
REGULATORY OVERVIEW

MONEY LENDING

Licensing & Registration

Under the Money Lenders Ordinance (Cap. 163) (“**MLO**”), a person carrying on the business of a money lender in Hong Kong must obtain a money lender’s licence (“**Licence**”) in a form prescribed under the Money Lenders Regulations (Cap. 163A), and carry out the business at such place and in accordance with such conditions as specified in the Licence. Any person who carries on business as a money lender without a Licence, or at a place not specified in the Licence, or not in accordance with the conditions of the Licence, or during any period within which the Licence is suspended, commits an offense. The licensing court may revoke or suspend the Licence if: (a) the licensee has ceased to be a fit and proper person to carry on the business; (b) the premises specified in the Licence has ceased to be suitable for carrying on the business; (c) the licensee has been in serious breach of, or has ceased to satisfy, the conditions in the Licence; or (d) the business has been carried on in a manner contrary to public interest.

Further, every person carrying on any business or commencing to carry on any business shall apply for the registration of the business under the Business Registration Ordinance (Cap. 310). If a business is carried on at a branch of a business, application for the registration of that branch should also be made.

Lending Business

A person carrying on the business of money lender in Hong Kong will also have to observe:-

- (i) The Code of Money Lending Practice (“**LMLA Code**”) issued by the Hong Kong Licensed Money Lenders Association Ltd (“**LMLA**”), which is a non-statutory code issued on voluntary basis to be observed by members of LMLA in dealing with personal customers, and K Cash Express is a member of LMLA.
- (ii) The Guidelines on Additional Licensing Conditions of Money Lenders Licence (“**CR Guideline**”) issued by the Companies Registry (“**CR**”) aim to provide guidance for money lender licensees on the requirements of additional licensing conditions imposed to facilitate effective enforcement of statutory ban on separate fee charged by money lenders and their connected parties, to ensure better protection of privacy of intending borrowers, to enhance transparency and disclosure, and to promote the importance of prudent borrowing.

Enforceability of loan agreement

The enforceability of an agreement for repayment of money lent by a money lender is subject to the provisions of MLO, including: (a) the signing of a written memorandum by the borrower with the particulars prescribed; (b) the inclusion of a summary of the provisions of Part III and Part IV of MLO; (c) absence of compound interest and prohibition of repayment by installments under the agreement; (d) absence of punitive interest by reason of default of repayment; (e) the statutory limit effective interest rate not exceeding 48% per annum (60% per annum for loan agreement entered into before December 30, 2022); (f) loan transaction would be considered as extortionate under the rebuttable presumption if the effective interest rate exceeds 36% per annum (48% per annum for loan agreement entered into before December 30, 2022). However, the court may declare that the agreement is not extortionate if, having regard to all circumstances relating to it, satisfied that such rate is not unreasonable and unfair. Under the MLO, the Court will also consider a transaction to be extortionate if: (a) it requires the debtor or a relative of his to make payments (whether unconditionally or on certain contingencies) which are grossly exorbitant; and (b) it otherwise grossly contravenes ordinary principles of fair-dealing. However, the money lender will not commit a criminal offence by charging an effective interest rate of exceeding 36% per annum (but below 48% per annum) under the MLO, and the loan transaction shall not become illegal and unenforceable simply for this reason alone. MLO also imposes restrictions on recovery of charges or expenses relating to the granting of the loan and advertisements published by money lenders.

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Money Laundering & Terrorist Financing

Under Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“**AMLO**”), requirements are imposed on financial institutions to conduct customer due diligence (“**CDD**”) and record-keeping on customers. AMLO also empowers the Hong Kong Monetary Authority (“**HKMA**”) to supervise compliance of these requirements and other requirements under AMLO. Further, financial institutions are also required to take all reasonable measures: (a) to ensure proper safeguards to prevent contravention of any requirement under Parts 2 and 3 of Schedule 2; and (b) to mitigate money laundering and terrorist financing (“**ML/TF**”) risks. The followings are regarded as criminal offenses under AMLO:-

- (i) If a financial institution, knowingly or with intent to defraud HKMA, contravenes a specified provision of AMLO (enlisted in section 5(11) of AMLO). Upon conviction, the financial institution can be liable to a maximum penalty of: (a) imprisonment for 2 years and a fine of HK\$1 million (if knowingly contravenes a specified provision), or (b) imprisonment for 7 years and a fine of HK\$1 million (if with intent to defraud HKMA);
- (ii) If a person, being an employee or is concerned in the management of the financial institution, knowingly or with intent to defraud HKMA or the financial institution, causes or permits the financial institution to contravene a specified provision of AMLO. Upon conviction, the person can be liable to a maximum penalty of: (a) imprisonment for 2 years and a fine of HK\$1 million (if knowingly contravenes a specified provision), or (b) imprisonment for 7 years and a fine of HK\$1 million (if with intent to defraud HKMA or the financial institution).

Further, for contravention of specified provision in AMLO, HKMA may also take disciplinary actions against the financial institution concerned, including: (a) public reprimanding; (b) ordering the financial institution to remedy the contravention; and (c) ordering the financial institution to pay a pecuniary penalty not exceeding HK\$10 million or 3 times the amount of profit gained or costs avoided by the financial institution as a result of the contravention, whichever is greater.

The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“**UN(ATM)O**”) implements decision of the Security Council of the United Nations in its Resolutions (“**UNSCRs**”) to prevent financing of terrorist acts and combating threats by foreign terrorist fighters. Under the UN(ATM)O, it is criminal offense for a person to: (a) provide or collect property with the intention or knowing that it will be used to commit terrorist act; (b) make any property or financial services available to, or collect property or solicit financial services for the benefit of, the terrorist; (c) deal with terrorist property, or property owned, controlled by or held on behalf of terrorist (whether knowingly or recklessly). Upon conviction, a person can be subject to a maximum penalty of a fine and imprisonment of up to 14 years. The Secretary for Security also has power to freeze any property which he has reasonable ground to suspect that it is terrorist property.

Under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) (“**DT(RP)O**”) and the Organized and Serious Crimes Ordinance (Cap. 455) (“**OSCO**”):-

- (i) Officers of the Hong Kong Police Force (“**HKPF**”) and the Custom and Excise Department (“**C&E**”) are empowered to investigate assets suspected to be derived from drug trafficking activities/organized crime and triad activities;
- (ii) The Court is given jurisdiction to: (a) confiscate proceeds from drug trafficking activities/organized and serious crimes; (b) grant restraint and charging orders in relation to a defendant’s realizable properties; and (c) order disclosure of information held by public bodies;
- (iii) It is an offense to deal with property known or believed to represent proceeds of drug trafficking/indictable offenses.

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Apart from the above, UN(ATM)O, DT(RP)O and OSCO also provide for offenses arising from act or inaction which may prejudice investigation:-

- (i) An offense for failing to disclose one’s knowledge or suspicion of any property representing a person’s proceeds of, was used in connection with, or is intended to be used in connection with, terrorist property, drug trafficking or an indictable offense (as soon as it is reasonable for one to do so). Upon conviction, a person will face maximum penalty of imprisonment of 3 months and a fine of HK\$50,000;
- (ii) An ‘tipping-off’ offense for disclosing any matter which is likely to prejudice any investigation which might be conducted following a disclosure, if the said person knows or suspects that such disclosure has been made. Upon conviction, a person will face maximum penalty of imprisonment for 3 years and a fine.

The United Nations Sanctions Ordinance (Cap. 537) (“**UNSO**”) provides for the imposition of sanctions against persons and places outside the PRC arising from Chapter 7 of the Charter of the United Nations.

The Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526) (“**WMD(CPS)O**”) controls the provision of services that will or may assist the development, production, acquisition or stock-piling of weapons capable of causing mass destruction or will or may assist the means of delivery of such weapons. WMD(CPS)O also prohibits a person from providing any services where that person believes or suspects, on reasonable grounds, that those services may be connected to proliferation financing. The provision of services is widely defined under WMS(CPS)O and includes the lending of money or other provision of financial assistance.

A person carrying on the business of money lender in Hong Kong will or may also have to observe the following codes of practice and guidelines:-

- (i) The Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (“**HKMA’s AML/CFT Guideline**”) issued by HKMA was published under section 7 of the AMLO and section 7(3) of the Banking Ordinance (Cap. 155) (“**BO**”). It sets out the statutory requirements under AMLO and BO and the standards which authorized institutions should meet in order to comply with them by providing practical guidance to assist authorized institutions and their senior management in designing/implementing their own policies, procedures and controls in the relevant operational areas. Authorized institutions which fail to comply with HKMA’s AML/CFT Guideline may be subject to disciplinary or other actions under AMLO and/or BO, and may reflect adversely on whether the authorized institutions continue to comply with the authorization criteria set out in the Seventh Schedule of BO.
- (ii) The Prevention of Money Laundering and Terrorist Financing Guideline (“**SFC’s PML/TF Guideline**”) issued by the Securities and Futures Commission (“**SFC**”) under section 399 of the Securities and Futures Ordinance (Cap. 571) (“**SFO**”) sets out the relevant statutory requirements under AMLO and SFO and the standards which licensed corporations (“**LCs**”) should meet by providing practical guidance to assist LCs and their senior management in designing/implementing their own policies, procedures and controls in the relevant operational areas. The SFC’s PML/TF Guideline is intended for use by associated entities (“**AEs**”) which are not authorized institutions and their officers. A failure by any person to comply with any provision of the SFC’s PML/TF Guideline does not by itself render that person liable to any judicial proceedings, but the SFC’s PML/TF Guideline is admissible as evidence in legal proceedings under SFO. Any failure by AEs to have regard to the provisions thereof may reflect adversely on its fitness and properness (and those of the intermediary of which the AEs are in a controlling entity relationship).
- (iii) The Guideline on Prevention of Money Laundering (“**HKMA’s PML Guideline**”) issued by Hong Kong Monetary Authority (“**HKMA**”) under section 7(3) of BO applies to all banking and deposit taking activities in Hong Kong carried out by authorized institutions.

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Prevention of Bribery

Under the Prevention of Bribery Ordinance (Cap. 201) (“**PBO**”), it is an offense for any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act in relation to his principal’s affairs or business; or showing or forbearing to show, or having shown or forborne to show, favor or disfavor to any person in relation to his principal’s affairs or business. Upon conviction, the agent concerned can be subject to a maximum penalty of a fine of HK\$500,000 and imprisonment for 7 years.

DATA COLLECTION

Personal Data Privacy

The collection and processing of personal data in Hong Kong are governed by the Personal Data (Privacy) Ordinance (Cap. 486) (“**PD(P)O**”). To constitute ‘personal data’, (a) the data must relate to an individual; (b) the individual must be reasonably identifiable from the data; and (c) the data must be reasonably retrievable.

The regulatory regime under the statute is applied through 6 data-protection principles regarding: (i) collection, (ii) accuracy and retention, (iii) use, (iv) security, (v) openness and (vi) the right of data subject to access and correct the personal data.

Code of Practice

A person carrying on the business of money lender in Hong Kong will or may also have to observe the Code of Practice on Consumer Credit Data (“**PCPD Code**”) issued by the Office of the Privacy Commissioner for Personal Data (“**PCPD**”) pursuant to the powers conferred under section 12 of PD(P)O.

PCPD Code is designed to provide practical guidance in handling the collection, accuracy, use, security, access and correction of consumer credit data. It covers credit reference agencies and credit providers in their dealing with credit reference agencies and debt collection agencies. A breach of, or failure to observe, the PCPD Code will give rise to a presumption against the data user in any legal proceedings under PD(P)O, and may also weigh unfavorably against the data user in any case brought before the PCPD.

USE OF ELECTRONIC MEDIA

Electronic Transactions

Under the Electronic Transactions Ordinance (Cap. 553) (“**ETO**”), electronic records and digital signatures used in electronic transactions are given the same legal status as their paper-based counterparts by the promotion of certification authorities. Hence, digital signatures can satisfy the legal requirements for signatures (if specified requirements are complied with), and information may be retained in the form of electronic records.

Further, it is a criminal offense under ETO for any person who has access to record or other material in the course of performing a function under or for the purpose of the ordinance to disclose information relating to another person as contained in such record or material to any other person.

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Electronic Messages

The Unsolicited Electronic Messages Ordinance (Cap. 593) (“**UEMO**”) regulates the sending of unsolicited commercial electronic messages with a ‘Hong Kong link’. Under UEMO, ‘do-not-call registers’ were established for pre-recorded telephone messages, short messages and facsimile messages, and senders of commercial electronic messages should access the registers to update and purge their database of address and should not send messages to those numbers.

UEMO also prescribes the requirements on the contents of commercial electronic messages which the senders should observe, including: (a) accuracy, language, presentation of identity and contact information of senders; and (b) provision, language, and presentation of unsubscribe facility. Sender must keep a record of the un-subscription requests received for at least 3 years, and should not use misleading subject headings or conceal calling line identification information in the electronic messages.

SALE OF PRODUCTS

Supply of Services

Under the Supply of Services (Implied Terms) Ordinance (Cap. 457) (“**SS(IT)O**”), certain terms are statutorily implied in a contract for the supply of service, such as: (a) the supplier will carry out the service with reasonable care and skill; (b) the supplier will carry out the service within a reasonable time (where time is not fixed in contract or in a manner agreed or determined by course of dealing); and (c) the party contracting with the supplier will pay a reasonable charge (if the consideration is not determined by the contract or left to be determined in a manner agreed or by course of dealing between the parties). Implied terms under SS(IT)O cannot be ousted by reference to any contract term.

Unconscionable Contracts

Under the Unconscionable Contracts Ordinance (Cap. 458) (“**UCO**”), if the Court finds that a contract for sale of goods or supply of services (in which one of the parties deals as consumer) to have been unconscionable in the circumstances relating to the contract at the time it was made, the court may: (a) refuse to enforce the contract; (b) enforce the remainder of the contract without the unconscionable part; or (c) limited the application of, or revise or alter, any unconscionable part to avoid unconscionable result.

Use of Exemption Clauses

Under the Control of Exemption Clauses Ordinance (Cap. 71) (“**CECO**”), a person cannot by reference to any contract term or notice given exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness under section 3 of CECO.

Further, in a contract when one deals as consumer or on the other’s written standard terms of business, a party (as against that consumer) cannot by reference to any contract term exclude or restrict his liability (when himself in breach) or claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of him or render no performance at all, except the contract term satisfies the requirement of reasonableness under section 3 of CECO.

A person dealing as consumer cannot by reference to any contract term be made to indemnify another person (whether a party to contract or not) in respect of liability that may be incurred by the other for negligence or breach of contract, except the contract term satisfies the test of reasonableness under section 3 of CECO.

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Trade Descriptions

Under the Trade Descriptions Ordinance (Cap. 362) (“**TDO**”), the following acts are prohibited: (a) use of false trade descriptions; (b) false, misleading or incomplete information, (c) false marks and misstatements in respect of products, and (d) false trade descriptions in respect of services supplied. Further, trade practices such as: (a) misleading omission; (b) aggressive commercial practices; (c) bait advertising; (d) bait and switch; and (e) wrong acceptance of payment are criminal offenses under TDO. Upon conviction, the offender may be subject to a maximum penalty of a fine of HK\$500,000 and imprisonment for 5 years.

INTELLECTUAL PROPERTY

Trade Marks

The Trade Marks Ordinance (Cap. 559) (“**TMO**”) regulates the registration and proceedings relating to infringement of trade marks in Hong Kong. Under TMO, a trade mark is registrable unless it contravenes any of the grounds for refusal stated thereunder. A registered trade mark can be assigned or otherwise transmitted separately from the goodwill of a business.

CORPORATE

Document & Allotment of Shares

The Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“**C(WMP)O**”) provides for, *inter alia*, regulatory regimes on the information disclosed in and other matters relating to the issuing of the document (Part II Division 1) and allotment of shares (Part II Division 2) for public companies. Misstatements in document can result in criminal liability with a maximum penalty of a fine of HK\$700,000 and imprisonment for 3 years.

Other Corporate Matters

Under the Companies Ordinance (Cap. 622) (“**CO**”), a company, its directors and officers must observe regulations regarding, *inter alia*, membership, share capital, distribution of profits and assets, registration, management and administration, appointment and disqualification of officials. It is a criminal offense if the company and/or its directors/officers fail to observe the relevant regulations.

In order for the court to be able to try a summary offense under CO, (a) information or complaint relating to the offense must be laid before or made to a magistrate within 3 years after the commission of the offense; and (b) the said information or complaint must be laid or made within 12 months after the date on which the evidence in support comes to the knowledge of the Secretary for Justice.

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EMPLOYMENT

Employment Protections

The Employment Ordinance (Cap. 57) (“**EO**”) applies to every employee engaged under a contract of employment in Hong Kong to an employer of such employee, and to a contract of employment between such employer and employee. EO provides the following entitlements or protections to an employee: (a) year-end payments; (b) maternity and paternity protection; (c) rest days; (d) protection against anti-union discrimination; (e) severance payment; (f) long service payment; (g) employment protection; (h) sickness allowance; (i) holidays with pay; (j) annual leave with pay.

Apart from the protections, EO also provides standard duties and obligations to be implied in contracts between employers and employees, as well as the formalities to be observed for employment contracts.

Employees’ Compensation

Under the Employees’ Compensation Ordinance (Cap. 282) (“**ECO**”), no employer shall employ any employee in any employment unless there is in force in relation to such employee a policy of insurance issued by an insurer for an amount not less than the applicable amount specified in ECO in respect of the employer’s liability. An employer who fails to comply with the above commits an offense and is liable to a maximum penalty of a fine at HK\$100,000 and imprisonment for 2 years.

Mandatory Provident Fund Schemes

Under the scheme established by the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“**MPFSO**”), all employees (and those who are self-employed) aged between 18 and 65 years with monthly earning between HK\$7,100 and HK\$30,000 are obliged by law to contribute 5% of their income to the scheme; and those with monthly earning more than HK\$30,000 are obliged to contribute HK\$1,500 to the scheme. In the first instance, a contribution of 5% of the total monthly income must be made to the scheme by both the employee and employer, unless the income falls below the minimum threshold (in which case the employer alone is obliged to contribute). The employee and employer may, if they so prefer, make contribution in excess of the statutory minimum.

Further, an employer has a duty to duly pay the mandatory contribution for its own behalf and for the employees. An employer who, without reasonable excuse, fails to pay contribution (or failure to do so on time) commits a criminal offense, and is liable: (a) on first conviction, to a fine at HK\$100,000 and imprisonment for 6 months; (b) on subsequent occasion, to a fine of HK\$200,000 and imprisonment for 12 months.

Notices of Commencement & Termination of Employment

Under the Inland Revenue Ordinance (Cap. 112) (“**IRO**”), an employer who employ someone who is or is likely to be charged with salaries tax or any married person shall give notice in writing to commissioner of Inland Revenue Department (“**IRD**”) not later than 3 months after the date of commencement of such employment, stating his/her full name and address, date of commencement and terms of employment. Further, where the employment ceases, the employer shall give notice thereof in writing to the commissioner not later than 1 month before the employee ceases to be employed in Hong Kong, stating the name and address and the expected date of cessation. Any person who without reasonable excuse fails to comply with the above requirements commits an offense and is liable to a fine of HK\$10,000, and the court may order rectification within a specified time.

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TAX

Profits Tax

Under IRO, profits tax shall be charged on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong that each year of assessment from such trade, profession or business (excluding profits arising from the sale of capital assets).

Property Tax

Under IRO, property tax shall be charged on every owner of any land or buildings or land and buildings wherever situate in Hong Kong for each year of assessment. The amount of profit tax charged is computed at the standard rate on the net assessable value of such land or buildings or land and buildings for each such year.

Stamp Duty

Under the Stamp Duty Ordinance (Cap. 117) (“**SDO**”), every instrument specified in the First Schedule to SDO, wherever executed, is chargeable with stamp duty. If any instrument chargeable with stamp duty is not duly stamped, the person specified in the First Schedule as being liable for stamping and any person who uses the instrument shall be liable civilly to the Collector of Stamp Duty for payment of the stamp duty and penalty. Under the First Schedule to SDO, instruments subject to stamp duty include conveyance, agreement for sale and lease of immovable properties in Hong Kong, contract note and transfer of Hong Kong stock, Hong Kong bearer instrument and their counterparts.

COMPETITION

Under the Competition Ordinance (Cap. 619) (“**CPTO**”), three main types of anti-competitive practices are prohibited, which are described under three rules detailed as follows:-

- (i) ‘*First Conduct Rule*’:- prohibiting undertaking from making or giving effect to an agreement (whether horizontal or vertical) if the agreement has the object or effect of harming competition in Hong Kong. The rule applies to concerted practices/decisions of associations of undertakings (whether participants are competitors or not). Examples of prohibited agreements are horizontal ‘cartel’ agreements, joint ventures, price fixing and group boycotts.
- (ii) ‘*Second Conduct Rule*’:- prohibiting business with substantial market power in a market from abusing that power by engaging in conduct which has the object or effect of harming competition in Hong Kong (i.e. to protect or increase position of power and profits). Examples include predatory pricing, anti-competitive tying and bundling; margin squeeze and refusals to deal, as well as exclusive dealing.
- (iii) ‘*Merger Rule*’:- prohibiting mergers with the effect of substantially lessening competition in Hong Kong. Currently the application of the rule is limited to mergers relating to undertakings directly or indirectly holding carrier licences issued under the Telecommunication Ordinance (Cap. 106).

Under CPTO, the Competition Tribunal is empowered to impose pecuniary penalties, award damages and order interim injunctions during investigations or proceedings for violation of competition rules. Parties to a contract may also invoke the rules to support their claim that a contractual clause is void or voidable.

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LAND

Rules Affecting Land

Under the Conveyancing and Property Ordinance (Cap. 219) ("CPO"), no action shall be brought upon any contract for sale or other disposition of land, unless the agreement (or some memorandum or note thereof) is in writing and signed by the party to be charged or person authorized by him.

In respect of the legal estate and equitable interest in land, the following rules are created by CPO:-

- (i) Legal estate in land can only be created, extinguished or disposed of by deed.
- (ii) Equitable interest in land can only be created or disposed of by writing signed by the person creating or disposing of the same (or by his agent authorized in writing, or by will or operation of law).

All interest in land created orally (and not put in writing and signed by the persons creating them) have the force and effect of interests at will only, notwithstanding that any consideration has been given for the same.

Mortgage

CPO also provides that a mortgage of legal estate (including any second or subsequent mortgage of the legal estate) can only be effected by a charge by deed expressed to be a legal charge, under which the mortgagor and the mortgagee shall have the same protection, powers and remedies (including foreclosure and equity of redemption, but excluding power to enter into possession before default by mortgagor) as if the mortgage is effected by way of assignment of the legal estate.

Voidable Disposition

CPO stipulates that any disposition of property made with intent to defraud creditors shall be voidable at the instance of any person prejudiced. The rule however does not extend to any estate or interest in land disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having notice of the intent to defraud creditors at the time of the disposition.

Further, every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

Land Registration

Under the Land Registration Ordinance (Cap. 128) ("LRO"), all deeds, conveyances, other instruments in writing and judgments ("**Registrable Instruments**") which may affect land is registrable in the Land Registry. Registrable Instruments registered in the Land Registry shall have priority according to the priority of their respective dates of registration.

For Registrable Instruments which are not registered in the Land Registry, they shall be absolutely null and void as against any subsequent *bona fide* purchaser or mortgagee for valuable consideration.