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Pearl Wisdom Limited agrees with SFC to unwind sale of The Apex Horizon hotel units

13 May 2013

Cheung Kong (Holdings) Limited, Cheung Kong Property Development Limited, Pearl Wisdom Limited (PWL) and Horizon Hotels & Suites Limited (collectively the Cheung Kong parties) today entered into an agreement with the Securities and Futures Commission (SFC) to unwind the sale of hotel room units at The Apex Horizon (Note 1).

The SFC has been investigating whether the offer to purchase hotel room units at The Apex Horizon development constituted an offer to acquire an interest in or to participate in a Collective Investment Scheme (CIS) under the Securities and Futures Ordinance (SFO). A total of 360 hotel room units were individually sold to purchasers by the vendor, PWL, in February 2013.

PWL will today issue a letter to all purchasers informing them that it wishes to cancel each contract and, in return, it will:

- reimburse every purchaser the deposit and any part payments together with interest at the rate of 2% per annum above the prime rate specified by the Hongkong and Shanghai Banking Corporation Limited for the period from the date each amount was paid respectively until 30 May 2013; and
- offer an amount of \$10,000 as reimbursement of any reasonable legal and other expenses.

These amounts will be paid to purchasers by 30 May 2013 (Note 2).

Mr Ashley Alder, the SFC's Chief Executive Officer, said: "Investors in a CIS are entitled to more information before investing than was provided in this case. The SFC considers that this is a sensible outcome, which, if effective, ensures all parties will be returned to their pre-transaction position."

"The SFC will monitor the progress by the Cheung Kong parties to unwind the sale to determine whether any further action is required," he added.

The SFC formed the view that the offer to purchase hotel room units at The Apex Horizon appeared to be an invitation to acquire an interest in or to participate in a CIS as defined in the SFO (Notes 3 and 4).

The key elements of a CIS that appeared to the SFC to exist included the fact that day-to-day management of the hotel was to be in the hands of a separate operator appointed to operate the hotel on behalf of the purchasers and the hotel operator would control key functions necessary to manage and supervise the hotel including allocation of guests to rooms.

The Cheung Kong parties do not agree with the SFC's view and contend that the purchasers have effective day-to-day control of their rooms and that it is an investment in real estate.

The SFC informed the Cheung Kong parties that it intended to commence proceedings under section 213 of the SFO in the Court of First Instance to seek orders unwinding the sale and returning all deposit moneys and part payments to purchasers.

Today's agreement avoids these proceedings being commenced at this stage.

End

Notes:

1. The Apex Horizon is a development in Kwai Chung comprising 360 hotel room units. On 18 February 2013, Cheung Kong announced at a press conference that its subsidiary PWL was offering 65 of the 360 hotel room units in the development at an average selling price of \$5,200 per sq. ft. On offer were 660 sq. ft. two-bedroom hotel room units and 909 sq. ft. three-bedroom hotel room units. All 65 units were sold on the same day with the rest of the units sold shortly afterwards.
2. The letter will require purchasers to sign a cancellation agreement and return it within 10 days.
3. A CIS has four relevant elements: (a) it must involve an arrangement in respect of property; (b)

participants do not have day-to-day control over the management of the property even if they have the right to be consulted or to give directions about the management of the property; (c) the property is managed as a whole by or on behalf of the person operating the arrangements; and (d) the purpose of the arrangement is for participants to participate in or receive profits, income or other returns from the acquisition or management of the property. See Schedule 1 of the SFO.

4. Under section 103 of the SFO, the SFC is required to authorize any marketing material that is issued to the public containing an offer to participate in a CIS (subject to exceptions). It is the SFC's policy that a CIS is required to be authorized by the SFC under section 104 of the SFO before it is marketed to the public. Authorization of advertising and marketing documents would require all offering and marketing documents to contain sufficient details of the features of the CIS as well as the risks involved. The purpose of these provisions is to ensure members of the investing public are properly and accurately informed about the key features of a securities product or an interest in a CIS when making a decision to invest.