

立法會
Legislative Council

LC Paper No. CB(1) 1218/04-05(08)

Ref : CB1/PL/HG

Panel on Housing

Meeting on 12 April 2005

**Background brief on
sales descriptions of overseas and
local uncompleted residential properties**

Introduction

Inadequate and misleading sales information on uncompleted residential properties is of concern to prospective purchasers as they have no opportunity to view the properties before purchase. Problems associated with the provision of inadequate and misleading sales information on uncompleted flats were rampant in Hong Kong in the eighties and early nineties. Examples of complaints included inaccurate size of the property, misleading descriptions of fittings and finishes, as well as sketchy layout and location plans. The problems were even more serious with overseas uncompleted residential properties sold in Hong Kong, particularly those located in the Mainland, where delayed completion and project failure often occurred due to financial problems faced by developers and a lack of control over property development in the host countries. As the number of overseas uncompleted properties being put up for sale in Hong Kong and the value of these transactions grew, complaints about inadequate and misleading sales information also increased and there were calls for measures to address the problems.

2. To tackle the problems, the then Attorney General and the then Acting Chief Justice referred to the Law Reform Commission (LRC) for consideration the law governing the protection of prospective purchasers of uncompleted property in relation to inadequate or misleading sales information or particulars in June 1992. LRC later appointed a subcommittee in November 1992 to first consider the sales descriptions of local uncompleted residential properties, and then of overseas uncompleted residential properties.

Consultation on the legislative proposals on sales descriptions

3. LRC published the Report on Description of Flats on Sale (the First Report) in April 1995. The LegCo Panel on Housing (the Panel) was consulted on the recommendations of the First report on 5 June 1995. A summary of the First Report is in **Appendix I**.
4. In December 1996, the Panel was briefed on LRC's Consultation Paper on the Sales Descriptions of Overseas Uncompleted Residential Properties. In September 1997, LRC published the Report on Sales Description of Overseas Uncompleted Residential Properties (the Second Report) and the Panel was consulted on 17 November 1997. A summary of recommendations in the Second Report is in **Appendix II**.
5. In March 1999, in the light of LRC's recommendations in the First report, the Administration briefed the Panel on its plan to introduce the Sales Descriptions of Uncompleted Residential Properties Bill (the Bill). Details of the Bill are in **Appendix III**. After taking into account the views expressed by the Panel, the Administration revised the original proposals and published a White Bill (**Appendix IV**) for public consultation before introduction of the proposed legislation. A subcommittee under the Panel was formed to study the White Bill.
6. On 10 July 2001, the Executive Council ordered that the need for the Bill should be reassessed in early 2002 in the light of the latest developments. The reason might be that, despite detailed deliberations, a number of controversial issues exposed during the three-month public consultation exercise on the White Bill still remained. According to the Administration, it would further look into the Bill to decide a number of controversial but key issues, such as the criminalization of certain breaches of the proposed legislation. The matter was discussed by the Panel on 18 July 2001. In response to members' concerns, the Administration affirmed that it would re-consider the introduction of the Bill in the event of recovery of the property market which warranted greater consumer protection. It also undertook to brief members on the outcome of its review of the Bill in due course.
7. In September 2002, LRC released the Report on Local Completed Residential Properties, which was the third part of its project on the sales descriptions of residential properties. The Panel received a briefing on the report on 6 January 2003. At the meeting, a member expressed disappointment at the Administration's failure to take forward recommendations in the First Report and the Second Report. Another member however felt that implementation of LRC's recommendations by legislation might not be necessary. The Administration explained that there were divergent views on the recommendations. A holistic approach had to be adopted in considering the recommendations in these three reports which were inter-related. It also undertook to revert to the Panel in due course.

Discussion by the Panel

Location plan, layout plan and floor plan

8. The First Report stated that it would be too onerous to require developers to disclose the intended uses of the land outside the boundaries of the development, except the specific uses required by the Government Lease. Purchasers should ascertain the land uses for themselves from, say, the latest issue of the outline zoning plans. At the Panel meeting on 5 June 1995, members queried the rationale behind such a statement. They stressed the importance of ensuring purchasers would have easy access to full details on land use.

9. In the light of members' view, the Administration prescribed in the Bill a requirement for a sales brochure to include a location plan showing the relevant development and its adjacent areas. The plan should cover major communal facilities and uses of land known to the developer within the plan. The sales brochure should also provide a layout plan of buildings within the development and where applicable, major roads, open areas, prominent transport, communal and recreational facilities as well as undeveloped land within the boundary of the development. If specific covenants in the Government lease required the developer to put aside any land inside or outside the boundary of the development to particular uses, the developer should also state these uses in the brochure. In addition, a sales brochure should contain floor plans which were drawn to scale, reasonably legible and show floor plans of all typical and non-typical floors, including rooftop, entrance floors and carparks.

Floor area

10. The First Report recommended that the measurement of floor area of residential properties for disclosure in sales brochures should be standardized. In this connection, the Administration prescribed in the Bill a new definition of "building area" to replace "gross floor area" (GFA) which was commonly used in sales brochures but did not have a standardized method of measurement. The term "building area" referred to the aggregate of the "saleable area" of a property plus the apportioned common areas which was for the common use and benefit of the development. The term "saleable area" had been standardized and adopted in sales brochures and agreement for sale and purchase since the 1980's. "Saleable area" referred to the area contained within the enclosed walls of the unit measured up to the exterior face of an external wall or the centre line of a separating wall between adjoining units, as the case might be. In other words, "saleable area" of a unit had included the thickness of external walls, internal columns and partitions. The Bill further required the inclusion of "internal floor area" (IFA) in sales brochures which should be the area contained within the enclosing walls of a property measured to the interior face of the external wall or separating walls but included all internal partitions and columns within the unit.

11. At the Panel meeting on 1 March 1999, some members opined that IFA should refer to the area contained within the internal walls of property but excluding all internal partitions. This would enable the purchasers to have a clear idea of the exact area which could be put to use. Other members however pointed out that there were various technical and practical difficulties in measuring IFA accurately since it was not uncommon that the external walls of a high-rise building were thicker in the lower floors than those in the higher floors.

12. Having regard to the views of the Panel and various sectors, the Administration revised the original proposals and included in the White Bill a mandatory requirement for the disclosure of “saleable area” and GFA. GFA of a residential property was an apportioned share of the total domestic gross floor area of the development calculated in accordance with the Building (Planning) Regulations as approved by the Building Authority.

13. At the Panel meeting on 7 April 2000, a member maintained that IFA should be used in sales brochures. He even opined that the White Bill should require developers to guarantee that IFA of the completed properties would be as stated in the sales brochures. Otherwise, developers should be required to adjust the property prices downwards as a remedy if the properties turned out to be significantly smaller. Another member however had no strong views on which terms should be adopted to express the floor area. He held the view that the most important thing was to ensure an identical system of floor area measurement.

Fittings, finishes and sample property

14. The First Report recommended that there should be a list of specified fittings and finishes in all sales brochures. All information in the sales brochure had to be accurate at the time of first sale of units in a development. Advertisements (other than a sales brochure) for the public sale of flats by developers or the private sale of flats by property agents had to state that a sales brochure was available, and the information given in any advertisement had to be consistent with the information given in the sales brochure.

15. In the light of the recommendation in the First Report, the Bill stipulated that a sales brochure should contain a list of fittings and finishes of the property. If a sample property was built for inspection, it should be reasonably representative in its dimensions to the type of residential properties offered for sale. The developer should display a notice at a conspicuous place in the sample flat stating the relevant floor areas, and whether the interior finishes, fittings, fixtures, appliances, furniture displayed in the sample property were included in the sales prices or were different from those of the properties offered for sale. At the Panel meeting on 1 March 1999, members stressed the need that the arrangement of the furniture within a flat in a sales brochure should be drawn to scale.

Engagement of licensed estate agents in Hong Kong to handle overseas residential properties

16. The Second Report recommended that any vendor of overseas uncompleted residential properties had to engage a licensed estate agent in Hong Kong if he wished to advertise those properties for sale in Hong Kong. Any advertisement published in Hong Kong had to specify the estate agent and provide his licence number. The agent would be under a duty to make available the sales brochure to the purchaser and to ensure that any information it contained was accurate. The agent would be liable for any false or misleading information in the advertisement or in the sales brochure.

17. At the Panel meeting on 17 November 1997, members expressed concern about the proposal to make estate agents primarily responsible for providing sales information, and to hold them liable for the accuracy of the information. They did not agree that estate agents should be held liable for any acts of overseas developers in view of their intermediary role. Individual members also proposed the following measures in dealing with the problems associated with overseas uncompleted properties -

- (a) exploring the viability of adopting the system where progress payments would be released to overseas developers in accordance with the actual progress of construction, and local solicitors would be appointed as the stakeholders in order to keep the stake held funds in Hong Kong;
- (b) prescribing regulations to restrict the sale of overseas uncompleted residential properties in Hong Kong with a view to arousing an awareness of the risks involved;
- (c) establishing a compensation mechanism in Hong Kong to deal with purchasers' claims in the event of delayed completion or project failure;
- (d) identifying a local agent to be held solely responsible for problems arising from the sale of overseas properties;
- (e) stepping up cross-border co-operation with the Mainland authorities so that purchasers of properties in the Mainland could claim against parties concerned in accordance with the laws in both jurisdictions; and
- (f) lobbying the relevant Mainland authorities to have regard to the current practices in Hong Kong when finalizing their reform package on property transactions.

Subsequent developments

18. Given the significant change towards a buyers' market after the property slump in 1997, coupled with the voluntary compliance by private developers in response to the community's demand for comprehensive and accurate information relating to flats for sale, the Administration considered that there was a reduced need for the Bill. Besides, it had to further look into the Bill to decide on the following controversial but key issues -

- (a) whether the provision of inaccurate or incomplete sales information should be criminalized;
- (b) implications of exempting the Housing Authority/Housing Department from criminal liability; and
- (c) need to strike a balance between adequate consumer protection for home purchasers and interests of the real estate industry and professionals to maintain flexibility over residential construction projects.

At members' request, the Administration undertook to revert to the Panel in due course.

19. A list of relevant papers with their hyperlinks at the LegCo Website is in **Appendix V**.

**SUMMARY OF
REPORT ON DESCRIPTION OF FLATS ON SALE
ISSUED BY
THE LAW REFORM COMMISSION OF HONG KONG**

(This summary is intended to give an outline of the Report on Description of Flats on Sale issued by the Law Reform Commission. While it includes the Report's main recommendations, those wishing more detailed explanation should refer to the Report itself. The references in this summary to paragraph numbers are to paragraphs in the Report.)

Introduction and Overview

Background

1. In recent years, because of spiralling property prices, people in Hong Kong have had to spend greater proportions of their household incomes on the monthly repayment of mortgage loans. Despite the great importance of property transactions to the average person, purchasers of flats in Hong Kong are often not provided with accurate and sufficient sales information. The problem is particularly acute in the sale of uncompleted flats. In such cases, purchasers do not have the chance to see the actual flats when they make the purchase.

Terms of reference

2. In June 1992, the then Acting Attorney General and the Acting Chief Justice made the following reference to the Law Reform Commission:

"Should the law governing the protection of prospective purchasers and purchasers of uncompleted residential property in relation to inadequate or misleading sales information or particulars be changed and, if so, in what way?"

Sub-committee membership

3. In November 1992 the Law Reform Commission appointed a sub-committee to consider the above terms of reference and to make proposals to the Law Reform Commission for reform. The membership of the sub-committee was:

Professor Derek Roebuck (Chairman)	Dean of Faculty of Law, City University of Hong Kong, Solicitor
Mr Tom Berry	Principal Solicitor, Lands Department
Ms CHEUNG Siu-hing (from 5.1.1993 to 1.12.1993)	Principal Assistant Secretary (Lands), Planning, Environment and Lands Branch, Government Secretariat
Ms Audrey EU Yuet-mee, QC	
Mr Andrew LEE King-fun	Principal Partner Andrew LEE King-fun and Associates, Architects
Mr Bowen LEUNG Po-wing (up to 30.11.1992)	Deputy Secretary (Lands and Planning), Planning, Environment and Lands Branch, Government Secretariat
Mr Alasdair Morrison	Managing Director, Jardine Matheson Limited
Mr Patrick Sheehan	Lecturer in Law, University of Hong Kong, Solicitor
Mr William SHIU Wai-chuen (since 19.11.1992)	Principal Assistant Secretary (Housing Policy), Planning, Environment and Lands Branch, Government Secretariat
Mr Marco WU Moon-hoi	Senior Assistant Director of Housing Department

4. Mr Thomas LEUNG Moon-keung, Senior Crown Counsel, acted as the Secretary to the sub-committee.

Consultation

5. In April 1994, the sub-committee issued their interim report in the form of a consultative document ("the Consultative Document"), setting out their interim recommendations relating to the sales descriptions of uncompleted residential properties in Hong Kong. The Commission's report reflects the comments made by the public on the Consultative Document. The Commission endeavoured to balance the views of conflicting interests in arriving at their final recommendations, but their overriding objective was consumer protection.

Scope of deliberations

6. As the Commission's terms of reference are confined to uncompleted residential property, the report does not deal with commercial or industrial buildings, nor residential properties which are completed at the time of sale.

7. In the case of uncompleted residential properties, the principal sales descriptions are made through the issue of sales brochures and price lists. The Commission have therefore considered whether there is a need to improve the quality and reliability of sales brochures and price lists for the better protection of purchasers and, if so, what the best means are to achieve that aim.

Overseas Uncompleted Residential Properties

8. The public comments on the Consultative Document indicated strong support for regulation of the sales descriptions of overseas uncompleted residential properties sold or advertised in Hong Kong. The sub-committee has now begun consideration of overseas uncompleted residential properties.

Completed residential property and commercial premises

9. There was also wide support in the public responses for introducing control over the sales descriptions of completed residential property and commercial premises. The problems which arise are as well documented as those of uncompleted residential property. The Attorney General and Chief Justice will consider in due course whether the existing terms of reference should be enlarged to allow these additional areas to be examined.

Uncompleted residential property

10. The terms of reference refer to "uncompleted residential property". We recommend that "uncompleted residential property" should refer to residential units for which the Occupation Permit has yet to be issued by the Building Authority under the Buildings Ordinance or, in the case of the Housing Authority's Home Ownership Scheme, the completion certificate has yet to be issued by the Director of Housing. We further recommend that this definition should be suitably modified in the case of exempted houses in the New Territories because Occupation Permit is not required for such houses. (Para 22 of Introduction and Overview)

"Consent" and "Non-Consent" Schemes (Paras 23 to 25 of Introduction and Overview)

11. The "Consent Scheme" generally applies to the development of lots where the Government Leases stipulate that the prior consent of the Director of Lands must be obtained before uncompleted units can be sold. The conditions for granting consent are varied to meet changing needs to protect purchasers of uncompleted units.

12. "Non-Consent Scheme" refers to property developments where there are no lease conditions stipulating that prior consent of the Director of Lands is required for the sale of uncompleted units. In these cases, if the same solicitor acts for both the vendor and purchasers, the solicitor is required to use a standard form of Agreement for Sale and Purchase ("ASP") which closely follows that used in the Consent Scheme.

Glossary of terms

13. To help readers to understand the contents of the Report, there is a glossary of terms at pages 7 to 11 of the Report.

CHAPTER 1

Measurement of Floor Area

Gross floor area (Paras 1.3 to 1.17)

14. In Hong Kong purchasers are used to thinking in terms of gross floor area when they compare the prices of different properties. Property developers invariably state in the sales literature the gross floor area of the units, yet there is no standard definition of gross floor area.

Two methods of measuring gross floor area (Paras 1.6 to 1.17)

15. We have considered two current methods of calculating the gross floor area. The first method is commonly used by developers. In that definition, "common area" includes all circulation areas and ancillary facilities such as pump rooms, transformer rooms and lift machine rooms.

16. A second method of measuring gross floor area is adopted by the Building Authority under the Buildings Ordinance (Cap 123) in Reg. 23(3) of the Building (Planning) Regulations for approval of building plans for all building developments in Hong Kong ("Buildings Ordinance definition"). (See para 1.9 for details of the definition)

17. We favour the Buildings Ordinance definition because it is clear and unambiguous and the gross floor area so calculated will match the gross floor area shown on the approved building plans.

18. We recommend that the definition of the term gross floor area in sales literature of uncompleted units should be standardized by legislation. The gross floor area shown in sales brochures must equal the gross floor area shown on the approved plans. The method of apportionment of the share of common areas to individual units should be clearly specified in the sales literature. (Para 1.18)

19. To this end, we recommend that the definition of gross floor area in regulation 23(3) of the Building (Planning) Regulations (Cap. 123) subject to the modifications which we have mentioned in paragraph 1.14 of the Report, should be adopted as the standard definition of gross floor area in sales literature of all uncompleted units. The definition of gross floor area should exclude such common areas as air-conditioning and mechanical rooms, refuse chambers, pump rooms, transformer rooms, water tanks, lift machine rooms, lifts and staircases passing

through carparking floors, but include clubhouses, management offices and caretaker rooms. (Para 1.19)

20. We further recommend that if any facilities, not being part of the block of flats, are to be included in the calculation of the gross floor area, the method of pro-rata allocation of the share of the facilities to individual units should be specified in the sales literature. (Para 1.20)

Saleable area (Paras. 1.21 to 1.25)

21. At present, only the sales brochures of Consent Scheme flats are required to state the saleable area. Sales literature should state the saleable area because it represents the actual floor space that purchasers can enjoy exclusively.

22. Unlike gross floor area, there is an accepted method of measuring saleable area. In June 1993, a review by the then Buildings and Land Department, in conjunction with the Law Society of Hong Kong, resulted in the adoption of a clear definition of saleable area with effect from 1 July 1993. (See para 1.22 of the Report for the definition)

23. We recommend:

- (1) that the definition of saleable area as promulgated in Legal Advisory and Conveyancing Office Circular Memorandum No. 1 dated 23 June 1993 for use in all new approved forms of ASP should be recognized in legislation as the standard method to describe saleable area in all sales literature;
- (2) that where the unit includes any incorporated item in the definition (such as cockloft, bay window, carparking space, yards, terrace, garden or flat roof), the saleable area of each of them should be specified and described separately in the sales literature; and
- (3) that the inclusion of saleable areas in sales literature should be made mandatory by legislation.

CHAPTER 2

Floor Plan (Paras. 2.1 to 2.20)

24. Purchasers of uncompleted units have to place great reliance on the floor plan in the sales brochure. Yet sales brochures often contain floor plans which provide only scanty or even inaccurate information. What is more, dimensions of the rooms are not always provided.

Information in floor plans (Para 2.19)

25. We recommend that:

- (1) the sales brochure should contain floor plans which:
 - (a) specify the external dimensions of individual units;
 - (b) are presented to conventionally accepted scales;
 - (c) show separately non-typical floors, the entrance floors, and the roof;
 - (d) show the location, the number and the minimum dimensions of the car parking spaces;
 - (e) show the orientation and location of ingress and egress points;
 - (f) show the load bearing walls; and
 - (g) show any known features within the unit that would materially affect a reasonable purchaser's enjoyment of the property, such as exposed pipes.
- (2) the sales brochure should contain:
 - (a) schedules listing saleable area of the unit and of any bay window areas, roof areas, flat roof areas, open yard areas, etc.;
 - (b) notes bringing to the purchaser's attention the usual term in the ASP concerning the adjustment in purchase price in proportion to variations in saleable area arising from amendment in the building plans and the purchaser's right to rescission, for variation of 5 per cent or more, where there is such a term in the ASP; and
 - (c) a note that the internal area of units on the upper floors may be slightly greater than that of the lower floors, if such is the case.
- (3) certified copies of the latest approved building plans should be made available for free inspection at the sales office during normal office hours.

Legal obligation to inform purchasers of saleable area upon completion (Paras 2.14 and 2.20)

26. One respondent to the Consultative Document suggested that there should be a legal obligation on the developer to inform purchasers of the saleable area upon completion if there has been any material alteration in the building plans.

27. In response to this suggestion, we recommend that there should be a legal obligation on the developer to inform purchasers of the saleable area upon completion (with architect's certification of the saleable areas concerned) since the purchaser may be entitled to a reduction in price if there is a reduction in the saleable area of the units

CHAPTER 3

Fittings and Finishes

28. Purchasers of uncompleted buildings cannot see for themselves the quality of fittings and finishes. Although some developers put up one or two sample units, purchasers cannot usually obtain all the information they require. A prospective purchaser is therefore likely to rely on descriptions contained in the sales brochures.

Problems with description of fittings and finishes

29. Descriptions are often vague and do not give a clear idea of the types of fittings and finishes used. There may also be discrepancies between descriptions in the Chinese and English versions.

Land Office Circular Memorandum No. 101

30. Land Office Circular Memorandum No. 101 ("LOCM 101"), was issued by the Registrar General on 21 February 1991 (see Annex III of the Report). It applies to all Consent Scheme developments and provides that the sales brochure must contain, *inter alia*, a list of all the fittings and finishes set out in the circular memorandum.

31. The types of the material used are specified in LOCM 101. These specifications are too general. The specifications should contain at least the brands and countries of origin of the fittings and finishes.

32. We recommend that all sales brochures should at least contain details of the fittings and finishes as stated in Appendix 2 of LOCM 101. They should also contain a description of air-conditioners where supplied and descriptions, such as locations, of air-conditioning plants. (Paras 3.14 and 3.15)

33. We also recommend that all sales brochures should state the brands and countries of origin of the fittings and finishes to be used. If the intended materials become unavailable, developers should be allowed to use substitute materials provided that the Authorized Person of the development project certifies that in his professional opinion the substitute materials are of comparable quality and standard to the intended materials. This right to use comparable substitute materials upon certification by the Authorized Person should be clearly stated in the sales brochure and the ASP. (Para 3.17)

Discrepancies between languages (Paras 3.18 to 3.19)

34. We recommend that if there are discrepancies between the Chinese and English versions of the specifications of fittings and finishes in the sales brochure, purchasers can choose which of the language versions is applicable.

Mock-up flats (Paras 3.20 to 3.24)

35. We think it is unreasonable to oblige developers to build mock-up flats. Nonetheless, we recommend that if mock-up or sample flats are provided, the mock-up should be accurately representative of the actual unit in all aspects including quality and dimensions and the Authorized Person of the development project should certify a schedule of the specifications of the mock-up flats. The developer should have a duty to keep a record of the certified schedule.

Supply of flush water/sewage treatment plant (Paras 3.13 and 3.16)

36. Sewage treatment systems are installed in some developments to recycle used flush water for continual use. This should pose no health hazard provided the treatment plants are adequately maintained. We recommend that all sales brochures should also contain information on the flush water/sewage treatment plants where they are supplied. Such information should include the maintenance of the treatment plants.

CHAPTER 4

Location and Layout Plans (Paras 4.1 to 4.25) (or Site and Development Plans)

37. Location plans and layout plans are the major sources of information on the provision of communal facilities, the existing surroundings and future developments in the vicinity of the project. Although the sales brochure may provide a location plan or layout plan, some of these plans have been found to be sketchy, and sometimes misleading. (Paras 4.1 to 4.4)

LOCM 101 (Paras 4.5 to 4.6)

38. Paragraphs A2 and A3 of Appendix 1 of LOCM 101 requires that the sales brochure of a Consent Scheme development should include:

- (i) a location plan "including up-dated information on prominent environmental features in the vicinity e.g. public park, swimming pool, refuse collection point etc., intended user of surrounding areas, if known" (para A2); and

- (ii) a layout plan drawn to scale "including communal facilities (and their completion dates if possible); undeveloped land and its intended use within the boundary of the development; the scale used" (para A3).

39. LOCM 101 provides a good model for the provision of location and layout plans in sales brochures and can be adopted for all uncompleted units, subject to our reservation over the suggestion that developers should be required to state the uses of land outside the boundaries of the development.

Uses of land within the development and of adjoining land (Paras 4.12 to 4.18)

40. We have considered whether it is necessary to require developers to disclose in the sales brochure existing and intended uses of land within a development and of adjoining land.

41. We think it would prove too onerous to require developers to disclose the intended uses of the land outside the boundaries of the development, except the specific uses required by the Government Lease. Purchasers should ascertain the land uses for themselves from, say, the latest issue of the outline zoning plans.

42. We recommend that, subject to paragraph 4.24 of the Report, a location plan containing the details specified at paragraph A2 of Appendix 1 of LOCM 101 should be provided in all sales brochures. (Para 4.19)

43. We recommend that the date and the reference number of the latest outline zoning plans at the date of the printing of the sales brochure should be stated in all sales brochures with a note that outline zoning plans are subject to change and that the latest outline zoning plans at the date of the printing of the sales brochure are available for free inspection during normal office hours at the sales office. (Para 4.20)

44. We recommend that all sales brochures should provide layout plans which are drawn to scale and contain the details specified at paragraph A3 of Appendix 1 of LOCM 101. We recommend that the layout plans provided in sales brochures should be the latest approved plans at the date of printing of the sales brochure. The expected completion dates of communal recreational facilities should also be included in the layout plans. (Para 4.21)

45. We recommend that if there are specific covenants in the Government Lease requiring the developer to put land inside or outside the boundaries of the development to particular uses, the developer should state accurately those particular uses in the sales literature. (Para 4.22)

46. We recommend that developers should be required to state accurately in the sales brochure anything which they know at the date of the printing of the sales brochure about the intended uses of the land within the boundaries of the development. (Para 4.23)

47. We recommend that, except for specific uses (mentioned in paragraph 4.22 of the Report) required of developers by the terms of the Government Lease,

developers should *not* be required to disclose the intended use of land outside the boundaries of the development. (Para 4.24)

48. We recommend that if the developer chooses to disclose in the sales literature any information about the use of land outside the boundaries of the development, the information so disclosed must be accurate. (Para 4.25)

CHAPTER 5

Date of Completion (Paras 5.1 to 5.3)

49. A reasonably accurate estimate of the date of completion of the construction of the units helps the end-users to plan for their accommodation. Complaints by purchasers about delayed completion are not uncommon. Furthermore, many sales brochures do not contain a definite completion date.

The construction completion date as stated in the ASP (Paras 5.4 to 5.7)

50. The construction completion date is contractually the deadline for the developer to complete the units, unless the delay is within the limited circumstances permitting extensions. Purchasers can therefore expect that in the normal course of events this is the latest time by which the construction of the unit will be completed.

The expected date of legal completion and expected date of vacant possession (Para 5.10)

51. The expected dates of legal completion and of vacant possession will give purchasers an idea as to when they are required to pay the balance of the purchase price and when they can take possession of the property.

Expected dates of events which govern payment of purchase price (Paras 5.11 and 5.12)

52. Purchasers of uncompleted units are often required to make full or partial payment of the purchase price by reference to the occurrence of certain events. For example, it is very common that full payment of the purchase price has to be made within 14 days of the issue of the Occupation Permit or of the Certificate of Compliance.

53. In order to assist purchasers in making their financial arrangements, we take the view that if any of the payment terms is dependent on the occurrence of a contingent event (such as issue of the Occupation Permit or the Certificate of Compliance, or execution of the assignment), the sales brochure or the price list should state the expected date of that event.

Our recommendations on dates of completion (Paras 5.13 and 5.14)

54. We recommend that the following dates should be stated in all sales brochures:

- (1) the construction completion date as stated in the Agreement for Sale and Purchase;
- (2) the expected date of legal completion;
- (3) the expected date of vacant possession.

55. We recommend that if any of the payment terms is dependent on the occurrence of a contingent event (such as issue of the Occupation Permit or the Certificate of Compliance, or execution of the assignment), the sales brochure or the price list should state the expected date of the happening of that event.

CHAPTER 6

Charges Levied on Transfer of Title to Sub-purchasers (Paras 6.1 to 6.9)

56. The required procedures and administration fees chargeable on the transfer of title from "first-hand" purchasers to sub-purchasers are seldom indicated clearly in the sales brochures.

57. We recommend that where charges are imposed by developers on transfer of title to sub-purchasers, the amount of such charges and the procedures for transfer should be specified clearly in the sales brochure or the price list. (Para 6.9)

CHAPTER 7

Financing Arrangements

Information on mortgage facilities (Paras 7.1 to 7.2)

58. Information about available finance is not always given in the sales literature. To assist purchasers to budget for their purchase, we think the sales brochure should state whether banks and financial institutions can provide finance and should also give a general description of the available finance schemes and the interest rates. However, it should remain the purchasers' duty to find out for themselves full details about financing arrangements from the relevant banks or institutions.

59. We recommend that the sales brochure or the price list should contain a general description of the finance schemes available from banks and other financial institutions and, where the interest is specified, it should be the rate per annum. (Para 7.6)

Developers providing mortgage facilities (Paras 7.3 to 7.4)

60. Some developers provide second mortgages to top up first mortgages granted by banks. Their interest rates are usually higher than those charged by banks. They may arrange with the banks to remortgage the properties so as to obtain more cash, thus incurring legal fees and sundry handling charges.

61. We recommend that, where the developer provides finance, whether solely or to top up other loans, details of such facilities and the interest rates per annum should be disclosed in the sales brochure or the price list. (Para 7.7)

62. We recommend that where the developer provides finance but later arranges for remortgage, purchasers should be informed in the sales brochure or price list of the possibility of the costs of remortgaging which may be passed to them. (Para 7.8)

Interest chargeable for late payment of purchase price

63. We recommend that the rate of interest per annum chargeable under the ASP for late payment of any part of the purchase price should be stated in the sales brochure or price list. (Para 7.10)

CHAPTER 8

Preliminary Agreement for Sale and Purchase

64. In Hong Kong, the usual procedure for the purchase of a flat in an uncompleted development commences with the developer and the purchaser entering into a preliminary agreement for sale and purchase (or a "Memorandum for Sale" as they are more frequently called) at the site office or the developer's office. The purchaser has to pay a deposit or reservation fee upon signing the preliminary agreement. The preliminary agreement will later be replaced by a formal ASP if the purchaser decides to go ahead with the deal.

Preliminary Agreement under the Consent Scheme (Paras. 8.2 to 8.6)

65. We recommend that the sales brochures of uncompleted units of Consent Scheme developments should state that:

- (1) purchasers cannot be bound to purchase by the preliminary agreement or Memorandum for Sale;
- (2) the preliminary agreement or Memorandum for Sale is non-assignable and that the developer cannot sign a formal agreement with any other

person but the one who signs the preliminary agreement or Memorandum for Sale;

- (3) a person signing the preliminary agreement or Memorandum for Sale, who does not wish to execute a formal agreement, may withdraw and obtain a full refund of the preliminary deposit less a sum equal to a percentage of the purchase price specified by the Director of Lands under the Land Authority Consent Scheme. (Para 8.5)

66. We recommend that the right to withdraw from the transaction with the forfeiture of a specific percentage of the purchase price should be prominently stated on the face of the preliminary agreement or Memorandum for Sale and in any sales brochure and price list. (Para 8.6)

Preliminary Agreements outside the Consent Scheme (Paras 8.7 to 8.12)

67. There is no control over preliminary agreements outside the Consent Scheme. Whatever terms are put into the preliminary agreement by developers, they should be disclosed to purchasers by exhibiting a specimen copy of the preliminary agreement in the sales brochure. As the legal nature of the preliminary agreement is of great concern to purchasers, we recommend that the sales brochures of all developments not governed by the Consent Scheme should state whether or not the preliminary agreement or Memorandum for Sale is intended to be a binding sale and purchase agreement and should include a specimen copy of the preliminary agreement or Memorandum for Sale. (Para 8.13)

CHAPTER 9

Right of Inspection Prior to Completion of Transaction (Paras 9.1 to 9.5)

68. We have considered the advantages and disadvantages of giving purchasers the right to inspect the unit prior to legal completion. We have come to the view that, due to its impracticality, the right of inspection prior to completion is *not* a workable suggestion.

Defect Liability Period (Paras 9.6 to 9.9)

69. There are two Defect Liability Periods, namely, (i) that between the developer and his contractor and (ii) that between the developer and the purchaser. Within the Defect Liability Period (between the developer and purchasers) purchasers may request developers to make good any defects in the property and its installations.

70. We recommend that all sales brochures of uncompleted units should state the Defect Liability Period. (Para 9.9)

CHAPTER 10

Deed of Mutual Covenant

71. The Deed of Mutual Covenant ("DMC") is an important document which governs the maintenance and management of a multi-storey building and the respective rights and obligations of the owners among themselves. It provides, for example, for the management of the common parts of a building and the method of apportionment of the management charges among the owners.

Chinese translations (Paras 10.5 to 10.7)

72. As the DMC affects the residents' enjoyment of their properties, we see no reason why developers should not be required to provide a Chinese translation of the whole text of the DMC for the benefit of the vast majority of purchasers who read and speak Chinese only. We have sought expert linguist advice and have been given Chinese equivalents of English legal terms and shown samples of Chinese DMCs which are easily comprehensible.

Salient points

73. We recommend that the following provisions in the DMC should be disclosed in the sales brochure: (Para 10.13)

- (1) the definition of common parts;
- (2) the number of undivided shares allocated to each unit and the method of apportionment of management charges;
- (3) the fact that the number of undivided shares is subject to change;
- (4) the sum payable by the owners as deposit for the first year budgeted management expenses (to be expressed in terms of a specific number of months of management fee if the exact amount has not yet been worked out);
- (5) any restrictions imposed on owners in the use of the common parts;
- (6) interest and charges on owners who default in paying sums due under the DMC; and
- (7) the name of the first manager (if already decided) and the minimum period of its management.

74. We recommend that the developer should deposit copies of the English and Chinese versions of the full script of the DMC at either the sales office or the solicitors' office for free inspection during normal office hours. (Para 10.14)

75. We recommend that there should be a statement in the sales brochure to the effect:

- (i) that copies of the English and the Chinese versions of the DMC are available for free inspection during normal office hours at either the sales office or the solicitors' office; and
- (ii) that, if there are subsequent changes to the provisions of the DMC after their disclosure in the sales brochure, purchasers will be notified of the changes. (Para 10.15)

76. We recommend that the sales brochure should contain a general notification to purchasers that there are various financial obligations which will be imposed on them by the DMC (eg. the obligation to maintain and repair the common parts) and they are advised to consult their professional advisers on this. (Para 10.16)

Private slope maintenance (Para 10.8 to 10.9)

77. The slope adjacent to a building is often owned by individual owners of the building under the terms of the Government Lease. The maintenance of such private slopes is the responsibility of the individual owners. Few owners are aware of that responsibility.

78. We recommend that if there is actual or potential responsibility for maintaining private slopes, there should be clear notifications to purchasers in the sales brochure of that responsibility. (Para 10.17)

79. We recommend that details of any known repair and maintenance works on the private slopes within a year from the date of printing of the sales brochure should be disclosed in the sales brochure. (Para 10.17)

CHAPTER 11

Conditions of the Land Lease

User restrictions (Paras 11.2 to 11.6)

80. Government leases and Conditions of Grant contain provisions which restrict the land to certain uses, the common ones being "commercial/residential", "non-industrial" and "industrial/godown".

81. Some purchasers have complained that they were misled into acquiring commercial or factory units for residential purposes because the sales literature did not indicate the restrictions on use of the property.

Duration of the land lease (Paras 11.7 to 11.8)

82. The duration of the land lease and the unexpired term of the lease are of interest to purchasers because renewal of a land lease requires a substantial increase in the annual rent payable to the Government. The amount of land rent in some cases could be 3 per cent of the rateable value of the property and that can be a substantial sum. The burden of the additional annual rent will be passed on to individual owners.

Special lease conditions (Paras 11.9 to 11.11)

83. There are various special lease conditions which impose on a flat-buyer continuing financial obligations.

84. We consider it impractical to require the developer to spell out all these special lease conditions in full in the sales literature. Special lease conditions vary from one land lease to another. It will be sufficient to have a general notification in the sales brochure.

85. We recommend that sales brochures should state the following:

- (1) the permitted uses of the individual units as stated in the approved building plans, together with any restrictions on uses contained in the Government lease or Conditions of Grant of the land;
- (2) the original term of the land lease and its date of expiry;
- (3) the land rent provisions in the Government lease; and
- (4) that the renewed land rent may be an apportioned amount of 3 per cent of the rateable value of the building. (Para 11.12)

86. We also recommend that the sales brochure should contain a general notification telling purchasers that there are various financial liabilities which will be imposed on a purchaser by the Government lease and that purchasers are advised to consult their professional advisers accordingly. (Para 11.13)

CHAPTER 12

Prices and Number of Units for Sale and Internal Sale

Prices (Paras 12.1 to 12.5)

87. In their advertisements, property developers tend to quote the lowest price instead of the full range of prices of the units being put up for sale. There have been cases in which price lists have not been available at the registration stage. In such cases purchasers can only rely on the advertised price and may later find to their surprise that the units are put up for sale at prices substantially higher.

88. We recommend that the price of all units put up for sale should be made available in price lists at least 3 days before the day of registration of prospective purchasers for balloting. We further recommend this requirement should apply to all phases of sales of flats in the same development. (Para 12.6)

Number of units offered for sale (Paras 12.7 to 12.10)

89. In the Consent Scheme, prospective purchasers have to register for balloting. It often takes some time to register at the sales offices, especially in the case of large developments. Prospective purchasers have to pay a reservation fee which is refundable if they fail to buy a flat. Prospective purchasers are therefore keen to know prior to registration the number of flats for sale, so that they can calculate their chances in the ballot.

90. We recommend that the number of units available for sale should be stated in the sales brochure or price list and that there should be the same number of units available for sale on the day of registration of purchasers for balloting. (Para 12.15)

Internal sale and buy-back arrangement (Paras 12.11 to 12.14)

91. The Consumer Council has received complaints that Consent Scheme developers have retained 50 per cent of flats for internal sale through private placement. (Note: The quota for private sales of uncompleted flats in the Consent Scheme has been reduced from 50% to 10% with effect from 8 June 1994 as part of the Government's package of measures to dampen property speculation.)

92. Such internal sales can create a false market. People will be led to think that the flats reserved for internal sale have been sold, thus giving the false impression of a buoyant market.

93. Under a "buy-back arrangement", the developer allocates some of the units reserved for internal sale to a property agent who tries to resell them to the public at a profit. The developer undertakes to buy unsold units back from the property agent.

94. We recommend that if developers state in the sales literature that certain units are reserved for internal sale, they must also state in the sales literature whether the units are reserved for future sale or have been sold. If the units have been sold, any "buy-back arrangement" must be disclosed. (Para 12.16)

CHAPTER 13

Miscellaneous Information

Name of contractors and authorized persons (Paras 13.2 to 13.6)

95. The names of the contractors and architects of the project are of importance to purchasers. A reputable contractor and architect give purchasers confidence in the quality and workmanship of the completed units as well as their ability to complete the project on time. Moreover, a reputable contractor is usually ready to remedy any defects in the property that may be found after purchasers have taken possession.

96. The name of the main contractor for the project should be disclosed but there is no need to name sub-contractors. If the names of all sub-contractors had to be disclosed, the details in the sales brochure would confuse purchasers, who are rarely interested in the names of sub-contractors.

97. We therefore only recommend that the names of the main contractor and Authorized Person of the project should be disclosed in the sales brochure. (Para 13.7)

Responsibility for transaction fee (Paras 13.8 to 13.14)

98. Transaction fees, which refer to legal costs and stamp duties, are usually the responsibility of the purchaser. The responsibility for, and the amount of, legal costs and stamp duties are rarely indicated in the sales brochures.

99. We recommend that whenever the sales literature contains information about the prices of the units, it should also state with whom the responsibility for legal costs and stamp duties lies. Any clause in the Agreement for Sale and Purchase which imposes on purchasers responsibility for the developer's conveyancing costs should also be indicated. (Para 13.13)

100. We recommend that information on the scales of legal costs and stamp duties should be provided by developers to purchasers upon request and a note to this effect should appear in the price list or other sales literature containing information about the prices of the units. (Para 13.14)

Date of printing of sales brochure (Paras 13.15 to 13.17)

101. As there could be a time lapse between their preparation and publication, all sales brochures should, in our opinion, state their date of printing. Purchasers can then know how up-to-date the information in a sales brochure is.

102. We recommend that the sales brochure should carry its date of printing and a clause declaring that the information supplied corresponds with the up-to-date approved plans which may be subject to change. (Para 13.18)

Supplementary charges upon taking possession (Paras 13.19 to 13.21)

103. Upon taking possession of the property, purchasers have to pay to the developer, the management company and/or the utilities companies various supplementary charges, including deposits for management fees, rates, water, electricity and gas supplies, contributions to the management fund and charges for the removal of debris. As these supplementary charges are seldom stated in the sales brochure, purchasers cannot budget for them in advance.

104. We recommend that the sales brochure should provide an itemized list of supplementary charges payable by purchasers upon taking possession of their units. We recommend that if the exact amounts of such charges are unknown, the obligation to pay them should be disclosed in the sales brochure. (Para 13.22)

Licence fee to Government and charges for right of way (Paras 13.23 to 13.24)

105. We recommend that where applicable, the sales brochure should state any way leave charges, licence fees or waiver fees payable to Government for water supply/drainage system going through Crown Land and/or pump room situated on Crown Land and any fees or charges payable to adjoining lot owners for right of way or easements. The amount of such charges or fees should also be stated, if known. (Para 13.24)

Car park spaces (Paras 13.25 to 13.28)

106. The availability of car park spaces in the development is likely to be of interest to most purchasers, whether they own a car or not, because they increase substantially the value of the flat.

107. We recommend that the sales brochure should contain a description of the car park spaces within the development, including their respective numbers for sale, for rent, and those for visitors. If the developer has not yet decided at the date of the printing of the sales brochure any of these matters, the sales brochure should clearly state this fact. Moreover, any descriptions of car park spaces in the sales brochure should be binding on the developer. (Para 13.29)

CHAPTER 14

Availability of Sales Brochures

108. We recommend that the developer should produce, for all sales, both private and public, a sales brochure and keep at least one copy of it for public inspection until the occupation permit or, where applicable, the certificate of compliance is issued. All information in the sales brochure should be accurate at the time of first sale of units in a development. If there have been any material

changes in the information in the sales brochure between the date of its printing and the time of first sale, a note to that effect should be attached to the sales brochure or the price list. (Para 14.13)

109. We recommend that where a developer commences a project but later sells it to another person or company which takes over the development and completion of the project, the responsibility for keeping a sales brochure for public inspection should fall on the person or company taking over the project. (Para 14.14)

110. We recommend that the public inspection of the sales brochure so kept should be exercisable free of charge during normal office hours at either the sales office, the registered office of the developer or the person or company taking over the development and completion of the project, or the office of their solicitors. (Para 14.15)

111. We recommend that the developer may apply to the relevant authorities in certain circumstances for exemption from the requirement to produce a sales brochure. For instance, where a purchaser buys in bulk from the developer with no intention to re-sell any of those units to the public, there should not be any need for the developer to produce a sales brochure in respect of those units. (Para 14.16)

112. We recommend that where multiple purchasers in internal or private sales impose different terms of payment in their resale of the units to the public, they should be required to produce a separate price list stating the new terms of payment. (Para 14.17)

Advertisements other than sales brochures (Paras 14.10 to 14.12)

113. It is, in our view, not feasible to apply all the disclosure requirements which we have recommended for sales brochures to other means of advertising. For instance, it is unrealistic to require a radio or television commercial, which lasts for a few minutes or even seconds, to disclose all the sales information which we have recommended in this report.

114. To make sure purchasers do not rely on such limited sales information, we are of the view that any advertisement by developers for public sale or by property agents for private sale of flats should state that a sales brochure is available.

115. We recommend that whatever methods of advertisement (other than a sales brochure) are adopted by developers for the public sale of flats or by property agents for the private sale of flats, they must state that a sales brochure is available. Information given in advertisements for sale of uncompleted flats (other than in the sales brochure) must be consistent with the information given in the sales brochure. (Para 14.18)

CHAPTER 15

Enforcement of the Recommendations

116. Having decided the measures for the protection of the purchasers of uncompleted units, the next question is how to enforce them.

Legislation (Paras 15.5 to 15.6)

117. Legislation is, in our view, the most effective way to bring about the intended results and ensure adherence to a uniform set of standards. As regards the argument that legislation is too rigid, we take the view that flexibility can be achieved by providing a basic Ordinance which is supported by a set of subsidiary regulations. The detailed recommendations can be put in the subsidiary regulations which can be readily amended from time to time.

118. We recommend that our recommendations should be enforced by legislation. (Para 15.27)

Definition of developer (Paras. 15.22 to 15.26)

119. Most of the recommendations in this report are aimed at the provision of sales particulars by developers. The sub-committee took the view that the definition of "developer or his assignee" should be wide and include, for example, shareholders or beneficial owners of the developer.

120. We think that the general legal principle that a company is in law treated separately from its shareholders is important for the smooth functioning of a commercial city like Hong Kong and as such, should be retained. We have therefore decided the liability of a "developer or his assignee" should *not* extend to shareholders or beneficial owners of the developer.

Features of the proposed legislation

121. We recommend that the proposed legislation should have the following features:

- (1) Fines should be sufficiently heavy to be an adequate deterrent;
- (2) Imprisonment should be available where a fine is not an adequate deterrent (in which case the "due diligence" defence should be available);
- (3) There should be civil remedies which enable purchasers to claim damages for loss suffered as a result of a breach of the proposed legislation. A breach of the proposed legislation should be a

statutory tort. This remedy of damages for breach of the proposed legislation should only be available to purchasers and sub-purchasers but *not* potential purchasers. (Para 15.28)

Relationship between the proposed reform and the existing remedies under ASP (Paras. 15.19 to 15.21)

122. All our recommendations, including the new remedies under the proposed legislation, are *not* intended to disturb or reduce the existing remedies under the ASP. We only intend to give purchasers additional remedies for breach of the proposed legislation.

123. In order to alleviate any concern over potential conflict between our recommendations and the existing remedies under the ASP, we recommend that there should be clear provisions in the new legislation that nothing in the legislation will detract from the rights of the purchaser under the ASP, and that no clauses in the ASP will detract from the statutory remedies in the legislation.

CHAPTER 17

Some Observations

124. In addition to the recommendations in the preceding chapters, we have made a number of observations during our deliberations which are set out below.

Non-Consent Scheme preliminary agreements (Paras 17.2 to 17.3)

125. The Non-Consent Scheme preliminary agreement (or Memorandum for Sale) should not be a binding sale and purchase agreement and there should also be a 3-day cooling-off period for such an agreement.

Warranties made to the developer by the contractor (Paras 17.4 to 17.7)

126. Notwithstanding any term in the building contract between the developer and the contractor prohibiting the assignment of the developer's rights against the contractor, the purchaser should have the right to take direct legal action against the contractor for any defects in the units.

Defect Liability Period (Paras 17.8 to 17.9)

127. The Defect Liability Period and sinking fund for remedying defects are worthy of further examination.

Private slope maintenance (Paras 17.10 to 17.11)

128. A "Slope Maintenance" clause should be included in all future DMCs setting out the individual owners' liability to maintain private slopes owned by them collectively and the Manager's authority to engage suitably qualified personnel to carry out the maintenance work.

Term in ASP regarding variation of floor plans (Para 17.12)

129. It is a usual term in the ASP of units falling within the Consent and Non-consent Schemes that, if the building plans are altered, resulting in variation of the saleable area of the unit, the purchase price shall be adjusted in proportion to the variation and that, if the variation exceeds 5 per cent of the saleable area, a purchaser may rescind the agreement. Such term should become a standard term in all ASP's.

ANNEXES I and II

Mock-up Sales Brochure and Mock-up Price List

130. To facilitate a better understanding of our recommendations and to show that the recommendations are feasible, we have provided a Mock-up Sales Brochure (at Annex I of the Report) and a Mock-up Price List (at Annex II of the Report).

CHAPTER 12

Summary of Recommendations

12.1 In this final chapter, we summarize our recommendations. It must be emphasized that all our recommendations are intended to apply only to overseas uncompleted residential property.

Summary of recommendations

12.2 Our recommendations are summarized below:

The General Approach

12.3 All licensed estate agents in Hong Kong handling overseas uncompleted residential properties must provide prospective purchasers with some basic sales information in sales brochures and price lists. (*Paragraph 1.12*)

12.4 All vendors of overseas uncompleted residential properties must engage licensed estate agents in Hong Kong. However, this requirement shall not apply to the sale of a single dwelling by a private individual. (*Paragraph 1.22*)

12.5 All media in Hong Kong (including television, radio and printed media) should be prohibited from publishing advertisements for sale of overseas uncompleted residential properties unless they refer to licensed estate agents in Hong Kong, together with the estate agents' licence number. However, the requirements mentioned in this paragraph shall not apply to advertisements for the sale of a single dwelling by a private individual, nor to advertisements for overseas property not put up for sale in Hong Kong. (*Paragraph 1.23*)

12.6 "Sale" shall include all transactions whereby a vendor's interest is transferred and shall also include the meaning of the term as defined in the Stamp Duty (Amendment) Ordinance (Ord No 8 of 1992). (*Paragraph 1.24*)

12.7 The estate agent referred to in the advertisement shall be liable for all false or misleading information in the advertisement and in all sales brochures not forming part of the advertisement. (*Paragraph 1.25*)

12.8 Any ambiguity in the terms used in any advertisement or sales brochure shall be construed in favour of the purchaser. (*Paragraph 1.26*)

12.9 Anything in the advertisements or sales brochures which is false or misleading should constitute a breach of the proposed legislations (mentioned in chapter 11). (*Paragraph 1.27*)

12.10 It should be the licensed estate agent's responsibility to make available up-to-date sales brochures to prospective purchasers. If sales brochures are not compiled by developers, it will be the licensed estate agent's responsibility to prepare the sales brochure. *(Paragraph 1.32)*

12.11 The sales brochures must be available in Chinese. If there are discrepancies between the Chinese and any other version of the sales brochures, purchasers can choose whichever version or part thereof applicable. *(Paragraph 1.33)*

12.12 Sales brochures must be available from the time the property is first advertised for sale. Moreover, any invitation to buy property can only be made if sales brochures are available to prospective purchasers at that stage. All information in the sales brochure must be accurate at the time the property is first advertised for sale. If there have been any material changes in the information in the sales brochure between the date of its printing and the time the property is first advertised for sale, a note to that effect must be attached to the sales brochure or the price list. *(Paragraph 1.34)*

Date of Completion and Date of being Ready for Occupation

12.13 Government should undertake a study to find out the appropriate financial measures (including stakeholding, trust account, insurance and bonds put up by developers) to protect all deposits and instalments paid by purchasers in the event of project delay or failure. *(Paragraph 2.13)*

12.14 The sales brochure must state the date that the property will be ready for occupation. The term "ready for occupation" shall mean:

- (i) all fittings and finishes which are specified in the list in paragraph 3.12 and which are applicable to the property concerned have been installed, unless stated to be excluded in the sales brochure; and
- (ii) there is reasonable access to the property; and
- (iii) the utilities stated to be available in the sales brochure have been connected; and
- (iv) all local permission needed for occupation has been obtained.
(Paragraph 2.19)

12.15 The sales brochure must state the grounds on which the date of completion can be extended. *(Paragraph 2.20)*

12.16 The sales brochure must state whether there are mechanisms for protecting all deposits and instalments paid by purchasers in the event of project delay or failure. Where no mechanism is in place to protect purchasers' deposits or instalments, the sales brochure should carry a prominent warning to this effect. *(Paragraph 2.21)*

Fittings and Finishes

12.17 If the sales brochure states that certain fittings and finishes will be provided, it must also state the types of materials intended for the fittings and finishes. Moreover, the sales brochure must at least contain details of the following list of fittings and finishes:

Exterior finishes

External walls, windows, verandah/balcony.

Interior finishes

Main entrance lobby, typical lift lobby, internal walls and ceilings, floors, bathroom, kitchen.

Interior fittings

Doors, bathroom, kitchen, bedrooms, telephone and aerials, electricity, gas/electricity supply, water supply and pipes.

Miscellaneous

Lifts, letter box, refuse collection, water/electricity/gas meters. *(Paragraph 3.12)*

12.18 If the intended materials become unavailable, developers should be allowed to use substitute materials provided that the substitute materials are of comparable quality and standard to the intended materials. *(Paragraph 3.13)*

12.19 Any description of the fittings and finishes in the sales brochure must be accurate. *(Paragraph 3.14)*

12.20 The standard of fittings and finishes in the mock-up flats, if any, must be consistent with that stated in the sales brochure and that of the actual properties. *(Paragraph 3.15)*

Utilities

12.21 The sales brochure must state whether connection to water, sewage and drainage will be available upon the completion of the property. Unless otherwise provided by a public system, the type of water, sewage and drainage systems must be specified in the sales brochures. *(Paragraph 4.9)*

12.22 The sales brochure must state the source, voltage and ampage of the electricity supply. *(Paragraph 4.10)*

12.23 If fuel (other than electricity) is provided to the property, its sources and uses must be stated in the sales brochure. *(Paragraph 4.11)*

12.24 The sales brochure must state the current estimate of costs of connection, if any, to utilities at the time of sale together with a general warning that the costs may change. Unless the sales brochure has stated that the costs of connection are to be borne by purchasers, purchasers cannot be required to pay for them, or if purchasers are required to pay under the general law, they shall be entitled to reimbursement from the developer. *(Paragraph 4.12)*

Location of Property and Transport Facilities

12.25 The sales brochure must contain a map/location plan which is accurate and drawn to scale and shows the orientation. Any statements about the travelling time, travel distance, and ground distance must be accurate and not misleading. *(Paragraph 5.14)*

12.26 Any pictorial representation of the location and surroundings of the development must be accurate and not misleading. *(Paragraph 5.15)*

Gifts and Benefits

12.27 References in advertisements or sales brochures to gifts and benefits (including nationality schemes) must be accurate and not misleading. *(Paragraph 6.12)*

12.28 If the advertisements or sales brochures state that nationality or right of residence can be acquired by the purchase of the property, they must contain a general warning advising prospective purchasers to consult the relevant consulates on the validity of the nationality schemes, particularly when granting of nationality and residence will depend on the individual's background. *(Paragraph 6.13)*

Financing Arrangements

12.29 Where advertisements or sales brochures state that mortgage facilities are available, they must carry a general warning advising prospective purchasers to find out from banks or other financial institutions the exact details of the mortgage facilities and that approval of mortgage facilities or otherwise will depend on the individual's credit and other background. *(Paragraph 7.7)*

12.30 Where the developers arrange mortgage facilities for prospective purchasers and intend to pass on to purchasers the costs of setting up such facilities,

the amount of such costs must be stated in the advertisements or sales brochures. Unless the sales brochure has stated that such costs are to be borne by purchasers, purchasers cannot be required to pay for them, or if required to pay under the general law, they shall be entitled to reimbursement from the developer. *(Paragraph 7.8)*

12.31 Where advertisements or the sales brochures state that mortgage facilities are available, the banks or other financial institutions providing such facilities must be identified. *(Paragraph 7.9)*

Price of Property

12.32 We think it desirable to have a cooling-off period of three working days after signing of the preliminary agreement (which includes reservation agreement, memorandum of sale etc.). If purchasers do not purchase the property after signing the preliminary agreement, they may have to pay such administrative fees as may be fixed by the appropriate authority. Licensed estate agents will be entitled to the administration fees. *(Paragraph 8.8)*

12.33 The price of all uncompleted overseas properties put up for sale in Hong Kong should be stated in the brochures or price lists. Should there be price variations or a premium be charged according to purchasers' characteristics, rather than the qualities of the property, the price differences or additional premium must be stated in the sales brochures or price lists. *(Paragraph 8.9)*

Restrictions on Sale of Property to Foreigners

12.34 The sales brochures of overseas properties must contain the following information:

- (i) all legal restrictions on the eligibility of foreign purchasers or purchasers who are nationals but reside outside the country to purchase property and the legal nature and classification of such property in that country (for example, residential, farmland) and any restrictions on tenure which foreigners can acquire;
- (ii) any restrictions on mortgage arrangements for foreign purchasers or purchasers who are nationals but reside outside the country; and
- (iii) the tenure of the property (for example, whether it is freehold or otherwise). *(Paragraph 9.13)*

Miscellaneous Information

12.35 The sales brochure must state with whom the responsibility for legal costs, stamp duty and other transaction fees lies. Unless the sales brochure has stated that such legal costs, stamp duty and other fees arising in respect of the property transaction are to be borne by purchasers, purchasers cannot be required to pay for them, or if purchasers are required to pay under the general law, they shall be entitled to reimbursement from the developer. Information on the scales of legal costs, stamp duty and other fees arising in respect of the property transaction must be provided by estate agents to prospective purchasers and there must be a note to this effect in the sales brochure. *(Paragraph 10.4)*

12.36 Details of any estate agents' commission payable by purchasers must be provided by the estate agents. *(Paragraph 10.5)*

12.37 The sales brochure must provide an itemised list of supplementary charges payable by purchasers upon taking possession of the property. If the exact amounts of such charges are unknown, the fact that they are unknown and the obligation to pay them must be disclosed in the sales brochure. Unless the sales brochure has stated that such supplementary charges are to be borne by purchasers, purchasers cannot be required to pay for them, or if purchasers are required to pay under the general law, they shall be entitled to reimbursement from the developer. *(Paragraph 10.7)*

12.38 The sales brochure must state the purchasers' liability for any tax which may arise from the purchase of the property together with categories of the taxes liable. *(Paragraph 10.9)*

12.39 The sales brochure must contain a warning that there may be exchange controls and taxes arising from the sale and purchase. *(Paragraph 10.16)*

12.40 The date of printing of the sales brochure must be clearly set out. *(Paragraph 10.18)*

12.41 The Hong Kong definition of saleable area (as set out in chapter 10) must be adopted and disclosed in all sales brochures and advertisements of overseas uncompleted residential property. Where the unit includes any incorporated item in the definition (such as cockloft, bay window, carparking space, yards, terrace, garden or flat roof), the saleable area of each of them should be specified and described separately in the sales brochures. *(Paragraph 10.25)*

12.42 Unless the sales brochure has stated that any extra fees or charges payable by developers are to be borne by purchasers, purchasers cannot be required to pay for them, or if purchasers are required to pay under the general law, they shall be entitled to reimbursement from the developer. *(Paragraph 10.28)*

12.43 The sales brochure must state the nature and duration of the interests that purchasers will take in the property. *(Paragraph 10.30)*

12.44 Where there are restrictions on the use of access or rights of way to the property or the site where the property is situated, the sales brochure must give details of the access and rights of way as well as the restrictions. (*Paragraph 10.32*)

12.45 The Defect Liability Period (between the developer and the purchaser) should be stated in all sales brochures. (*Paragraph 10.35*)

Enforcement of the Recommendations

12.46 Our recommendations should be enforced by legislation. (*Paragraph 11.19*)

12.47 A breach of the proposed legislation by estate agents should carry criminal or other sanctions only if the breach is committed intentionally or recklessly. However, a breach of the proposed legislation by developers should be a strict liability offence (but with a due diligence defence). Moreover, mere failure to supply the necessary sales information as recommended in this report should also be a strict liability offence (but with a due diligence defence). (*Paragraph 11.20*)

12.48 The proposed legislation should carry the usual statutory sanctions of imprisonment and fines. (*Paragraph 11.21*)

12.49 Fines should be the usual form of sanction. The maximum fine for an offence under our proposed legislation should be very substantial to have sufficient deterrent effect. (*Paragraph 11.22*)

12.50 Imprisonment should be available as a penalty only where fines are not thought adequate in all the circumstances of the case. (*Paragraph 11.23*)

12.51 There should be statutory powers for the appropriate body to suspend, revoke or restrict an estate agent's licence for acts or omissions in breach of the proposed legislation. This sanction should be available in addition to any other penalty that may be imposed by the Court. (*Paragraph 11.24*)

12.52 Defendants to a charge or an enquiry by the appropriate body under the proposed legislation should be able to invoke the "due diligence" defence if they can show that they have taken all reasonable steps and exercised all due diligence to avoid committing the offence, or have relied on information given by another, provided they can show that it was reasonable for them to have relied on the information. (*Paragraph 11.25*)

12.53 There should be civil remedies which enable purchasers, and sub-purchasers who buy before the time of completion to claim damages against the developers or the estate agents for loss suffered as a result of a breach of the proposed legislation. A breach of the proposed legislation should be a statutory

tort. This remedy of damages for breach of the proposed legislation should only be available to purchasers, and sub-purchasers who buy before the time of completion but *not* potential purchasers even if they can show that they have suffered loss.
(Paragraph 11.26)

12.54 There should be clear provisions in the new legislation that nothing in the legislation will detract from the rights of the purchaser under the ASP, and that no clauses in the ASP will detract from the statutory remedies in the legislation.
(Paragraph 11.27)

**Details of the proposed Sales Descriptions of
Uncompleted Residential Properties Bill**

The proposed legislation will:

- (a) require developers to provide sales brochures regarding the sale of uncompleted residential properties;
- (b) require specified information be provided in sales brochures;
- (c) empower the Government to enforce the proposed legislation by investigating alleged breaches relating to non-provision of such information;
- (d) stipulate penalties for non-compliance; and
- (e) provide legal remedies for purchasers who suffer losses as a result of breaches or non-compliance.

2. The specified information to be provided in sales brochures includes the following -

- (a) floor area;
- (b) fittings and finishes;
- (c) location plan;
- (d) layout plan;
- (e) floor plan;
- (f) carparking spaces;
- (g) permitted uses of the land where the property is situated;
- (h) salient conditions of the Government lease;
- (i) salient provisions in the Deed of Mutual Covenant;
- (j) defects liability period;
- (k) completion date;
- (l) slope maintenance;
- (m) price list and number of units put up for sale;
- (n) financial and mortgaging arrangements; and
- (o) supplementary charges payable on taking possession of the property.

CONSULTATION PAPER ON THE SALES DESCRIPTIONS OF UNCOMPLETED RESIDENTIAL PROPERTIES BILL

BACKGROUND

Existing protection for purchasers of uncompleted residential properties in Hong Kong is inadequate as there is no legislation requiring property developers to provide sufficient and accurate information on these properties in sales brochures.

2. The Law Reform Commission (LRC) recommended in its report issued in April 1995 that legislation should be introduced to require developers to produce sales brochures for the sale of local uncompleted residential properties, and that the brochures should contain certain specified information, with appropriate penalties for non-compliance.

3. Following publication of the LRC's recommendations, the Government consulted interested parties including the Consumer Council, the Real Estate Developers Association of Hong Kong, the legal profession and professional bodies on the subject. Based on feedback received, the Government has drafted the Sales Descriptions of Uncompleted Residential Properties Bill : a copy is at Annex. Because of widespread interest in the community in this subject, the Government has decided to publish the Bill as a White Bill for public consultation before introducing draft legislation into the Legislative Council.

SALES DESCRIPTIONS OF UNCOMPLETED RESIDENTIAL PROPERTIES BILL

Objective

4. The Sales Descriptions of Uncompleted Residential Properties Bill seeks to enhance the accuracy, uniformity and transparency of information provided in sales brochures and advertisements regarding the public sale of local uncompleted residential flats. The Bill represents a major step forward in consumer protection.

Main proposals

5. The Bill requires all developers to provide sales brochures regarding any public sale of uncompleted residential properties, and stipulates certain key information to be included in these brochures. The specified information includes location plan, floor plan, floor area, fittings and finishes, car parking spaces, salient conditions of the Government lease, salient provisions in the Deed of Mutual Covenant, defect liability period, completion date, slope maintenance, price list, number of units put up for sale, mortgage loans and payment scheme, and other fees and charges payable.

6. The Bill proposes to standardise the definition of floor area of uncompleted units for sale, and makes it mandatory to state the "saleable area" and the "gross floor area". Ancillary accommodation (such as bay windows and roof) should be listed separately. Both the "saleable area" and the "gross floor area" are popular terms known to the public, and are commonly used in sales brochures. However, the absence of

a standardised method of measurement often confuses purchasers and makes comparison difficult. The Bill seeks to eliminate the present confusion in the methods of calculating floor area.

Salient provisions of Bill

(A) Scope of Proposed Legislation (Clauses 2 and 3)

7. The Bill covers all uncompleted residential properties situated in Hong Kong and offered for sale to the public. This includes private residential developments, flats developed and sold by the Hong Kong Housing Authority and the Hong Kong Housing Society, and certain exempted developments under the Buildings Ordinance (Application to the New Territories) Ordinance. The developer is defined as the person who commissions the construction, owns the property and offers the residential properties in a public sale.

(B) Location Plan and Disposition Plan (Sections 4, 5 and 25 of Schedule 1)

8. A sales brochure should contain a **location plan** showing the position of the relevant development, the major communal facilities and the use/intended use of land as shown in the latest town plan. A **disposition plan** of the buildings within the development, including major roads, open areas, transport, communal and recreational facilities should also be provided.

(C) Floor Plan (Section 6 of Schedule 1)

9. Floor plans of all typical and non-typical floors, including rooftop, entrance floors and car parks, drawn to scale, should be provided. These include separate floor plans showing the thickness of the load bearing walls at the lowest, median and top levels of the building.

(D) Floor Area (Section 7 of Schedule 1)

10. Developers are required to state in sales brochures the "saleable area" and the "gross floor area" of all flats of an uncompleted residential property. The area of bay windows, roof and other ancillary facilities should be stated separately.

(a) Saleable area (Schedule 3)

11. "Saleable area" refers to the floor area contained within the enclosing walls of a residential unit measured up to the external edge of the enclosing wall or the centre line of a separating wall between two adjoining units. We propose to revise the Chinese translation from "實用面積" (which is commonly used but is easily misinterpreted) to "出售面積".

(b) Gross floor area (Schedule 2)

12. "Gross floor area" should be the proportionate share of the total domestic gross floor area of the development calculated in accordance with the Building (Planning) Regulations as approved by the Building Authority. This is equal to the saleable area of the flat together with a

proportionate share of all common areas approved by the Building Authority. The method of apportionment and the main components of common areas must be detailed in the sales brochure.

(E) Fittings and Finishes and Sample Property (Clause 11 and Section 32 of Schedule 1)

13. A sales brochure should contain a description of fittings and finishes. If a sample property is offered by the developer, it should be accurate in terms of dimension and partition. The sample flat should carry a notice giving the "saleable area" and the "gross floor area" of the property, and a statement as to whether the interior finishes, fittings, appliances and furniture displayed are included in the sale price.

(F) Government Lease and Deed of Mutual Covenant (Section 12 of Schedule 1)

14. A sales brochure should contain a summary of the salient terms of the Government lease and the Deed of Mutual Covenant, including user restrictions, details of land lease, Government rent, property management arrangements.

(G) Documents for Public Inspection (Clause 10 and Section 23 of Schedule 1)

15. The developer should make available, at his office and at each sales office, two copies each of the Deed of Mutual Covenant, building plans and town plans referred to in the sales brochure, and the standard agreement for sale and purchase of properties for inspection by the public free of charge during the sale period.

(H) Advertisements (Clause 12 and Section 16 of Schedule 1)

16. There should be a notice stating clearly that purchasers should refer to the sales brochure for details. If the sale price per square foot or square metre calculated on the basis of "gross floor area" or any other basis is stated in an advertisement or a sales brochure, the price per square foot or square metre calculated on the basis of "saleable area" must also be shown.

(I) Penalties (Clauses 5, 9, 10, 11, 12 and 13)

17. For failure to provide a sales brochure containing information specified in the Bill, a fine of \$5 million on conviction upon indictment, or a fine of \$100,000 on summary conviction is proposed. If the dimension of any part of a sample property is different from the information stated in the notice displayed in the sample property, a fine of \$1 million on conviction upon indictment, or a fine of \$100,000 on summary conviction is proposed. There are penalties for other failures.

(J) Legal Remedies (Clause 6)

18. Certain essential information such as land use, salient clauses in the Government lease and the Deed of Mutual Covenant, provisions concerning slope maintenance as disclosed in the sales brochure shall be representation of fact made by the developer to the purchaser in respect of the contract for sale and purchase of the property. This will facilitate purchasers to pursue contractual remedies for inaccurate information. Other information such as finishes, fittings and defect liability period disclosed in a sales brochure

will be implied as a term of contract. Purchasers may seek compensation for losses as a result of the developer's non-compliance. The Bill will not diminish in any way the existing rights of purchasers.

(K) Defence (Clauses 14 and 15)

19. Since developers may rely on other persons to provide the required information, it is proposed that developers should be allowed to invoke the defence of "due diligence". However, where an offence is committed by a corporation and is proved to have been committed with the consent of or proved to be attributable to the neglect of an officer of the corporation, that officer and the corporation can both be liable for the offence.

(L) Enforcement (Section 2 of Schedule 1)

20. The Government proposes to enforce the Bill upon receipt of complaints. The Buildings Department will act as the lead department to receive complaints and will make referrals where appropriate. The Department of Justice will be responsible for prosecuting developers in case of non-compliance.

(M) Power of the Secretary for Housing (Clauses 18 and 19)

21. The Bill empowers the Secretary for Housing to make rules and amend the schedules.

COMMENTS

22. Members of the public are invited to give their comments on the White Bill. Views can be sent in writing on or before 7 July 2000 to:

Housing Bureau
Government Secretariat
Murray Building, 18th Floor
Garden Road
Central
Hong Kong

Facsimile No. : 2509 9988
E-mail Address: sdbill@hb.gcn.gov.hk

23. The Housing Bureau reserves the right to publish all views and comments, and to disclose the identity of the source. Any part of the submission, which is considered confidential, should be clearly marked. The Housing Bureau will take the request into account in making its decision on whether or not to disclose such information.

**Housing Bureau
Government Secretariat
7 April 2000**

**Sales Descriptions of Overseas
and Local Uncompleted Residential Properties**

List of relevant papers

Council/Committee	Date of meeting	Paper
Housing Panel	2 December 1996	LC Paper No. CB(1) 2067/95-96 Minutes (http://www.legco.gov.hk/yr96-97/english/panels/hg/minutes/hg021296.htm)
Housing Panel	17 November 1997	LC Paper No. CB(1) 275/97-98 LC Paper No. CB(1) 491/97-98(05) (http://www.legco.gov.hk/yr97-98/english/panels/hg/papers/hg17114d.htm) Minutes (http://www.legco.gov.hk/yr97-98/english/panels/hg/minutes/hg171197.htm)
Housing Panel	1 March 1999	LC Paper No. CB(1) 919/98-99 (http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg0103_7.htm) Minutes (http://www.legco.gov.hk/yr98-99/english/panels/hg/minutes/hg010399.htm) LC Paper No. CB(1) 1347/98-99(01) (http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg01037a.htm)
Housing Panel	7 April 2000	LC Paper No. CB(1) 1315/99-00(01) Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/minutes/hg070400.pdf)

Council/Committee	Date of meeting	Paper
Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill	28 April 2000	Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un280400.pdf)
Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill	16 May 2000	Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un160500.pdf)
Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill	13 June 2000	Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un130600.pdf) Report LC Paper No. CB(1) 1936/99-00 (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/report/a1936e.pdf)
Housing Panel	18 July 2001	LegCo Brief HB(CR)3/2/9 (http://www.legco.gov.hk/yr00-01/english/panels/hg/papers/brief.pdf) Minutes (http://www.legco.gov.hk/yr00-01/english/panels/hg/minutes/hg010718.pdf)
Housing Panel	6 January 2003	LC Paper No. CB(1) 2597/01-02(01) LC Paper No. CB(1) 591/02-03(04) (http://www.legco.gov.hk/yr02-03/english/panels/hg/papers/hg0106cb1-591-4-e.pdf) Minutes (http://www.legco.gov.hk/yr02-03/english/panels/hg/minutes/hg030106.pdf)