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Legislative Council

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Panel on Housing
Meeting on 3 July 2006

Background brief on
arrangements for selling first-hand residential properties

Purpose

This paper sets out the major concerns relating to the provision and dissemination of information on uncompleted and first-hand residential properties and summarizes the major discussions by the Legislative Council (LegCo) and its committees on the concerns.

Problems associated with sale of uncompleted and first-hand residential units

2. Inadequate and misleading sales information on uncompleted and first-hand residential properties is of concern to prospective buyers. Problems such as inaccurate size of the property, misleading descriptions of fittings and finishes, sketchy layout and location plans were rampant in Hong Kong in the eighties and early nineties. The problems were even more serious with overseas uncompleted residential properties sold in Hong Kong, particularly those located in the Mainland. In recent years, concerns have been raised about the provision and dissemination of misleading information to the market regarding the prices of property transactions and sales figures. As the number of complaints about inadequate and misleading sales information grows, there are increasing calls for measures to address the problems.

Proposals to tackle the problems associated with sale of uncompleted and first-hand residential units

3. 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 properties 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.

4. LRC published the Report on Description of Flats on Sale (the First Report) and the Report on Sales Description of Overseas Uncompleted Residential Properties (the Second Report) in April 1995 and September 1997 respectively, which set out the recommendations for improving the quality and reliability of sales brochures and price lists in relation to local and overseas uncompleted residential properties. The reports pointed to the need of providing prospective property buyers with important information in sales brochures including floor area, floor plan, details of fittings and finishing, location and layout plans, date of completion etc., and information on prices and number of units put up for sale before the sale. The LRC recommended that the recommendations in the two reports be enforced by legislation to bring about the most effective results.

5. In March 1999, in the light of LRC's recommendations in the First Report, the Administration briefed the Panel on Housing (the Panel) on its plan to introduce the Sales Descriptions of Uncompleted Residential Properties Bill (the Bill). Details of the Bill are in **Appendix I**. After taking into account the views expressed by the Panel, the Administration revised the original proposals and published a White Bill (**Appendix II**) for public consultation in April 2000. The White 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.

Discussion on the Law Reform Commission's First Report and Second Report and the White Bill

6. The Panel discussed the recommendations of the First Report and the Second Report, and proposals in the White Bill at a number of meetings from 1995 to 2000. The major deliberations by the Panel are summarized in **Appendix III**. Given the significant implications of the White Bill, a subcommittee was formed under the Panel to study it further. The subcommittee examined in detail the proposals contained in the White Bill, with particular focus on how the provisions would ensure the supply of accurate and adequate information on uncompleted residential properties by property developers. The report of the subcommittee is hyperlinked in **Appendix VI**.

Review of the Sales Descriptions of Uncompleted Residential Properties Bill

7. On 10 July 2001, the Executive Council ordered that the need for the Bill be reassessed in the light of the latest developments. Given the significant change towards a buyers' market after the property slump in 1997, coupled with the promulgation of a set of comprehensive guidelines developed by the Real Estate

Developers Association of Hong Kong (REDA) for voluntary compliance by its members in response to the community's demand for comprehensive and accurate information relating to flats for sale, the Administration considered there was a reduced need for the Bill. Besides, it had to further look into the Bill to decide on controversial issues including whether the provision of inaccurate or incomplete sales information should be criminalized, implications of exempting the Housing Authority/Housing Department from criminal liability, and the 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. The matter was discussed by the Panel on 18 July 2001. In response to members' concern, 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 the review of the Bill in due course.

8. In September 2002, LRC released the Report on Local Completed Residential Properties: Sales Descriptions and Pre-contractual Matters, 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 and considered legislation was instrumental to give legal effects to the recommendations. 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.

9. At the Panel meeting on 12 April 2005, the Administration up-dated members on the position of proposals to introduce legislation to regulate sales brochures for overseas and local uncompleted residential properties. According to the Administration, the self-regulatory regime by developers on the provision of sales information on local uncompleted residential properties implemented since mid 2001 had been satisfactory and the number of complaints received had been small and properly dealt with. Given that the regime had struck a proper balance between protecting consumers' interests and providing an environment conducive to business development, the Administration did not intend to resuscitate the proposals to enact legislation to regulate sales brochures for local uncompleted residential properties. Some members stressed the need to enforce regulation on the provision of sales information on properties by way of legislation to enhance the protection for the interests of prospective purchasers instead of relying on non-statutory guidelines developed by REDA. A member did not see the need to enact legislation and considered that the REDA's guidelines was a more flexible and practical approach in addressing public concern.

Dissemination of misleading information to the property market

10. At the meeting on 4 July 2005, the Panel met with representatives from REDA, the Estate Agents Authority (EAA) and the Consumer Council (CC) for views to enhance the transparency of private sale of local uncompleted residential units and the accuracy of sales figures released to the public. Members noted that in light of the public concerns on the matter, REDA had issued a set of supplementary guidelines on private sale which took effect on 24 June 2005. Some members remained of the view that legislation should be introduced to regulate sales brochures for local uncompleted residential units and urged for strengthening of regulation over private sale through measures, such as requiring developers to provide prospective buyers with the price list of all flats on offer under the private sale. The Administration responded that besides REDA's guidelines, CC and EAA had been respectively invited to step up publicity to promote public awareness on the protection of consumers' rights in property acquisition and to enhance the standards and professionalism of estate agents. It also undertook to continue to work closely with CC, EAA and REDA to keep the present regime under review and identify scope for further improvement in the light of operational experience.

11. At the Council meeting on 26 April 2006, an oral question was raised on the collection and dissemination of information on property transactions. Some Members expressed concern about dissemination of false and misleading information including prices and sales figures by developers and estate agents in order to boost the property market. They emphasized the need to set up an effective regulatory regime to govern transactions of new private residential properties. The details of the question and the Administration's reply are in **Appendix IV**.

12. At the Council meeting on 7 June 2006, a motion on "Regulating the transactions of new private residential properties" was moved to urge the Government, among other things, to introduce the Sales Descriptions of Uncompleted Residential Properties Bill into the LegCo, formulate legislation for regulating the sale of new residential properties, draw up guidelines on property sales and promotion activities, and study the provision of a cooling-off period in the contracts of new private residential properties. The motion was negatived. In response to the motion, the Administration re-iterated its position that the three-pronged approach involving joint efforts from REDA, EAA and CC had greater flexibility and could better cater for the needs of the local property market compared with the option of regulating the market by means of legislation. The wording of the motion and the speech delivered by the Secretary for Housing, Planning and Lands at the meeting are set out in **Appendix V**.

Reference

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

Council Business Division 1
Legislative Council Secretariat
30 June 2006

**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.

(Source: Extracts from LC Paper No. CB(1)919/98-99 provided by the Administration.)

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**

Major deliberations by the Panel on Housing on the proposals in the Law Reform Commission's Report on Description of Flats on Sale (First Report) and Report on Sales Description of Overseas Uncompleted Residential Properties (Second Report)

Location plan, layout plan and floor plan

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.

2. 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

3. 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 agreements 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.

4. 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 on the lower floors of a high-rise building were thicker than those on the higher floors.

5. 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.

6. 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

7. 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.

8. 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

9. 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.

10. 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.

(Source: Extracts from LC Paper No. CB(1)1218/04-05(08) Background brief on sales descriptions of overseas and local uncompleted residential properties (provided by the LegCo Secretariat).)

**Oral question raised by Hon LEE Wing-tat on
Collection and dissemination of information on property transactions
at the Council meeting on 26 April 2006**

Question:

Regarding the collection and dissemination of information on property transactions, will the Government inform this Council whether:

- (a) it compiles statistics on the number of uncompleted property transactions involving signed Provisional Agreements for Sale and Purchase; if so, of the number and total value of residential units involved last year; if not, whether it will compile such statistics and regularly publish the number of uncompleted transactions and the reasons therefor;
- (b) there are provisions in the existing legislation which are targeted at acts to mislead the market with non-bona fide property transactions; if so, of the enforcement of the relevant legislation; if not, whether it will consider enacting legislation to prohibit such acts; and
- (c) it will, by drawing reference from the stipulations on disclosure of transactions in the stock market, consider requiring property developers to disclose major transactions and property transactions with connected persons?

Reply by the Administration:

Hong Kong has a well-developed property market. Property transactions are conducted in accordance with free market principles. Both the buyer and seller are bound by contract. There are also statutory provisions against fraudulent behaviour and misrepresentation.

My reply to the three-part question is as follows:

- (a) Generally speaking, over 90% of all formal Agreements for Sale and Purchase registered at the Land Registry do not come with registration of corresponding provisional agreements. Moreover, we have no way of knowing when or whether a provisional agreement will be completed, and the reason for a transaction not being completed. In addition, relevant statistics from the Land Registry are not classified by residential and non-residential transactions. Hence, we are not able to provide the number of residential transactions and the transaction value involved based on the available information. Due to the above reasons, we will not compile such statistics on a regular basis.
- (b) In order to maintain the fair and smooth operation of the property market, acts of fraud or misrepresentation involving use of false transaction information to mislead the market must not be tolerated. Resorting to fraud in the course of a property transaction may amount to a criminal offence and offenders may be liable to prosecution under the Theft Ordinance (Cap. 210); in terms of civil liability, at common law where a misrepresentation amounts to fraud, an action for damages in tort for deceit is possible. Also, pursuant to the Misrepresentation Ordinance (Cap. 284), a person who makes a misrepresentation inducing another person to enter into a contract may also be liable for damages.

From 2003 to 2005, Police pressed 116 charges against 47 persons for fraudulent behaviour in relation to property transactions. Over 90% of the cases were successfully tried and convicted. It should be noted that these figures cover various types of property fraud, such as mortgage fraud, use of false instruments, etc., and there is no breakdown of statistics down to the category of releasing false property transaction information. Hence, these statistics from Police which I am providing reflect all prosecutions related to property fraud rather than specifically to the use of false property transaction information to mislead the market.

- (c) The operation of the property market is vastly different from that of the securities market. The securities market involves listed companies, and the activities of each listed company may affect the interests of the investing public. Property transactions are no different from ordinary transactions involving contracts that affect the interests between a buyer and a seller: any dispute on the transaction may be dealt with through civil litigation, and if fraudulent behaviour is involved, criminal prosecution action may be taken according to relevant provisions of the law. Moreover, as a property transaction involves a contract signed by a buyer and a seller, it may not be feasible to require a developer to disclose information in relation to the buyer without the buyer's consent. With the current mode of operation and transparency of the property market, the interests of home buyers and investors are adequately protected. We therefore see no justification for requiring any contractual party involved to disclose their own background information to the public.

Wording of motion negatived at Council meeting on 7 June 2006

Wording of motion on “Regulating the transactions of new private residential properties” negatived at Council meeting on 7 June 2006

“That, although currently the Government has strict legislation to regulate the securities and futures market for the protection of investors' interests, there is no regulatory legislation targeted at the transactions in the property market, this Council urges the Government to:

- (a) introduce the Sales Descriptions of Uncompleted Residential Properties Bill into the Legislative Council, requiring developers to provide sales brochures regarding any public sale of uncompleted residential properties and include in the brochures such information as the 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, so as to safeguard the rights and interests of consumers;
- (b) formulate legislation for regulating the sale of new residential properties and to prohibit market misconduct including insider dealing, false trading, price rigging and disclosing false or misleading information, so as to enhance the transparency of the property market and ensure its healthy development; and
- (c) in view of the increasingly hectic scenes at property sales and promotion activities, which can easily create an atmosphere that renders prospective buyers vulnerable to being misled and deceived, draw up guidelines on property sales and promotion activities in conjunction with the real estate sector, and study the provision of a cooling-off period in the contracts of new private residential properties, in order to allow time for buyers to decide whether or not ultimately to buy the residential properties concerned.”

Speech by the Secretary for Housing, Planning and Lands on the motion delivered at
the Council meeting on 7 June 2006

“President:

I would like to thank Members for their opinions on the topic of regulating first-hand residential property transactions.

Some Members have drawn a comparison between the property market and the securities market, and consider that Government should establish a statutory regime to specifically regulate property transactions. In my reply earlier to a Legislative Council question on a similar topic, I already pointed out that the two markets are different and should not be compared in the same light.

The securities market is of a global nature. As an international financial centre, Hong Kong needs to ensure that the regulatory standards for the local securities market is on a par with other major financial centres. Also, given the many different types of stocks and futures, and the fact that the amount of investment involved may vary considerably, the extent of the securities market's impact is far deeper and broader than that of the property market. Hence, it is necessary to establish a stringent statutory regime to regulate activities in the securities market.

There is generally no international common practice on whether or how the property market needs to be regulated. Different jurisdictions would employ different mechanisms appropriate to their own circumstances. In Hong Kong, property transactions are no different from other commercial transactions such as sale and purchase of cars in that they are all carried out in the spirit of the contract, rather than being subject to market-specific statutory control. Any dispute from a transaction may be dealt with through civil litigation, and if fraudulent acts are involved, criminal prosecution action may be taken in accordance with relevant legislation. We believe existing arrangements suit the needs of the local property market.

The property market in Hong Kong is thriving under free market forces. It has always been Government's policy objective to strike an appropriate balance between protecting consumers' interests and maintaining a free business environment. At present, the Real Estate Developers' Association of Hong Kong (REDA) already has a set of guidelines for developers to follow when they sell uncompleted residential properties. Furthermore, the Consumer Council takes steps to enhance consumer education and remind home buyers of the things they need to pay attention to when they purchase properties. The Estate Agents Authority (EAA) has also stepped up enforcement action and taken measures to raise the calibre of estate agents. This

three-pronged approach has greater flexibility and can better cater for the needs of the local property market compared with the option of regulating the property market by means of legislation.

I have the following views on the three suggestions mentioned in the motion:

First, regarding information provided in sales brochures, REDA has, since the introduction of a regime of self-regulation in October 2001, asked its members to provide essential information in sales brochures of local uncompleted residential properties. There were reports last year saying that private sale arrangements lacked transparency and that the accuracy of released sales figures was in question. In the light of these concerns, Government urged REDA to review the matter. REDA responded positively and issued a more detailed set of guidelines on 24 June 2005 asking developers to improve the transparency of sale of uncompleted residential units and the accuracy of sales figures disclosed.

Under REDA's current guidelines, developers are already being asked to provide essential information in sales brochures, including most of the information mentioned in the motion, such as location plan, floor plans, information on prominent fittings and finishes, floor areas, dimensions of parking spaces, salient terms of the land lease and the Deed of Mutual Covenant, anticipated completion date of the buildings and facilities, information on management fees, etc. If applicable, sales brochures also need to set out owners' obligations with regard to slope maintenance and to feature a plan showing the slopes. As regards the defect liability period, REDA has recently undertaken to ask its members to include such information in sales brochures so that property buyers can have more comprehensive information.

Concerning such information as price lists, number of units on offer, mortgage and payment plans, and miscellaneous expenses involved in a property transaction as mentioned in the motion, it is developer's commercial practice to make adjustments having regard to the sales situation and market circumstances, and make available updated information to prospective purchasers. If such information was required to be printed in the text of sales brochures, developers would no longer have flexibility in selling residential units. Free operation of property transactions would be impeded. This is not an advisable step to take.

In a nutshell, REDA's guidelines allow more flexibility than does legislation because guidelines can be updated from time to time to meet changing market circumstances and consumer expectations. Members of the public, including consumers and the media, are constantly watching how developers regulate themselves. If individual developers are found to have failed to comply with REDA's guidelines, their business

reputation would be tarnished once the incidents are reported by the media. This is an incentive for developers to follow REDA's guidelines.

In addition, if a developer is in breach of provisions prescribed in Lands Department's Consent Scheme for sale of uncompleted residential units, Lands Department could take enforcement action depending on the extent of the breach. For instance, Lands Department may issue warnings and ask the developer concerned to correct the information. Lands Department may suspend, or even withdraw, its consent to discontinue the sale, and require the developer to allow buyers not to complete the Agreement for Sale and Purchase (ASP) and to refund the buyers the money paid plus interest.

Hence, we can see that the current mechanism has its deterrent effect. At the moment, the Administration will not consider enacting legislation to regulate sale of uncompleted residential properties, but will continue to meet with REDA, the Consumer Council and EAA on a regular basis to explore ways to make further improvements and to ensure that REDA's guidelines can really meet the needs of consumers and the real estate sector.

Second, regarding disclosure of inaccurate sales figures, the motion makes a comparison between the property market and the securities market and suggests that Government should establish a statutory regime specifically to regulate property transactions to prohibit such improper acts as insider dealing, false trading, price rigging and disclosure of false or misleading information. Earlier, I already pointed out the differences between the two markets. The two markets cannot be compared in the same light.

There have been recent reports about disclosure of inaccurate sales figures. The Administration has conveyed its concerns to REDA and asked REDA to review existing practice. REDA has agreed to urge developers to ensure that they release accurate information about sales situation and to standardize the definition of "sale" to refer to the signing of a Preliminary ASP. The new measures will facilitate dissemination of clearer information about sales for buyers' reference.

I wish to emphasize that laws against misrepresentation and fraudulent acts already exist, and persons involved in such acts may have to bear criminal or civil liabilities. A purchaser has the right to seek litigation and claim damages if he considers that inaccurate information is involved in the course of a property transaction and that he has been induced to sign an ASP as a result of misrepresentation.

Third, I have just heard different views about the idea of introducing a statutory cooling-off period for first-hand private residential transactions. I believe the community would too have divided views on this suggestion. Individual buyers may not necessarily consider that a mandatory cooling-off period would be to their benefit, depending on whether there are drastic fluctuations in the property market. As a matter of fact, should both parties to a transaction agree to adopt a cooling-off period, they are free to set out the agreed details of such a period in the Preliminary ASP. This can be done without a mandatory cooling-off period prescribed by legislation. Generally speaking, a buyer can, under the current mechanism, choose not to complete the transaction within a certain period after signing a Preliminary ASP and forfeit the deposit paid. This is what market players commonly refer to as the non-"must buy must sell" arrangement. To some extent, it is already similar to a cooling-off period.

Based on the above considerations, we believe it is not a suitable time now to introduce a mandatory cooling-off period by way of legislation.

At the end of the day, introducing a mandatory cooling-off period and hindering the free operation of the property market would not be the most effective means of consumer protection. Rather, consumers need to be educated to refrain from making hasty or rash decisions to purchase residential properties. In this regard, the Consumer Council and EAA will jointly publish a checklist this month. The checklist will be inserted in sales brochures and will list out the things which purchasers of first-hand residential properties should pay particular attention to. The checklist will remind consumers to think very carefully before buying residential properties. Consumer education would help prospective buyers make wiser choices.

Thank you, President.”

Arrangements for selling first-hand residential units

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)
Housing Panel	12 April 2005	LC Paper No. CB(1) 1218/04-05(08) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0412cb1-1218-8-e.pdf)

Council/Committee	Date of meeting	Paper
		LC Paper No. CB(1) 1218/04-05(09) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0412cb1-1218-9-e.pdf Minutes http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050412.pdf
Council meeting	18 May 2005	LegCo question http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0518ti-translate-e.pdf
Housing Panel	4 July 2005	LC Paper No. CB(1)1965/04-05(01) (English version only) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0704cb1-1965-1-e.pdf LC Paper No. CB(1) 1944/04-05(03) http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0704cb1-1944-3-e.pdf Minutes http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050704.pdf
Council meeting	26 April 2006	LegCo question http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm0426ti-confirm-c.pdf
Council meeting	7 June 2006	Motion debate http://www.legco.gov.hk/yr05-06/english/counmtg/agenda/cmtg0607.htm#m_3 Speech by the Secretary for Housing, Planning and Lands http://www.info.gov.hk/gia/general/200606/07/P200606070300.htm