

**THE ROLE AND CONDUCT OF HONG KONG  
SOLICITORS IN PRC PROPERTY TRANSACTIONS**

Submission to: The LegCo Panel on Administration of Justice and Legal Services

**THE**

**LAW SOCIETY OF HONG KONG**

**香 港 律 師 會**

## **SUBMISSION TO:**

**The LegCo Panel on Administration of Justice and Legal Services —**

## **THE ROLE AND CONDUCT OF HONG KONG SOLICITORS IN PRC PROPERTY TRANSACTIONS**

### **1. INTRODUCTION**

- 1.1 Solicitors are members of a self-regulating profession.
- 1.2 The Council of the Law Society is the governing body.
- 1.3 Responsibility for regulatory matters has been delegated by the Council to the Standing Committee on Compliance. Investigation Committees, which are sub-committees of the Standing Committee, adjudicate on the vast majority of complaints, and those decisions can be reviewed by the Standing Committee.
- 1.4 The Conduct Section of the Secretariat investigates complaints and compiles the reports which form the basis of the adjudications.
- 1.5 In the appropriate cases, the Standing Committee refers complaints to the Disciplinary Tribunal, which is an independent statutory body and the Disciplinary Tribunal will investigate the conduct of the solicitors.
- 1.6 A brief discussion of the Investigation Process can be found in the Interim Report published in September 1996 (**ANNEXURE 1**, paragraphs 17 to 22).

### **2. PRC PROPERTY TRANSACTIONS**

- 2.1 The Law Society shared the evident concern of members of the public and legislators in the problems experienced in this sector. A Working Party was established in August 1996 to look into complaints made by members of the public against solicitors involved in PRC property transactions.
- 2.2 The Law Society adopted an open approach. An Interim report was issued in September 1996, a Second report was issued in September 1997 (**ANNEXURE 2**) and a Third report (a short one) on 26 November 1998 (**ANNEXURE 3**).
- 2.3 Mr. Peter Sit, the Chairman of the Standing Committee on Compliance, was requested to co-ordinate the work of the Working Party, various aspects of publicity and also the Conduct Section investigations into the complaints.

2.4 The Working Party made several recommendations including:

- a Publicity Campaign, highlighting the differences between the Hong Kong system of conveyancing and that in the PRC;
- where necessary the issue of guidelines to members to ensure that clients were fully informed of a solicitor's function in overseas property transactions; and
- resolution of the investigations into the complaints.

### **3. REVIEW OF COMPLAINTS**

3.1 The numbers of complaints received by the Law Society about PRC property transactions have greatly declined. This is a positive endorsement of the efforts of the Working Party.

3.2 During the years 1995, 1996, and 1997 there had been 123 complaints.

3.3 In 1998 there were 15 complaints.

3.4 In 1999 there were 5 complaints.

3.5 Investigations into 138 complaints have been completed and the parties notified of the decisions reached. Only 5 complaints (all of which were lodged in 1999) are still under investigation.

### **4. THE INVESTIGATION PROCESS**

4.1 Obviously, the Society seeks to investigate all complaints fairly impartially and effectively and it has to work within the legal constraints and limitations upon its authority. Thus, for instance:

- allegations of negligence or of breach of contract are for the courts;
- mere inadvertence does not constitute professional misconduct;
- complaints that a solicitor failed to discharge the duties of a China-appointed Attesting Officer (CAAOs) imposed upon him by the Administrative Measures for Administration of China-Appointed Attesting Officers (Hong Kong) 1995 and the Association of CAAOs, and not by the Legal Practitioners Ordinance and the Law Society of Hong Kong, have first to be referred to the Association of China Appointed Attesting Officers Limited (The Association of CAAOs).

4.2 When it is concluded a solicitor has committed minor breaches of the standards of conduct expected, then letters of regret or disapproval can be issued.

## **5. SOLICITORS AS CAAOs**

5.1 The Working Party identified that the crux of the problem leading to many of the complaints was that buyers of PRC properties at the time did not understand the differences between solicitor and solicitor acting as CAAOs only. Paragraphs 12 to 14 of the Interim Report refer.

5.2 Many solicitors represented to the Law Society that they only acted for complainants at the stage of sale and purchase agreements in PRC properties, they also acted as CAAOs, but did not act for the complainants thereafter, although certain gratuitous services may have been rendered subsequently.

5.3 Most of the complainants suggested that developers failed to complete construction work or that descriptions of properties and materials varied from those promised. Some complained the solicitors had been negligent.

## **6. LIAISON WITH THE ASSOCIATION OF CAAOs**

6.1 The Law Society has developed an active liaison with the Association of CAAOs.

6.2 There were ten instances of complaints relating to breaches of duty on the part of CAAOs's handling of the transactions being referred to the Association of CAAOs. These were cases where the complaint was against the conduct of a solicitor beyond the professional rules of the Law Society but were likely to be matters governed by the CAAO measures and the Association of CAAOs.

6.3 In each instance when the Association of CAAOs has deliberated upon the matter it has informed the Society of the result of its investigations. The Law Society has been notified of the results of seven such cases.

6.4 That may not, however, necessarily be the end of the matter. Should the result of that investigation indicate the solicitor had been guilty of professional misconduct as a CAAO it is open to the Law Society to reopen its own investigation. The Law Society has no authority to administer the rules relating to members of the Association of CAAOs but it can, and does, investigate all aspects of the practice of a solicitor.

## **7. DISCIPLINARY PROCEEDINGS**

7.1 In 10 cases, files relating to solicitors were referred to prosecutors with a view to institute disciplinary proceedings.

7.2 In one case, which has already been heard by a Tribunal, a solicitor was fined a substantial sum of HK\$150,000.00.

7.3 Active steps are being taken in respect of the remaining cases.

## **8. THE PUBLICITY CAMPAIGN**

8.1 The Law Society first published a leaflet about PRC conveyancing transactions in October 1997. The leaflet was subsequently revised.

8.2 It proved to be a popular leaflet (approximately 2,500 copies having been distributed to date) and had to be republished in August 1998, and again in December 1998.

8.3 The leaflets have been distributed free of charge to the public as part of the Law Society's efforts to highlight the differences between the conveyancing procedures in the PRC and Hong Kong and the role of CAAOs in PRC property transactions.

8.4 A copy of the current issue is annexed at **Annexure 4**.

## **9. CONCLUSION**

The Law Society while not complacent about developments believes that, in the main, the problem has been successfully addressed. It will continue to monitor the situation and will not hesitate to take any further action it might consider appropriate in the light of future developments.

## **ANNEXURE 1**

**THE WORKING PARTY'S INTERIM REPORT**  
**ON COMPLAINTS AGAINST SOLICITORS**  
**INVOLVED IN CHINA PROPERTY TRANSACTIONS**

**BACKGROUND**

1. On 2nd August 1996 a delegation of ten representatives of 全港大陸問題樓盤聯委會 attended the Law Society Office and handed to the President of the Law Society a bundle of complaints against various solicitors. Those solicitors were previously involved in handling China Property transactions. **Appendix A** is an extract of the minutes of the meeting held on 2nd August 1996.
2. The President appointed Mr. Vincent Liang, Vice President, Mr. Herbert Tsoi, Chairman of the Standing Committee on Compliance and Mr. Anthony Chow, Council Member and himself to form a Working Party to look into the complaints.
3. The Working Party also reviewed all similar complaints on the same subject received by the Law Society prior to 2nd August 1996 and fresh complaints which the Law Society received after 2nd August 1996.

**CLASSIFICATIONS (Appendices B, C and D)**

4. There are altogether 250 aggrieved buyers. Their complaints can be classified into 78 cases against 34 firms of solicitors.
5. Of those 78 cases, 8 did not contain any complaint against any party.
6. In 6 cases, the buyers complained against the developers only.

7. In 31 cases, the buyers alleged the developers failed to complete the projects. Some of the buyers have paid more than half of the purchase price to the solicitors and the solicitors released the money to the developers.
8. In 12 cases, the buyers alleged the developers delayed in completing the projects. The buyers felt that they have no remedy. As the contracts are governed by the law of China and the developers have no assets outside China, the buyers should take proceedings in China. However all the buyers are living in Hong Kong. Taking legal action in China can be costly, time consuming and troublesome.
9. In 4 cases, the buyers questioned whether the projects have completed and whether the buyers have the right to use the units which they have bought. The Certificates of Completion require the approvals of four to five authorities in China. There is not a single piece of legislation in China to say how many chop marks (each representing an approval by an authority) would be required before a certificate becomes effective. In Hong Kong, a developer only needs to show the buyers the occupation permit (and sometimes also the certificate of compliance) as evidence of project completion. No permit or certificate will be issued by the Lands Department of Hong Kong unless all the necessary requirements are fulfilled. In China, certificates may be given before all the relevant authorities have given their approvals.
10. In 13 cases there are disputes on floor area, quality, landscaping, fitting, furniture, appliances and equipment. The completed units are said to be different from those advertised in the newspapers and the sales brochures. Agreements for uncompleted buildings in Hong Kong have to specify the saleable area (a term which is well defined), the materials to be used, the brand name, models and specifications of the furniture, fittings, appliances and equipment to be supplied.
11. In 4 cases, the buyers complained the authorities in China charged very high fees for installation of public utilities including water and electricity. When possession of the property was obtained, the Government levied an additional 3% of the value of the property as property tax.

## CRUX OF THE COMPLAINTS (Appendix E)

12. The people in Hong Kong are accustomed to having solicitors to handle their property transactions. China has a different conveyancing system and practice. It has title registration and the conveyancing work is mainly carried out not by lawyers but by a special category of persons called attesting officers. For the purpose of giving a true and legally effective attestation to documents signed in Hong Kong and used in China the Ministry of Justice created the system of China-Appointed Attesting Officers in Hong Kong. Their functions are different from solicitors.
13. Many buyers complained that the solicitors in the transactions did not act for them, or accept their instructions to sue the developers, or ensure the purchase considerations were properly used, or help them to get back their money from the defaulting developers. They felt aggrieved when the solicitors claimed that they took on the role of China-Appointed Attesting Officers only and did not act as the buyers' solicitors. In their capacity as China-Appointed Attesting Officers, they could not offer the buyers any assistance. The complainants did not understand the difference between solicitors and solicitors acting as attesting officers only. Their perception was that the solicitors were using this technicality to avoid responsibilities. Some said the solicitors did not explain to them the role the solicitors played before they purchased the units.
14. The general feeling among the complainant buyers was that solicitors favoured the developers and did not want to act contrary to the interests of the developers.
15. There are cases where the solicitors' integrity is put in issue. Some of the more serious allegations are:-
  - (a) solicitors who were not Appointed Attesting Officer pretended they were qualified to handle the transactions;
  - (b) pages were taken away or added to the documents without the buyers' knowledge after they had signed the agreements;

- (c) the name of the Hong Kong developer was erased from the agreement without the buyer's approval after execution of the agreement;
  - (d) solicitors forced buyers to complete even though the title was known to be defective and the project work was not yet completed.
16. There are cases where the buyers complained that the handling solicitors have been negligent.

### INVESTIGATION PROCESS

17. The Working Party takes a very serious view on allegations of misconduct and recommends the Investigation Committee to expedite its process of investigation. It is not however the function of the Working Party to deal with individual investigations; such work will have to be undertaken by the Investigation Committee and independent Disciplinary Tribunals.
18. The Law Society will as the governing body of solicitors investigate every complaint it receives. An Investigation Officer is assigned to every case and the Investigation Officer will examine and study the papers. If information is insufficient or documents are not complete, the Investigation Officer will contact the Complainant to obtain further materials. The Officer will send the complaint letter to the solicitor concerned requesting him to explain within 14 days. It will be a professional misconduct if a solicitor fails to reply. On receipt of the explanation, the Investigation Officer prepares a brief report and sends it together with the complaint letter, the letter of explanation and the respective supporting materials, if any, to an Investigation Committee for recommendation.
19. The Investigation Committee consists of three members of the Standing Committee on Compliance. They are usually senior members of the profession who are specialised in the relevant areas of practice. They will study the papers and individually give their comments. The Investigation Officer collates their views and report them to the Standing Committee which then deliberates and decides on the merits of each complaint and the Standing Committee will make a recommendation to the Council

where necessary.

20. The recommendations are broadly divided into the following:-

- (a) That the complaint is not substantiated. These are cases where the evidence produced by the complainant is so weak that the complaint could not possibly be proved.
- (b) That further advice or opinion is required. These are cases where certain points of law are involved which cannot be easily resolved.
- (c) That letters of regret or disapproval are dispatched. These letters are issued to the offending solicitors. Evidence clearly indicates that certain irregularities have been committed but not of significant importance.
- (d) That the matter is referred to the Disciplinary Tribunal for investigation.

21. The Disciplinary Tribunal is a statutory body. It is independent and is outside the influence of the Law Society. Once the Law Society refers a complaint to the Tribunal Convenor, a separate Tribunal will be constituted. Every Tribunal consists of three members, two of them are selected from Panel A and one selected from the Panel B. The Panel A members comprise solicitors with over 10 years standing and all appointed by the Chief Justice. The Panel B members are members of the public appointed by the Chief Justice.

22. The Tribunal will hear and consider evidence from the complainant, the solicitor respondent and witnesses from both sides. It will then make its findings and deliver a decision. The Tribunal will dismiss the complaint if the Respondent is found not guilty. If the complaint is substantiated, the Tribunal shall pass sentence which will be one or more of the following:-

- (a) Impose fine of up to \$500,000.00;

- (b) Reprimand;
- (c) Suspend the solicitor's right to practice;
- (d) Strike the solicitor off the roll; and
- (c) Pay the costs of the proceedings.

23. **Appendix F** sets out the different stages the complaints have reached. One complaint has already been referred to the Disciplinary Tribunal.

#### INTERIM RECOMMENDATIONS

24. The Working Party's interim recommendations include:-

- (a) That a publicity campaign should be carried out by the Law Society to let the public be aware of the differences between the Hong Kong system of conveyancing and China's system of conveyancing.
- (b) That the Law Society should consider issuing guidelines to its members requiring them to take steps to ensure that the parties fully understand what they can expect from solicitors in overseas property transactions.
- (c) That the Investigation Committees should finalise their investigation as soon as possible.

11th September 1996

## *APPENDIX*

- Appendix A : Record of Meeting with the representatives on 2nd August 1996
- Appendix B : Cases lack of information
- Appendix C : Cases where the Complaint is directed against the developer only
- Appendix D : Summary of Facts
- Appendix E : Summary of Complaints
- Appendix F : Investigation Progress

**APPENDIX A : RECORD OF MEETING ON 2ND AUGUST 1996**

Ten members of a delegation representing 6000 buyers of property in China attended the Law Society on 2nd August 1996 at 11.00 am.

Mr. Christopher Chan (President), Mr. Vincent Liang (Vice President), Mr. Herbert Tsoi (Chairman of Standing Committee on Compliance) and Mr. Anthony Chow (Council member) received them at CLE Room. Ms. Irene Lau, the Assistant Director of External Affairs and Ms. Garbo Oy, Investigation Officer were also present.

They were accompanied by a Tuen Mun District Councillor, Mr. Chan Won Sang. The delegation verbally lodged a formal complaint concerning the purchase of property in the PRC.

They alleged that either of the flats were poorly built or the completed units were different from what was advertised.

The delegation told the Council members that they were not satisfied with the solicitors' service in that:-

1. The solicitors failed to warn the purchasers about the unfair terms in the contracts;
2. The solicitors claimed that they acted only for the developers and not for the purchasers. They tried to avoid responsibility.
3. The China Appointed Attesting Officers did not explain the difference between acting as solicitors and playing the role as attesting officers only;
4. The solicitors failed to assist the purchasers to get back the money and compensation;
5. The solicitors bullied the Complainants and behaved offensively when the complainants sought the solicitors' assistant.
6. The solicitors did not witness signing of contract and did not personally explain the contents of documents to them and left the work to the clerks.
7. Only the clerks, not the solicitors, explained the contents of documents;
8. Overcharging;
9. The contract which was notarised and given back to the buyer was different in some aspects from the one actually signed by the purchasers; and
10. No certificate of right to use land was issued to the purchasers long after the completion of the sale and purchase had taken place.

The members of delegation also handed over a bundle of documents, some complaint letters and copies of the chinese agreements of sale and purchase and receipts.

The delegation were informed that the Standing Committee on Compliance would deal with their complaints. They were also advised that it was for the court to decide what the solicitors' civil responsibilities would be.

Finally, the President assured the delegation that the Law Society would take action promptly and give a report within a month on how the complaints would be dealt with by the Law Society.

***APPENDIX B : CASES LACK OF INFORMATION***

1. The following are the cases where the buyers have supplied us with the documents e.g. the contracts and receipt but have not specified what their complaint are.
2. The Law Society has contacted the representative Mr. Wong and has requested for further information.
3. At present the law Society treats these documents as papers supplied for reference.
4. There are altogether 8 cases under this category.
5. Case Code Nos. A336, A345, A347, A351, A358, A365, A366 and A429.

***APPENDIX C : CASES WHERE THE COMPLAINT IS DIRECTED AGAINST THE DEVELOPER ONLY.***

1. Cases in this Appendix C are different from Appendix B cases in that Appendix C cases have complaint letters. These complaint letters are against the developer for failure to complete.
2. The Law Society has written to each of the Complainants and enquire whether they are not satisfied with the services of the solicitors concerned and whether their intention is to complain against the developer only
3. At present the Law Society is waiting for reply.
4. There are altogether 6 cases under this category.
5. Case Code Nos. A340, A349, A353, A354, A359 and A363.

**APPENDIX D : SUMMARY OF FACTS**

1. Developers failed to complete the projects.

Case Code Nos. : A091, A095, A139a, A139b, A139c, A139d, A222, A235, A245, A251, A333, A334, A337, A341, A346, A348, A350, A352, A355, A356, A357, A364, A382, A395 A415, A416, A425, A427, A428, A429, A430

Total : 31 cases

2. Developer delayed in completing the projects.

Case Code Nos. : A223, A387, A388, B139, B208, B232, B248, B252, B274, B282a, B282b, B284

Total : 12 cases

3. Buyers doubted whether the building was actually completed and whether they had the right to use the land.

Case Code Nos. : B159, B178, B184 and B264

Total : 4 cases

4. The unit has a floor area less than that described in the agreement.

Case Code Nos. : A368, B248 and B330

Total : 3 cases

5. The building was constructed with poor quality material and bad workmanship.

Case Code Nos. : A344, A381, A342, A388, A414, A426, B002, and B330

Total : 8 cases

6. The complete unit was different from that advertised in the newspaper or sale brochure in respect of landscaping, fitting, furniture, appliances and equipments.

Case Code Nos. : A220 and B159

Total : 2 cases

7. Purchasers were asked to pay more than expected including additional charges for installation of public utilities and increase of PRC Property tax.

Case Code Nos. : A165, A221, A388 and B267

Total : 4 cases

**APPENDIX E : SUMMARY OF COMPLAINTS**

1. The solicitors did not assist the buyers to get back the money when it was obvious that the project would not and could not be completed.

Case Code Nos. : A095, A222, A223, A235, A241, A250, A251, A348, A352, A364, A368, A381, A428, B208, B240, B264 and B282

Total : 17 cases

2. The buyers felt aggrieved because they thought that the solicitor firm represented for both sides, but later discovered that the firm had not acted for them when the firm acted for the developer to claim against the buyers for failure to complete the transaction.

Case Code No. : A382

3. The buyers felt that they were betrayed when the solicitor who acted for them in the transaction refused to accept instruction to claim against the developer.

Case Code No. : A095, A264, A334, A341, A343, A344, A348, A350, A357, A364, A368, A381, B208, B232, B274 and B284

Total : 16 cases

4. The buyers discovered that the solicitor in charge who acted for them in the transactions was the son of a director of the developer.

Case Code No. : A245

5. The solicitors did not ensure that the purchase price was properly used for the project. The solicitors did not follow the buyers instruction to return the money upon their request.

Case Code Nos. : A350, A357, A425, B139, B245, B274, B282 and B284

Total : 8 cases

6. The solicitors did not warn the purchaser of the unfair terms in the contract or at the time of settlement of claim.

Case Code Nos. : A221, A342, A388, A395, A415, A426, A428, A430, B139 and B282

Total : 10 cases

7. The solicitor forced the buyer to complete even though he knew that the title was defective and the project work was not yet completed.

Case Code No. : B139

8. The solicitor refused to produce certificates of occupation and completion unless instalment payment had been made.

Case Code No. : A414, B264

9. The solicitor did not inform the purchaser that the construction work was behind schedule.

Case Code No. : A095, A139, A350 and A387

Total : 4 cases

10. The solicitor did not inform the purchaser that the business of the developer was transferred to another person.

Case Code No. : B240, B282

11. The solicitor failed to notice that the developer did not comply with the terms of the contract.

Case Code No. : B159

12. The solicitor gave false assurances as to the reliability of the legal documents in securing completion of the project.

Case Code No. : B232

13. The solicitor gave very short notice for completion.

Case Code No. : B330

14. The solicitor wrongly advised the buyer to settle with the developer.

Case Code No. : A350

15. The solicitor failed to provide evidence that the construction had been completed.

Case Code No. : B184

16. The agreements given back to the purchasers were different from those they signed: either some pages were missing or some were added.

Case Code Nos. : B002, B248, and B252

Total : 3 cases

17. Solicitors charges were unfair:solicitors charges for completing the transaction where no assignment was signed and for cancellation where the transaction had follow through.

Case Code Nos. : A139, A221, and B282

Total : 3 cases

18. The solicitor refused to supply the names and details of buyers of other units in the same project.

Case Code No. : A250

19. The solicitor refused to amend the contract after signing.

Case Code No. : B184

20. The solicitor did not forewarn the buyers the amount of installation charges of public utilities and the increase in property tax.

Case Code Nos. : B267 and A165

Total : 2 cases

21. There were mistakes in the agreement prepared by the solicitor.

Case Code No. : A382

22. The solicitor did not notice that there was difference in the specifications between those advertised and those contained in the agreement.

Case Code Nos. : A220 and B159

Total : 2 cases

23. The solicitor did not notice that there was defect in the Certificate to use the property and Certificate of Completion.

Case Code Nos. : B159, B175 and B178

24. The solicitors were not China Appointed Attesting Officers.

Case Code Nos. : A339, A389, A416 and A427

Total : 4 cases

25. The solicitors failed to check the developer's title documents at the time the agreement was signed.

Case Code Nos. : A346, A418, A426, B139, and B282

Total : 5 cases

26. No appointed attesting officer was present at the time the contracts were signed by the Complainant

Case Code Nos. : A342, A395, A415, A428 and B139

Total : 5 cases

27. The name of the Hong Kong developer was erased from the contracts without the buyers' approval after the execution of the contracts

Case Code No : A139

28. The solicitor failed to advise the buyers that the Hong Kong developer was not properly incorporated

Case Code No : A426

29. The solicitor prepared different versions of contracts

Case Code No : B139

30. The solicitor failed to forward the contract for notarisation in the PRC

Case Code No : B282

31. There was a change of solicitor to handle the legal work involved in the transaction. The solicitor failed to notify the buyers when ceased to act.

Case Code No : A355

32. The solicitors failed to explain the contracts' terms

Case Code Nos : A342, A344, A357, A415

Total : 4 cases

## ***APPENDIX F : INVESTIGATION PROGRESS***

### **1. Waiting for solicitors' replies**

Case Code Nos. : A139b, A222, A223, A234, A235, A237, A341, A342, A346, A348, A350, A351, A364, A382, A387, A388, A389, A414, A415, A416, A425, A426, A427, A428, A430, B139a, B139b, B139c, B139d and B282a, B282b

Total : 31 cases

### **2. Pending decision by Investigation Committee**

Case Code Nos. : A095, A219, A333, A339, A395, B208, B232, B248, B252, B267, B274, B282, B284 and B330

Total : 14 cases

### **3. Complaints not substantiated**

Case Code Nos. : A139a, A165, A220, A221, A223, A250,

Total : 6 cases

### **4. Letters of Disapproval**

Case Code Nos. : A091, B002 and B165

Total : 3 cases

### **5. Referral to China Attesting Officer Association for further action.**

Case Code Nos. : B139a, B159, B175, B178 and B184

Total : 5 cases

### **6. Report to ICAC by Complainant**

Case Code Nos. : B245 and B330

Total : 2 cases

### **7. Complaint withdrawn**

Case Code Nos. : A221 and A091

Total : 2 cases

### **8. Referral to Disciplinary Tribunal**

Case Code No. : B240

Total : 1 case

## **ANNEXURE 2**

**A SUMMARY OF**  
**THE WORKING PARTY'S SECOND REPORT**  
**ON COMPLAINTS AGAINST SOLICITORS**  
**INVOLVED IN MAINLAND CHINA ("CHINA") PROPERTIES**

**INTRODUCTION**

1. A Working Party was set up by the Law Society of Hong Kong ("Law Society") in August 1996 to look into complaints made by members of the public against solicitors involved in China properties.
2. The Working Party published its interim report on 6 September 1996 ("interim report"). In it the following recommendations were made:-
  - (a) That a publicity campaign should be carried out by the Law Society to let the public be aware of the differences between the Hong Kong system of conveyancing and China's system of conveyancing.
  - (b) That the Law Society should consider issuing guidelines to its members requiring them to take steps to ensure that their clients fully understand what they can expect from the solicitors in overseas property transactions.
  - (c) That the Investigation Committees should expedite their process of investigation.

**INVESTIGATION RESULTS**

3. Up to 23 September 1997, the Law Society received a total of 122 complaints against 46 solicitors in China property transactions. The Investigation Committees completed their investigations on 113 complaints, including the two complaints which the complainants

concurrently referred the matters to the Independent Commission Against Corruption (“ICAC”). All the complainants and solicitors involved in the 113 completed investigations have been advised of the results of the investigations. Of those 113 complaints, the Investigation Committees found:-

- (a) 86 complaints did not have a prima facie case against the solicitors involved;
- (b) 10 complaints should be (and have since been) referred to the Association of the China Appointed Attesting Officers’ Association;
- (c) in respect of 7 complaints, a letter of regret or a letter of disapproval should be (and has since been) sent to each of the solicitors and/or law firms for their minor breaches; and
- (d) in respect of 10 complaints, the matters should be (and have since been) referred to the Disciplinary Tribunal for disciplinary proceedings to be commenced.

#### **INVESTIGATION APPROACH**

- 4. The following general approach can be deduced from the results of the investigations.
  - (a) It is not the function of the Law Society to adjudicate a civil claim. Allegations of pure negligence or inadvertence which did not reveal any act of misconduct on the part of the solicitors should be considered by other tribunals or forums.
  - (b) For those cases where the crux of the complaints was that the solicitors failed to discharge their duties as China Appointed Attesting Officers (“CAAOs”), those complaints would be transferred to The Association for China-Appointed Attesting Officers Limited (“Association of CAAOs”) for their considerations.
  - (c) For minor breaches, a letter of regret or a letter of disapproval would be issued.

- (d) Solicitors who acted as witnesses of the signatures of the purchasers on China property contracts when they were not accredited CAAOs were considered by the Investigation Committees to have committed a serious misconduct. The Investigation Committees recommended that those complainants be referred to the Disciplinary Tribunal for disciplinary proceedings to be commenced (Note). Whether or not the solicitors in question were in breach of professional conduct will still have to be judged by the Disciplinary Tribunals.
- (e) In responding to Law Society's investigations, many solicitors stated that they only acted for the complainants at the stage of the sale and purchase agreements in China properties when they also acted as the attesting officers, but not for the complainants afterwards although on occasions they rendered gratuitous services to the complainants. Most of those complaints suggested the developers failed to complete the construction works, or the descriptions of the properties and materials used varied vastly from the descriptions given to the complainants at the time of sales. The Investigation Committees noted that in all those cases, no additional bills of costs were issued to the complainants for services rendered after the sale and purchase agreements. On the available facts, the Investigation Committees did not find a case of professional misconduct has been established; at the same time a standard letter was sent by the Law Society to each of those solicitors stating that if any of the assertions made by the solicitor should be found untrue, the Law Society reserved the right to re-visit the complaint and to consider appropriate actions.

### **SPECIFIC COMPLAINTS**

5. The interim report noted that some of the complaints put the solicitors' integrity in issue. The Investigation Committees have dealt with those complaints and their findings are as follows:-

- (a) solicitors who were not CAAOs pretended they were qualified to handled the transactions

The Investigation Committees did not find any case where a solicitor had deliberately misrepresented himself/herself as a CAAO when he/she in fact was not.

Nonetheless, based on the reasons set out above, all except two of those cases where a solicitor witnessed a sale and purchase agreement for China properties when he/she is not a CAAO have been referred to the Disciplinary Tribunal for disciplinary proceedings to be commenced against them.

- (b) pages were taken away or added to the documents without the buyers' knowledge after they had signed the agreements

There were two cases in this category of complaints.

In the first case, the solicitor explained that it was the developer who took away the pages on specifications on building materials from the China agreements after the agreements already executed by the purchasers were sent to them for signature. The solicitor stated that he was not aware that those pages were missing until the complainants raised that issue.

The Investigation Committee found that there was misconduct on the part of the solicitor for breach of Principle 9.03 of the Guide in that the solicitor continued to act for the developer and the complainants in the transactions when an obvious conflict of interest had arisen between those clients. A letter of disapproval was given to the solicitor.

In the second case, the complainant alleged that three pages of supplementary provisions were inserted in the standard agreement without his consent. The solicitor explained that the complainant had been given the standard agreement with

the supplementary provisions to read before the complainant was asked to sign the standard agreement.

The Investigation Committee found that on the available evidence, there was no professional misconduct on the part of the solicitor.

- (c) *the name of the Hong Kong developer was erased from the agreement without the buyer's approval after execution of the agreement*

The solicitor in question inserted the name of a corporation as the developer's agent in some of the sale and purchase agreements. That name was removed by the Notarial Public Office in a certain Guangdong county. The removal only came to the knowledge of the solicitor when the agreements were returned to him by the notarial office.

The Investigation Committee found that on the available evidence, there was no professional misconduct on the part of the solicitor.

- (d) *solicitors forced buyers to complete even though the title was known to be defective and the project work was not yet completed*

Some 80 complainants were purchasers of commercial units of a composite building, with commercial units below and residential units above the commercial units. The developer only constructed three storeys of commercial units and requested the complainants to complete the purchase of the commercial units.

The solicitor explained that the China authority certified the completion of construction work in respect of the commercial units in question. The solicitor obtained a legal opinion stating the purchasers were contractually bound to pay the balance of purchase price under China law.

The Investigation Committee found that on the evidence available, there was no professional misconduct on the part of the solicitor.

6. The interim report revealed that two cases had been referred by the complainants to the ICAC. The Law Society has not been advised by the ICAC on the progress or result of their investigations. Meanwhile the Investigation Committees examined the conduct of the solicitors involved and made the following findings:-

- (a) In the first case, the complainant accused the solicitor's firm in question of failing to monitor the appropriation of the sale proceeds and acting in a manner where conflict of interest would be unavoidable.

The solicitors explained that:-

- (i) they acted for the developer and not for the purchasers. They had made that clear to the purchasers at the outset. There was no conflict of interest although the handling solicitor was the son of one of the directors of the developer.
- (ii) there was no provision in the sale and purchase agreements that the solicitor's firm should act as stakeholders of the funds. There was no misappropriation of sale proceeds. The solicitor's firm already reported to the complainants on the way in which the sale proceeds were utilized.

The Investigation Committee found that on the evidence available, there was no professional misconduct on the part of the solicitor.

- (b) In the second case, the complainants complained that the units were of inferior building and structural quality and decoration standard, and that there was a deficiency in the floor area. The complainant apart from alleging that the solicitor's firm was negligent also suggested that the solicitor's firm did not act in

the interest of the complainant. The Investigation Committee found the complaint against the solicitor's firm in question not substantiated.

### **THE PUBLICITY CAMPAIGN**

7. The problems surrounding sales and purchases of China properties were given extensive media coverage in 1996 and early 1997. The Working Party on Publicity assisted in a number of television productions and news programmes. Members of Council also attended various seminars, talks and meetings regarding China properties. The public is now generally aware of the special characteristics and difficulties involving China properties and that the China system of conveyancing is very different from the Hong Kong system in the sale and purchase of uncompleted units.

### **THE PAMPHLET**

8. The Working Party held a total of four meetings. Sixteen topics concerning the Hong Kong type of conveyancing and the China type of conveyancing were selected for a detailed comparison. Members were divided into sub-groups. Each sub-group was responsible for delivering papers on some of the sixteen topics. After all the papers were submitted, a professional writer was employed to write up a concise Chinese text in a laymen friendly language. The final version of the pamphlet (which is in Chinese only) is appended hereto. The Council of the Law Society resolved to publish the pamphlet which is intended for public consumption.

### **THE GUIDELINES**

9. The Working Party has also submitted their draft guidelines. The Working Party however also noted that the method of selling China properties in Hong Kong has changed, viz. (a) less sales are going through solicitors; instead, purchasers are asked to appoint attorneys or authorised representatives to execute the sale and purchase documents in China and (b) most of the China properties for sale in Hong Kong nowadays are completed units. The

Working Party recommended that the publication of the proposed guidelines be further considered. The Council of the Law Society accepted the recommendation.

30 September 1997.

Note: In one case, the solicitor in question was not at the time a CAAO. A certain Notary Office in a Guangdong county accepted the agreements and proceeded to notarise the agreements notwithstanding the witnessing solicitor was not a CAAO. In another case, the solicitor argued that he was appointed by the Notary Office of certain Guangdong county as its agent. The Notary Office of that county notarised the agreements notwithstanding the solicitor was not a CAAO.

## **ANNEXURE 3**

**Letterhead of LAW SOCIETY OF HONG KONG**  
**香港律師會的信頭**

Our Ref : DC/MT/GO/wt/PRC  
Your Ref :  
Direct Line : 26th November 1998

**Please quote our reference**

**CONFIDENTIAL**

Mrs. Pandora Chan  
Legislative Council Secretariat,  
Legislative Council Building,  
8 Jackson Road, Central.

Fax:2521 7518

Dear Madam,

**Re : Problematic Residential Development in Guangdong Province**

We refer to your fax messages of 19th November 1998.

Up to 31st October 1998, the Law Society received a total of 137 complaints against solicitors in China properties transactions. The Investigation Committees completed their investigation on 134 complaints. Of those 134 complaints, the Investigation Committees found:

- a. 102 complaints did not have a prima facie case against the solicitors involved;
- b. 13 complaints should be (and have since been) referred to the Association of the China Appointed Attesting Officers' Association;
- c. in respect of 9 complaints, a letter of regret or a letter of disapproval should be (and have since been) sent to each of the solicitors and/or law firms for their minor breaches; and
- d. in respect of 10 complaints, the matters should be (and have since been) referred to the Prosecutor for disciplinary proceedings to be commenced.

The Solicitors' Disciplinary Tribunal has already dealt with one matter and its order will be delivered shortly.

Yours faithfully,

Anthony W.K. Chow  
President

## **ANNEXURE 4**

大陸內地房地產

知多少？



THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會