適的任何 ~~報酬~~ 和條款,委聘任何人行使以上權力~~並向該等人士支付我們或接管人認為合適的任何報酬:~~".

Clause 26.1:-

Original (on page 23) -

"... Your liabilities ... are not affected or discharged by any of the following

events:"

Translation (on page 19) -

"...而該等法律責任...不會因...下列事件而受到影響:"

Observation -

The original words "or discharged" towards the end of the paragraph thereof have not been translated. Such omission should be added back thereto.

Suggested translation -

"...而該等法律責任...不會因...下列事件而受到影響 **或解除**:".

Sub-clause 26.1(a) -

Original -

"your death, ...or liquidation (where applicable) ..."

Translation -

"你去世、...或被清盤 ..."

Observation -

The original words "(where applicable)" have not been translated, so we suggest to add "(如適用者)" back to the translation. Furthermore, the passive voice, "被清盤" does not fit the idiomatic expression of the Chinese language. The failure to translate "where applicable" constitutes a serious omission because "death" could only refer to individual natural person whereas "liquidation" is only applicable to body corporate which has different legal entity from the natural person. Thus the insertion of "where applicable" is necessary to clarify the position as you, i.e. the mortgagor, could be either a natural person or an artificial person.

Suggested translation -

"你去世、...或 **遭到** 被清盤(如適用者) ..."

Clause 26.2 :-

Original -

"Without affecting any of our rights or your liabilities under the Mortgage we or the Receiver may at any time:

(a) give any other ...

- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) neglect, release, ... "

Translation (on page 20) -

"我們或接管人可在任何時間：

- (a) 給予任何其他 ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) 不理會、免除、...

而不影響我們或接管人於按揭中的權利。"

Observation -

To be faithful to the original, the last sentence in the translation, "而不影響我們或接管人於按揭中的權利" should be reallocated to the front thereof and also the words "或接管人" therein do not appear in the original text at all. Furthermore, "or your liabilities" in the original text has not been translated.

Suggested translation -

"在不影響我們於按揭中的權利 *或你於按揭中的法律責任*、我們或接管人可在任何時間：

Clause 26.2(f) :-

Original (on page 24)-

"neglect, release, ..."

Translation (on page 20) -

"不理會、免除、..."

Observation -

The word "neglect" therein has been translated as "不理會". This implies taking no action in a positive manner rather than being unaware or negligent of

taking requisite action. It would be more appropriate to replace it by "忽略".

Suggested translation -

"忽略、免除、...".

Clause 30 :-

Original -

"We are entitled to require you ..."

Translation -

"... 、我們可要求你 ..."

Observation -

The translation "我們可要求你" fails to bring out the true meaning of the word "are entitled" and the legal implication of these word has been discussed in length for Clause 8(y) hereinabove. "有權" is a forcible term and imperative in nature for the exercise of legal or equitable right as compared with the character "可" which indicates merely a request. Furthermore, in legal parlance, "有權" is a suitable and widely acceptable translation for "are entitled".

Suggested translation -

"... 我們有權再要求你 ..."

Clause 31.1 :-

Original -

"... assign or transfer ... the Mortgage and ... documents based on which we have made available the facilities under the Facility Agreement and any of our rights or obligations under them ..."

Translation -

" ... 轉讓或轉移 ... 、按揭及 ...按融資協議提供信貸的文件及我們根據融資協議和按揭所具有的任何權利或責任 ... ".

Observation -

The translation is cumbersome and difficult to comprehend. It has messed up the "documents based on which we have made available the facilities" with

"the Facility Agreement"

Suggested translation -

It is suggest to re-translate (1)"...documents based on which we have made available the facilities under the Facility Agreement ..." to "按貸款協議提供信貸所基於的文件..." and (2)"... any of our rights or obligations under them ..." to "根據其所賦予我們的任何權利或責任 ...".

So it should read "... 轉讓或轉移 ... 、按揭及 ...按融資貸款協議提供信貸 **所基於** 的文件及我們根據 **其所賦予我們** 融資協議和按揭所具有 的任何權利或責任 ...".

Clause 31.3 :-

Original -

"... in the same way and to the same extent that ... before the assignment or transfer."

Translation -

"... 、其方式和範圍 ...與 ... 轉讓或轉移前 ...的方式和相同範圍。"

observation -

It is found that the word order of the translation at the end of this clause, i.e.: "... 相同範圍。" should be reversed. The characters, 相同 should be placed after 範圍 in order to denote that 方式 (the way) and 範圍 (the extent) are the same, in line with the source language.

Suggested translation -

"... 、其方式和範圍 ...與 ... 轉讓或轉移前 ...的方式和**相同**範圍 **相同**。".

Clause 32.1 -

Original (on page 26) -

"You confirm that you have received, read, and understood ... the data privacy statement ... You agree to allow us to disclose your personal ... information ... to the persons ... stated in our data privacy statement."

Translation -

"你確認你已收到 ... 資料私隱聲明文本、並已閱悉及明白 ...你同意容許我們 ... 向在我們的資料私隱聲明中明文述明的人 ...披露你的個人 ... 資料"

Observation -

The translation of "read" to "閱悉" sounds a little strange. Why not switch back to the idiomatic and commonly known expression of "閱讀 or 閱覽" which sounds more familiar to our readers. In the second sentence thereof, the translation of "明文" before the characters, "述明" should be deleted as it is not the case that the word "stated" was modified by any adverb, "expressly" in the original text.

Suggested translation -

"你確認你已收到 ... 私隱聲明~~文本~~、並已閱悉 **閱覽** 及明白 ... 你同意容許我們 ... 向在我們的資料私隱聲明中~~明文~~述明的人 ... 披露你的個人 ... 資料"

Clause 35.1(b) :-

Original -

"pursue any claim against any other security provider for the Amount Owning;"

Translation -

"就針對任何其他就欠款提供抵押的人的任何申索、作出追索 :"

Observation -

The translation, "任何申索、作出追索" is incomprehensible and illogical. Literally it means we claim against the security provider in respect of his claim, which has presumed the existence of a claim of the said security provider. It causes confusion by just looking at the translation.

Suggested translation -

"就針對任何其他就欠款提供抵押的人的~~任何申索、作出追索~~ **提出申索** :"

Clause 35.2 :-

Original -

"You must give us the benefit of each claim and pay us all money you receive in breach of clause 35.1 and in the meantime hold them on trust ..."

Translation -

"你 ... 在違反第 35.1 條 ... 收取的每項申索的利益給予我們，和將你在該等情況下收取的所有款項支付給我們，並在給予和支付之前以信託形式 ..."

Observation -

"在該等情況下" is redundant as it does not appear in the original and so as "給予和支付之前" which is unfaithful and inaccurate in that the original text only says "in the meantime".

Suggestion -

"你 ... 在違反第 35.1 條 ... 收取的每項申索的利益給予我們，和將你在該等情況下所收取的所有款項支付給我們，並在該段時期給予和支付之前以信託形式 ..."

Clause 36.3 :-

Original -

"If you are an individual ..."

Translation -

"於你去世後 ... "

Observation -

The expression, "If you are an individual" has not been translated at all so it is necessary to fill in the omission by adding "如你是個別人士" to the very beginning of this translation.

Suggested translation -

"如你是個別人士、於你去世後 ... "

Clause 36.4 :-

Original -

"you must notify us ... "

Translation -

"你同意 ... 通知我們 "

Observation -

"同意" is not equivalent to "must". In conformity with the original meaning "你必須" should be used instead.

Suggested translation -

"你必須 ... 通知我們 "

Clause 37 and 37.1:-

Original (page 28) -

"37. Governing law ...

37.1 Hong Kong law governs this Mortgage"

Translation (page 23) -

"37. 管限的法律 ...

37.1 香港法律管治本按揭"

Observation -

The original words, "Governing" and "governs" have been translated into "管限" and "管治" respectively. As such, there is a difference in translation of an exactly the same term in the original, even though it is not prejudicial to its meaning. This has compromised the principle that translation must be faithful to and consistent with the original. Accordingly, if "管限" is used for Clause 37, the same should also be employed for Clause 37.1. Moreover, in our view, both "管限" and "管治" are idiomatically unsound. It is suggested that the term, "適用" usually adopted in translating "govern or governing" in the majority of commercial documents, is more acceptable.

Suggested translation -

"37. 管限 適用 的法律 ...

37.1 香港法律管治 適用於 本按揭"

Clause 37.2

Original (page 28) -

"You agree to take legal action ..."

Translation (page 23) -

"你同意 ...提起 ... 法律程序 ..."

Observation -

Usually, we use "採取法律行動" to translate "to take legal action". It is rather weird to translate the same as "提起法律程序"."程序" literally means "proceedings". Why not adopt the commonly acceptable idiomatic expression as suggested hereinabove?

Suggested translation -

"你同意 ...~~提起~~ ~~採取~~... ~~法律程序~~ ~~行動~~..."

The above are some of our observations on the translation of the Mortgage Deed and our suggestions are just other options for people interested or engaged in legal translation to consider. As we all know, translation is an art more than a science. Different translators may have different ways to do their jobs so that even for one single article, they will produce different translations. In this regard, there is absolutely no right or wrong approach and it depends very much upon the judgment of individual reader in accordance with his or her own preference and standard of appreciation. So, this is, as we opine, purely academic.

Back to the issue of bilingualism in conveyancing documents, we are somewhat disappointed as few people would have any interest in it. This is due to the fact that the Chinese translation is intended for reference only and have no legal effect, as more particularly specified in Clause 38 of the said Deed. With this in mind, how could we expect to have any future prospect in this matter. The situation is entirely different from the implementation of bilingualism in legislation and the court proceedings. For such purpose, the authorities have taken the leading role and spared no effort to achieve such goal. Nowadays, all the legislations and ordinances are bilingual in text and many court judgments, especially those landmark or leading cases are available in both languages. What happens to conveyancing documents? Just as it were in the old days, all indentures are still written in English for execution by the parties concerned. It is never in our experience throughout the practice for all these years to see a single Assignment written in Chinese. Our discussion of the subject matter herein has no significant impact on bilingualism as HKMC has already made it quite clear that only the English text has the legal effect. The effort to produce translation, in our view, does not pay as this can hardly bring about any radical change to our conventional practice.

The position of HKLS is no better than HKMC. They have rallied all available manpower and resources, even mobilizing the law students and

trainees, to provide translation to the designated documents. After performing a magnificent task, they announced that the Chinese text is for reference only so we wonder why they need to devote a great deal of effort on this matter. The most discouraging fact is that they from time to time issue circulars to remind members not to use the Chinese versions for execution by their clients. Such attitude has definitely produced a negative impact on promotion of bilingualism in this area despite of all the good work they have done.

The Government, as we are aware, plays little or no part in furtherance of bilingualism in the conveyancing domain as they show no interest or are not as keen as they have illustrated in other ambits, like the bilingual legislation. The work done by the financial organization and the professional body, as aforesaid, in the legal service sector is laborious and yet unrewarding and it is considered that the psychological effect thereby produced is greater than the practical effect. But, if they do not change their mindset, it is difficult to see how we can bring about new culture to the practice.

In such circumstances, it depends very much upon the contribution of our conveyancers who should keep up with the tide and respond to the change from time to time. The present situation is really not optimistic as we need to fight an uphill battle in order to strive for the ultimate destination. We anticipate there is still a long hard way to go. Nevertheless, we must not give up and continue to advocate bilingualism in conveyancing. It is always our conviction that some day we may use bilingual texts in conveyancing deeds for all purpose rather than only for reference. So, we would like to call upon all the conveyancers and legal practitioners to join force together to achieve our common goal. Lastly, let us just keep our fingers crossed and look forward to the day when our dream may come true.