



Dear Licensees,

Re: Contracts (Rights of Third Parties) Ordinance

The Contracts (Right of Third Parties) Ordinance (“Ordinance”) was passed by the Legislative Council on 26 November 2014 and came into operation on 1 January 2016.

The Ordinance reforms the long established common law rule that a person may not enforce a contract if he/she is not a party to it (the “privity of contract” rule) and allows a third party to enforce the contractual terms subject to contracting parties’ intention. If a third party may enforce a term of a contract under the Ordinance, the parties to the contract may not, without the third party’s consent by agreement, rescind or vary the terms of the contract such that the third party’s right under the term is altered or extinguished.

Licensees should therefore note that if it is not the intention of the contracting parties to a provisional agreement for sale and purchase or provisional tenancy agreement that a third party may enforce a term of the relevant agreement, the safest course is to insert an express exclusion clause to such effect in the agreement, such as “*The provisions of the Contract (Rights of Third Parties) Ordinance (Cap. 623) are hereby expressly excluded from this agreement and/or any other documents executed pursuant thereto*”.

In light of the complication and possible implication of the Ordinance it may have on the provisional agreements for sale and purchase or provisional tenancy agreements of properties usually prepared by licensees, licensed estate agents are advised to review their existing forms of provisional agreements for sale and purchase and provisional tenancy agreements and consider (after seeking legal advice, where necessary) whether any revision to the terms and conditions contained in those forms is necessary.

Estate Agents Authority

31 May 2016