

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局

香港九龍何文田佛光街33號



Government Secretariat  
Transport and Housing Bureau

33 Fat Kwong Street, Ho Man Tin, Kowloon,  
Hong Kong

本局檔號 Our Ref. LM (13) to THB/HD/(PH) 1/2 Pt. 17  
來函檔號 Your Ref.

電話 Tel. 2761 5094  
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香港中區  
昃臣道八號  
立法會大樓  
立法會秘書處  
立法會房屋事務委員會秘書長  
(經辦人：余麗琼女士)

余女士：

房屋事務委員會二零一一年二月十日會議  
的跟進事宜

二零一一年二月十日立法會房屋事務委員會(委員會)的會議上，在討論有關一個發展商的高層行政人員在二零一零年十一月十九日發表有關購買物業的言論時，委員要求當局把運輸及房屋局與香港地產建設商會(商會)就有關事宜的所有往來書信送交委員會。在商會同意下，我們現夾附一整套運輸及房屋局與商會截至二零一一年四月二十六日的有關往來書信送交委員參考。有關信件只有英文版本。

我們亦已安排了把有關信件透過電子檔案方式送交予您。

為求確保資料的完整性，夾附的有關往來書信包括商會於二零一一年二月十日送交委員會的三封信件(即該會於二零一零年十二月八日及二零一一年二月十日致本局的信件，以及本局於二零一一年二月九日致商會的信件)，以及本局因應商會公開有關信件的行動，於同日送交委員會的三封信件(即本局於二

零一零年十一月二十四日致商會秘書長的電郵，以及本局於二零一零年十二月三日及二零一一年二月九日致商會的信件)。

正如我們在二零一一年二月十日以書面以及在委員會會議上解釋，在正常的情況下，政府不會公開正進行跟進的事宜的資料，因為恐防這樣做會對跟進中的工作造成負面影響以及影響跟進工作的公正性。不過，正如本信上一段所述，由於商會已向委員會公開了部份信件，並同意公開所有餘下信件，我們現透過您把委員要求的所有信件送交委員會，以便委員全面了解有關事宜。

運輸及房屋局局長

(馮建業)  (代行)

二零一一年四月二十七日

副本送 (不連附件) :

地政總署署長

香港地產建設商會 (經辦人：龍漢標先生)

Eugene KY FUNG PAS-PH AD-PH

24/11/2010 10:25

Urgent

Return receipt

To loonglhb@pacific.net.hk

cc Alice LS

YEUNG/HD/HKSARG@HD

Angora LY

NGAI/HD/HKSARG@HD

bcc

Subject Statement of Mr Kwok Tse-wai of  
Cheung Kong on the new measure

Dear Louis,

We understand that Mr Kwok Tse-wai of the Cheung Kong made the statement in 新浪微博 (<http://t.sina.com.cn/kwoktsewai>) that those who purchase Festival City Phase 2 (盛薈) on 19 November 2010 would not be affected by the new measures of the Government. This statement, which is not qualified at all, is misleading. The new measure on the Special Stamp Duty will apply to the resale of residential properties acquired on or after 20 November 2010 and resold within 24 months after acquisition. Purchasers who purchase flats in Festival City Phase 2 on 19 November 2010 may have only signed the Preliminary Agreement for Sale and Purchase (PASP) on that date. Depending on the terms and conditions of the PASP for Festival City Phase 2, the signing of PASP of Festival City Phase 2 may not constitute to the acquisition of the flat and that if the corresponding ASPs are signed on or after 20 November, the property will be subject to SSD if they are resold within 24 months. I would be grateful if you could draw our concern on the misleading statement to Cheung Kong and suggest that they take rectification measures to avoid the further spreading of this confusing message in any channels. Please let me know REDA and Cheung Kong's 's follow up actions.

Eugene



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中十九號環球大廈1403室  
Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.  
Tel: 2826 0111 Fax: 2845 2521

26 November 2010

By fax

Secretary for Transport & Housing  
Transport & Housing Bureau  
33 Fat Kwong Street  
Ho Man Tin  
Kowloon

Attention: **Mr. Eugene Fung**

*Dear Eugene,*

### Statement of Mr. Kwok Tse-wai of Cheung Kong on the New Measures

We refer to your email of 24 November.

Enclosed please find a self-explanatory letter from the developer concerned for your attention.

Please let us know if we could be of further assistance.

Yours sincerely

Louis Loong  
Secretary General

c.c. Mr. Stewart Leung, Vice Chairman, Executive Committee



Ref : YKM/C0088/10-pw

26 November 2010

Mr. Louis Loong  
The Real Estate Developers Association  
of Hong Kong  
Room 1403 World-Wide House  
19 Des Voeux Road Central  
Hong Kong

Dear Mr. Loong,

Re: Statement of Mr. Kwok Tse-wai of Cheung Kong on the new measure

We have been requested by Mr. Kwok Tse-wai to make this reply in relation to the e-mail from your Ms. Maggie Lau attaching an e-mail from Mr. Eugene Fung of 24 November 2010 regarding the captioned matter.

The statement as referred to in Mr. Fung's e-mail was only a personal statement made by Mr. Kwok Tse-wai on 19 November 2010 in his private and personal blog expressing his personal understanding of the announcement of the new measures of the Government shortly after the same was released and was induced and triggered by the Financial Secretary's remarks at the press conference on new anti-property speculation measures on 19 November 2010<sup>1</sup>, which is extracted in the below:-

“記者：另外，關於明天起生效方面，早前簽署了臨時合約的都會包括在內，還是由明天起才計算？”

財政司司長：明天起才計算。”

At the same time, we would like to take this opportunity to express our view on the date of acquisition as raised in the letter dated 19 November 2010 from the Inland Revenue Department to The Law Society (“Letter”) and the FAQ on Special Stamp Duty as published in the official website of the Inland Revenue Department (“FAQ”) and the Preliminary Agreement for Sale and Purchase (“PASP”) under the consent scheme.

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<sup>1</sup> Please refer to<財政司司長進一步遏抑炒賣措施記者會答問全文>

Ref : YKM/C0088/10-pw

26 November 2010

Mr. Louis Loong  
The Real Estate Developers Association  
of Hong Kong

It is stated in the Letter that, subject to the drafting and passage of the amendment ordinance, the date of acquisition of a property is the date on which the interest in the property is acquired under any enforceable instrument providing for the sale and purchase of the property.

PASP is, in our view, a legally binding and enforceable instrument providing for the sale and purchase of the property. Under the PASP, the vendor is legally bound to sell the property to the purchaser. As for the purchaser, he acquires the right to purchase the property together with an option not to purchase. In other words, the purchaser is entitled to take legal action against the vendor if the vendor fails to sell the property. In the event of the purchaser exercising the option not to purchase the property as provided in the PASP, the vendor shall be entitled to determine the PASP with the entitlement to forfeit the preliminary deposit paid by the purchaser. If the PASP is not an enforceable and legally binding agreement for sale and purchase, the vendor should not be bound to sell the property to the purchaser and the purchaser should be entitled to have the full refund of the deposit. This is obviously not the case.

As said, if the vendor fails to sell the property to the purchaser as provided in the PASP, legal action can be instituted against the vendor for not completing the transaction. In this connection, Item 5 of the FAQ provides that "if it is provided in the provisional agreement legal action would be instituted against the party not completing the transaction, it will not be caught by the proposed amendment." A similar reply is also set out in Item 6 of the FAQ.

/P.3

CONTINUATION

Ref : YKM/C0088/10-pw

26 November 2010

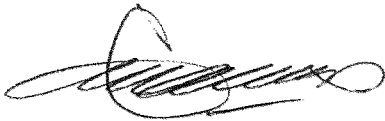
Mr. Louis Loong  
The Real Estate Developers Association  
of Hong Kong

In light of Government's pronouncement and publication as above mentioned, the PASP signed on or before 19 November 2010 should not be caught by the new anti-property speculation measures and we would thus urge Government to consider our views in enacting and enforcing the new law for the Special Stamp Duty

Yours sincerely

for and on behalf of

**CHEUNG KONG PROPERTY DEVELOPMENT LIMITED**



Authorized Signature

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

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來函檔號 Your Ref.

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**CONFIDENTIAL**

3 December 2010

*[By fax and by mail]*

Mr Louis Loong  
Secretary General  
The Real Estate Developers Association of HK  
Room 1403, World-wide House  
19 Des Voeux Road Central  
Hong Kong

Dear *Louis,*

**Festival City Phase 2 (盛薈) in Tai Wai**

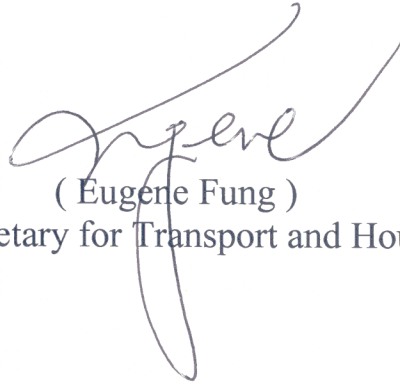
I refer to my email of 24 November 2010 which expressed our concern about the alleged misleading statement by Mr Kwok Tse-wai of the Cheung Kong Property Development Limited (Cheung Kong) that buyers who purchased flats at the Festival City Phase II on 19 November 2010 would not be affected by the new stamp duty measures of the Government. We look to the Real Estate Developers Association of Hong Kong (REDA) to follow up on this matter fully in accordance with your established procedures for complaint handling to ascertain whether the case should be referred to the Compliance Committee. Please inform us of the follow up action taken.

In your reply of 26 November 2010, you merely attached the letter of the same date from Cheung Kong but did not indicate whether or not REDA had investigated the case, the outcome of REDA's investigation, and the follow-up actions which REDA will take or have taken. We therefore expect REDA to proceed immediately to instigate the established complaint handling procedures for this case and let us know the findings and outcome.



The issue has aroused grave public concern. I would be grateful if REDA will look seriously into the issue and let us have a full reply as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eugene Fung', with a large, sweeping flourish extending upwards and to the right.

( Eugene Fung )  
for Secretary for Transport and Housing



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中十九號環球大廈1403室  
Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.  
Tel: 2826 0111 Fax: 2845 2521

8 December 2010

By fax (2761 7444)

Secretary for Transport and Housing  
Transport and Housing Bureau  
33 Fat Kwong Street  
Ho Man Tin  
Kowloon

**Attention: Mr. Eugene Fung**

### **Festival City Phase 2 in Tai Wai**

I refer to your letter of 3 December.

As recapped in our telephone conversation(Fung/Leung) of 6 December, upon receipt of your email of 24 November, we immediately passed your concerns to Cheung Kong as requested. Cheung Kong wrote back on 26 November with their explanation and at the same time requested you to consider their views in enacting and enforcing the new law for the Special Stamp Duty. This letter, as you will recall, was promptly forwarded to you on the same day together with our suggestion that you please let us know if we could be of further assistance.

We have thus complied with every request you made in your email of 24 November. Since neither we nor Cheung Kong, as far as we are aware, have received your response to their request up to the time of this writing, we are at a loss as to what follow-up action you are expecting from us.

For your information, our Compliance Committee met on 1 December to discuss this case. Their observation is that the crux of this matter lies in the difference in interpretation between Cheung Kong and yourselves regarding the legal status of the Preliminary Agreement of Sale and Purchase under the Consent Scheme. Our Compliance Committee concluded that they are not in a position to decide on this legal issue which they considered should best be deferred to yourselves and the developer concerned.



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.  
Tel: 2826 0111 Fax: 2845 2521

In the circumstances, we are awaiting your decision.

Yours sincerely

Stewart Leung  
Vice Chairman, Executive Committee

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局

香港九龍何文田佛光街33號



Government Secretariat  
Transport and Housing Bureau

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來函檔號 Your Ref.

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**CONFIDENTIAL**

14 December 2010

*[By fax and by mail]*

Mr Stewart Leung  
Vice Chairman, Executive Committee  
The Real Estate Developers Association of Hong Kong  
Room 1403, World-wide House  
19 Des Voeux Road Central  
Hong Kong

Dear *Stewart,*

**Festival City Phase 2 in Tai Wai**

I refer to your letter of 8 December 2010.

In REDA's reply of 26 November 2010, REDA merely attached the letter of the same date from Cheung Kong Property Development Limited (Cheung Kong) but did not indicate whether or not REDA had investigated the case. I wrote to REDA again on 3 December 2010 requesting REDA to instigate the established complaint handling procedures for the case. You conveyed to me over the phone on 6 December 2010 that the Compliance Committee had met on 1 December 2010 to discuss the case and I received your written response vide your letter of 8 December 2010.

The Special Stamp Duty (SSD) applies to those transactions of residential properties the equitable ownership or legal ownership of which is acquired on or after 20 November 2010 and resold within 24 months. Therefore the SSD will not apply to those transactions of residential properties which equitable or legal ownership of the property was acquired before 20 November 2010. Mr Kwok Tse-wai of Cheung Kong seemed to

have claimed in general that the SSD would not apply to those who had signed Preliminary Agreements for Sale and Purchase (PASPs) of units of the Festival City Phase 2 on 19 November 2010. Generally speaking, a purchaser does not acquire the equitable ownership of the property concerned upon execution of a PASP of the property, not to mention the legal ownership of the property. The equitable ownership of a property is only acquired upon the signing of the formal Agreement for Sale and Purchase (ASP). Following the Financial Secretary's announcement of the introduction of the SSD on 19 November 2010, the Inland Revenue Department (IRD) issued letters to the Law Society of Hong Kong and the major estate agents associations on the same day to explain the arrangements of the SSD. Relevant information was uploaded onto the websites of IRD and the Transport and Housing Bureau respectively for public information. In order to facilitate the trade to have a better understanding of the arrangements of the SSD, IRD arranged two briefing sessions for the Law Society of Hong Kong and the Estate Agent Authority. Also, we have reminded the public through various channels to consult their solicitors as appropriate.

As stipulated under the pre-sale consent letter of 20 October 2010 for the Festival City Phase 2, "*the PASP must state prominently that it is not binding on the purchaser except that the Developer has the right to keep the Preliminary Deposit and that the purchaser will have to agree with the Developer in the ASP that the Developer is entitled to keep the Preliminary Deposit if the ASP is later cancelled in any way whatever*". The PASP of the Festival City Phase 2, from the copy that we have seen, is also expressed to be an option to purchase agreement. As such, the PASP is not binding on the purchaser to purchase the property that is the subject matter of the PASP (notwithstanding that it is a legally binding agreement in respect of the other terms and conditions provided in therein). It is our view that those purchasers who have signed PASPs on 19 November 2010 for units of the Festival City Phase 2 merely acquire an option to purchase the property (rather than the equitable ownership of the property) by the signing of the PASPs. If the purchasers had not acquired the equitable ownership of the respective property concerned, the purchasers could not claim that their transactions should not be subject to SSD on the basis that they had acquired the equitable or legal ownership of the respective property before 20 November 2010.

In the light of our reiteration of the Government's position as set out above, I request that REDA promptly consider further the case, take appropriate follow-up action, and let us know of the outcome.

Yours sincerely



( Eugene Fung )

for Secretary for Transport and Housing

c.c.

Secretary General, the Real Estate  
Developers Association of Hong Kong

(Attn: Mr Louis Loong)



# 香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中十九號環球大廈1403室

Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.

Tel: 2826 0111 Fax: 2845 2521

24 December 2010

By fax

Secretary for Transport and Housing  
Transport and Housing Bureau  
33 Fat Kwong Street  
Ho Man Tin  
Kowloon

Attention: Mr. Eugene Fung

*Dear Eugene,*

**Festival City Phase 2 in Tai Wai**

I refer to your letter of 14 December and am pleased to enclose a self-explanatory letter from the developer concerned for your attention. Please let me know if we could be of further assistance.

May I take this opportunity to wish you a Merry Christmas and a Happy New Year!

Yours sincerely

Louis Loong  
Secretary General

c.c. Mr. Stewart Leung, Vice Chairman, Executive Committee



Ref: YKM/C0106/10-pw

23 December 2010

Mr. Louis Loong  
The Real Estate Developers Association  
of Hong Kong  
Room 1403 World-Wide House  
19 Des Voeux Road Central  
Hong Kong

Dear Mr. Loong,

**Re: Festival City Phase 2 In Tai Wai**

This refers to your letter dated 15 December 2010 enclosing the Transport and Housing Bureau's letter dated 14 December 2010 ("Bureau's letter").

The below is the reply from Mr. Kwok Tse-wai ("Mr. Kwok") to the 3<sup>rd</sup> paragraph of Bureau's letter.

According to Mr. Kwok, he was in gist replicating Mr. John Tsang's remarks at the press conference held on 19 November 2010. He recalled that Mr. Tsang in reply to a reporter's question maintained that SSD would not apply to those the Preliminary Agreement for Sale and Purchase signed before 20 November 2010.

Had Mr. Tsang elucidated that the Bureau's view on the Preliminary Sale and Purchase Agreement under the Consent Scheme at that time, Mr. Kwok might have repeated the Bureau's view on SSD in his personal blog .

At this juncture, Mr. Kwok feels sorry for Government's inordinate delay and confusion in promulgation of the new rules of SSD and the implementation details to public.

Firstly, despite the Bureau said that Inland Revenue Department issued letters to the Law Society of Hong Kong and the major estate agents association on the same day following the Financial Secretary's announcement, the Bureau seems ignorant of the time gap for these associations to distribute the message to its respective members and the property transactions that had been ongoing all the time.

Cont'd.../P.2



## CHEUNG KONG PROPERTY DEVELOPMENT LIMITED

.../P.2

CONTINUATION

Ref : YKM/C0106/10-pw

23 December 2010

Mr. Louis Loong  
The Real Estate Developers Association  
of Hong Kong

Furthermore, up to the date of this letter, Government has failed to provide any briefing to The Real Estate Developers Association of Hong Kong about the SSD despite property developers are the main suppliers of residential properties in Hong Kong. To keep out property developers from these briefing sessions is unhelpful and is a mockery to Bureau's statement "to facilitate the trade to have a better understanding of the arrangement of the SSD".

Mr. Kwok genuinely believes that under the Preliminary Agreement for Sale and Purchase as prescribed by the Consent Scheme rules, the vendor is legally bound to sell the property to the purchaser and specific performance can be invoked by the purchaser if the vendor reneges. Mr. Kwok is thus equally baffled by the different stance taken by Bureau and that of IRD officials on the Preliminary Agreement for Sale and Purchase. (See Item 5 of the Questions and Answer provided by IRD to EAA [http://www.eaa.org.hk/SSD\\_info.pdf](http://www.eaa.org.hk/SSD_info.pdf)).

It is further noted that Bureau's view that those who signed an option to purchase agreement merely acquired an option to purchase the property (rather than the equitable ownership of the property). This will create a loophole for the speculators in the secondary market for sale of completed units to avoid SSD by signing the option to purchase agreement instead of an Agreement for Sale and Purchase.

In view of the above, we would be grateful if REDA can kindly pass Mr. Kwok's views to Bureau.

Yours sincerely  
for and on behalf of

**CHEUNG KONG PROPERTY DEVELOPMENT LIMITED**



Authorized Signature

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局

香港九龍何文田佛光街33號



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Transport and Housing Bureau

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Hong Kong

本局檔號 Our Ref. HD(CR) 6/102  
來函檔號 Your Ref.

電話 Tel. 2761 5207  
傳真 Fax. 2761 7444

9 February 2011

By Fax

Mr Louis Loong  
Secretary General  
The Real Estate Developers Association of Hong Kong  
Room 1403, World-wide House  
19 Des Voeux Road Central  
Hong Kong

Dear *Louis*,

**Festival City Phase 2 in Tai Wai**

Thank you for your letter of 24 December 2010.

We note from your previous replies that REDA has not yet addressed the key issue of whether REDA, as a self-regulatory body of its member developers on sales of first-hand residential properties, considers it appropriate for Mr Kwok Tse-wai, as a senior executive of a developer company involved in the sale of Festival City Phase 2, to have made the said statements, in particular in the tone and context, upon announcement by the Government on 19 November 2010 of the introduction of the Special Stamp Duty to curb speculative activities in the private residential property market.

I look forward to an early reply on position of REDA and its follow up action on the above.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Eugene Fung', written over a large, stylized flourish that extends downwards and to the right.

(Eugene Fung)

for Secretary for Transport and Housing



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中十九號環球大廈1403室

Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.

Tel: 2826 0111 Fax: 2845 2521

10 February 2011

By fax (2761 7444)

Secretary for Transport & Housing  
Transport & Housing Bureau  
33 Fat Kwong Street  
Ho Man Tin  
Kowloon

Attention: **Mr. Eugene Fung**

*Dear Eugene,*

**Festival City Phase 2 in Tai Wai**

Thank you for your letter of 9 February.

I would have thought that our position on this matter had been clearly stated in our letter of 8 December 2010, a copy of which is attached for your easy reference.

For the record, our Compliance Committee (made up of 7 independent members from the legal profession and 4 of our own members) met on 1 December 2010 to look into this case. They concluded that this is actually a case of difference in opinion between your Bureau and the developer concerned on the legal status of the Preliminary Agreement for Sale and Purchase of the project in question under the newly introduced Special Stamp Duty Policy, and that no REDA Guideline was breached. The Compliance Committee was also of the opinion that REDA is not in a position to adjudicate on this legal issue which should best be settled between yourselves and the developer concerned.

Conscious of the fact that the Panel on Housing will meet this afternoon and trusting that they may be interested in our view on this matter, I am copying this letter to the Clerk to the Panel for distribution to its Honourable Members.

Yours sincerely

Louis Loong  
Secretary General

c.c. Clerk to the LegCo Panel on Housing (with enclosure)

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
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**CONFIDENTIAL**

10 February 2011

*Urgent by fax*

Mr Louis Loong  
Secretary General  
The Real Estate Developers Association of HK  
Room 1403, World-wide House  
19 Des Voeux Road Central  
Hong Kong

Dear *Louis*,

**Festival City Phase 2 in Tai Wai**

I refer to your letter of today.

I note that you have passed to the Clerk to the Legislative Council Panel on Housing (the Housing Panel) earlier today, for distribution to Members of the Housing Panel, the Real Estate Developers Association of Hong Kong (REDA)'s reply letters of 8 December 2010 and 10 February 2011 to the Transport and Housing Bureau (THB) regarding the issue about the statement of 19 November 2010 by a senior executive of a development company in his online blog about the purchase of uncompleted residential flats at the company's development in Tai Wai (the issue). Also, we understand that REDA has also passed to the Clerk to the Housing Panel THB's letter of 9 February 2011.

You may wish to note that, in response to the request of the Clerk to the Housing Panel, we have passed to her for the reference of Members of the Housing Panel the following correspondence from THB to REDA as mentioned in REDA's two letters:

- (a) THB's e-mail of 24 November 2010 to the Secretary General of REDA;
- (b) THB's letter of 3 December 2010 to REDA; and
- (c) THB's letter of 9 February 2011 to REDA.

We would like to emphasize that under normal circumstances, the Government will not disclose information relating to an issue which is being followed up, so as not to adversely affect and prejudice the ongoing actions. However, given the fact that REDA has disclosed the letters as mentioned in the first paragraph of this letter to the Housing Panel, it is important that the Housing Panel is given the exchange of the relevant correspondence between THB and REDA in order to enable the Housing Panel to understand the matter in a comprehensive manner. We therefore pass to the Housing Panel a copy of the correspondence as requested by the Clerk to the Housing Panel.

THB reserves the right to seek further clarification from REDA on the issue.

Yours sincerely,



 ( Eugene Fung )  
for Secretary for Transport and Housing

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局

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Government Secretariat  
Transport and Housing Bureau

33 Fat Kwong Street, Ho Man Tin, Kowloon, Hong Kong

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來函檔號 Your Ref.

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傳真 FAX. 2761 7444

**CONFIDENTIAL**

4 April 2011

**By Fax**

Mr Louis Loong  
Secretary General  
The Real Estate Developers Association of Hong Kong  
Room 1403, World-wide House  
19 Des Voeux Road Central  
Hong Kong

Dear *Louis*

**Festival City Phase 2 (盛薈) in Tai Wai**

I refer to your letter of 10 February 2011 in reply to our letter of 9 February 2011. You would also have noted our letter of 10 February 2011 which we sent to you urgently by fax upon our receipt of your letter of the same date.

As I explained to you in our telephone conversation on the subject on 22 March 2011, we note from all your previous replies to us that the Real Estate Developers Association of Hong Kong (REDA) and its Compliance Committee have not addressed the fundamental issue which we have raised.

As I mentioned clearly in my letter of 9 February 2011 to you, and as made clear by the Administration at the meeting of the Legislative Council (LegCo) Panel on Housing (the Panel) on 10 February 2011, we would expect REDA to address the key issue of whether REDA considers it appropriate for Mr Kwok, as a senior executive of a developer company involved in the sale of Festival City Phase 2, to have made statements which were not qualified in any way, and in a tone and context which clearly were intended to encourage people to make a last-minute or rushed decision on flat purchase upon the announcement by the Government on 19 November 2010 of the introduction of the Special Stamp Duty (SSD) to curb short-term speculative activities in the

private residential property market. As the self-regulatory body for its member developers with a responsibility to consider the conduct and behaviour of Developers and their staff in respect of the sales of first-hand residential properties, we are most disappointed that, in spite of our repeated requests, REDA has not addressed this point so far.

As you may be aware, at the meeting of the Panel on 10 February 2011, Members requested the Administration to pass to the Panel a full set of the exchange of correspondence between THB and REDA on the subject matter. We explained to the Panel that under normal circumstances, the Administration would not disclose information relating to an issue which was being followed up, so as not to adversely affect and prejudice the ongoing action. However, as REDA had unilaterally disclosed to the Panel on 10 February 2011 its letters of 8 December 2010 and 10 February 2011 and THB's letter of 9 February 2011, THB had at the request of the Clerk to the Panel (the Clerk) passed to the Clerk on the same day THB's correspondence to REDA as mentioned in REDA's two letters, so that members could understand the matter in a more comprehensive matter. At the request of the LegCo Members at the Panel meeting on 10 February 2011, we undertook to seek REDA's agreement to releasing to the Panel the remaining correspondence between THB and REDA.

Please let us have your reply in writing by 11 April 2011 on the following:

- (a) REDA's deliberations and decision in respect of Mr Kwok's statement of 19 November against the background set out in paragraph 3 of this letter; and
- (b) REDA's views on whether THB may pass to the Panel the remaining correspondence between THB and REDA, including REDA's reply to this letter.

We reserve all Government's rights in the matter.

Yours sincerely,



( Eugene Fung )

for Secretary for Transport and Housing



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中十九號環球大廈1403室  
Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.  
Tel: 2826 0111 Fax: 2845 2521

11 April 2011

By fax (2761 7444) and mail

Your Ref: HDCR 4-3/PH/1-10/0-1

Secretary for Transport and Housing,  
Transport and Housing Bureau,  
33 Fat Kwong Street,  
Ho Man Tin,  
Kowloon

Attn: Mr. Eugene Fung

*Dear Eugene,*

### Festival City Phase 2 (盛薈) in Tai Wai

I refer to your letter of 4 April 2011.

I have to confess that I am somewhat perplexed by your repeated suggestions that REDA has not addressed the point raised in the third paragraph of your letter dated 4 April 2011, given that:

- (a) In our letter to you dated 8 December 2010 we informed you as follows:

*"For your information, our Compliance Committee met on 1 December to discuss this case. Their observation is that the crux of this matter lies in the difference in interpretation between Cheung Kong and yourselves regarding the legal status of the Preliminary Agreement for Sale and Purchase under the Consent Scheme. Our Compliance Committee concluded that they are not in a position to decide on this legal issue which they considered should best be deferred to yourselves and the developer concerned."*

- (b) In our letter dated 10 February 2011, we stated as follows:

*"For the record, our Compliance Committee (made up of 7 independent members from the legal profession and 4 of our own members) met on 1 December 2010 to look into this case. They concluded that this is actually a case of difference in opinion between your Bureau and the*





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*developer concerned on the legal status of the Preliminary Agreement for Sale and Purchase of the project in question under the newly introduced Special Stamp Duty Policy, and that no REDA Guideline was breached. The Compliance Committee was also of the opinion that REDA is not in a position to adjudicate on this legal issue which should best be settled between yourselves and the developer concerned."*

In this connection, we would observe that the Bill is still pending in the Legislative Council ("Legco"), and the ambit and application of the Special Stamp Duty have yet to be determined and enacted into law.

In the 4th paragraph of your letter dated 4 April 2011, you stated that REDA had unilaterally disclosed to the Panel on Housing ("Panel") of LegCo the letters of REDA dated 8 December 2010 and 10 February 2011, and the letter of the Transport and Housing Bureau ("THB") dated 9 February 2011, on which we would comment as follows :-

- (a) It is for the Administration which introduces the Bill to assist LegCo in the exercise of its legislative function and provide the Panel with all relevant information.
- (b) None of the letters passed by REDA to the Panel was marked "confidential" and REDA does not understand them to be confidential or intended as confidential. In passing copies of the letters to the Panel, REDA was not acting in breach of confidence. REDA was right in providing information to the Panel on an issue in which the Panel should be interested, in case the Panel had not already been made aware of the same.

To address specifically the last but one paragraph of your letter dated 4 April 2011:

- (a) REDA's position has been made clear to you. Please see the second paragraph of this letter.
- (b) REDA is happy and would request that you pass all correspondence between THB and REDA on the subject to the Panel. REDA would expect you to pass your letter dated 4 April 2011 and this letter to the Panel.

Lastly, we are puzzled by the last paragraph of your letter dated 4 April 2011 in which you stated that you reserve all Government's rights in the matter. You seem to be



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suggesting that Government has certain rights against REDA. If that is the suggestion, we do not see the basis of it, and would regard it as an unhelpful statement.

Yours sincerely,

Louis Loong  
Secretary General

c.c. Mr. Stewart Leung, Vice Chairman, Executive Committee

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局

香港九龍何文田佛光街33號



Government Secretariat  
Transport and Housing Bureau

33 Fat Kwong Street, Ho Man Tin, Kowloon,  
Hong Kong

本局檔號 Our Ref. LM to HDCR 4-3/PH/1-10/0-1

來函檔號 Your Ref.

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26 April 2011

By fax

Mr Louis Loong  
Secretary General  
The Real Estate Developers Association of HK  
Room 1403, World-wide House  
19 Des Voeux Road Central  
Hong Kong

Dear *Louis,*

**Festival City Phase 2 (盛薈) in Tai Wai**

I refer to your letter of 11 April 2011.

We note that you referred again to the meeting of the Compliance Committee held on 1 December 2010 which concluded that it was not in a position to decide on the issue as it was a legal matter. We also note that you have nothing to supplement on this stance and will take no further action.

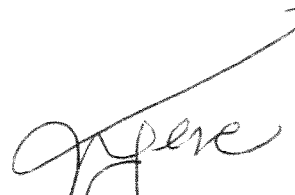
We are disappointed at your latest response and at the manner in which the Real Estate Developers Association of Hong Kong (REDA) has handled the case. We referred the case to REDA for follow up, as it is the self-regulatory body responsible for the conduct and behaviour of its member developers in respect of the sales of first-hand residential properties.

We have made repeated requests to REDA to address the key issue of whether REDA considered it appropriate for Mr Kwok Tse-wai, a senior executive of a development company involved in the sale of Festival City Phase 2, to have made a statement which was not qualified in any way, and in a tone and context which clearly intended to encourage people to make a last-minute or rushed decision on flat purchase, upon the announcement by the Government on 19 November 2010 of the introduction of the Special Stamp Duty (SSD) to curb short-term speculative activities in the private residential property market.

We therefore do not understand why REDA has refused to address this key point, including in your letter of 11 April 2011. We consider that it is not appropriate for Mr Kwok to have made the statement in such a definite way, and in such tone and context at the time, given Mr Kwok is a senior executive of the development company involved in the sale of Festival City Phase 2. The statement appears to encourage people to make a last-minute rush on flat purchase, without proper legal advice, and in order to avoid the SSD. Whether such a statement was made in a 'private' capacity in Mr Kwok's personal blog is beside the point, as it was related to the sale of units in Festival City Phase 2 and could only be perceived by the public to be part of the promotional and sales activities of the development company.

We note that REDA has no objection for the Transport and Housing Bureau (THB) to disclose to the Legislative Council Panel on Housing (the Panel) all the correspondence between THB and REDA on the issue. You may wish to note that we will pass to the Panel the full set of correspondence between THB and REDA, including this letter to you of 26 April 2011. If we do not hear from you by noon 27 April 2011, we shall assume that you have no further comments to make and we shall proceed to disclose all the said letters to the Panel. If you do reply to this letter before noon 27 April 2011, please indicate in your reply whether your reply should also be disclosed to the Panel.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Eugene Fung". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

(Eugene Fung)  
for Secretary for Transport and Housing