

立法會
Legislative Council

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Panel on Housing

**Minutes of special meeting
held on Friday, 28 January 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon LEE Wing-tat (Chairman)
Hon WONG Kwok-hing, MH (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Members attending : Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Fred LI Wah-ming, SBS, JP
Hon Vincent FANG Kang, SBS, JP

**Public officers
attending**

: For item I

Mr D W PESCOD, JP
Permanent Secretary for Transport and Housing (Housing)

Mr Eugene FUNG
Acting Deputy Secretary for Transport and Housing
(Housing)

Mr TANG Hung-ki
Assistant Director/New Buildings 1 (Acting)
Buildings Department

Mr YIP So
Chief Building Surveyor/Hong Kong West
Buildings Department

Ms Annie TAM, JP
Director of Lands

Mr CHAU Hon-yum
Assistant Director/Legal/PARD & NTE (Legal Advisory
and Conveyancing Office)
Lands Department

Mr Armstrong CHU
Chief Land Conveyancing Officer/ PARD (Legal
Advisory and Conveyancing Office)
Lands Department

Mr Ambrose HO, SC, JP
Vice-Chairman
Consumer Council

Ms Connie LAU
Chief Executive
Consumer Council

Mrs Rosanna URE
Chief Executive Officer
Estate Agents Authority

Attendance by invitation : For item I

Centaline Property Agency Ltd

Mr Sherman LAI
Group Chairman

Mr Raymond LI
Senior Sales Director

Mr William KWOK
Director (Corporate Risk Management)

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Mandy POON
Legislative Assistant (1)4

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I. Sale arrangements for uncompleted first-hand residential flats

Before commencing discussion, the Chairman invited representatives from the Administration to update members on the progress of regulation of the sales of first-hand private residential properties, particularly in the light of the recent complaints about the residential development at 38 Conduit Road (The Icon). The Permanent Secretary for Transport and Housing (Housing) (PSTH(H)) said that the Administration was concerned about the complaints relating to The Icon. Various government agencies, including the Buildings Department (BD), the Consumer Council (CC) and the Estate Agents Authority (EAA), were following up the cases closely. As the investigation work required the full co-operation of complainants with the authorities to provide evidence and to stand ready to serve as witnesses, he took the opportunity to appeal to anyone who had been affected by The Icon to fully cooperate with the relevant enforcement agencies so that a full investigation could be carried out. He said that those who had withdrawn their complaints should also consider providing information to the authorities.

Meeting with Centaline Property Agency Ltd

2. The Chairman said that apart from Centaline Property Agency Ltd (Centaline), invitation had been extended to Winfoong International Limited, developer of The Icon, which had declined to attend the meeting. He also informed members that Mr Sherman LAI, Group Chairman of Centaline, had to leave at around 11:45 am.

3. Mr Sherman LAI, said that Centaline had signed an estate agency agreement with the Winfoong International Limited in 2007 to act as the sole agent for the sales of The Icon. Information on The Icon was made available to Centaline in mid-2009 when the development was put on sale. Based on the information provided by the developer, Centaline had prepared promotional leaflets for distribution to prospective buyers. The sales had proceeded well and quite a number of units were sold. Upon the issuance of Occupation Permits (OP), some buyers had complained that the flats being handed over to them were unfinished. Centaline had since been liaising with developers with a view to addressing buyers' complaints.

4. Referring to promotional leaflets prepared by Centaline which indicated the availability of open kitchens in some of the units, Miss Tanya CHAN enquired if Centaline had made efforts to confirm whether the provision of open kitchen was in conformity with the layout plan and in compliance with building requirements. She understood that the developer had initially planned to provide open kitchens but subsequently changed the design. Based on copies of the building plans on The Icon submitted by the developer in 2008, 2009 and 2010 for approval by the Building Authority (BA), there was clear indication that enclosed kitchen was the standard design in the typical floor plan for 11th to 30th floors. She questioned why open kitchen was shown in the promotional leaflets. Mr Sherman LAI/Centaline said that the layout plan as set out in the promotional leaflets was based on information provided by the registered architects appointed by the developer. He recalled that the floor plans for one-room and two-room flats provided to Centaline in 2006 and 2007 contained open kitchens, but he was not certain whether these floor plans had the approval from BA. As the Agreement for Sale and Purchase (ASP) for The Icon had made it clear that floor plans would be subject to change, Centaline had proceeded to distribute the promotional leaflets based on the floor plan with open kitchens.

5. Mr Alan LEONG noted that according to the notice issued by EAA, estate agents were required to exercise due diligence in ensuring that the property information they disseminated was accurate and would not mislead their clients. As an experienced estate agency, Centaline should have been able to spot any irregularities with the layout plans. He enquired if Centaline had explained to

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buyers of A and B units of The Icon about possible contravention of the Building Ordinance (Cap. 123) (BO) in the event of conversion to open kitchens. Expressing similar concern, the Chairman held the view that Centaline should have the responsibility to check the propriety of converting the enclosed kitchen to open kitchen upon issuance of OP in November 2010 as the approved building plan depicted only the enclosed kitchen. He enquired if the buyers were duly informed of the approved layout with the enclosed kitchen. Mr James TO also enquired whether, Centaline, being an experienced estate agency, had any doubt over the legality of the alteration works to be carried out by the developer to convert the enclosed kitchen to an open one and if so, whether Centaline had taken the initiative to alert buyers of the possible implications.

6. Mr Sherman LAI/Centaline said that buyers had been provided with two floor plans, one with enclosed kitchen approved by BA and the other with open kitchens to be provided by the developer upon delivery of flats. There was no indication that the conversion works for the open kitchen were illegal. Centaline was an estate agency and not an architect or engineer, it could not tell from the building plans provided by registered architects whether the conversion to an open kitchen was unlawful. Besides, approval for building works could be given at different stages of construction. As Centaline was not aware of any non-compliance of the floor plans with open kitchens with building requirements, they had not alerted buyers on the legality of open kitchens. Moreover, it was the duties of the solicitors responsible for the conveyancing procedures to explain ASP to buyers to protect their interests. It was worth noting that no complaints had been received from buyers upon signing of ASP. He added that since the issue of OP in November 2010, the promotional leaflets had been suitably amended to reflect the one-room design with an enclosed kitchen. Notwithstanding, the developer as well as the buyers could seek formal approval for conversion of enclosed kitchens to open kitchens after OP had been issued.

7. Mr Ronny TONG said that the contention regarding The Icon case stemmed from a lack of understanding about BO. Under BO, alteration works not involving the structure of a building would not require formal approval from BA. While developers could advise buyers the types of alteration works that could be carried out in the units, they should also alert buyers on the need for BA's approval for such alteration works. As an estate agency, Centaline should check with the developer whether the partitioning wall for the kitchen in The Icon was a structural wall, and whether its removal would require formal approval because unlike other alteration works, alterations to kitchens might contravene fire safety requirements. Expressing similar concern, Ir Dr Raymond HO questioned why Centaline staff should advise buyers on the conversion to open kitchens if they were not in a position to do so. Mr Sherman LAI/Centaline said that as the building plans were provided by registered architects, Centaline had

assumed that these plans were in order with necessary approvals from the relevant authorities. Besides, the conversion to open kitchens should be in order as such had been provided by architects in the earlier floor plans.

8. Mr CHAN Kam-lam held the view that Centaline should have a good understanding of the layout plans and the standard fittings of The Icon as buyers would have to rely on the estate agency for such information since they could not contact the developer direct. As the sole agent, Centaline should have the responsibility to ensure that the plans and fittings were in compliance with building requirements as all information related to the development was disseminated to the buyers through the sole agent. As such, Centaline should not put all the blame on the developer. The Chairman enquired about the duration of the sole agency agreement on The Icon between Centaline and the developer. Mr Sherman LAI/Centaline said that the sole agency agreement had already expired in late 2009. During the period of sole agency, Centaline only had the exclusive right to sell the flats but not the additional responsibility to ensure compliance of the plans and fittings with building requirements, which should rest with the developer. Centaline had been disseminating property information to buyers based on that provided by the developer.

9. Mr WONG Kwok-hing questioned why the developer was willing to offer compensation to buyers if Centaline had fully discharged its duties and did not provide any misleading information to buyers. Mr Sherman LAI/Centaline said that as buyers were not satisfied with the unfinished condition of the flats upon delivery, Centaline had endeavoured to negotiate with the developer in working out compensatory arrangements, including the buy-back option, to address buyers' grievances. However, it was for the developer to decide on the course of actions to be taken. As a result of Centaline's efforts, the developer had increased the buy-back price from 110% to 120% of the original sale prices of the units concerned. Mr WONG held the view that the enhanced compensatory arrangements were meant to cover up the collusion between the developer and the estate agency. Mr Sherman LAI/Centaline said that the proposal to increase the buy-back price was meant to address buyers' discontent and the buy-back price would be borne by the developer. At present, 17 buyers had opted for the buy-back option.

10. The Chairman made reference to an earlier statement made by the former Chairman of Centaline at a press conference that Centaline agents were inexperienced in handling The Icon case, and that they might have circumvented certain procedures in relation to the conversion of the enclosed kitchen to an open one. Mr Sherman LAI/Centaline said that having reviewed The Icon case, he did not consider that there was circumvention on the part of Centaline. However, there was room for improvement that his agents should exercise more diligence in

ensuring the accuracy of property information.

11. Mr Abraham SHEK sought EAA's views on the statements made by Mr Sherman LAI/Centaline. The Chief Executive Officer, EAA (CEO/EAA) said that EAA required estate agents to take reasonable steps to verify the accuracy of any representation before dissemination of the same to clients, and to protect the interests of all parties. As the investigation on The Icon case was underway, she was not in a position to comment to avoid prejudicing the investigation.

Meeting with the Administration

(LC Paper No. CB(1) 1184/10-11(01) — Administration's paper on regulation of the sales of first-hand private residential properties)

12. The Chairman invited representatives from BD, EAA and CC to elaborate on their respective follow-up actions taken in respect of The Icon case.

13. The Assistant Director of Buildings/New Buildings 1 (Acting) (AD/NB1 (Atg)) said that The Icon was a 21-storeyed residential development at 38 Conduit Road with OP issued on 12 November 2010. The sales brochures setting out the green features of the development were submitted to BD for record on 5 October 2009 and 13 November 2009. After the issuance of OP, formal approval and consent from BA was required prior to the carrying out of structural alterations or other alteration works which might have implications on the safety of the building in accordance with the provisions of BO. In the light of the complaints from buyers of The Icon, BD had inspected some of the units on 18 and 21 January 2011. No unauthorized alterations were found in these units. BD would follow up the case and carry out further inspections as appropriate.

14. CEO/EAA said that since the problems associated with The Icon came to light, EAA had received five complaints from buyers of which two had been withdrawn. EAA was collecting evidence from the complainants and estate agents of Centaline. It had also written to the Winfoong International Limited, the developer, seeking information on The Icon.

15. The Vice-Chairman, CC (VC/CC) said that CC supported the introduction of a new legislation to regulate the sales of first-hand private residential properties under both the Consent and Non-Consent Schemes. The legislation should also govern the sale practices of private residential properties to protect consumer interest. Stakeholders, including developers and estate agents, should be required to provide accurate information on the properties on sale. As buyers might only have access to property information through estate agents, the latter

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should have the responsibility to ensure the accuracy of information. In accordance with the existing codes of practice, estate agents should be impartial to both vendors and purchasers. Estate agents had to ensure that the information contained in their promotional leaflets was accurate. Where there were changes in designs or layout plans, estate agents had to ascertain whether formal approval had been obtained. Without confirmation from the relevant authorities, estate agents should not advise buyers on the matters such as alteration works. An effective monitoring mechanism should be put in place to ensure compliance with the legislation. EAA should also strengthen its role in the regulation of estate agents. On the other hand, consumers should endeavour to raise questions to find out whether the property information provided was correct in order to protect their own interest. There might also be a need to review the duration of the liability period for first-hand properties as the present six-month period might not be sufficient given that some latent defects would not surface until a much later stage.

Existing mechanism

16. Mr Ronny TONG noted that some provisions in the sales brochures of first-hand properties were set out in a very fine print, making it very difficult to read. He considered it necessary for CC to regulate the presentation of sales brochures to ensure that essential information would be printed in an appropriate font size to draw the attention of prospective buyers. VC/CC said that sales brochures should contain clear information on the names of the development and developer, location plan, and floor area etc. CC was looking into means to tackle unfair contract terms in sales agreements. The Acting Deputy Secretary for Transport and Housing (Housing) said that under the Consent Scheme, developers were required to provide sales brochures which should contain, among other things, the name of the developer, the postal address of the development, the outline zoning plan of the district, and typical floor plans. Prospective buyers were advised to make reference to the information provided in the sales brochures and to visit the sites concerned to see the actual surroundings. The Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) would discuss specific issues pertaining to the regulation of the sales of first-hand residential properties, including the requirements on sales brochures. CC was a member to the Steering Committee and had been providing advice on the property information to be included in the sales brochures. The Law Society of Hong Kong had also been involved in the work of the Steering Committee. The Director of Lands (D of L) added that under the Consent Scheme, there were requirements on mandatory disclosure of certain information in the sales brochures and no disclaimer of the accuracy of such information was allowed.

17. Mr CHAN Kam-lam said that the crux of the problem was that estate agents, in an attempt to promote the sales of properties, had not exercised due diligence in verifying the accuracy of property information, which was essential in the sales of both first-hand and second-hand properties. The situation was further aggravated by the exuberant property market fuelled by speculators. There was a need for EAA to strengthen regulation of estate agents. Mr Alan LEONG echoed that some estate agents tried to evade responsibility for providing inaccurate property information by stating that they were not building nor legal professionals and therefore not in a position to ascertain the accuracy of property information. They also put the blame on developers for providing inaccurate information. He agreed that EAA should review its guidelines to prevent evasion of responsibility by estate agents.

18. In response, CEO/EAA said that EAA attached great importance in the regulation of sales practices of estate agents. The Estate Agent Ordinance (Cap. 511) (EAO) and its subsidiary legislation had provided for the regulation of estate agents and set out guidelines on sales practices. Estate agents were required to familiarize themselves with any laws, government regulations, essential facts and developments in the real estate market, which included general knowledge on, for example, unauthorized building works and fire safety. They were also required to verify the accuracy of information provided by owners/developers. EAA had enhanced its guidelines in May 2010 to strengthen the regulatory regime over the sales practices of estate agents in regard to the sale of first-hand residential properties. For example, agents were required to advise buyers to make reference to the information in sales brochures rather than relying on artistic impressions. Non-compliance with the EAA's guidelines by estate agents could result in sanctions, the most severe of which was revocation of licences. To enhance professionalism, EAA also regularly organized training courses for estate agents. A number of seminars on building legislation and unauthorized building works were held last year. Major estate agencies, such as Centaline, would also conduct training courses for their own estate agents. She nevertheless concurred that there was always room for improvement.

19. Referring to his earlier conversation with the former chairman of Centaline, the Chairman said that he was given to understand that owners usually provided very limited information in entrusting the sales of their properties to estate agents. In this connection, consideration should be given to requiring developers to deposit with EAA copies of sales brochures confirmed to be correct by their directors together with the promotional pamphlets prepared by sole estate agencies to facilitate cross-referencing. CEO/EAA said that EAA had recently written to major estate agencies involved in the sales of first-hand properties requesting them to seek confirmation from developers on the accuracy of information provided in promotional leaflets prepared by estate agencies before distribution to clients.

This arrangement would place responsibility on developers to check the accuracy of information contained in the promotional leaflets prepared for distribution by their estate agents.

20. Mrs Sophie LEUNG said that the sales of properties in Hong Kong should be well governed by law so that consumers would not have to make extensive enquiry/verification before making property purchases. As a regulatory body, EAA should ensure compliance with the operational guidelines set out in EAO by estate agents. It should also ensure that estate agents would provide the requisite information to clients. CEO/EAA said that under the Consent Scheme, developers were required to provide sales brochures for flats being sold. Estate agents were required to take reasonable steps and exercise due diligence to verify the accuracy of information before dissemination to clients. EAA would endeavour to enhance regulation of estate agents, particularly in respect of preparation of promotional leaflets.

Regulation of the sales of first-hand private residential properties by legislation

21. Mr Alan LEONG was aware that the legislation on the sales description of uncompleted flats had been considered years ago but had yet to be introduced. He enquired about the measures which could be taken to protect consumers' interest pending the introduction of legislation on the regulation of the sales of first-hand private residential properties. VC/CC said that pending the introduction of legislation to regulate the sale of first-hand private residential properties, the stakeholders in the sale and purchase of properties, i.e., the Real Estate Developers Association (REDA), EAA, the Law Society of Hong Kong and CC should enhance their monitoring role in the process. The Icon case had shed light on the measures which should be taken to protect consumers' interests.

22. Mr WONG Kwok-hing said that the problems associated with The Icon stemmed from the lack of control over residential developments under the Non-Consent Scheme. While a Steering Committee had been established to study the regulation of the sales of first-hand private residential properties by means of legislation, the legislative procedure would take time. Instead of relying on REDA to ensure voluntary compliance with its guidelines by developers, he enquired about the measures to be taken during the interim to protect consumers against fraudulent practices of the property trades. PSTH(H) said that all issues pertaining to the proper and effective regulation of the sales of first-hand private residential properties would be discussed by the Steering Committee. It was expected that the Steering Committee would come up with practical recommendations by October 2011. The Administration planned to take forward the subsequent consultation in the form of a White Bill in order to expedite the process. He trusted that CC, as a member of the Steering Committee,

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would bring its views to the attention of the Steering Committee. As regards the measures to be taken during the interim, PSTH(H) said that continued efforts would be made to enhance the transparency and to strengthen regulation of the sales of properties through the Consent Scheme and REDA's guidelines. Investigative actions would be pursued for cases involving fraudulent practices in property sales.

23. The Chairman enquired about the timing for the introduction of the legislation on regulation of the sales of first-hand properties. He urged the Administration to expedite the process so that the legislation could be enacted within the current legislative term for better protection of consumers' interest. His views were shared by VC/CC. PSTH(H) said that the Administration would endeavour to introduce the legislation as soon as practicable. It was hoped that the Steering Committee could complete its work by October 2011 for the preparation of the White Bill for public consultation.

The Icon case

24. Miss Tanya CHAN enquired whether The Icon case would be referred to the Commercial Crime Bureau for further investigation if the sales involved fraudulent activities. Given the many problems associated with sales of properties under the Non-Consent Scheme, including The Icon, she enquired about the remedial actions to be taken to prevent future recurrences. For better consumer protection, Mr Alan LEONG asked if the Lands Department would make available to the public the developments under the Non-Consent Scheme which would be put on sale in the next few years. D of L said that the Consent Scheme implemented in 1961 was not applicable to developments subject to old land leases containing no restrictions on alienation. Information on developments subject to the Consent Scheme was available on the website of the Lands Department. If purchasers wished to purchase units from a development not covered under the Consent Scheme, they might wish to consult their own lawyers if necessary when purchasing flats. PSTH(H) said that the proposed legislation would cover all types of first-hand residential properties, including projects developed under old lease conditions, Consent Scheme projects, as well as completed and uncompleted first-hand residential properties. REDA had been encouraging member developers to follow its guidelines when selling uncompleted residential properties not covered under the Consent Scheme. Notwithstanding, consumers should obtain proper advice and verify the accuracy of information with a view to protecting their own interest in purchasing properties. CEO/EAA added that EAA would refer cases of suspected fraudulent or criminal activities in the sales of properties to the relevant enforcement agencies for follow up. Last year, EAA had referred 47 cases to the Police and four cases to the Independent Commission Against Corruption. In reply to the

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Chairman's enquiry on suspected fraudulent activities involving the cancelled transactions of two flats at the "Emerald Twenty Eight", PSTH(H) said that the two cases had been referred to REDA because the developer was a member of REDA albeit the development concerned was not under the Consent Scheme.

25. Mr Ronny TONG enquired if the proposed conversion to open kitchens was exempted from formal approval under section 41 of BO and if not, whether the alteration works would stand a good chance of approval. AD/NB1(Atg) said that in accordance with the Code of Practice for Fire Resisting Construction 1996, a kitchen located near the only exit of domestic premises should be provided with an enclosure wall having a fire resistance of not less than one hour to separate it from the rest of the premises. Generally speaking, the building plan would provide indications on whether the partitioning wall was a structural or non-structural wall. However, conversions to open kitchens would require special consideration because additional fire safety measures might be required to reduce the risk of fire. The authorized person would need to submit building plans for the proposed alteration works to BA for consideration. So far, BD had not received any application for conversion to open kitchens at The Icon after the issuance of OP for the building. In reply to Miss Tanya CHAN's request for confirmation on whether the developer of The Icon had ever submitted any building plans with open kitchens to BA for approval, AD/NB1(Atg) said that BA had not approved plans showing alteration works for conversion to open kitchens at The Icon.

26. Professor Patrick LAU declared interest as a member of the Steering Committee. He enquired whether the developer had set out in ASP the conditions of flats upon delivery i.e. whether an enclosed or open kitchen would be provided and if so, why the conveyancing solicitors had not alerted the buyers of the situation. He also enquired if owners of The Icon units could engage their own contractors to submit applications for conversion to open kitchens. PSTH(H) said that solicitors were governed by the codes of practices under the Law Society of Hong Kong, and they had an important role to play in the sales of properties. D of L said that developers of projects under the Consent Scheme were required to use standard ASP which obliged them to complete the developments in compliance with the land lease conditions and the building plans as approved by BA. The fittings and finishes would be set out in a schedule to ASP. However, The Icon was not a project subject to the Consent Scheme. On conversion to open kitchens which were near the exit doors, AD/NB1(Atg) said that applications would have to be accompanied by a fire safety assessment report and plans setting out the proposed fire safety measures. The processing time for such applications would take 30 days if these were submitted before issuance of OP, and 60 days if these were submitted after issuance of OP. Prior approval would not be required for conversion to open kitchens which were located far away from exit doors of

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domestic units.

27. Mr LEUNG Kwok-hung expressed grave concern about the sales practices of first-hand private residential properties which often involved collusion between developers and estate agents. In The Icon case, the developer had tried to circumvent building control by submitting plans with enclosed kitchens in order to obtain approval from BA and proceeding with the conversion to open kitchens after issuance of OP. The estate agents, on the other hand, had tried all means to promote sales. The provisions in the sales brochure would not serve much useful purpose in protecting consumer interest. REDA, being a self-regulatory body, was not able to control the sales practices of developers.

II. Any other business

28. There being no other business, the meeting ended at 12:55 pm.

Council Business Division 1
Legislative Council Secretariat
30 March 2011