

Legislative Council Panel on Housing

Refinancing of Home Ownership Scheme flats with premium unpaid

PURPOSE

This paper briefs Members on matters relating to refinancing of Home Ownership Scheme (HOS) flats with premium unpaid.

DETAILS

Background

2. The Government has responded on various occasions to the concern of Legislative Council (LegCo) Members regarding the operation of and the fees charged by financial intermediaries, as well as refinancing of HOS flats with premium unpaid. This includes replies to questions raised by the Hon Wong Kwok-kin and the Hon Alice Mak at the LegCo meetings on 13 May 2015 and 17 June 2015 respectively. Relevant replies are at **Annex A** and **Annex B** for ease of reference.

3. In response to Members' request to discuss matters relating to refinancing of HOS flats with premium unpaid, we have summarised the relevant information in the ensuing paragraphs.

Alienation restrictions under the Housing Ordinance

4. HOS flats are subsidised flats offered by the Hong Kong Housing Authority (HA) to eligible applicants at prices below market value. To ensure the proper use of public resources, HA imposes alienation restriction on HOS flats. As stipulated in the Schedule to the Housing Ordinance (the Ordinance) (Cap. 283), HOS flat owners are prohibited from selling, letting, mortgaging or in any way alienating or parting with interests of their flats unless the specific requirements are met, such as payment of premium or obtaining the approval of the Director of Housing.

5. If HOS flat owners wish to refinance their flats without paying premium, prior approval must be obtained from the Director of Housing. Refinancing will only be approved for cases of financial hardship whereby an immediate sum of money is needed to meet personal or family expenses arising out of unforeseen circumstances. Possible grounds for approval include medical expenses, education expenses for family members, funeral expenses, a lump sum payment or payment of maintenance to one's spouse according to the court order of divorce as a result of divorce or separation, and in cases of financial hardship arising from business activities. Refinancing applications on other grounds, such as personal financial problems, will be considered on a case-by-case basis. Applicants can obtain application form from and return it to the District Tenancy Management Offices of the respective court.

6. Section 17B of the Ordinance stipulates that where a person refinances the HOS flat without obtaining prior approval from the Director of Housing or paying the premium, the purported mortgage or other alienation together with the relevant agreement shall be void. Section 27A of the Ordinance further stipulates that where a person, whether as lender, borrower or otherwise purports to mortgage or alienate the HOS flat or enter into relevant agreement which is void under section 17B, the person commits an offence and is liable to the maximum fine of \$500,000 and to imprisonment for one year.

7. The Housing Department (HD) reviews the procedures in processing refinancing applications from time to time. In this regard, for applications received on or after 1 September 2014, provided that the applicant's solicitor has ensured that the legal charge will contain the terms and provisions as required by HD in accordance with the terms and conditions specified in the consent letter when preparing the legal charge, it is not necessary for applicants to submit the draft legal charge to the Legal Service Sub-division of HD for approval. This new arrangement helps shorten the time required for processing the refinancing applications and save the application costs. With effect from 1 June 2015, HD also launched new measures to simplify the procedures and improve the application form by listing the supporting documents required for verification in order to reduce processing time.

Monitoring of unlawful refinancing

8. Currently, HD examines the relevant land search records when processing applications for refinancing, premium assessment and transfer of ownership for HOS flats. In the past five years (i.e. 2010-11 to 2014-15), HD has checked more than 4 500 land search records on average each year. Should it be found in the search records that a loan or mortgage record has been registered in connection with a flat with unpaid premium, and that the loan or mortgage may involve mortgaging an HOS flat without the approval of the Director of Housing, prosecutors of HD will consider whether to institute prosecution in accordance with the Prosecution Code of the Department of Justice (DoJ). When considering these cases, prosecutors will look into the actual circumstances of each case, in particular, whether the loan document contains any contractual terms or wording involving mortgage that may constitute a contravention of the Ordinance. With sufficient evidence to prove all offence elements, the prosecutors will institute prosecution against the suspected person under section 27A of the Ordinance. For instance, there is a recent case whereby an HOS flat owner was found to have breached Section 27A of the Ordinance by charging his HOS flat to a finance company for obtaining a loan. The relevant owner and finance company were both prosecuted and were successfully convicted. The finance company subsequently lodged an appeal. After hearing, the Court of First Instance of the High Court rejected the appeal and maintained the original judgment. It is worth noting that not every loan agreement involving HOS flats of HA will invoke the alienation restriction stipulated under sections 17B and 27A of the Ordinance. In general, only loan agreements which involve charging the flats with premium not yet paid as securities will invoke section 17B and contravene section 27A. Therefore, there is no hard and fast rule in determining whether a loan agreement signed between the owner of an HOS flat with premium not yet paid and finance company has contravened the Ordinance. It is necessary to look into the actual circumstances of individual cases.

9. From time to time, HD finds that owners of HOS flats with unpaid premium have entered into loan agreements with finance companies in the form of personal loans and there is insufficient evidence in the agreement provisions to prove that the loans are secured by the HOS flats and thus constitute a contravention of section 27A of the Ordinance. Where necessary, HD will seek advice from DoJ on whether there is sufficient evidence to prove such offence elements for instituting prosecution in individual cases.

Publicity and education efforts

10. The Investor Education Centre (IEC), the Consumer Council and the Police have taken measures to raise awareness of fraudulent practices through different channels and to remind the public to understand thoroughly the terms and conditions concerning the fees and charges in any loan agreements or financial contracts. Loan and debt management has all along been a focus of IEC's key education efforts. Since June 2015, the IEC has launched a series of education activities on borrowing to draw the public's attention on points to note and the risks involved in using property as collateral in borrowing. By using various channels such as the mass media, outreach talks and other activities, the IEC will continue to promote the importance of smart use of loan and proper debt management among the public, especially students, the youth and the elderly. It will launch more education activities on loan secured by using property as collateral when necessary. The Police has also produced and aired in the "Police Magazine" Programme a simulated case with the theme of combating loan deception.

11. Information about the alienation restriction of HOS flats and application procedures of refinancing is available on HD's website. HOS flat owners can contact the District Tenancy Management Offices of the respective court and call HA's or the Government's hotlines for enquiries.

12. In addition, for the convicted case mentioned in paragraph 8 above, HD has issued press release and reminded the public that any unlawful mortgage, charge, assignment or other alienation and any relevant agreement to do so, on a subsidised housing flat with premium unpaid, will be void, and it is an offence for any person to carry out such act.

**Transport and Housing Bureau
June 2015**

Annex A

Following is the written reply by the Secretary for Transport and Housing, Professor Anthony Cheung Bing-leung, to the question raised by the Hon Wong Kwok-kin at the Legislative Council (LegCo) meeting on 13 May 2015-

LegCo Question 11: Mortgage loans taken out for Home Ownership Scheme flats with unpaid premium

Question:

Currently, owners of flats under the Home Ownership Scheme and the Private Sector Participation Scheme (HOS/PSPS) must not sell, let, mortgage or remortgage, or in any way alienate or part with possession of their flats before paying a premium or obtaining approval from the Director of Housing, or else they contravene section 27A of the Housing Ordinance (Cap. 283) (section 27A). On the other hand, it was reported last month that as the land title records of thousands of HOS/PSPS flats with unpaid premium contained entries of encumbrances in loan agreements with finance companies, the relevant owners were alleged to have illegally remortgaged their flats. In this connection, will the Government inform this Council:

- (1) of the number of applications received by the Housing Department from owners of HOS/PSPS flats with unpaid premium for remortgaging their flats and, among them, the number of approved cases, in each of the past five years;
- (2) of the respective numbers of cases involving alleged contraventions of section 27A into which investigations were conducted and in which prosecutions were instituted by the authorities, as well as the number of convictions, in the past five years;
- (3) whether, in the light of the aforesaid report, the authorities will take the initiative to conduct investigations; if they will, of the details and the timetable; if not, of the reasons for that;
- (4) given that in recent years, some HOS/PSPS flat owners have pointed

out that quite a number of finance companies have launched loan schemes exclusively for HOS/PSPS flats with unpaid premium, thus misleading them into believing that remortgaging their flats is not illegal, how the authorities will step up publicity and law enforcement efforts to remind HOS/PSPS flat owners of the risks involved; and

(5) whether the authorities and the relevant financial regulators have monitored the risks posed by mortgages of subsidised flats with unpaid premium, as well as the liabilities of the owners concerned, and assessed the impacts of the relevant situation on the overall property market; if not, whether the authorities will formulate measures to monitor and assess the relevant situation?

Reply:

President,

With inputs from the Financial Services and the Treasury Bureau, my consolidated reply to the questions raised by the Hon Wong Kwok-kin is as follows.

Home Ownership Scheme (HOS) is subsidised housing offered by the Hong Kong Housing Authority (HA) to eligible applicants at selling prices below market value. To ensure the proper use of public resources, HA imposes alienation restriction on subsidised sale flats (including HOS flats). As stipulated in the Schedule to the Housing Ordinance (the Ordinance), HOS flats are subject to alienation restriction; and unless owners have met the specific requirement (such as payment of premium or obtaining the approval of the Director of Housing, etc.), they are prohibited from selling, letting, mortgaging or in any way alienating or parting with possession of their flats.

Currently, if subsidised sale flat owners want to refinance their flats without paying the premium, prior approval must be obtained from the Director of Housing who may, in giving his approval, impose such terms and conditions as he thinks fit. The terms and conditions must be complied with when the flat is refinanced. Refinancing will only be allowed in cases of financial hardship in which an immediate sum of

money is needed to meet any personal or family expenses arising out of unforeseen circumstances. Possible grounds for approval include medical expenses, education expenses for family members, funeral expenses, a lump sum payment or payment of maintenance to one's spouse as a result of divorce or separation, and in cases of financial hardship arising from business activities. Refinancing applications on other grounds (such as personal financial problems) will be considered on a case-by-case basis. The maximum amount of refinancing loan permissible will be limited to the difference between 80 per cent of the sale price assessed by the Director of Housing as at the date of the application for refinancing and the amount of any outstanding mortgage loan. In the past five years (i.e. 2010-11 to 2014-15), there were a total of 1 771 refinancing cases approved by the Director of Housing for flats with premium not yet paid (including HOS and Tenants Purchase Scheme, etc.).

The Housing Department (HD) reviews the approval procedures for refinancing applications from time to time to streamline procedures and to facilitate applicants. For instance, subsequent to an earlier review, for applications received on or after September 1, 2014, as long as the applicant's solicitor has ensured that the legal charge will contain the terms and provisions as required by the HD in accordance with the terms and conditions specified in the consent letter when preparing the legal charge, it is not necessary for applicants to submit the draft legal charge to the Legal Service Sub-division of the HD for approval. This new arrangement helps shorten the time required for processing the refinancing applications and save the approval charges. The HD will continue to review the approval procedures for refinancing applications when appropriate with the objective to further shorten and streamline procedures to address the emergency needs of the applicants. Information on refinancing of HOS flats and the application procedures are available to the public on the HD's website. For enquiries on such matters, HOS flat owners can also contact the respective Estate Management Offices.

Section 17B of the Ordinance on "void alienations" stipulates that under certain circumstances, "the purported mortgage, other charge, assignment or other alienation, together with any agreement so to mortgage, charge, assign or otherwise alienate, shall be void". Section 27A of the Ordinance further stipulates that where a person, whether as lender,

borrower or otherwise purports to alienate land or enter into relevant agreement which is void under section 17B, the person commits an offence and is liable to the maximum fine of \$500,000 and to imprisonment for one year. For loan agreement, not every loan agreement involving subsidised sale flats of HA will invoke the alienation restriction stipulated under sections 17B and 27A of the Ordinance. In general, only loan agreements which involve using the HOS flats with premium not yet paid as securities will invoke section 17B and contravene section 27A. Therefore, there is no hard and fast rule in determining whether a loan agreement signed between the owner of a HOS flat with premium not yet paid and finance company has contravened the Ordinance. It is necessary to look into the actual circumstances of individual cases.

According to the HD's past experience in scrutinising the loan agreements concerned, only in relation to some of them did HD consider that there was evidence to prove the same might have constituted a contravention of the Ordinance. For those loan agreements which the HD considered might have constituted a contravention of the Ordinance, the court might consider otherwise afterwards. Under the prevailing mechanism, in addition to applications for refinancing, the HD will examine the relevant land search records when processing applications for premium assessment and transfer of ownership. In the past five years (i.e. 2010-11 to 2014-15), the HD has checked more than 4 500 land search records on average each year. Should it be found in the search records that a loan or mortgage record has been registered in connection with a flat with unpaid premium, and that the loan or mortgage may involve mortgaging an HOS flat without the approval of the Director of Housing, the HD will consider whether to institute prosecution. When considering these cases, HD will look into the actual circumstances of each case, in particular, whether the loan document contains any contractual terms or wording that may constitute a contravention of the Ordinance. Upon obtaining sufficient evidence, the HD will institute prosecution against the suspected person under section 27A of the Ordinance.

The HD, from time to time, finds that owners of HOS flats with unpaid premium have entered into loan agreements with finance companies in the form of personal loans and there is insufficient evidence in the agreement provisions to prove that the loans are secured by the HOS flats and thus

constitute a contravention of section 27A of the Ordinance. When necessary, HD will seek advice from the Department of Justice on whether all elements of the offence are available and whether there is sufficient evidence for instituting prosecution in individual cases. In the past five years (i.e. 2010-11 to 2014-15), a total of 27 persons, who were suspected of creating mortgages on subsidised flats with unpaid premium without the prior approval of the Director of Housing, were prosecuted for violation of section 27A of the Ordinance. Amongst these cases, 11 persons were convicted, three persons were acquitted, and the charges against two persons were withdrawn. The remaining 11 cases are still being processed.

On the other hand, under section 30(1) of the Money Lenders Ordinance, a person (including finance companies) shall not, by any false, misleading or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induce or attempt to induce any person to borrow money from a money lender. Offenders are liable to a fine of \$10,000 and six months' imprisonment.

In addition, the Hong Kong Monetary Authority (HKMA), as a banking regulator, is also aware that some finance companies provide personal loans to owners of HOS flats with unpaid premium. The HKMA requires banks engaging in mortgage lending to review borrowers' financial conditions from time to time. If banks find that a borrower's financial conditions have changed, including obtaining further mortgage financing from other financial institutions, they should review the borrower's repayment ability and take suitable measures to manage the increased risks. In cases where the borrower has encountered financial difficulties, banks should take the initiative to communicate with the borrowers, with a view to reaching a mutually acceptable repayment arrangement.

Meanwhile, as an organisation dedicated to improving financial knowledge and capability of the public in Hong Kong, the Investor Education Centre (IEC) has well noted the financial and debt management issues faced by the public as well as their knowledge and capability gaps. The topic of debt management and borrowing has been one of the IEC's core education focuses. In view of recent reports on borrowers' using property as collaterals to apply for loans, the IEC will enhance education

initiatives on borrowing and debt management in the coming months, including media columns, website, e-newsletter, education campaign on IEC Calculators and outreach seminars etc.

The Government will continue to monitor the latest development of the property market and the evolving external environment. The Government will not hesitate to introduce measures when necessary, in order to maintain the healthy and stable development of the property market.

- ENDS -

Annex B

Following is the reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, to the question raised by the Hon Alice Mak at the Legislative Council (LegCo) meeting on 17 June 2015 -

LegCo Question 1: Regulation of financial intermediaries

Question:

In recent months, quite a number of members of the public have relayed to me that some staff members of financial intermediaries, impersonating staff members of banks, telephoned them to persuade them to refinance their properties. Such financial intermediaries even colluded with finance companies to charge the victims exorbitant intermediary fees. Should the victims concerned refuse to pay the fees, the financial intermediaries would harass and intimidate them incessantly, causing great distress to them and their families. It is learnt that some financial intermediaries could accurately tell the victims' personal particulars when telephoning them, thus winning their trust. So far, I have received 69 such complaints involving a total sum amounting to over \$49 million, indicating that the problem is serious. In this connection, will the Government inform this Council:

(1) whether it has studied if the aforesaid business practices of financial intermediaries are in contravention of the Money Lenders Ordinance, the Trade Descriptions Ordinance or other legislation; if the study outcome is in the affirmative, of the number of prosecutions against such contraventions instituted by law enforcement agencies in the past three years; whether the authorities will step up law enforcement actions in response to such increasingly rampant practices; if they will, of the specific measures; if not, the reasons for that;

(2) given that among the complaints I have received, nearly half of them involved the owners' refinancing of their subsidised sale flats with unpaid premium, whether the authorities will step up publicity to remind owners of subsidised sale flats of the requirement to obtain approval from the Director of Housing before they may refinance their flats with unpaid premium; whether the authorities will further streamline the current

procedures of vetting and approval of refinancing applications; if they will, of the specific measures; if not, the reasons for that; and

(3) whether, in order to combat the aforesaid malpractices of financial intermediaries, the authorities will adopt new measures, including (i) amending the relevant legislation to limit the fees charged by financial intermediaries, (ii) making public the information about the finance companies and financial intermediaries involved in such malpractices, so as to prevent members of the public from inadvertently falling into lending traps, and (iii) requiring banks, other financial institutions and credit reference agencies to review their mechanisms for protecting the personal data of their customers; if they will, of the specific measures; if not, the reasons for that?

Reply:

President,

Hon Mak's question contains three parts. I will first answer parts (1) and (3).

Regarding the issue of financial intermediaries suspected of colluding with money lenders to charge excessive intermediary fees and inducing the public to obtain loans from money lenders, the existing Money Lenders Ordinance (MLO) expressly prohibits a money lender from colluding with any person to charge a fee from a borrower unlawfully. It is also a criminal offence to fraudulently induce any person to borrow money from a money lender by any false, misleading or deceptive statement, or by any dishonest concealment of material facts. Offenders may be liable to fine and imprisonment.

If a financial intermediary engages in a commercial practice prohibited by the Trade Descriptions Ordinance (TDO) such as "false trade descriptions" or "misleading omissions", it commits an offence and may also be liable to fine and imprisonment.

If the acts of a money lender or a financial intermediary involve criminal elements, the Police may deal with the matter and take follow-up

actions in accordance with existing legislation such as the Crimes Ordinance.

From 2012 to 2014, the Police instituted 44 prosecutions against money lenders and financial intermediaries under the MLO, with 23 persons being convicted. The Police has also conducted three special operations recently in this regard and arrested a total of 80 persons.

For the implementation of the amended TDO with effect from July 19, 2013 up to end May 2015, the Customs and Excise Department has received a total of 78 complaints involving financial intermediaries and referred appropriate cases to the Police for follow-up under the MLO. The remaining cases were closed as the complainants withdrew the cases, or the complainants were unable to provide adequate information, or the cases did not involve a contravention of the TDO.

It has been proposed that the relevant legislation should be amended to limit the fees charged by financial intermediaries. As stated above, the MLO already clearly provides that it is a criminal offence for a money lender to collude with a financial intermediary to charge a fee from a borrower unlawfully. The TDO covers the unfair trade practices such as "false trade descriptions" and "misleading omissions" of service providers including financial intermediaries. The existing legislation has enabled the law enforcement agencies to prosecute money lenders and financial intermediaries suspected of unlawfully charging fees. There have also been successful convictions in the past in this regard.

The Government will rigorously handle breaches of the relevant ordinances and take enforcement action against malpractices of financial intermediaries. The Investor Education Centre (IEC), the Consumer Council and the Police have taken measures to raise awareness of such fraudulent practices through different channels and to remind the public to understand thoroughly the terms and conditions concerning the fees and charges in any loan agreements or financial contracts.

Loan and debt management has all along been a focus of IEC's key education efforts. The IEC has, starting from this June, launched a series of education activities on borrowing to draw the public's attention to the

points to note and the risks involved in borrowing when using property as collateral. By using various channels such as the mass media, outreach talks and other activities, the IEC will continue to promote the importance of smart use of loan and proper debt management among the public, especially students, the youth and the elderly, and will launch more education activities on loan secured by using property as collateral when necessary. The Police has also produced and aired in the "Police Magazine" Programme a simulated case with the theme of combating loan deception.

Banks and credit reference agencies are required to comply with the Personal Data (Privacy) Ordinance and the Code of Practice on Consumer Credit Data issued by the Privacy Commissioner for Personal Data. The Hong Kong Monetary Authority (HKMA) has also issued clear guidelines requesting banks to have adequate control measures to prevent leakage of customers' personal data by bank staff. Last October, the HKMA issued a circular requesting banks to strengthen their control measures for easier detection of leakage of customer data and minimising the risk of such leakage. The HKMA has also requested all retail banks to appoint an independent assessor (such as their internal audit department) to conduct regular review of their compliance with the relevant guidelines.

As regards part (2) of the question, the Housing Ordinance stipulates that Home Ownership Scheme (HOS) flats are subject to alienation restriction. Unless owners have met the specific requirement (such as payment of premium or obtaining the approval of the Director of Housing, etc.), they are prohibited from selling, letting, mortgaging or in any way alienating or parting with possession of their flats. If flat owners with premium not yet paid wish to refinance their flats, prior approval must be obtained from the Director of Housing. Refinancing will only be approved for cases of financial hardship whereby an immediate sum of money is needed to meet personal or family expenses arising out of unforeseen circumstances. To refinance the HOS flats without paying the premium and without obtaining prior approval from the Director of Housing constitutes a contravention of section 27A of the Ordinance. The person, whether as lender, borrower or otherwise, may be liable to fine and imprisonment.

Information about the alienation restriction of HOS flats and application procedures of refinancing is available on Housing Department (HD)'s website. Flat owners may also lodge enquiries to the HD or call the Government's or the Hong Kong Housing Authority's hotlines. Currently, HOS owners have sufficient access to relevant information.

HD reviews the procedures in processing refinancing applications from time to time to streamline procedures and to facilitate applicants in need. With effect from September 1, 2014, so long as an applicant's solicitor has ensured that the legal charge contains the terms and provisions as required by HD when preparing the legal charge, it is not necessary for the applicant to submit it to HD for approval. With effect from June 1 this year, HD also launched new measures by simplifying the existing procedures and enhancing the application form to help reduce the processing time.

Moreover, HD issued a press release about a successful prosecution case in which a HOS flat owner was found to have breached the Ordinance by charging his flat for obtaining a loan. HD reminded the public that it is an offence for a subsidised housing flat owner to unlawfully mortgage, charge, assign or otherwise alienate their subsidised housing flat without paying the premium, and that such a transaction, together with any related agreement, will also be void and all participants will breach the law.

- ENDS -