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Panel on Housing

Meeting on 6 July 2015

**Background brief on refinancing of Home Ownership Scheme flats with
premium unpaid
prepared by the Legislative Council Secretariat**

Purpose

This paper provides background information on refinancing of Home Ownership Scheme ("HOS") flats with premium unpaid, and gives a summary of the major views and concerns expressed by Members on the subject in the 2014-2015 legislative session.

Background

Alienation restriction on HOS flats

2. HOS flats are subsidized 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 subsidized housing including HOS flats under the Housing Ordinance (Cap. 283) ("the Ordinance"). Under the alienation restriction, HOS flat owners are prohibited from selling, letting, mortgaging or in any way alienating or parting with possession of their flats unless the owners have met the specified requirements (e.g. payment of premium or obtaining the approval of the Director of Housing, etc.). Alternatively, these flats may be sold to households with Green Form status without payment of premium in the HOS Secondary Market.

3. 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 a maximum fine of \$500,000 and to imprisonment for one year.

4. According to the Administration, not every loan agreement involving HOS flats will invoke the alienation restriction stipulated under sections 17B and 27A of the Ordinance. In general, only loan agreements which involve using HOS flats with premium not yet paid as securities may invoke section 17B and contravene section 27A.

Applications for refinancing without payment of premium

5. If HOS flat owners wish 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 financial hardship arising from business activities.

6. Refinancing applications on other grounds (such as personal financial problems) will be considered by the Director of Housing on a case-by-case basis. The maximum amount of refinancing loan permissible will be limited to the difference between 80% of the sale price of the HOS flat assessed by the Director of Housing as at the date of the application for refinancing and the amount of any outstanding mortgage loan.

Premium Loan Guarantee Scheme

7. Currently, the Hong Kong Mortgage Corporation Limited ("HKMC")'s Premium Loan Guarantee Scheme facilitates subsidized flat owners (including HOS flat owners) to take out a loan on top of the existing mortgage loan through their mortgage banks to pay off the premium. On 21 April 2015, HKMC announced that its Board has approved the launch of the Premium Loan Insurance Scheme ("PLIS")¹ to help owners of subsidized sale flats who are above 50 years of age to pay premium. According to HKMC, PLIS will

¹ PLIS is a loan arrangement provided by banks, whilst HKMC serves as an insurer providing insurance to the participating banks. Under PLIS, eligible borrowers will be granted loans against their properties as security primarily for settling premium payment to HA, the Hong Kong Housing Society and the Government. As long as the borrowers continue to own the properties, they are not required to repay the loan during their life time. After settling the premium payment, the borrowers will have greater flexibility in letting out or selling the properties in the open market. The maximum loan amount depends on several factors including the market value of the property, the number of borrowers, the age of the borrowers and the mortgage plan that the borrowers choose.

initially cover HOS and the Flat-For-Sale-Scheme, and be extended to cover other schemes in stages. HKMC plans to launch PLIS in the latter half of 2015.

Major views and concerns expressed by Members

8. At the Council meeting on 13 May 2015, Hon WONG Kwok-kin raised a question relating to mortgage loans taken out for HOS flats with unpaid premium. At the Council meeting on 17 June 2015, Hon Alice MAK Mei-kuen raised a question on regulation of financial intermediaries. On 20 April 2015, Hon Alice MAK Mei-kuen issued a letter requesting the Panel on Financial Affairs to discuss issues relating to licensed money lenders. On 28 May 2015, Hon Alice MAK Mei-kuen, Hon WONG Kwok-hing and Hon KWOK Wai-keung issued a joint letter to the Administration on issues relating to illegal refinancing of HOS flats with premium unpaid, investigation of and enforcement against contravention of the alienation restriction on HOS flats, as well as related publicity to HOS flat owners. The Council questions and the Administration's written replies, as well as the letters mentioned above are hyperlinked in the **Appendix**. The major views and concerns expressed by Members on the above issues are summarized in the ensuing paragraphs.

Illegal refinancing of HOS flats with premium unpaid

9. Members noted with concerns about the increasing number of cases involving alleged contraventions of section 27A of the Ordinance in the recent year. Members expressed concerns about the law enforcement actions taken by the Administration against these cases, and sought information on the number of cases into which the Administration had conducted investigations and/or instituted prosecutions, as well as the number of convictions, in the past five years.

10. The Administration advised that up to May 2015, 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) in the past five years (i.e. 2010-2011 to 2014-2015). During the period, a total of 27 persons, who were suspected of creating mortgages on subsidized 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.

11. The Administration pointed out that, according to the past experience of the Housing Department ("HD") in scrutinizing 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 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, HD would examine the relevant land search records when processing applications for premium assessment and transfer of ownership. In the past five years (i.e. 2010-2011 to 2014-2015), HD had 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 had been registered in connection with a flat with unpaid premium, and that the loan or mortgage might involve mortgaging an HOS flat without the approval of the Director of Housing, HD would consider whether to institute prosecution. When considering these cases, HD would look into the actual circumstances of each case, in particular, whether the loan document contained any contractual terms or wording that might constitute a contravention of the Ordinance. If necessary, HD would seek advice from the Department of Justice.

Approval procedures for HOS refinancing applications

12. There were concerns from some Members as to whether illegal refinancing of HOS flats with unpaid premium might be given rise by certain weaknesses/loopholes associated with HD's approval procedures for refinancing applications, such as a long waiting time for approval as some applicants claimed. Some Members suggested that the Administration should streamline the approval procedures.

13. The Administration advised that HD reviewed 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 1 September 2014, as long as the applicant's solicitor had ensured that the legal charge would 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 was not necessary for applicants to submit the draft legal charge to HD for approval. This new arrangement helped shorten the time required for processing the refinancing applications and save the approval charges. The Administration further advised that information on refinancing of HOS flats and the application procedures were available to the public on HD's website. For enquiries on such matters, HOS flat owners could also contact the respective Estate Management Offices.

Malpractices of money lenders

14. Noting that a number of finance companies launched loan schemes specifically for HOS flats with unpaid premium, and mislead flat owners into

believing that remortgaging HOS flats this way was not illegal, Members urged the Administration to strengthen publicity to remind HOS flat owners of the risks involved and step up law enforcement efforts. Members also requested the Administration to monitor the risks posed by mortgages of subsidized flats with unpaid premium, and the liabilities of the owners concerned, as well as assess the impacts of the relevant situation on the overall property market.

15. The Administration advised that under section 30(1) of the Money Lenders Ordinance (Cap. 163), a person (including finance companies) should 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 were liable to a fine of \$10,000 and six months' imprisonment.

16. As regards monitoring of risks associated with mortgages of HOS flats with unpaid premium, the Administration apprised Members that the Hong Kong Monetary Authority ("HKMA"), as a banking regulator, was aware that some finance companies provided personal loans to owners of HOS flats with unpaid premium. HKMA required banks engaging in mortgage lending to review borrowers' financial conditions from time to time. If banks found that a borrower's financial conditions had 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 view of the recent reports on borrowers' using property as collaterals to apply for loans, the Investor Education Council would enhance education initiatives on borrowing and debt management, including media columns, website, e-newsletter, education campaign and outreach seminars, etc.

Latest development

17. The Panel on Housing will discuss with the Administration issues relating to refinancing of HOS flats with premium unpaid at the meeting on 6 July 2015.

Relevant papers

18. A list of relevant papers is set out in the **Appendix**.

Refinancing of Home Ownership Scheme flats with premium unpaid

List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Financial Affairs	--	<p>Letter dated 20 April 2015 from Hon Alice MAK Mei-kuen on issues relating to licensed money lenders (Chinese version only) (LC Paper No. CB(1)955/14-15(01))</p> <p>Administration's written response to issues raised by Hon Alice MAK (LC Paper No. CB(1)955/14-15(02))</p>
Panel on Housing	--	<p>Joint letter dated 28 May 2015 from Hon Alice MAK Mei-kuen, Hon WONG Kwok-hing and Hon KWOK Wai-keung addressed to the Administration expressing concerns about illegal refinancing of Home Ownership Scheme flats with unpaid premium, and requesting the Administration to discuss related issues (Chinese version only) ("the Joint Letter") (LC Paper No. CB(1)910/14-15(01))</p> <p>Administration's written response to the Joint Letter (Chinese version only) (LC Paper No. CB(1)960/14-15(01))</p>

Hyperlink to relevant Council Question:

Date	Council Question
13 May 2015	Council question (written) raised by Hon WONG Kwok-kin http://www.info.gov.hk/gia/general/201505/13/P201505130487.htm
17 June 2015	Council question (oral) raised by Hon Alice MAK Mei-kuen http://www.info.gov.hk/gia/general/201506/17/P201506170421.htm