OFFICIAL RECORD OF PROCEEDINGS

Thursday, 28 June 2012

The Council continued to meet at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, S.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

DR THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE CHEUNG HOK-MING, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S., J.P.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE EVA CHENG, G.B.S., J.P.
SECRETARY FOR TRANSPORT AND HOUSING

MR YAU SHING-MU, J.P.
UNDER SECRETARY FOR TRANSPORT AND HOUSING

CLERKS IN ATTENDANCE:

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will continue the resumed Second Reading debate on the Residential Properties (First-hand Sales) Bill.

(Bill scheduled to be dealt with at this Council meeting)

RESIDENTIAL PROPERTIES (FIRST-HAND SALES) BILL

Resumption of debate on Second Reading which was moved on 21 March 2012

MR WONG KWOK-HING (in Cantonese): President, I would like to speak to welcome this Bill. I describe it as a belated spring. But it is better late than never. Why do I call it a belated spring? Buying property is an important thing in life. Besides getting married and giving birth to children, buying property is certainly an important thing in life. But after making a decision to buy property, if the buyer is hoaxed, his savings of a lifetime may go down the drains. It is therefore a big setback. Moreover, the rights of the consumers are not safeguarded.

During these four years in the Legislative Council, I was the chairman of the Housing Panel in the first two years, and the deputy chairman of the same Panel in the following two years. The handling of related complaints and subjects has been discussed many times. I do not understand why this Bill is introduced to this Council for discussion only before the present-term Government leaves office. From this we can see that the Bill comes late because, as we all know, the present-term Government is biased in favour of the developers. It tolerates them and seems to be afraid of them. Hence it does not dare to make a resolute and swift decision to protect the rights of the consumers and the greatest investment in buying properties in their life. This explains the delays and swings in the legislative process of this Bill. And it is only towards the end of this term of the Council that this Bill is tabled for scrutiny.

However, as I have said at the beginning, I think that it is a welcomed move to initiate criminal prosecution and impose penalties on offenders with respect to the first-hand sales of residential properties. This is because only in this way will unlawful real estate developers be deterred from fleecing members of the public in a wilful and unscrupulous manner. This Bill therefore deserves our great support.

In the past, we have actually seen how developers and their associations trying to dodge the complaints from consumers and buyers. They have employed the delay tactics and refused to be self-disciplined in a serious and responsible manner. Many complaints have not been addressed even after many twists and turns. This has disappointed the Consumer Council and the victims very much. When the cases have finally been brought before this Council, we have found that nothing can be done after going through numerous procedures and discussions. This is due to the absence of a clearly-defined law which can regulate the sales of first-hand residential properties and safeguard the rights of the consumers.

President, this Bill aims at offering consumers protection in the purchase of first-hand residential properties. I would think that there are a number of aspects that we should pay attention to. From the numerous complaints and cases we have come across over the years, it can be deduced that there are some malpractices which show that these developers do not abide by the law in property sales. An example is exaggerations and misrepresentation in publicity, which is very common. This can usually be seen in the sales brochures and the sales practices involved. Great sums of money are spent on the production of advertisements in the electronic media. We can often watch in the prime viewing times on the television some advertisements marked by superb elegance and various images against a background of lovely music. For a while we feel like we are in some places in Europe or dreamland. It is only in the end it occurs suddenly to us that the advertisement is selling a certain property development in Hong Kong. This sort of advertisements make people think that, after buying a flat in that property development, they will transform to the characters in the advertisement and instantly become princes and princesses, or members of the elites and high society. This kind of publicity approach often misleads consumers.

Such exaggerations and misrepresentation in advertisements will mislead consumers in another way, and at times the misleading practices are way over

board and shocking. An example is that the property development is claimed to be situated in a central area. People may think that it is in the heart of the Central District. But it turns out that the so-called central area could well be just Tin Shui Wai and it is the heart of the Great Pearl River Delta. Sometimes it can go so far. Or the property development is claimed to be situated along a beautiful harbour, but in fact it is miles away from the sea, having no harbour view at all. Or the property development is claimed to command the view of a famous cross-sea bridge, but it turns out that it is next to a landfill and it is just a conceptual construction. Since these exaggeration and misrepresented advertisements that mislead consumers are not subject to any regulation, consumers will often fall into the trap of this kind of fine packaging. Therefore, there is really a need to regulate by legislation.

Or for example, many sales brochures of residential properties exaggerate the actual view and the height of the buildings such that consumers may think the ideal flat they bought has a superb and unblocked sea view. It turns out to their dismay that the view of the flats they bought has been blocked entirely by the buildings in front. The developers who use this kind of sales tactics are not ordinary developers. I have received a large amount of complaints on developers having the exclusive right for property development along the railway. It is to our surprise that they use this kind of tactics for property sales. Therefore, the Administration must impose regulation on this kind of irresponsible sales practices. What is called the environment in fact includes the view, the slope and the sketch map drawn to scale and so on. All this should be stringently regulated in the law and the offenders should be punished.

As the saying goes, "The wicked and unscrupulous will always find ways to outwit the just and righteous". In these few years, we have seen developers always change their tactics to mislead consumers. Very often when we handle some complaint cases lodged with this Council, we find developers come up with new tricks quickly. The latest one includes misleading people to think that certain floor of a building is at a distance from the ground level, but it turns out that the floor concerned is on the same level as the street. The result is very strange ― the owners think that they can overlook the street below but it turns out that their flats are at street level, subjecting them to serious noise pollution and blocked view.

One of the basic problems is the floor area. Should the gross floor area or the saleable area be adopted? Should the developers be allowed to inflate the

floor area by all sorts of ways? These problems are dealt with by this Bill. As a matter of fact, we can see that the issue of floor area is the most controversial. The question is: Should it be calculated in terms of gross floor area or saleable area? Which kind of floor area should be used as the standard? The developers have raised many opposing views out of their own interests. It is fortunate that the Government has listened to the views of consumers and insisted on its position. As such, I wish to commend the Secretary for her insistence on this issue. This is because if she has not done so, the spirit of this piece of legislation will be taken away. The spirit of this law is to truly protect the interests of consumers. Even when people buy vegetables in the market, they want to get the correct weight, so when they buy properties, they all the more do not want to be misled and cheated. So with respect to fraudulent practices, I would think that the Administration must not leave any room for bargaining in this law.

President, I know that after the passage of this Bill at the final stage in this Council, there will be a transitional period before it comes into force for the Government to conduct preparation work. However, many new residential developments will be launched during this period. How will the Government step up its regulation during the transitional period? I hope the Secretary can respond to this question when she replies. I know she will leave office on 30 June, but I think despite changes in officials, these matters will have to be taken up by the next-term Government. So I hope that the Secretary will respond to the question of how regulation can be stepped up during the transitional period.

Second, how will consumers be protected and educated during the transitional period? I would think that it is important to educate consumers to enable them to heighten awareness and vigilance, so as to avoid being misled by exaggerated and misrepresented advertisements. The most important thing is that they should know their rights. In this connection, I would think that after the enactment of this law, the Government should invest additional resources in education and publicity to heighten the awareness and vigilance of consumers. I also hope that the Secretary can tell us in her reply how the authorities would enhance consumer education.

Third, what should we do if we receive complaints of people being misled or cheated during the transitional period? I hope the authorities can respond to

this question as well. The Government should provide the avenues needed to protect ordinary members of the public and homebuyers during the transitional period. With respect to the abovementioned points, I hope very much that the Government can respond to them in its reply later.

Lastly, I would like to take this opportunity to thank Secretary Eva CHENG. Although not everything has fared perfectly well during her term of office, we have to thank the Secretary all the same for her hard work to successfully bring this Bill to this final stage today.

MR RONNY TONG (in Cantonese): President, when deliberating on the Residential Properties (First-hand Sales) Bill, many Honourable colleagues have been scrutinizing the Competition Bill and the Companies Bill at the same time. Like me, they had to spend more than half of the time in a week on these three Bills. I often could not attend the meetings of the Bills Committees on this Bill. Yesterday when Ms Audrey EU spoke, she complained that oftentimes she was the only Member attending the meetings. I am sure she understands that we have to have a division of labour to a certain degree. But that does not mean that I do not care about the scrutiny of this Bill. I have tried my best to attend the meetings of the Bills Committee.

In many ways this Bill is similar to the Competition Bill. First, the two Bills are the result of the arduous efforts made by Hong Kong people over the years. I remember when I was first returned to this Council in 2004, the topic of the very first motion debate I came across was something like why there was no law in Hong Kong to regulate the sale of properties. When we go to the supermarket to buy a can of milk formula, if it is specified on the can that the weight is one pound but when we weigh it at home and find its weight is only eight ounces, we have laws which state that such action of the manufacturer is against the law. But when it comes to the sale of residential properties, how can developers claim that a unit measures 1 000 sq ft while it actually is only 700 sq ft? This kind of thing is simply baffling to me.

I also remember not long after I was returned to this Council and it should be 2005, this Council passed a motion on regulating the sale of residential properties by legislation, especially first-hand residential properties. We have been striving for this cause for many years. But as always, the Chief Executive

Mr TSANG's attitude towards this issue was the same as in the setting of a minimum wage and the enacting of a competition law, saying the business sector and the relevant industries should first be subject to self-regulation and should that fail, legislating would then be considered. Such an approach resulted in a delay of several years. This is the case for a minimum wage as well as a competition law. And, the regulation of the sale of first-hand residential properties is no exception.

However, like other Honourable colleagues, I must praise Secretary Eva CHENG. This is because in the process of formulating this Bill, the compromise she has made is not as great as that made by Secretary Gregory SO. The compromise Secretary SO has made is so great that it is like he has retreated to his own doorstep. Of course, the kind of pressure Secretary CHENG has faced is very much different from Secretary SO. This is because the entire business sector is against the Competition Bill while only real estate developers oppose the regulation of the sale of first-hand residential properties. I can see that some representatives of the developers are here. They are not pleased at all and are obviously against this Bill.

President, we have put forward many views in the course of scrutiny and the Secretary has accepted them as much as possible …… Where was I just now? President, what I wish to say is, despite the fact that the Secretary has met with relatively less pressure, she has tried as much as she possibly can to take on board many of our views expressed in the course of scrutiny and included them in the amendments proposed by the Administration. Later on we will deal with these amendments at the Committee stage.

As in the case of examining other Bills, in the course of scrutiny of this Bill, I have also heard some really weird views. An example is that someone has raised the point of whether or not freedom of speech will be restricted if the sales brochures is subject to regulation. And whether or not the right to property will be restricted or deprived of if the sale of residential properties is subject to regulation. And, whether or not such regulation is in contravention of the Basic Law.

President, when I listened to these views in the course of scrutiny, I could not help but respond to them. But I was not doing so as a lawyer. Members have to understand that laws are not difficult principles which are hard to

understand. After all, they are just common sense and justice in the ordinary sense of the word. Behaviour which causes damage to other people and benefits oneself will never be protected. Freedom of speech does not mean practising fraud; the right to property does not mean selling a smaller-then-it-claims unit to Buyers. Therefore, even if someone is not a lawyer, he can refute this kind of arguments at once.

In the course of scrutiny, another very important controversy was whether developers should be held criminally liable. About this issue, there has been much discussion in the community before the consultation. In my opinion, the argument for the idea is relatively simple. Can developers really be regulated solely by imposing civil liability on them? In my opinion, there would be some difficulties. First, when an ordinary buyer wants to take legal action against a developer, it is like a David and Goliath case. Second, developers make huge profits and what would be the effect of civil sanction on them? However, rich people are scared of being put in prison. So, if criminal sanction is imposed, I believe a certain deterrent effect will be produced.

But it is precisely for this reason some Honourable colleagues have raised in the course of scrutiny the point that if a developer hires some professional designers or surveyors, would the liability fall on these professionals instead and the developer can get away with it?

President, I would think that this is another specious argument. Why? If this argument stands, then rich people will never be found guilty of any crime. It is because they can always hire the best lawyer, the best surveyor, and they can even hire four of them at one time …… right, these four surveyors do not have to be hired and they can say whatever they like. I therefore do not find this argument acceptable. The Secretary is very sensible and insists that the term "company" as found in the Bill includes director, secretary and senior representative.

Moreover, we have asked the Secretary to expand the meaning of "company" to include overseas companies. This request has been accepted by the authorities. President, this is an important point because the headquarters of many large real estate companies is no longer in Hong Kong. If they want to shirk their responsibilities, they do not have to go to a faraway place. All they can do is to set up a company in Macao or Shenzhen and they can escape from

their responsibilities easily. This kind of practice is totally unacceptable. Properties in Hong Kong should be subject to the laws of Hong Kong.

We have also discussed in the course of scrutiny of the Bill the question whether the sale of overseas properties in Hong Kong should be regulated by the laws of Hong Kong. I would think that this question is entirely a matter of preference and opinions have been divided until now. I would think that it is acceptable for this Bill not to regulate the sale of overseas properties in Hong Kong.

President, the next thing I wish to discuss is that when the authorities first issued consultation papers and introduced this Bill, some exemptions proposed in the consultation papers and the Bill took us by surprise, and we found them unacceptable. An example is that the buildings constructed by the Housing Authority would all be exempted. After repeated efforts made during the scrutiny of the Bill, we have managed to include the buildings constructed by the Housing Authority under the regulation of certain clauses in the Bill while other clauses are still not applied to these buildings.

Besides, there are some clauses in the Bill which I find hard to understand. For example, in the exemption clauses, there is one clause which provides that the Bill shall only be applied to …… President, I have to find that clause …… the sale of properties which solely or mainly used for residential purposes shall be subject to regulation by the Bill. Strangely enough, there is an exemption clause which states that if the main use of the property concerned is a contravention of the land lease or its original purposes as specified, then the Bill shall not be applied to that property.

President, I would think that this is a very strange exemption clause. Why? It is alright for the Bill to mainly regulate properties used for residential purposes. But if the main use of a piece of land is not for the construction of residential properties but the land has nevertheless been used to build residential properties in contravention of the land lease, then how can the properties concerned be given an exemption instead? The explanation from the Administration is that if someone violates the land lease or the original purposes as specified, there will be other government departments to deal with the case and impose penalties, such as in the case of the building of unauthorized basement for lease. However, even if the Buildings Department will punish the persons

concerned, should we not protect the rights of the buyer in the Bill? This is actually not the case. Even if the Buildings Department will impose penalties, as long as the piece of land concerned is not resumed, the offender will still make a profit. So if a property is exempted from the regulation of the Bill because its actual use is in breach of the land lease or its requirements, it is really unbelievable. If this is the case, are you trying to encourage people to violate the original purposes as specified in order to circumvent the law? I hope that the Secretary can think carefully about this point. For me, I find it very hard to understand the logic of it.

Of course, the Secretary may say that such cases do not often happen and houses cannot be built in this way in most circumstances. But I can tell you that I have lived in the New Territories for decades and in the New Territories, anything can happen. Like after a house has been completed, one could add a dozen more floors to it. And the authorities may know nothing about it. Only when the building is built and people move in for more than a decade that the authorities say the building is illegal and must be demolished. Those living there would literally take up arms and fight with you to the bitter end. They will claim that this is their rights. In Hong Kong, we absolutely cannot ignore the consequences of violating the laws on land use.

President, I have considered whether or not to amend this Bill, but in the end I think that this is not necessary for the time being. May be the Secretary is right when she says that we should first see the incidence of non-compliance that will lead to buyers not getting protection under the relevant Ordinance. During the next term of this Council, we may need to consider amending this Ordinance.

I am satisfied with the Bill on the whole. I think it is acceptable. In my opinion, the Secretary has done something good before she leaves office. Basically this Bill can meet our demands as well as public aspirations. Thank you, President.

PROF PATRICK LAU (in Cantonese): President, as many colleagues have pointed out, the public generally wish to see the enactment of this piece of legislation. So long as the Government is genuinely committed to doing something, it can indeed accomplish it expeditiously.

First of all, I have to thank the Secretary who has been dedicated and sincere. Apart from appointing Mr LEE Wing-tat to be a member of the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee), she also particularly appointed me to sit on the Steering Committee. I really like the word "steering" very much. Mr Abraham SHEK often said to me, "You must keep an eye on Mr LEE Wing-tat. You must keep him under watch." He also told me, "This can be taken as the 'LEE Wing-tat bill'". I think buying a property by the people is, in fact, an issue that warrants great concern. What are the reasons?

Among the needs of Hong Kong people in respect of clothing, food, housing and transportation, the biggest problem lies in housing. President, given high rental and expensive property prices, buying a property is not purely for self-occupation nowadays, for this has become an investment. Such being the case, high property prices can give rise to many problems. Therefore, without a more comprehensive law to monitor the sale and purchase of residential properties, many disputes can arise in buying a property.

The Steering Committee comprises not only professionals, but also many people involved in the sale and purchase of residential properties. Its most important member is certainly the representative of the Consumer Council, so as to ensure the protection of consumer rights and interests. Its members also include a practitioner in the real estate industry, or the representative of estate agents engaging in the sale and purchase of residential properties, and there are also representatives of lawyers, architects and surveyors. In fact, with regard to the design of buildings, including the facilities and design inside a building and calculation of the area, all these are the work of architects. As we architects have a good understanding of where the problems lie, many members of the profession have participated in the work of the Steering Committee. Property developers certainly have the weakest voice, as they only have one representative in the Steering Committee, and this representative's position is opposite to that of the other nine members, as these nine members all hope to protect the rights and interests of small owners, whereas the representative of property developers emphasizes commercial considerations and the development of residential buildings for sale to make profits. That said, I think property developers should not be described as the victims, and there are indeed problems with their sales practices. Mr WONG Kwok-hing has made some very good points earlier on in pointing out problems such as property developers misleading the public by

advertisements. We all know that those practices of property developers, such as engaging Miss World in filming an advertisement for a property development project, are not necessary.

President, I still remember clearly that I once saw at Prince Edward Road an advertisement for a property development. It gave people the impression that the property development was located at Price Edward Road but it turned out to be in Sha Tin. Back then, property speculation was at a peak, and unlike the situation now as people can have time to make consideration, people at that time would not be able to buy a flat if they did not make a purchase after viewing. Many people blindly queued up to buy a property not for self-occupation but for investment, and this is a big problem. How can the reasonable value of residential properties be truly reflected? This is a question that needs to be addressed by the Steering Committee in a focused manner.

For this reason, I think it is very important to introduce this piece of legislation. I also thank the Chairman of the Steering Committee, Mr PESCOD, for taking forward the relevant work efficiently. Although the Steering Committee has worked for less than a year, we have published a report as soon as possible to facilitate the passage of the Bill. Certainly, I also have to thank Mr CHAN Kam-lam for leading the Bills Committee to complete deliberations in three months, and I have never seen such high efficiency. Mr Ronny TONG said earlier on that further amendments would be proposed to the future ordinance. In fact, I think this Bill is very complicated and involves a lot of details, and I would like to highlight the most important part to facilitate Members' understanding. The most important part of this Bill is certainly the flat area. In the past, when people purchased a flat of 1 000 sq ft and when they measured the area after taking possession of the property, they would find that it was only 700 sq ft. Why was it so?

We must understand that developers calculate the gross floor area (GFA) according to the Buildings Ordinance when developing their property projects. Apart from the residential units, a building also includes the lobby, fire escapes, lifts, walls, and structural elements. The developer will include all these areas in the flat area, which is what we refer to as the GFA. Given the past practice of including an apportioned share of the common area of a building in the GFA of flats on each floor, the methods for calculating the area of second-hand properties and first-hand properties will become different in future, and this has to be

handled carefully. We now propose that the saleable area should be calculated, excluding the areas taken up by other facilities such as the lobby and fire escapes. I would actually prefer the saleable area to be rendered as "銷售面積" in Chinese to mean the inhabitable area being put up for sale.

With this method of calculation, the area of the flat delivered to the buyer will be closer to the area claimed by the developer. It means that when a buyer purchases a flat which is claimed to be of 1 000 sq ft, the saleable area may be 850 sq ft. Why is the property price per square foot so high now? Let us not forget that as residential properties are compared in terms of the price per square foot, even though the price is high if the saleable area is used as the basis of calculation, this can more truly reflect the inhabitable area.

Members have often mentioned Mr LEUNG Chin-man, who did a lot to improve the living environment during his office in the Buildings Department. For example, he promoted environmentally-friendly balconies, and utility platforms for drying clothing. The Government has granted exemption to many places, such as many places in the lobby, from the calculation of floor area. Although this can provide more common space in a building, many problems have been resulted. While these facilities developed by developers can be provided for public enjoyment, the problem lies in the calculation method of the area. Even though developers are given exemption from including these facilities in the calculation of floor area, as they still have to make investments for developing these facilities, these areas will be included when the flats are put up for sale.

In view of this, the proposed regulation seeks to provide clear stipulations on the calculation of the flat area. The proposed regulation has two emphases. The first is the sales brochure, and this is what the public must pay attention to. The sales brochure must provide clear information on all the places inside a flat to enable buyers to know the size of the flat, while setting out in detail the facilities to be provided in the flat. As the building has not yet been completed and the flats to be sold are still in a conceptual stage, it may be difficult to meet these requirements. In spite of this, the information provided must be very accurate.

Another emphasis of regulation is, as also mentioned by colleagues earlier, the location of the property development. The most important consideration in buying a property is its location, unless it is intended solely for investment

purpose, in which case the buyer may not care about the location. Otherwise, if it is intended for self-occupation, the buyer must not be oblivious to the location of the building. For this reason, we will require the provision of the address of the development, unlike the past practice of not providing such information clearly to tell the public where the development was located. Besides, the provision of the outline zoning plan is also required, so that everyone can understand the planning in the vicinity of the building. In buying a property, the public should at least know the plans that have been made there and be assured that no high-rise buildings will be developed in the vicinity, so that they will not feel dissatisfied after buying the property. This is very important as well.

Moreover, we propose to include an important information material in the sales brochure and that is, the aerial photo of the development. After Members have seen on newspapers the aerial photos of the residence of the Chief Executive-elect, they should understand why aerial photos are so important. Therefore, the sales brochure is required to provide the aerial photo of the development.

President, as you should recall, the Legislative Council has approved a lot of funding to improve the technology of aerial photography. At present, new digitalized technology has been adopted for taking aerial photos, without having to use large films as in the past. It is now easy for us to get aerial photos. Aerial photos will enable the public to know the location of the site and the surrounding environment, so that the public can understand the actual conditions of the site at the time, and more detailed information can be provided. I understand that if the sales brochure is required to contain a lot of information, the difficulty lies in the commissioning of architects or surveyors to provide all the information. However, if the sales brochure can provide an exhaustive list of information, and if even the font size is clearly specified, the incidence of misleading the public can be avoided. So, this Bill will impose regulation on many details. For example, the developer is required to set out the size of the furniture shown in the plan, in order not to mislead the buyers. Even though many stipulations in the Bill still have room for improvement, I think we have at least embarked on the regulatory work.

Another aspect to be put under regulation is show flats, and this is certainly very important too. As we all know, since a buyer of an uncompleted flat is unlikely to know the conditions inside a flat, the developer may, or may not, build

show flats for public viewing. In the past, glass-panel wardrobes were used as the partitioning walls or glass was mounted onto the walls in many show flats to make the flat look spacious. Given the small flat area in Hong Kong, problems were hence resulted. For this reason, we propose to require that developers cannot only provide furnished show flats, as buyers may be misled by the furnishing into thinking that the flat is spacious with a beautiful environment. We propose to require developers to provide an unmodified show flat next to the furnished show flat. The unmodified show flat will show the actual conditions of the flat after completion, and this can prevent buyers from being misled. It is because the furnished show flats provided by the developers cannot reflect the actual conditions of the flats purchased by the buyers. Strict regulation must be imposed in this respect.

If I am asked how these many measures to be taken within a short time can provide safeguards to the public in purchasing first-hand residential properties, I can tell Members that when the public purchase uncompleted flats in future, although they still have to imagine what the flats will be like upon completion, such information will enable them to have a more accurate understanding of the conditions of the flats and hence, they will consider their flats value for money after making the purchase. This is the most important point.

Members have mentioned — as also mentioned by Mr Ronny TONG — that the punishment is harsh, and the lawyers have also provided a lot of input. In fact, a lot of publicity information may not be true and how should we handle it? This, I think, is also a major problem. If the Government will impose punishment, it should be confined to the provision of seriously misleading information or serious cases of withholding information. In this connection, I think many talents in the local advertising industry will be slightly affected in giving play to their creativity. They have packaged property developments to make them look special and attractive to the public, and I think this does not give cause to criticism. From a commercial point of view, poor packaging of a property development will render the sales affected.

We have carried out a great deal of work in the Steering Committee in the hope that a balance can be struck between the interests of buyers and those of sellers. There are certainly a lot of things that we propose to put under regulation, including the time for setting prices, the time for flats to be put up for sale, and so on. The developers have also provided a lot of input in these

respects. I think this Bill has at least covered each and every detail and this will provide greater protection for the public in buying a property in future.

MR LEUNG KWOK-HUNG (in Cantonese): President, I think Members are all happy to see that there is eventually a law to regulate first-hand residential properties. Secretary Eva CHENG should have remembered that I asked The Real Estate Developers Association of Hong Kong (REDA) the other day the number of its members and whether a list of its members could be provided to this Council. A Mr LEUNG said, "No problem, Mr LEUNG. The list of our members is open for public information." I thought that he had promised to do it, and I did not pursue him further but instead, the Cable TV remembered this and asked him to provide details on members of REDA. He replied, "I am sorry, but we have already provided the list." It was found out that he had provided a list to this Council, but nobody knows if that is just a list of members of its executive committee.

We were, of course, greatly shocked. Under our watchful eyes in this Council, he said that he would provide it to us and yet, he did not do so, and he even argued that he did not catch what I said correctly. But there is record on what happened, and we can watch the video recording. Then he said that even if he did catch what I said correctly, he would not provide the list to the Legislative Council. This is really amazing. When he was asked the reason, he asked in return why he should provide it to the Legislative Council as they were a private body. It sounds reasonable — President, do not look that way — and since they are a private body, why should he provide the list to us? But the Legislative Council is different. All the information has been uploaded onto the website. Earlier on an old man called me, complaining against the Estate Agents Authority. But you must understand that our Government eats the dish of "steamed salty fish and pork" every time, and it comes from a "salty pork shop". "Salty pork shop" is certainly indecent.

Why should the list of members of a private organization be made public? Because the Government eats this dish every time, saying that REDA can be counted on for managing itself, and that it is an autonomous body which exercises self-discipline. Of course, there was a very funny thing that happened last year. There was an exchange of correspondence — it was like China and Britain exchanging correspondence during the talks on the future of Hong Kong — a

total of seven letters were exchanged to discuss whether the Government had the power to punish people suspected to have taught other people on the Internet to engage in illegal property speculative activities. As the discussions went on and on, it eventually turned out that the Government …… No one knew what exactly it was all about, and we did not see the reason for it. The Government was like keeping its head down in low spirit and its reaction was entirely submissive. The developers said that they would not do such a thing and that if the Government wanted to do it, it should do it by itself, rather than telling the public all the time that the developers would do it, whereas the Government had not taken any action, nor did it have the power to do it. It was brewed only after going through so many troubles.

Besides, Secretary Eva CHENG told the public that if they had time, they could measure the area in show flats and that the public could bring a measuring tape with them to do so. Once the Secretary had said it, people, of course, acted swiftly. As the Secretary had said that the public could take measurement of the flat area, who would refrain from doing so? But the Secretary just said it but did not do it herself. Some people were really so naïve as to take a measuring tape with them to measure the area and how were they treated? Under everybody's watchful eyes, and it was again the Cable TV — Does the Cable TV have a grudge against property developers? — It turned out that they were not permitted to do it. Mr SHEK, you may help arguing for them later. They said, "You may take measurement but you cannot take photographs. Oh, you cannot take measurement either, because our furnishing is original. See our bathtub? It is the one used by Cleopatra for taking a bath. You cannot take photographs, in case some other people copy it." How outrageous it is. Tell me, are they not the "biggest"? They are like the two jokers in a pack of cards, which are the biggest trump cards once they are played.

President, the regulation of the sale of first-hand residential properties is bizarre indeed. The sale of pork is subject to regulation, and even the sale of straw is subject to regulation. In Kai Yip Estate where I live, a scale is provided for public use. If half a catty of lean pork is bought, it absolutely should not weigh just seven and a half taels. President, pretexts have been concocted, such as bay windows and this and that. All these have reduced the saleable area to the lowest but adjusted the floor area to make it seem as large as possible, in an attempt to deceive people into buying these flats. President, let me ask you this: When the air-conditioner in your room does not work and you send for someone

to repair it but if warm air comes out of it after it is repaired, how will you feel? Will you talk to Secretary General Pauline NG and tell her that you want cool air to come out of it? Disregarding whether or not this legislation is enacted, things will go on like this — You want cool air but what comes out of it is warm air.

President, there is another point that I must talk about. To what extent has the Government connived at property developers? A hospital in my constituency applied to the Government for two hectares of land — Mr SHEK is also aware of this — A hospital is built on one hectare of land and luxurious residential flats on the other. This seems to be unrelated to this Bill on the surface. But President, I am not repeating myself, and they are related. The reason is that in the course of legislating, the legislature is not playing a game of deduction or logics in making legislation, unlike Mr WONG Yuk-man who wrote a line containing 100 words in a row to confuse Members. We make legislation for one purpose. On both sides of the scale, property developers who are so carefully taken care of by the Government are on one side — Here, I wish to briefly explain that the term "developer" does not make sense. What does development mean? "Developer" is, of course, a term adopted from the British who intended it to be a "rip-off". Why did the British call real estate businessmen "developers"? Because there used to be a planning department or planning bureau similar to Carrie LAM's …… For the purpose of property speculation, those officials, and corrupt members of the parliament were told to — as in the case of Britain, there is the House of Lords which is hereditary and enacts legislation — The Government had to make planning as to where should be developed and where should not be developed. Mr Abraham SHEK's factory site originally was not of any value but the Government suddenly said that planning would be made to develop this site and so, he eventually made it and became a "developer", man. Does he run a factory? I am just citing an example, and don't be so serious about it. No, Mr Abraham SHEK is not engaged in the real estate business. He only serves the real estate sector.

This is how we have grown accustomed to this error and accepted it as right to call them developers. London used to be an industrial city where the industrial proletariat was subject to exploitation, but as more people lived there, planning was made, and plans were made for zone one to zone three. There was a planning department, and there used to be urban planning. Urban planning means expanding the city. Some people, therefore, came forth pretending to be the philanthropists and said, "Let me develop this place!" This is the ideology of

collusion between property developers and the Government in Hong Kong. If they do not carry out development, where will there be jobs for the people? If they do not carry out development and build residential units next to a landfill, where will there be houses for people to live in? Will the people still smell the stench then?

Such misleading …… I am giving a speech here today anyway. The name "developer" should really be changed in future. What kind of developers are they? Where there is reclamation, planning will be made — Carrie LAM must really take the blame — turning barren lots into luxuriously decorated residences facing the sea, the Pacific Ocean, the Atlantic Ocean, and telling lies every day. When we pass by MTR stations, what we see is like all the five oceans and seven continents appearing before our eyes. Can this not be misleading?

Members, these real estate businessmen are called "developers" but the fact is that we are carrying out development for them. Wherever the railway can reach, the platform …… In Tai Wai which is within my constituency, there are all screen-like buildings like tombstones. Why is it that all one can see when setting foot in Tai Wai is tombstones? Are these the graves of mortgagers, or the graves of property speculators, or the graves of people who wish to breathe fresh air? The name "developers" has pulled wool over the eyes of the people.

In the entire process of real estate development, the poor can only swallow the shame and humiliation. Many people in Diamond Hill …… I lived in the squatter area in Shau Kei Wan and was resettled later, and this was also copied from the British. By calling it "resettlement", they said that it was meant to improve the people's living but the site was then used for speculation, and is that all? This is how the Government has colluded with business; this is how rent-seeking activities have been carried out; this is how the resources to which all Hong Kong people are entitled have been turned into rent-seeking tools. These were originally "places of good fortune", "streets of good fortune" — I mean they considered that these were places of good fortune and streets of good fortune.

President, what are we discussing today? Our discussion here is to do some justice where these crimes prevail. Now, many people have …… I really have to ask the Democratic Alliance for the Betterment and Progress of Hong

Kong (DAB) how much donation they have accepted from property developers. It would be best if there is a sunshine policy. Let me tell you this: The four major property developers are the major source of funding for the DAB to meet its election expenses, and I am sure about it. Had there been a sunshine Bill, I would have made a much shorter speech today. I do not have such donation, and my "property developer" is the "Hong Kong Government". President, you do not like what I have said, do you? The DAB has not accepted donations from property developers — insofar as today is concerned.

In this Council, let us trample on the property developers, and let us stamp on them with our left foot and then stamp on them with our right foot. President, if you will return to this Council in the next term, you should ask everyone to fill in a form, so that we will know which political parties have accepted donations from property developers, or which political parties have included property developers in their overseeing committee or executive committee. I remember that CHENG Kar-shun is a member of the Senate of the DAB. He said to me, "Mr LEUNG, you are stirring up troubles in probing into me." I said, "Mr CHENG, you are a Hong Kong member of the National Committee of the Chinese People's Political Consultative Conference and a member of the DAB's Senate. What exactly are you doing? Are you engaging in politics or government affairs?

Members, the collusion between property developers and businessmen is in itself a malignant tumour. Some people say that a malignant tumour is part of the ecology. President, you will die sooner or later if you have a malignant tumour. But we must remove it, right? This is where the problem lies.

President, I know that many people will claim credit for this achievement made today. In my electioneering banners I definitely will not write: "I have successfully fought for the legislation on the regulation of the sale of first-hand residential properties". We have, at last, successfully fought for it, and what is the problem? There is one consideration. "True gold fears no fire". I would like to make a point concerning real estate development. Mr LEUNG Chun-ying is engaged in real estate development and to put it bluntly, he is like a "pimp" who gets benefits from a deal between the prostitute and the prostitute's client, and this is what a real estate intermediary does.

"Market maker" means reselling a residential property for seven times. The father purchased it and the mother purchased it; the mother's lawyer also

purchased it and it was then resold to the father's lawyers. This is just common practice. Man, it is about unauthorized building works and the case has not yet settled. What credibility does he have? Take a look at our Chief Executives. The previous one lost his mind from eating abalones and forgot to keep watch on property developers. The incumbent has eaten no abalone but is found to have dug a hole underground too.

President, this should need no further elaboration. Regarding our three Chief Executives, TUNG Chee-hwa has a very close relationship with property developers; LEUNG Chun-ying is a "pimp" or an intermediary; Donald TSANG could do nothing and so, he became the "corrupt Donald TSANG" and craved for abalones. Is this Council not yielding to real estate hegemony now? Well, it is still good to get a consolation prize, as Members will write on the banner: "Other than 'Long Hair', we have also successfully fought for the legislation on the regulation of the sale of first-hand residential properties".

President, I so submit. I hope that you are in a good mood.

MR ALBERT CHAN (in Cantonese): President, Hong Kong people are known as "mortgage slaves" for many years for they have become the slaves of big property developers. They have to tighten their belt all their life in order to save money for the down payment of their flats and the monthly instalments thereafter. On the basis of the current property prices, wage earners have to service their mortgage throughout their whole life. Their offspring may have to offer help as well. After moving into their flats, they are treated like prisoners by the property management company which is a subsidiary of the property developer. Residents will be sued for defamation if they criticize the property management company. Some lawsuits of this kind have lasted for a decade and are still going on. So, property developers are brutal, overbearing and engaged in collusion with the Government. They treat Hong Kong people in a brutal manner because they are shielded and protected by the Government.

Regarding the legislation on the sales of first-hand residential properties, we have discussed it for two decades. Mr Dominic WONG should have completed legislation around a decade ago. However, soon after the publication of the blue bill, the legislative proposal was withdrawn reluctantly under the despotic power of property developers. Then, we have to wait for another

decade, during which many ordinary people found that they had, to a certain extent, been deceived by a blatant scam due to the unfair contract terms or lack of regulation by law.

The Residential Properties (First-hand Sales) Bill (the Bill) before us today can be said to be signifying one step forward for doing justice for small property owners. Interestingly, there is a rumour recently circulating on the Internet about a typhoon attacking Hong Kong. It is said that the typhoon is most likely heading towards Hong Kong because the "LI force" begins to fade when the "local communist force" is going to take over. Meanwhile, the Bill will be passed in these couple of days and the "LI force" will dwindle gradually upon the passage of the Bill. It is hoped that after passage of the Bill, Hong Kong's small property owners or prospective owners will enjoy better protection by law and they will not be so miserable.

President, the Bill certainly seeks to regulate many problems in respect of the sale and purchase of properties in the past, including the area of properties and relevant information, sales procedures, dissemination of information and legal representatives. Over the years, many victims have expressed their grievances. The Bill can be said to be written in blood. There are many tragic cases and I believe many victims have committed suicide. Years ago, a couple came to my office in tears because they had encountered some problems in buying a property. They said that they wanted to commit suicide by burning charcoal with their two children. In their thirties, they belonged to the middle class with one of them working as a teacher. Being treated unfairly in the purchase of a property, they had thought of committing suicide together with their children. I hope such problems will be minimized after passage of the Bill.

President, by taking this opportunity, I would like to tell the Secretary the painful experience of the small property owners of Maywood Court. I think this is due to the unfairness in the sale and purchase of properties, particularly in the agreement for sale and purchase, in Hong Kong over the past two decades. As a result, thousands of small property owners have been victimized. Even today, they are seeking to address their grievances. The problem was caused by the financial turmoil in 1997 when some prospective owners were trapped into financial problems due to the plunge in property prices.

Concerning the sale and purchase of properties, upon the signing of the preliminary agreement for sale and purchase, the transaction date and the

handover date would be set out clearly. However, the same lawyer was appointed by both the buyers and sellers due to the lack of regulation by law. Meanwhile, the property developer could do whatever they liked at the expense of the small property owners' interests and the Consumer Council was just like a "toothless tiger". In the agreement, the completion date was set out. When the so-called completion date was approaching, small property owners kept enquiring when the properties would be completed because Hong Kong property market had experienced a slump during the few months after the completion of the development project. After a long delay, or at least four or five months, the owners were informed of the handover of properties.

During the handover, property prices had fallen by 30%. However, the handover date was different from that set out in the agreement. In other words, it was not the scheduled date when the owners bought the properties. In short, as property prices had fallen by a huge percentage, hundreds of owners were unable to secure mortgage loans, resulting in the forfeiture of deposits by the developer. Subsequently, the developer continued to pursue the matter. Even after the flats had been sold, each and every buyer was sued for damages, plus administrative costs, to the tune of $800,000 to $900,000 on minimum average. The lawsuits against some buyers have still been active and in progress for more than a decade. The damages, plus interest, have exceeded $1 million in many cases.

The problem lies in the requirements of the sale and purchase of properties. As the properties concerned were uncompleted residential properties, the Lands Department and Law Society had compiled the so-called standard agreement for the sale and purchase of uncompleted residential properties, in which there were 24 or 28 standard clauses. Anyway, certain standard clauses were stipulated. However, owing to the fact that fragmented information was provided by the developer and the small property owners were unfamiliar with the relevant requirements, the latter found that the handover date was three months later than the specified date only after the occurrence of the incident. In short, as the developer had failed to observe the deadline of the handover of properties, the owners would have been entitled to giving formal notice to the developer to rescind the sale and purchase agreement and demand for refund of the deposit within three months, as set out in the preliminary agreement for sale and purchase. But as we all know, back then the standard clauses in the preliminary agreement for sale and purchase were subject to changes from time to time.

These standard clauses were different in different periods of time. However, it was clearly provided in the agreement that if the properties had not been completed after the handover period, the buyer may unilaterally notify the developer to terminate the contract and demand for refund of the deposit. However, no owner was aware of this and the developer did not inform the owners of this either.

During the same period, the Hong Kong Housing Society (HS) was putting up residential flats for sale in Hung Hom. According to the agreement, the HS informed the owners that they could terminate the contract. These owners were as happy as if they had won the Mark Six Lottery because the property prices had plummeted at the time. However, the 1 700 owners of Maywood Court, which was developed by the Cheung Kong (Holdings) Limited (CKHL), were not informed that they could terminate the contract within three months. On the contrary, they were informed of the handover of flats after expiry of these three months — I am not sure about the exact time. Seemingly, the owners were informed of the handover five months after the deadline. Despite repeated enquiries by the owners during that period, the developer provided some plausible reasons to procrastinate or refused to reply in an attempt to conceal the fact. Finally, the owners received a handover notice five months later. Some people had no choice but rescind the transaction while some took over the flats reluctantly.

If these 1 700 owners had been aware of their right under this clause to terminate the agreement and recover the deposit, then these 1 700 owners, or at least some of them, needed not face such a huge financial problem and the legal proceedings. After taking over the properties, some of them had to forfeit the deposits and some were sued because they were unable to secure mortgage loans. During the lawsuits against these owners, the information I cited just now was gradually revealed in Court. Back then, with the funds they had raised, the aggrieved property owners appointed Senior Counsel Ms Audrey EU to write legal opinions for supporting their legal aid application. Finally, approval was granted and they went to litigation. But because of some legal provision issues, all the owners lost in the court case eventually.

If the CKHL returned the deposits to the owners according to the agreement, it had to refund $1.7 billion. According to my computation, as there were 1 700 units at an average price of $1 million each, it would have to refund

$1.7 billion. Later on, LI Ka-shing donated $1 billion to The University of Hong Kong for changing the name of its Medical School to "Li Ka Shing Faculty of Medicine". In fact, the donation for this change of name was actually paid collectively by the small property owners of Maywood Court rather than LI Ka-shing. The small property owners were sued by LI Ka-shing later on and the lawsuits are still in progress. Some owners were pursued relentlessly for payment; some were demanded for payment by debt collection agencies; and some had their other properties registered a charge against the land title.

Therefore, we can see the unreasonable practice in the sale and purchase of properties, the inadequacies in respect of information available to the buyers and protection offered by legislation. If it was stipulated by law that the owners be informed of their basic rights after the handover date set out in the agreement, the whole story would have been rewritten, right? The developer could not do whatever they liked or continue to pursue the matter against the small property owners in such a brutal way. From the legal perspective, small property owners should be able to recover the deposits. But it was not the case because they had no knowledge of the legal provisions. Even though the developer had failed to fulfil some of its contractual obligations, it could pursue the matter by suing those small property owners. Secretary, this is an ironclad fact. Precisely because of the lack of regulation by law, these small property owners have to face the plights and some of them have even gone bankrupt. Therefore, the rationality of the clauses in the agreement for sale and purchase is most important.

President, in my opinion, the Bill can basically address most of the problems. But concerning property transactions, especially the standard clauses relating to the sale of uncompleted properties, the problems I raised just now have not been fully addressed, as revealed by the relevant Annex. Secretary, I hope I have overlooked some points in it. However, the responsibilities described in the clauses should be borne by developers. They are obliged to notify the owners. If they do not do so, they should be deemed to have failed to fulfil their contractual obligations. In that case, small property owners will be entitled to rescinding the contract on this justification.

President, there are also other problems. There are punitive provisions stipulating the penalties for the developers if they have failed to perform certain duties or made any mistake in performing certain duties. This will certainly produce some deterrent effect. However, insofar as these punitive provisions

are concerned, the amount of fine is a compensation of $500,000 or $1 million, which is far from adequate to produce any deterrent effect, given that the amount involved in a development project of a large property developer was as high as $1.7 billion, as I said just now. So, a fine of millions of dollars is peanuts. Certainly, under some criminal provisions, imprisonment will be imposed. However, when a penalty of imprisonment is imposed, they will get a scapegoat to serve the sentence for them. Will the developers go to jail themselves?

Therefore, it should be stipulated in some provisions that if a developer has failed to fulfil the responsibilities set out by law, including insufficient disclosure of information or any inadequacies in respect of the sale procedures, the prospective owners or owners should have the right to terminate the agreement for sale and purchase on the basis of these reasons, thereby putting pressure on the developers. For example, when inaccurate information has been provided and it can be proved that the information is inaccurate, the buyers can rescind the agreement for sale and purchase on the basis that the developers have provided inaccurate information upon handover of properties. In that case, the buyers are not required to fulfil their contractual obligations. Then, the developers will have to compensate the buyers for the deposits, interest plus other legal fees and handling charges. The authorities should step up regulation by adding one or two more such provisions in order to enhance the constraint on those unscrupulous developers.

President, some clauses in the Bill deserve praises. To put it simply, concerning the sales brochures, there are clauses stipulating the font size requirements. The size of a letter or number in the text must not be smaller than the size of the same letter or number in 10 point Times New Roman typeface, while the size of a letter or number not in the main text must not be smaller than the size of the same letter or number in 8 point Times New Roman typeface. In fact, the size of words in 8 point is also too small for those with presbyopia like me because I cannot read words which are printed in 8 point of font size. Nevertheless, some is better than none because the font size used by the developers on some occasions is so small that we cannot read it even with a magnifying glass, particularly the line "This sales brochure is for reference only and not legally binding", which often appeared in sales brochures in the past. This sentence could hardly be read even with a magnifying glass. Moreover, it was printed in hazy fonts against a messy background to make it difficult for the public to read such important and legally binding wording.

President, the People Power will support the passage of the Bill today and wishes to ensure the passage of the Bill in these couple of days because we are worried that LEUNG Chun-ying may withdraw the Bill after taking office. It is because the future Chief Executive is a person who has told a lot of lies and the prospective Secretary, Anthony CHEUNG, who will be in charge of the Bureau in future, also loves to use lies. Anthony CHEUNG, who is an untrustworthy villain and the former vice-chairman of the Democratic Party, will draw close to any camp from which he can get benefits. Back then, he joined the Democratic Party because he wanted to run in the Legislative Council Election, but he had never fulfilled any promises he made when fighting for nomination. He failed to honour his election promises. Therefore, when such people have become Directors of Bureaux in future, it will only bring Hong Kong into disrepute. Together with this Chief Executive ……

PRESIDENT (in Cantonese): Your speaking time is up.

MR ALBERT CHAN (in Cantonese): …… They will basically bring disaster to Hong Kong.

MR LEE CHEUK-YAN (in Cantonese): President, I believe the Secretary will also come tomorrow even though today is her second last day of office. I am not sure if the Secretary is counting down in her heart to see how many hours are left before she can relieve from her official duties. However, I really hope that the Secretary, when she speaks later, can speak from the bottom of her heart to explain why the Bill comes to this stage so late although it will be passed today. I believe the Secretary also wishes to complete the legislative work sooner. I certainly understand that government officials have to face many restrictions, but why does the Bill come to this stage so late?

Today, we debate on regulating the sale of first-hand residential properties. This issue has been under discussion for more than a decade, but it has yet been dealt with properly. All along, the Government has told us that we should let the industry exercise self-discipline. However, the more it exercises self-discipline, the more the unpleasant incidents are "blown off". But the Government has continued to let the industry exercise self-discipline. Past

experiences have proved that self-discipline does not work. Facing the temptation of $100 million, several hundred million dollars or even more than $1 billion, no one on earth can exercise self-discipline. Let us not talk about the temptation of more than $10 billion or $20 billion, sometimes even a few thousand or a few ten thousand dollars will make people unable to exercise self-discipline.

To put it simply, nobody participated in the voluntary Wage Protection Movement back then. The Government hoped that the relevant industries could exercise self-discipline, adding that legislation would follow if they failed to do so. As a result, the legislation on a minimum wage was stalled for two years. Self-discipline is nowhere to be seen although the minimum wage we have been talking about costs as little as a few ten thousand dollars or only some $100,000, let alone facing such a huge temptation. Of course, I am not suggesting that we should forgive the property developers on the grounds that no one can stay away from such a huge temptation. We opine that the Government has the responsibility to intervene if business traders have gone too far.

The Government has actually intervened, but only bullying small business traders. The most infuriating part is that it dares not even touch the biggest and the most powerful consortia. How does the Government bully small business traders? President, we all know that cheating at the scale is illegal. There is a public scale in every public market. The Food and Environmental Hygiene Department can ask a stall operator to put the goods in question on the scale to measure the weight. The stall operator will be prosecuted if he is found cheating at the scale. A vegetable stall operator can be held criminally liable to cheating at the scale. But in the case of selling a residential property valued at millions or tens of millions of dollars, the practice of deceiving will have no consequences at all and such a practice can continue. It is only until now the Government regulates the sale of first-hand residential properties by legislation.

Before the introduction of this Bill, the Government has all along connived large developers to deceive people. Members may consider it exaggerating by using the word "deceive". However, we can take a look at the facts and see whether or not large developers have deceived people. For instance, the mini furniture items in a show flat are not real furniture. Apparently, the show flat is furnished with a sofa, which is, however, a scaled-down version. People hope that, after marriage, they will have a master bedroom that can at least

accommodate a double bed. But it ends up that the master bedroom is too small for a double bed. Certainly, a double bed can be placed in the master bedroom of a show flat. But it is not the case in a real flat unless the space of the bay window is also used.

Apart from this, walls are finished with glass mirror to create such visual effect that the flat looks much more spacious than it is. As we can see in a recent example, some flats at the podium floor are actually at the ground level next to the road. Another example is that properties were sold at astronomical prices but in the end, the transactions were called off collectively. The developer was criticized for fraud to boost the property prices.

These incidents happened in succession and were exposed in succession. Does self-discipline work? A spate of such incidents has led to the enactment of this long-awaited Bill. However, we have to ponder one thing. Fifteen years after the reunification, property prices now have caught up with the 1997 level. The property price index now stands at 103 while it was 100 in 1997. The difference between 103 and 100 represents an increase of 3%. But in fact, property prices at present are much more expensive than those in 1997. Why? Because nowadays flats are "shrunken". The saleable area of a flat before 1997 is much larger while the size of a flat nowadays is "significantly inflated". Apart from the frauds I mentioned just now, another example of blatant fraud is "inflated flats" across the board.

I prefer to buy old flats and live in Mei Foo Sun Chuen. The gross floor area of my flat is 900 sq ft with a saleable area of almost 800 sq ft. Nowadays, the saleable area of a 1 000 sq ft flat may be just 600 sq ft or even smaller. Mr LEUNG Yiu-chung may be a victim. Just now he said that the saleable area of his flat was even smaller. I would like to air grievance for him. The saleable area of a 1 000 sq ft flat could be less than 600 sq ft. As flats have been "inflated" to such a terrific scale, the difference between the property prices at present and those in 1997 is almost one fold. Although the present property price index stands at 103 while that in 1997 stood at 100, representing an increase of 3%, in terms of saleable area, the rate of increase in property prices between now and then should be much bigger.

The legislation is not enacted until now. From another perspective, President, the property developers have been fattened for more than a decade.

The legislation should have been enacted before 1997. But now we do not know how to do the calculation. Although the Government says that regulation will be imposed by law now, property developers have been fattened unfairly. I am not jealous of them, but it is unfair. Owing to unequal access to information, after investing their lifetime savings and expectations, in the end, buyers find that they have been deceived into buying "shrunken flats".

Under such circumstances, we feel more infuriated at the collusion between the Government and business. Against such background, we think the Government has skewed in favour of consortia, engaged in collusion with business, and fattened the property developers. Is it too late to address these problems today? Yes, it is too late! Certainly, some people always say that better late than never. However, we have to ponder this question: How many Hong Kong people were victimized in the past? Why do we have to invest our lifetime savings, hard-earned money and lifetime expectation in a flat, which turns out to be a "shrunken flats"? Anyhow, we think it is important for the Bill to be passed today. But I hope that improvement can be made in several aspects during the enactment process.

First of all, buyers very often can hardly keep cool in the sales process. So a cooling-off period is needed. The Bill sets the cooling-off period at three days. Upon our persuasion, the Government now accepts the Consumer Council's proposal to extend the cooling-off period to five days. There is a big question in addition to the cooling-off period. If the buyer does not proceed with the transaction, the deposit will be forfeited. At present, the deposit is 5%. In Mr LEE Wing-tat's amendment, it is proposed to change it to 3%. Let us think about it. If a person prefers not to buy five days after making a lifetime decision, how much can a property developer lose? The developer can resell the flat and take the buyer's 5% deposit, which involve quite a large amount of money. Let us think about it. If a flat sells for $10 million, 5% deposit means $500,000. If a flat sells for $5 million, 5% deposit means $250,000. For an ordinary family, $250,000 or $500,000 is a huge amount of money. Can the developers stop being so calculating? In fact, 3% is already very much and 5% is simply an immense burden. Therefore, we support that the amount of deposit to be forfeited as a result of the buyer giving up transaction during the cooling-off period should not be so heavy.

President, we have, on the other hand, made reference to the relevant ordinance of the Securities and Futures Commission (SFC) and the ordinance

regulates the trading of shares. Compared with the relevant ordinance of the SFC, the Bill is laxer in some aspects. I have put forward an amendment with regard to the first aspect, that is, property prices must be included in the dissemination of information. The SFC's ordinance stipulates that any information sensitive to stock prices must be disclosed. In my amendment which is to be discussed later, I have proposed to require to disclose any information sensitive to property prices. The SFC's ordinance stipulates that the dissemination of false or insufficient information constitutes a criminal offence. Why have we never asked the Government to force developers to disseminate information sensitive to property prices? Therefore, we will put forth an amendment in this respect. So there is no need to say any further.

As for the second aspect, we think that the SFC is helpful to the victims because it can file civil litigation on their behalf. Although this Bill only allows civil litigation, the Estate Agents Authority (EAA) cannot file any civil litigation on behalf of the victims. We can imagine that in the case of legal proceedings, no matter whether dissemination of false information or misleading sales brochures is involved, compensation is also very important apart from criminal liability. However, it is quite difficult for individual consumers to challenge the system because they will come under enormous pressure and burden. Hence, we think that we should refer to the SFC's system and set up an arrangement to sue on behalf of the victims property developers selling first-hand residential properties. Currently, there is no such arrangement. If I propose an amendment, it will certainly be very complicated. Anyway, I hope the Government will take note of it and examine whether more can be done in other areas such as class action lawsuit.

Up to now, we have all been discussing about the sale of first-hand residential properties. Why do we not do the same to the sale of second-hand residential properties? One current view is that we should deal with the sale of first-hand residential properties first. When they turn into second-hand properties later on, we will be able to know exactly their saleable area when we look back at the first-hand residential properties. However, only buildings after today are clearly provided with the saleable area. In other words, calculation will not be based on the floor area/gross floor area, but the saleable area. Starting from today, all buildings in future will be provided with the saleable area except for those buildings before today. Why can we not have a uniform system? Should both the gross floor area and the saleable area are required, so

that consumers will be informed of the saleable area of second-hand residential properties? The problem of "inflated buildings" we are talking about actually arises from the discrepancy between the saleable area and gross floor area. A flat of 1 200 sq ft in gross floor area has a saleable area of only 700 sq ft. A flat of 1 000 sq ft is only 500 to 600 sq ft in size.

With the mandatory provision of saleable area, we may now resolve the problem in respect of all first-hand residential properties in future. However, we cannot resolve the problem in respect of properties which were built before the enactment of this Bill. President, we think that it would, therefore, be more thorough if both first-hand as well as second-hand residential properties are subject to regulation. The problem of "shrunken flats" exists in both old and new residential flats. After putting an end to the problem in new buildings, we hope to do better for old buildings. In our opinion, this is also an inadequacy or incompleteness of the current legislation as inequality of access to information has put consumers in a vulnerable position. When consumers are left in a vulnerable position, we hope to introduce a more balanced arrangement.

Today we in the Labour Party certainly support the belated Bill on regulating the sale of first-hand residential properties. The Labour Party deeply regrets that the legislation has come so late because years of collusion between the Government and business have turned many property buyers into victims. But only up till today we have a piece of legislation to impose regulation and protect future buyers. Besides protecting future buyers, we also have to monitor the effectiveness of the legislation because where there is a measure, there is bound to be a counter-measure. We do not wish to play a "cat and mouse" game with property developers. We hope that the legislation can truly protect residential properties purchasers because they are investing their lifetime savings. In our opinion, the legislation must provide protection in a fair and square manner.

Thank you, President.

MS CYD HO (in Cantonese): Although I am not a member of the Bills Committee, I have great admiration for its members for being able to complete the scrutiny of this 400-page Blue Bill within three months. This is really incredible. Not only has the scrutiny of the Bill proceeded smoothly, there was

also not much controversy. I believe the smooth scrutiny of the Bill and the lack of major controversy have something to do with community support and the collation of views by the Steering Committee during the preliminary period when the policy was conceived before the proposal was formulated. As a result, there was not much controversy when the Bill was introduced. This shows that smooth administration is possible if the policy formulated is popular and the Administration is willing to heed views at an early stage before the policy is formulated. On the contrary, if the Administration works behind closed door and refuses to listen more to other people's views on the details, despite that the relevant policy gets community support, there will still be a lot of disputes when the Bill goes through scrutiny. Let me cite the Personal Data (Privacy) (Amendment) Bill 2011 as an example. Disputes arose when some issues beyond public concern were included in the Bill.

How many times will ordinary people buy a property in their lifetime? Except for some people who gain a lot of experience in buying properties through property investment or speculation, other ordinary people will not have much experience in buying properties is their lifetime. So, most buyers have little experience in buying properties. Compared to property developers and their legal advisors, these people do not have reciprocal technical know-how. But insofar as property buyers are concerned, buying a property is a crucial investment or necessity in their lives. Moreover, they are required to repay a mortgage loan over a period of more than 20 years. Hence, protection for property buyers is especially important.

In Hong Kong, however, properties are very often bought in panic. I recall my experience of seeing some newly-launched property developments prior to 1997. In the sales office, there was only a large chart on the wall setting out the floor level, tower block, floor area and price of the properties for sale. Property buyers then pointed at the chart to indicate to the staff their preferred properties. In fact, except for the sales brochure and the show flat inspected earlier, all other information was not available. As for those sales brochures, we were very familiar with them, which were all artists' creation of singing birds, fragrant flowers and green grass everywhere. As mentioned by Mr LEE Cheuk-yan just now, the show flats displayed some miniature furniture, with a single bed measuring only five-and-a-half-feet long and two-and-a-half-feet wide as well as an exceptionally small dining table. Moreover, viewers were not allowed to take photographs or measurements. When people were influenced by

a panic mood for fear that they might not be able to purchase a property, they would purchase a "shrunken flat" inadvertently. They found out that no furniture could fit the flat only after moving in.

This explains why this Bill specifically requires the saleable area (SA) of a property to be stated clearly. This practice of setting out clear marked prices is instrumental in protecting property buyers. We all know that at present the SA of a property is only 80%, and even 70% or 60% of the gross floor area (GFA). The problem is especially serious for small properties because they are required to share common areas, corridors, and so on. Hence, the smaller a property, the more it is "shrunken". The area of some properties is so small that someone can stand in the middle of the living room and stretch out his hands to reach the walls on both sides. Or he may sit down watching television with no need for a remote control because the television can be turned on and off with his foot. With such a miserable small property, people in the lower-to-middle class in Hong Kong are really in great distress. Sometimes the SA of a public rental housing flat for a larger household might even be bigger than a "small-area, low-priced" private property.

At present, the GFA of a property covers not only lift lobbies, but also facilities inside, such as green balconies and bay windows. The value of these facilities is regarded as part of the flat price, and the facilities are also seen as special features to attract buyers. However, the load of a green balcony is different from the internal floor load. Hence, green balconies cannot accommodate too many things. As for bay windows, when they are measured vertically, their storage space will be diminished by at least two sq ft. This explains why these facilities cannot be compared to the internal SA of a property. Nonetheless, many people are fond of green balconies for ventilation and airing laundry. Property developers also regard green balconies as a selling point and market them as green architecture.

President, I have viewed some flats and found that, despite the presence of the so-called green balcony and architecture, some toilets and bathrooms are enclosed without any windows, thus failing entirely in meeting the needs of community hygiene. In fact, such information should be included in the sales brochures for the sale and purchase of properties, because it is really basic. Why? I believe Members should still recall that, during the SARS period, Amoy Gardens was infected because of the transmission of infectious agents

through its sewage and other piping systems, and the entire Block E of Amoy Gardens became an infected area. But now in some new developments, enclosed toilets and bathrooms with no windows are designed to facilitate a green balcony and a sea view for every flat.

Where are the pipes installed? They are installed at the internal wall outside the flat besides the lift shaft. Therefore, in the event of pipe leakage or bursting or back-flow of the effluent, the situation will definitely be very serious because, unlike the situation in old buildings, owners in these new buildings will not notice anything wrong until problems occur inside their flats. As all the pipes in old buildings are installed at the external wall outside, even if a property owner is not aware of pipe leakage in his own flat, people living below will tell him because they will also be affected.

Hence, all this information, which is extremely important, should be explained to buyers and included in the sales brochure. Besides basic information on community hygiene, information on, for instance, the hours of daylight, whether a flat is never exposed to any sunlight or is exposed to sunlight for several hours a day, the overall air ventilation of and wind direction in the estate, the air ventilation of every block and flat, the noise pollution in the vicinity of the estate, and even the light pollution caused by the adjacent or opposite gigantic fluorescent light signboards to the flats, and so on, should be provided to buyers, too. This can make buyers psychologically prepared for the quality of the flats for which they will have to work more than 20 years in order to pay off several million dollars in home mortgage.

Since the Director of Buildings or the Building Authority was previously allowed to exercise discretion to raise plot ratios, property areas could be "inflated" or "shrunken". A well-known example is LEUNG Chin-man. He has been praised by some for his good work of introducing beneficent measures such as green balconies and green architecture. On the other hand, we have the Grand Promenade as another example. Thanks to its green balconies and the provision of a bus terminal as a transport hub beneath it, its plot ratio was allowed to be raised by over 40%. People considered it worthwhile to pay for these green balconies, but the plot ratio turned out to be raised by over 40%. As the density of the whole estate raised accordingly, the daylight and ventilation as pointed out earlier were affected.

These green balconies have become a tool for property developers to make profits on both ends. On one end, the balcony can draw buyers by misleading them into believing that green balcony are environmentally-friendly and electricity tariff can be saved as the laundry can be aired in the balcony. However, buyers do not know that property developers can enjoy a relaxed plot ratio thanks to these balconies, and the air ventilation of their flats might very likely be affected as a result. On the other end, property developers can make profits through the relaxation of the plot ratio. Worse still, the discretion exercised by government officials to relax plot ratios has become a tool to transfer deferred benefits to them. Therefore, the required clear marked prices for the sale and purchase of properties stipulated in the Bill will not only protect buyers, but also curb possible corruption.

In fact, the SA was adopted by the Government in other areas a long time ago. The acquisition price announced by the Urban Renewal Authority (URA) for compensation during the acquisition of properties in old districts was sometimes so high that it might reach $12,000 per sq ft, but actually it was calculated on the basis of the SA. When an affected owner in old districts was offered compensation calculated on the basis of the so-called $12,000 per sq ft, 30% of it must be discounted because prices would be calculated on the basis of GFA no matter whether he rented or bought a flat again. The URA was very smart in excluding rooftops, illegal structures and everything not in compliance with the plan kept by the Land Registry. As a result, the amount of compensation offered was just at the most basic rate.

Hence, we have this question: Given that the concept of calculating on the basis of the SA was already adopted by the Government when the Urban Renewal Authority Ordinance was passed, why has the same practice not been introduced for the sale and purchase of first-hand properties until now? However, there is nothing we can do now. As it is better late than never, and considering that our term of office is nearing the end, time is running out and there is even a fear that the Bill cannot be passed, so we must expedite its passage.

Lastly, President, I would like to express my views on the amendments proposed by Mr LEE Cheuk-yan and Mr LEE Wing-tat separately.

Mr LEE Cheuk-yan proposes in his amendment for key information to be included in sales brochures. Just now, I already explained this in a relatively

detailed and in-depth manner and stated which information I considered essential to be included in the sales brochure. Therefore, I will definitely support Mr LEE's amendment.

Mr LEE Wing-tat proposes in his amendment for the forfeiture amount to be reduced by two percentage points from 5% to 3%. As inexpensive new properties are currently no longer available, with the cheapest ones being sold for more than $8,000 per sq ft, and a 500-odd sq ft flat sold for $4 million to $5 million, 2% is equivalent to $100,000. With this sum of money, property buyers can upgrade their furnishing and have a bit more money to spend in preparation for acquiring a new home.

Certainly, the 2% can be saved if they do not opt for forfeiture. However, in the event of a sudden family crisis or a change of mind within several days for fear of having bought an unsuitable flat in panic, the $100,000 penalty is really severe to them, for it will take years before they can save up this sum of money. Therefore, I will support Mr LEE Wing-tat's amendment. Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, many people compare the Residential Properties (First-hand Sales) Bill to a belated spring, meaning that spring is always better than a bitter winter. As everyone knows, life is more comfortable in spring. After all, life is extremely tough in the severe winter when it is bitterly cold. In fact, the problems with first-hand properties in the past were so numerous that they could be compared to the array of stars in the sky, with consumers facing a predicament comparable to a bitter winter.

Why did this happen? I recall that initially consumers considered that buying "shrunken flats" was the biggest problem they faced when buying properties. This problem could be described as widely known. It was only at the moment when a buyer moved into a property he had purchased that the actual condition of the property, which was supposed to be of a certain size, was found to be a far cry from what was stated initially. As pointed out by a colleague just now, since the area of bay windows was taken into calculation, the originally ordered furniture could not be used. Even ready-made furniture, not to mention custom-made furniture, might not be suitable for use, for it could simply not be placed in the room. The critical situation of "shrunken flats" was thus conceivable.

The point is, despite the occurrence of this sort of situation and years of discussion among us, the Government has completely been indifferent. As a result, property developers have developed a mindset that consumers cannot do anything even if the situation persists. As they believe no one will care and consumers will continue to buy, they have continued to adopt this sort of unscrupulous sales tactic.

Besides "shrunken flats", we can also find, for instance, inconsistencies between the information contained in sales brochures and the facts — for instance, the sales brochure might conceal the fact that a cemetery is situated besides a development project or claim that a swimming pool is situated nearby, which is actually not the case. Consumers have suffered losses due to the massive outbreak of this sort of cases, for what is not shown in the sales brochure is found only after the property is already bought. Hence, not only members of the public cannot live in contentment, they may even suffer from other losses.

Unfortunately, this situation has not been ameliorated so far because of the complete lack of government intervention. The Government's failure to come up with any policies to curb this situation has also led property developers into believing they can do whatever they want and employ whatever means, as long as more profits can be reaped. It is precisely because the Government is a "toothless tiger" which only issues verbal warnings and reacts helplessly to various kinds of unscrupulous sales tactics that property developers can continue to act in an arbitrary and reckless manner.

There are some people who say that consumers are to blame for their stupidity, as in such circumstances they may refuse to buy such properties. These are certainly just fine words, but the point is: Why do consumers still prefer to buy these properties reluctantly in some cases? Our housing policy is to blame for all this.

The situation today has become most critical. The Secretary's remark sounds very pleasant to the ears, for she said that flat production was flexible and more flats could be built when required. Despite years of discussion over this issue, the Government still insists that flat production is flexible without making any undertaking to increase it.

As a result, not only more than 100 000 people are still waiting for public rental housing flats, even the more affluent middle-class people wish to acquire

their own homes, but supply still cannot meet demand in the market. Whenever a new property development is put on sale, buyers will come in droves to scramble for properties. It is precisely because of such a phenomenon that people who have a desire for home ownership strive to fulfil this dream hastily without much consideration.

There are two reasons behind this sort of mindset. First, if they do not acquire a home today, they will have to face the possibility of even high property prices tomorrow. Hence, it is always better to acquire a home earlier. Second, if they do not buy their own homes, they will have to rent a private flat. But unfortunately, because of the lack of rent control in Hong Kong, the supply in the private residential market is getting increasingly tight, and the rent will continue to rise. When the rent level reaches a certain level, they might as well spend money on home mortgages and become a home owner. This has also compelled them to buy their own homes.

Furthermore, people are encouraged to acquire their own homes regardless because they believe property values can be guaranteed when property prices rise. But this actually reflects an unhealthy condition, that is, the Government's lack of a comprehensive and long-term housing strategy leads people to strive to buy their own homes without considering whether it is worthwhile to do so, even if it means they have to raise a loan for that purpose. They do so for two reasons: self-occupation and probably value guarantee. It can be described as the tragedy of "a snail without a shell", because the properties they buy are not necessarily of good value. So, how can they be not miserable?

In my opinion, the Government should therefore be held largely responsible for dealing with this issue. Unfortunately, it has all along neglected the issue, leading to the building up of the grievances of consumers. It is precisely for this reason that this legislative proposal of regulating the sale of first-hand residential properties has come into being today. Many people share the view that it is better late than never. Has the Secretary ever felt guilty about this? She has made many people suffer losses. It is only until today that she has learnt from the bitter lesson and made an effort to resolve this issue when she is going to leave office. This seems to become a norm, for many other senior officials have behaved in the same manner recently. Instead of keeping their mouth shut and acting indifferently as usual, they are now speaking their conscience when they are about to leave office knowing that they will not have

the chance of remaining in their posts. Likewise, I wonder if it is because Secretary Eva CHENG is going to leave office that she has decided to make such a contribution.

This makes me very sad. Why did the Secretary not deal with this issue immediately when she took office several years ago but allow it to be delayed until now? Although many people are praising the Secretary, I have to raise this question instead: Does the Secretary feel ashamed? In fact, she should examine her conscience and reflect on herself as to why no actions have been taken over the years, as this issue does not begin today and has been discussed for many years. If I were the Secretary, I would have felt ashamed rather than honoured. In fact, we should all examine our conscience and reflect on ourselves.

In any case, as many colleagues have said, we will still support this Bill. However, this Bill still has a lot of inadequacies, and among others, the sale of second-hand properties is not regulated. Very often, members of the public wishing to acquire their homes rely on estate agents as intermediaries, but a lot of information about second-hand properties remains unclear. Making the provision of comprehensive information a statutory obligation can give buyers greater protection. The failure of the Bill to do so can be considered one of its shortcomings.

On the "cooling-off" period, Members all agree that it is a good idea to extend it from three to five days, though I still consider the period, whether it lasts three or five days, too short. Given the condition under which properties are sold, buyers might not be able to really calm down and think carefully within three or five days. It will be even better for the "cooling-off" period to be extended a bit longer. Nevertheless, I do not wish to argue again about figures because, in comparison, the current arrangement is already much better than the past, only that I believe the longer the "cooling-off" period, the greater the protection for consumers.

As regards government buildings including Home Ownership Scheme flats, I do not understand why the Bill does not provide for regulation of the sales brochures and price lists of these buildings. Why are these buildings not put under the same regulation but exempted instead? This is most crucial because, as pointed out just now, it is precisely because sales brochures are often misleading in many areas that properties are found inconsistent with their

promised descriptions only after they have been bought. Why does the Government not impose regulation? Why are the price lists, which pose yet another problem, not regulated? I do not understand why the Government is always leaving behind a "tail" in dealing with everything.

As regards Mr LEE Wing-tat's proposal of revising 5% to 3%, as Ms Cyd HO already elaborated on it just now, I will not comment on it in detail. I consider it most crucial that the damage caused to consumers can thus be reduced as the spirit of the entire legislation is to ensure that they can minimize their damage in addition to enjoying greater protection. I hope colleagues can support this direction to enable the Bill to achieve an actual effect, or else it will serve no real purpose at all. The Bill should not be considered genuinely passed if it cannot achieve any actual effect after it is passed.

I know that the Secretary will no longer be responsible for improving the future Ordinance. Nevertheless, I still hope that the relevant department and Policy Bureau can step up the monitoring of its implementation effect in the future and fine-tune areas where further improvements are required. They must not think that the matter is already settled for they have got their job done. This is because we really should not allow the "toothless tiger" to remain, and the Ordinance cannot be considered useful unless it can protect consumers in concrete terms.

President, I so submit.

MISS TANYA CHAN (in Cantonese): President, in fact, as early as in 1961, the Lands Department already drew up the Consent Scheme to regulate the sale arrangements for uncompleted flats to ensure that instances of "fallen through property development" would not occur, but the scheme does not impose stringent restrictions on the sale descriptions of uncompleted first-hand residential properties. It was not until 2000 that the Government proposed the Sales Descriptions of Uncompleted Residential Properties Bill by way of a white bill. Yesterday, Ms Audrey EU said that at that time, she was a new Member and witnessed how the whole white bill had been withdrawn back then.

I also remember that when we visited the districts during the time when the *de facto* referendum was conducted, whenever we talked about the problems

relating to buildings, residents in those neighbourhoods and members of the public would stand still at once to listen to us. I believe many people have the same experience, which is what I often say, "In our life, apart from having children, the biggest investment is to buy a property.". I still do not have the opportunity to experience these two kinds of events yet but I may have the opportunity to experience one of them after the enactment of the Bill, so I hope I can have better protection in the future.

The white bill mentioned just now only sought to regulate "uncompleted residential properties" but the Residential Properties (First-hand Sales) Bill this time around does not just cover uncompleted properties but also completed first-hand residential properties, so this can be considered as progress. However, the most important point is that as we can see, for many years, it has not been really feasible to ask property developers to exercise self-discipline. We can see that at present, property developers really have boundless creativity, particularly with regard to sales brochures, property advertisements and various kinds of sales tactics, such as those relating to the publication of price lists and each time, all of them are highly innovative eye-openers.

President, if you still remember this, to me, the most unforgettable experience is THE ICON on Conduit Road. Although the Consent Scheme was in place, due to the fact that THE ICON was a project developed under old lease conditions, it was not covered by the Consent Scheme. At that time, we found that the information provided by estate agents as well as their subsequent discussions with the property developer were all very dubious. In particular, the condition of what estate agents or the developer referred to as "unadorned flats" was really shocking.

I wonder if the President still recalls that it had really never occurred to me that this could be so shocking. At that time, I thought that in spending $10 million to buy a residential property …… on that day, I received a phone call telling me that a residential flat on Conduit Road had been purchased at a cost of $10 million but that there was no kitchen in it. So I asked the caller why and if it had been demolished. He replied in the negative, so I asked him if the kitchen was an open one and again, he replied in the negative. However, it was stated explicitly in the sales brochure that there was a kitchen, so I said that since it was stated therein that there was a kitchen, surely that meant there was one? However, again, he said that this was not the case because the flat he had viewed

did not have any kitchen. I then asked again why it was so. Was the flat that he had bought located in the New Territories? Again, he replied in the negative and said that it was a flat on Conduit Road. No matter how he elaborated, I just could not understand.

Then, my assistant went there to have a look at the flat and only then did we find the situation really terrible. Once the person involved in this incident opened the door, it was found that there were as many as 15 wash basins in the flat and the floor planks of the neighbouring flats were also all put inside. Why were there 15 wash basins? Because conversion projects were being carried out in the other flats. In sum, the sight before us was really a spectacle. It really was a spectacle. After the floor planks had been removed from other flats, they were all placed in the flat of the person who planned to take possession of it. Of course, the condition of some flats of THE ICON was actually somewhat more satisfactory but I remember that in some television programmes, the condition during flat inspection was filmed. In some of them, we could see some of the flats that owners had taken possession of. At that time, the building surveyor made a comment, saying "all places where water can be found have experienced water seepage.". Just imagine this. To hand over flats in this way is really shocking. How can consumers find any protection?

I also have personal experience of some sales tactics and I would also like to share them with Members. Fortunately, at present, the present Bill has also brought such tactics within its scope of regulation but I still want to share them with the Secretary because they are quite typical. I remember that on one occasion, I visited a place where I thought show flats were on display. The flats were not located in a construction site but on a certain floor of a commercial building. On-going in, I first saw a chandelier, then two women in attires similar to those of flight attendants came up and bowed, saying, "Welcome". Then, the viewing of show flats began but after viewing, one would find this truly remarkable.

First, I would not talk about the size of the flat but the most remarkable thing of all was that the wall between the toilet and the kitchen was transparent. If the flat were a real one, this wall would not be transparent, but in a bid to create a feeling of spaciousness, so as to give visitors the impression that the flat was somewhat larger, the wall was made transparent. Just imagine this: If I were to think that the wall on one side of the toilet was really transparent after viewing,

what would happen? A lot of furniture was put inside the flat but in fact, the walls were made thinner, so that even though it was fully furnished, the flat still gave one the impression of being quite spacious.

Since I was too shocked, I could not help but ask one of the air hostesses …… or rather, attendants …… what kind of flat that actually was. They said, "These are not show flats but 'an exhibition of lifestyle'". At that time, I did not quite understand it, so I asked further, "It cannot be. What kind of flat is this actually?" They again replied, "These are not show flats but 'an exhibition of lifestyle'". Then I understood. Maybe some uncompleted flats put on pre-sale could not be called show flats, so they kept repeating that "this is an exhibition of lifestyle" like a voice recorder. Of course, I could not understand what kind of lifestyle this was. Just imagine this: What lies between the kitchen and the toilet was a transparent wall, so what kind of lifestyle could this be?

In recent days, there is also the example of Oceanaire that some Honourable colleagues have mentioned. Fortunately, the Bill this time around also makes specific reference to property sales brochures and imposes detailed regulation on them. Be it the planning development in the vicinity or even the font sizes to be used — in particular, the font size of explanatory notes or footnotes — all of them are regulated. This is because often, the font size of footnotes is small like gnats and even though a magnifying glass is used, one still cannot read them, so even requirements on the font size have been laid down.

In addition, we are also very concerned about the issues relating to price lists. In the past, I heard people who had the opportunity to buy properties long ago say that the price lists of flats were very simple, just like all the bus routes published by bus companies. The prices of the flats on various floors were all set out on a single sheet of paper. However, the present way of buying flats is very weird. It is like a desperate fight among cornered beasts. The public have no idea when the price list would be published and subsequently, they would learn from press reports that some second, third, or fourth mistresses or fifth, sixth or seventh concubines and even some sort of magnates have already driven up the prices with their speculative activities and that each of them have reserved a certain number of flats. Such news is reported well beforehand but no one knows what the price of a flat actually is. The public only know about the "intended price".

Fortunately, the Bill this time around also provides for price lists — of course, not the price of each flat — but in varying degrees, it is hoped that property developers can enhance the transparency in prices as far as possible, so that consumers can have sufficient information for reference when making one of the major decisions in their lives. Be it the information on the sales, the flats or the prices, as well as the information on show flats or "unadorned flats", all information should be as transparent as possible and conveyed to consumers as soon as possible, so that they can make a smart choice. This is of the utmost importance. A lot of such information is covered by the Bill under deliberation now.

However, just now, many Honourable colleagues have expressed their concern about whether or not the situation of trying to outsmart the legislation would arise. The Bill this time around shares one common feature with the white bill back then in that it specifies that the property developer or the senior management concerned has to assume criminal liability for the offences. Not only is there the possibility of having to pay compensation, there is also the possibility of being sentenced to a period of imprisonment. I believe that the public find it more reasonable to lay down such provisions. Just now, many Honourable colleagues have also said that since it is necessary to assume criminal liability for tampering scales, why is criminal liability not prescribed in respect of the sale of residential properties? This time around, the Bill is possible to make some of the people concerned — in particular, informed parties — assume criminal liability, so this would be fairer to the public.

All along, the public, and for that matter, even people who can afford flats worth $10 million, are all very concerned that financially, it would be difficult for them to take civil legal actions against property developers. On this point, often, some members of the public who were deceived by property developers feel that when the public negotiate with property developers, both sides have different bargaining power. My Member's office has dealt with many such cases before. Apart from THE ICON, other residential flats were also involved. Of course, some property developers have scruples. Property developers with scruples would protect the rights of ordinary consumers but in the face of those unscrupulous ones, sometimes, we really can find no way to deal with them. Therefore, it is very much hoped that after the passage of the Bill, property developers can respect their own responsibilities. If instances of consumers being subjected to unfair treatment have occurred, property developers can sit down to have discussions with them properly, rather than wait until criminal

liability will be pursued before they are willing to have discussions.

There is another matter that we are worried about. If I am mistaken, I stand to be corrected by the Secretary later. After going through the whole Bill, we find that the situation of the greatest concern to us is that after buying a residential flat, a buyer can buy a parking space by paying just $1 more. I wonder if such instances can be eliminated. Our greatest concern is that such a practice would give potential buyers the impression that the prices of flats are very high, thus driving up the prices of the whole housing estate or other flats. Such a practice would make it impossible for consumers to ascertain the true value of properties accurately. Therefore, I hope very much that be it the future Secretary or the civil servants responsible for monitoring the implementation of this piece of legislation, they can all continue to monitor if instances of outsmarting this piece of legislation or outwitting each other would arise after the legislation has come into operation. I hope that we can all continue to pay attention to this.

Lastly, I also wish to say that the most important thing in the implementation of this piece of legislation is to make reference to the practices in the secondary market. I still remember very clearly that on one occasion, when I talked about the secondary market in the relevant Panel, some Honourable colleagues hastened to say that this had nothing to do with the secondary market and that if the saleable area and gross floor area of properties in the secondary market were also covered, this would only cause confusion. Of course, I am very thankful to the Bureau for standing firm throughout and I also know that the relevant regulator has also issued a guideline relating to the secondary market which says that if both the saleable area and the gross floor area for a second-hand property are available, it is necessary to set them out clearly if a buyer so requests. A buyer can also obtain the relevant information from the Government's Rating and Valuation Department if necessary. I hope that after the Residential Properties (First-hand Sales) Bill comes into effect, be it properties in the first-hand market or the secondary market, the information available to potential buyers can be highly adequate, comprehensive and transparent, so that property buyers or potential property buyers like me can be afforded adequate protection in the future and the market would no longer be so distorted but would become fairer.

I so submit.

MR CHIM PUI-CHUNG (in Cantonese): President, I speak in support of the Second Reading of the Residential Properties (First-hand Sales) Bill (the Bill).

President, the development of the property industry in Hong Kong is both a deformity and a marvel. Looking in retrospection at history, after the liberation of China, the population of Hong Kong increased drastically. Before the liberation, property developers were practically non-existent in Hong Kong. It was only when some people found that there was an escalating demand for housing that they transformed their original business and became property developers. At present, there are indeed many people in Hong Kong who got rich thanks to properties.

In selling flats, some property developers would sell the 1 000 or 500 units built by them in one go, while some property developers would freeze the sale after selling some units. It is the latter that can make the most money. This is a fact that we can all see, while the method of calculating flat prices in property sales in Hong Kong can be considered a great disgrace for Hong Kong.

In my opinion, the greatest disgrace for Hong Kong is firstly, the cage homes of the past and secondly, the "sub-divided units" nowadays and thirdly, the system of "speedy price increases and tardy price decreases" for fossil fuels and fourthly, the system of property sale in Hong Kong. This is an undisputed fact. I have stressed a number of times that perhaps I am not knowledgeable enough but each time I speak in the Legislative Council, I would strive to say what I believe in my heart to be facts.

There are often doubts about some unscrupulous property developers and the reasons are two-fold. The first is that they build "shrunken flats". If one buys a flat with an area of 1 000 sq ft, the saleable area is only some 600 sq ft. Yet, strangely, while there are "shrunken flats", there are also "inflated flats". Property developers tap on the advantage of helping the Government develop land and frequently use their talents and other privileges to build "inflated flats". They utilize the land sold by the Government to them to the fullest and by means of "shrunkening and inflating", the resulting difference can be as big as 60% or 70%.

We have to know that in "inflating" the flats, property developers do not have to pay additional land premium and if the flats are "shrunken", their prices

can be even higher. The price difference between the "inflating and shrunkening" of flats is beyond imagination. Are there any property developers that use this kind of method to make more money? President, let me tell you that indeed there are and they are even well-known ones. Therefore, as some Honourable colleagues said just now, the Government has done this late. This is the Government's mistake.

Fifteen years have passed since the reunification. We can hold different political views and this is normal because we all make decisions that we consider correct for the sake of votes. However, the regulation of property sale involves collective interests but the SAR Government really has to assume responsibility for failing to carry out co-ordination and ensure the early passage of the legislation in this Council. Of course, the Legislative Council also has to assume responsibility but most importantly, it is necessary for the Government to table the Bill before it can be scrutinized by the Legislative Council. Therefore, the Government really has undeniable responsibility.

President, sometimes, some of the methods of property sale on the Mainland are really amazing. For example, if one buys a unit of 1 000 sq m on the Mainland, one may get 1 200 sq m or even 1 300 sq m. Not only is the unit not "shrunken", it may even be larger. What is the reason for this? Because on the Mainland, the saleable area is used as the basis for calculation. Swimming pools and some areas would not be included in the calculation of the area of a unit. In order to attract business, property developers are also happy to provide an area of 1 200 to 1 300 sq m to buyers buying a unit of 1 000 sq m.

Of course, we cannot expect such instances to occur in a place with high land prices like Hong Kong. However, in all matters in Hong Kong, fairness, openness and justice are always important considerations, so be they members of the public or buyers, it is not the price per square foot is that they care about, all they ask is a fair and reasonable process of property sale. I believe that in the future, when the price per square foot is based on the saleable area, it would be hardly surprising that luxury properties worth $100,000 per square foot would be commonplace. However, the public have never demanded that the price per square foot cannot be more than $5,000 or $10,000. Their major demand is that a consensus is reached to calculate the price per square foot based on the saleable area in future.

President, we understand that sometimes, due to building issues, to calculate the price per square foot based on the saleable area would pose some difficulties because a housing estate or a building does not just consist of private areas occupied solely by owners but also common areas, and the so-called green areas nowadays. In these circumstances, I firmly believe that users and the public would not make any special requests. Property developers only need to state clearly what facilities or areas are included in what is sold to the buyer. In fact, a sales brochure is a miniature version of an initial public offering (IPO) prospectus. We all know that the company concerned has to assume full responsibility for the contents of the IPO prospectus. Since a sales brochure is a miniature version of an IPO prospectus, naturally, property developers have to assume full responsibility, including for ensuring the truthfulness of the contents.

I personally believe that since Hong Kong is an international city, the SAR Government, as a responsible and open-minded Government, should make sure that rules are prescribed for all matters. As I said just now, it does not matter even if the price of a property is as high as $100,000 per square foot. This is a commonly accepted fact. But the Government must strive to regulate the "shrunken flats" and "inflated flats" nowadays.

President, property development is crucial to society. Although property development is only one line of business in society, it has such a great bearing on the living environment of the public that it can create resentment among them. When many members of the public or buyers are subjected to unfair treatment, naturally, they would feel resentment and get it vented in society or assume a confrontational stance. It is true that property developers have paid a lot of taxes but at the same time, they have also profited from property development. Therefore, they should not create an atmosphere of hostility in society. In fact, this atmosphere is not something created intentionally by property developers but the result of inadequate regulation by the Government. If the laws of the Government are clear, I am sure those super-rich property developers definitely would not challenge the law.

I believe that apart from the Bill to be passed today, the Government should also make greater efforts in regulating sales brochures, as I said just now. Since the materials used in building construction can lead to great price differences, if possible, the Government should even require property developers to set out in detail the brands of the building materials used because if the brands

of the materials are disclosed, the public can have supervision targets and obtain more information. If property developers do not disclose the brands of the materials used, the public, users or buyers would know naturally that lower quality materials have been used, so the prices of the flats should be cheaper.

President, I have all along said that as Hong Kong lacks resources, the fastest way for it to secure a prominent position in the world is to become a second home for the wealthy Chinese all over the world and now, such a trend can actually be seen. Since there is such a trend, the Government should all the more boost the confidence of potential buyers in Hong Kong. To do so, of course, we have to protect their rights in property transactions. In the future, more overseas (in particular, Mainland) compatriots will buy properties in Hong Kong. Of course, there are also voices demanding that restrictions be imposed on their investment but this is another matter. No matter what, to inspire their confidence in the property market in Hong Kong, we must ensure that the properties bought by them must conform to the descriptions in sales brochures and other advertisements. As regards high or low prices, this is another matter.

Therefore, the Government should strive to play a monitoring role in various areas. As a number of Honourable colleagues have pointed out, what is called self-discipline does not work. I personally believe that since property developers actually enjoy many unique advantages, they …… of course, we should not be jealous of them, nor do we have to admire them because if property developers make excessive investments or carry out excessive speculation at inappropriate times, they may become bankrupt and such instances did occur before.

The Government's most important task is to provide a level playing field in society to ensure that buyers and users would not be misled or deceived, so that mutual trust can be fostered in a society with fair competition. At the same time, we must not give people the impression that the property industry is hegemonic, rather, the property industry should be used for stimulating the development of other complementary industries, so that all sectors can benefit from a booming property market and scale new heights. This is the responsibility of the future SAR Government *(The buzzer sounded) ……* and also the expectation of the public.

MR WONG YUK-MAN (in Cantonese): President, first of all, I would like to wish the Secretary good luck. Actually, this Council is very tolerant, no one today requests for ringing the bell to do a headcount. The Residential Properties (First-hand Sales) Bill should be able to undergo Third Reading and get passed within this week. Then the Secretary can steer away from the murky waters of politics and spend time with her family. Congratulations.

This is certainly no place for people to be reluctant to leave. I have been a Member of this Council for four years and I have a feeling that I am more like a "demon". The oracle writing on the lot drawn from the Che Kung Temple this year is really amazing. It is really like what the writing says that it is hard to tell demons from humans. Just see what kind of people are found in the team of three Secretaries of Departments and 12 Directors of Bureaux. I would not comment on the former office-holders. But just take a look at the newcomers. The person who is about to take up the post of the Director of Audit just puts me in a cold sweat of fear. I will hold a press conference later and expose what this person has done. This is someone who has no integrity and was involved in the Ernst and Young scandal. But he can be the Director of Audit. This really drives people crazy.

PRESIDENT (in Cantonese): Mr WONG, you have digressed from the question.

MR WONG YUK-MAN (in Cantonese): I have to remind Members that Hong Kong is getting into real trouble. The Director of Audit should be someone who is politically and administratively neutral and he should have no ties with the business sector or the Government, or with anyone belonging to the camp of the Chief Executive-elect, LEUNG Chun-ying. When a person like this is appointed to be the Director of Audit, I can predict that Hong Kong will be dead.

PRESIDENT (in Cantonese): Mr WONG, please do not make any comments unrelated to this Bill.

MR WONG YUK-MAN (in Cantonese): I have done so already.

We are fully in support of the Residential Properties (First-hand Sales) Bill. The earlier the passage of any Bill to combat the hegemony of developers is the better. So we will support this Bill. Stop saying that we are filibustering and delaying the passage of those Bills on people's livelihood. The truth is many people in this Chamber are not interested in what is going on. The hottest news today is about the appointment of three Secretaries of Departments and 12 Directors of Bureaux. As a public representative in this Council, and as Dr Margaret NG reminded us yesterday, the speeches we make in this Council will be put on record and go down in history. So with respect to a Bill as important as the Residential Properties (First-hand Sales) Bill which involves a struggle for power between developers and other parties and the protection for the life of the people, we have to speak up for such an important Bill.

Over the past years, the Transport and Housing Bureau or the Administration has relied on self-discipline or self-regulation in the industry in handling problems commonly considered as very serious, especially with respect to the various kinds of malpractices or misleading practices which homebuyers have to face. In the absence of regulation in law, very often it would be difficult to curb the unscrupulous developers.

Ms Audrey EU said yesterday that many details of the Bill are still unclear. The Law Society of Hong Kong has also got many queries concerning the Bill. Some of its views expressed have been accepted by the Government and relevant amendments are proposed. If we read these amendments carefully, we will find that the Government has accepted views put up by the public. Most of the amendments are proposed after taking on board the views from various parties. However, there are still concerns and doubts that have not been addressed. In particular, there is a point raised by Dr Margaret NG that the Government has failed to achieve a balance in the Bill between the protection given to consumers and measures to facilitate the actual operation of property transactions by the legal professionals. I would think that this is a good point to make. I hope the Government, especially the Secretary, would respond to that point later on and explain why the view of the Law Society is not accepted. This is because we are worried that the Bill will lead to other problems in its bid to protect consumers.

We are of course delighted to see the passage of this Bill. As we all know and as many Members have mentioned, there exist problems like the high premium policy, the real estate bubble and so on. These problems have been

widely discussed in society. A few days ago when I had a meeting with the residents in a district, we discussed problems like the exorbitant rentals these days and the inability of the young people to buy their first homes. At that time I said that those of us born in the 1950s, provided that we had some higher education and when we graduated from university in the 1970s, the salary we got each month was enough to pay for some 10 sq ft of a residential property. But now the monthly salary of a university graduate is only good enough to buy only 1 sq ft. It can be seen easily from this comparison that there is little if no chance for the young people to move up the social ladder. Very often, if they want to buy a flat, they have to use more than half of their monthly salary to pay for the mortgage. These people become slaves to their flats. They have saved painstakingly to buy a flat but in the end the hard-earned money which they have saved up for more than a decade is eaten up by the high interest rates charged by the banks and the price of flats asked by the developers. If they want to apply for public rental housing, despite the claim made by the Secretary that the average waiting time is only three years, they have to wait much more than that in reality. However, I would not want to argue with the Secretary, this is because she is about to leave. I think I will leave it to the next time when I can debate with Prof Anthony CHEUNG.

What the developers are doing and the practices they adopt nowadays can only be described as shameless. It can be said to be shameless in the extreme. Examples of this are countless. One is the development called Oceanaire. A unit on the fourth floor shown in the plan is in reality situated next to a street. This is a most ridiculous thing. There are some problems which I hope to talk about here. First, the problem about floor numbers. Of course, many people, be they Chinese or foreigners, would have some taboo for certain numbers. The Chinese are very sensitive about the number four, for it sounds similar to the word "death". And it is therefore an unlucky number. For the foreigners, they think that the number 13 is unlucky. But that does not really matter, for we can just make some adjustment with respect to these two numbers and we may just skip them. It would not cause any serious problems if the fourth and the thirteenth floors are skipped. However, we should note that the order of floors in a building is very clear in English. The order will certainly start from the first floor, then the second floor, the third floor and so on. There is no reason why the order will start from the fifth floor. This is totally incomprehensible to foreigners. We will consider it way over board if more and more floor numbers are skipped.

I remember about a year or two before, Mr LEE Wing-tat questioned the case of a serious skipping of floor numbers in a property development under a certain developer. In that case, some tens of floors numbers were skipped. A building which is some 10 floors or more became 48 floors in number. The aged developer gave a rather humorous reply to Mr LEE Wing-tat, asking what was wrong about that. When Mr LEE Wing-tat was so short in stature, he had a nickname called "Gundam". So, this was the meaning of the skipping of floor numbers. There was nothing we could do about it. The developer was very humorous and he even poked fun at the Member, saying that he had a nickname of being called "Gundam" despite his small stature.

We hope that some sort of regulation can be imposed. Even if floor numbers are to be skipped, there should be some limit to it. And there should be some indication as to the actual floor number shown besides those re-arranged floors. This can avoid misleading the buyers.

The Cheung Kong Holdings has a new residential development and it states in the sales brochure that it is located in Kowloon Tong but actually it is in Tai Wai in Sha Tin. There is a mountain separating these two places. Is this kind of misrepresentation very similar to that made by CY? In future there could be some sales brochure for a development in the Western District that claims to be situated right in the heart of the Central District. Of course, now that it is the Western District which is the heart of Hong Kong and it has been like that ever since 1997. As things are going, Diamond Hill is taken to be Beacon Hill, and any project which has got the Chinese word meaning "bay" as its name has got problems, like the Grand Promenade, the Hung Hom Bay Centre, Residence Bel-Air, and so on. All these developments are related to the transfer of benefits in one way or the other. All these developments have got the name in Chinese meaning a bay. But the real Bay Area is in San Francisco. And there is a housing development called Beverley Hills in Hong Kong and it is meant to rival the real Beverley Hills in LA which is an area for the rich. All these are lies that mislead people. Just look at those advertisements about property developments. They are about a panoramic sea view and azure sky with white clouds. Just how many days in Hong Kong can we see azure sky and white clouds? But there is no regulation of this kind of advertisements. It could be that the Secretary is living in a place where she can see azure sky and white clouds and it is a real luxury residential development.

The situation in Hong Kong is really interesting. Those rich people living on the Peak and in houses of a few thousand square feet will still build unauthorized structures in order to add a few thousand square feet more to their homes. Those from the middle class buy flats about 600 sq ft in size but they can actually get 300 sq ft. Those in abject poverty sleep on the streets and even as they only take up 2 sq ft, they are ruthlessly driven away. Who can tell me what is really going on? Some people say all the posh homes on the Peak have unauthorized structures. The owners own the houses and they can add anything there. This is really equating necessity and reality. This is what is happening to the Chief Executive. He is making more mistakes when he is talking more. Those unauthorized structures are there for a long time and he takes for granted that rich people living in a 6 000 sq ft house can add unauthorized structures to make it 9 000 sq ft. But for those in the middle class, they save hard to buy a flat measuring 600 sq ft, but that flat is actually only 300 sq ft. For the poor people, they do not even have a place to live and when they apply for a public rental housing flat, they have to wait long in sheer exasperation.

Another problem which many Members have talked about is that of "inflated flats". This problem became more acute when LEUNG Chin-man was the Director of Housing. Under all sorts of ingenious names, the developers change small flats into medium-sized flats and cheat at the floor area. Although some of these tricks to inflate flat sizes have been stopped by the Development Bureau, this problem of "inflated flats" still exists. These "inflated flats" are like a bubble and if the developers are allowed to produce this kind of bubble, when the small owners possess their flats, these bubbles will burst. It is a tragic thing to own a property in Hong Kong, for after paying a huge sum of money, the owners can only get a tiny flat.

My youngest son lives in Las Vegas. People in that place can buy a house measuring 1 800 sq ft with US$180,000. I tell him in Hong Kong, if you take US$180,000, that is, some HK$1 million, you cannot even buy a toilet. People who want to buy a home have to save up a large sum of money and borrow from the bank and they have to repay mortgage loans every month. But these unscrupulous developers are selling these "inflated flats" to them. At times when I see what is happening around me, I would delight in seeing what is considered misfortune in other people. When I see those reports of cases of fighting for the estate of a deceased person, I would think that this is retribution.

For these people, they have amassed their huge fortune from seizing other people's lifetime savings and in the end, they cannot die in peace because their family members are fighting over their estate. So there is really retributive justice in this world and every person cannot escape from it. LEUNG Chun-ying is an example. At first he was very pleased with himself.

It will not work if we are to rely on the Real Estate Developers Association of Hong Kong to exercise self-regulation or to depend on developers to act according to the dictates of their conscience as it was the case before. For example, in those show flats, the prospective buyers are allowed to view them but they are not allowed to measure the interior of the flats. This is absurd. Once I went with some friends to view some of these show flats but we found the flat upon possession was very different from what we had seen in the show flats. The degree of divergence was simply stunning.

Another problem that should be raised is about sales brochures and advertisements. Actually, whether the law can regulate all the unscrupulous practices is an issue worth our examination. An example is a new property development called The Beaumont again by the Cheung Kong Holdings. The ridiculous thing about this project is that prospective buyers are required to pay a so-called "sincerity deposit" amounting to $150,000 before they are provided a sales brochure. Does this Bill have any ways to regulate this sort of practices?

We also notice that the Bill does not regulate on matters like the developers must state the actual view of the property development such as whether the buildings are blocked by other buildings next to them. In the case of The Beaumont by the Cheung Kong Holdings, the sales brochure does not indicate that there is a steelworks next to the project, and there is no indication that seven 40-storey blocks will be built next to it. If there is no way this Bill can regulate such matters, we can say honestly that this law is not very useful. The kinds of tactics which the developers use in selling their new development projects can only be rightfully termed as cheap, shameless and unscrupulous.

Secretary, in the face of this kind of abnormalities in the property market, the enactment of this law is only a very small step made. I hope that the Government can examine and conduct regular reviews of how this law is being put into force. There are chances that laws will become rigid and there are bound to be loopholes. So we hope that after this law is put into practice, the

Government will conduct reviews from time to time. As a matter of fact, it is hard for us to elaborate on the problem of *(The buzzer sounded)* the hegemony of developers in such a short time as 15 minutes. I hope we can talk about it during the Committee stage later.

MS MIRIAM LAU (in Cantonese): President, acquiring a home is a major wish of most Hong Kong people, but as new flats can now cost some $3 million or more any time, the loan burden will be extremely heavy.

Recently, some banks have provided mortgage loans with a repayment period of as long as 40 years. Even if a person is doing so exceptionally well that he can have the means to buy a property shortly after he started to work at the age of 25, he will pay off his mortgage only at the retirement age of 65 when his mandatory provident fund benefits can be withdrawn, which means that he will have to work for a lifetime to repay the mortgage loan for his flat. If a person cannot afford buying a flat at 25 but eight or 10 years later in his 30s, his children will likely have to take over in making property mortgage repayments.

Therefore, to members of the public, buying a property can be said as a major lifelong or even inter-generational investment. We are duty-bound to guard the gate for the public to ensure that their investment is fairly and reasonably protected.

There used to be many problems with first-hand residential properties in respect of their sales arrangement, as well as the transparency and fairness of transactions, such as exaggerated and untrue information in advertisements, ambiguities in price lists, differences between show flats and completed flats, and a great discrepancy between the saleable area (SA) and gross floor area (GFA), which aroused great public concern. To improve these undesirable situations, the Government has proposed to impose regulation on the sale of first-hand residential properties by way of legislation. The Liberal Party basically supports this, except that we have conveyed our wish to the Government that under the premise of enhancing the transparency of information, both the GFA and the SA should be set out for the public to have more information to make a comparison. For example, if the price of a flat is $10,000 per square foot when it is calculated on the basis of the SA but $5,000 per square foot when quoted on the basis of the GFA, meaning that the flat size is "inflated" by 50%. The public can then be

clearly provided with a comparison between the GFA and the SA and they will be able to find out whether the price is cheap or expensive. Of course, the SA must be shown in more conspicuous places to prevent developers from misleading the public.

The merit of this practice is that it can have regard to the habit of the industry and the public of measuring the flat size and comparing prices on the basis of the GFA. But the Government has insisted that the calculation of the price should be standardized by using the SA as the basis, rather than allowing developers to set out the GFA at the same time or calculate the price based on the GFA in parallel. The Government has said that if developers are allowed to set out the GFA, they may be able to play a lot of tricks to mislead the public. But I think the Government may consider it more convenient and easier for regulation if the SA is adopted as the sole basis for calculation. This will provide convenience to the Government but in terms of the protection of users' right to know, I think this is not of much significance. I am not going to pursue it further for the time being and in fact, it is meaningless to argue over it. As the Government has insisted on using the SA as the sole basis for calculation, we will measure the flat size on the basis of the SA for the time being.

President, as the use of the SA for calculating the prices for first-hand residential properties is only the first step and second-hand residential properties are likely to follow this practice adopted for first-hand residential properties of using only the SA to calculate the prices in future, this will easily lead to confusions in the market, for this will change the deep-rooted habit of the public. The problem is that if the SA should be used instead for measuring the size of flats which have been completed for years, many practical difficulties and problems may arise. For example, the Estate Agents Authority (EAA) already made a headstart some time ago by promulgating a practice circular to require estate agents to provide information on the SA in their second-hand residential property advertisements with effect from 1 January next year, and non-compliance may result in revocation of licence. But the problem is that at present, the information on the SA of second-hand residential properties can be looked up only from two sources. One is the database of the Rating and Valuation Department (RVD) and the other is the SA stated in the agreement for sale and purchase for the registration of the first assignment in the Land Registry. However, the SA provided by these two sources may be different and so, the estate agents or the buyers will simply be at a loss.

A newspaper has looked up the SA of several second-hand private residential properties from the RVD and the Land Registry respectively and found that the difference can be as much as 3.7%. For example, for a flat in The Arch in West Kowloon, the information of the RVD shows that the SA is only 976 sq ft whereas from the first assignment of the flat in the Land Registry, the SA is 1 014 sq ft, showing a difference of 38 sq ft. Do not underestimate the significance of these 38 sq ft. Based on the market price back then which was $16,800 per square foot, it would mean a difference of $630,000. The Government, though knowing the problem and without comprehensive supporting measures, has remained hell-bent on using the SA for calculating the price. This will indeed create unnecessary troubles, while owners, buyers and the industry will feel at a loss as to what to do. Some members of the industry are concerned that disputes may arise between the vendor and the buyer, and especially at times when property prices are on a downward trend, this may easily become a pretext for cancellation of property transactions.

President, to adopt the SA for calculating the price per square foot without causing unnecessary disputes, the Government should, in fact, set up a central database of residential properties expeditiously to standardize the SA for all residential properties. It is open to question indeed if, before the setting up of a central database, the provision of the SA is mandatorily required even for the sale and purchase of second-hand residential properties, for this would cause great difficulties to the estate agents who act as the middlemen in property transactions. Ironically, the EAA actually allows the provision of both the GFA and the SA for the transactions of second-hand residential properties, only that the SA must be stated in larger fonts than the GFA. This is proof that the Residential Properties (First-hand Sales) Bill to be enacted is quite unreasonable in requiring the provision of the SA only.

As regards Mr LEE Wing-tat's amendment which proposes to lower the amount of deposit to be forfeited by a purchaser from 5% to 3% of the purchase price if the purchaser does not proceed with the signing of an agreement on sale and purchase within the cooling-off period after signing a preliminary agreement for sale and purchase, the Liberal Party considers it acceptable. In fact, the level of property prices is currently quite high, and the prices of first-hand residential properties are also on the high side. For example, with regard to Heya Green in Sham Shui Po which has been put up for sale by the Hong Kong Housing Society recently, the flats cost nearly $4 million at a minimum, and 3% of the purchase

price will be $120,000, which is not a small amount to ordinary members of the public. This can actually create sufficient deterrence to prevent them from making hasty purchase decisions.

The Government refused to lower the percentage of 5% mainly to prevent abuse by speculators. But I think that consumer rights and interests must be accorded with priority in our protection, and we should not put the cart before the horse. In the market as a whole, there are always more users than speculators. Furthermore, if a prospective buyer makes a decision on buying a property only because he cannot resist the persuasion of the estate agent at the time, the forfeiture of 5% is not considered a small loss to the buyer. Given that speculators have primarily disappeared in the market since the introduction of the Special Stamp Duty, why does the Government have to make genuine home buyers suffer unnecessary losses?

President, in the remaining time, I would like to express my views on the procedures of the deliberation on the Residential Properties (First-hand Sales) Bill and the entire legislative exercise by the Legislative Council.

In fact, the Bills Committee has spent less than three months on the deliberations on this very complicated Bill. President, you must have seen how thick the Bill is. It is almost an inch thick or more. We have spent about three months on the Bill which can be barely considered as having been scrutinized and passed by us. In the course of deliberations, the Bills Committee has listened to the views of many members of the public and professional bodies. While the public learned of the resumption of the Second Reading debate on this Bill in this Council just yesterday, two professional bodies have written to us. One is the Law Society of Hong Kong (Law Society), and they expressed disappointment in its letter dated yesterday (27 June). They have made several submissions to the Bills Committee and if my memory does not fail me, one of the submissions consists of 25 pages and they have continuously provided input to the Bills Committee. The other professional body is The Hong Kong Conveyancing and Property Law Association Limited, most members of which are lawyers who handle property transactions. Its members also include other professionals involved in the handling of property transactions. They have made a submission to the Bills Committee and if my memory does not fail me, their submission consists of more than 30 pages, in which some 60 to 70 proposals or concerns are raised. In the two letters that they have sent us recently, they said that they were aware that the Second Reading debate on the Bill would be held, but when they

saw that the final version of the Government's Committee stage amendments actually did not address the various concerns they expressed to the Bills Committee and that the Government was willing to make only slight amendments, they said that they were greatly concerned and felt disappointed.

Having said that, both organizations still stated that they understood that it was the wish of the public to see the passage of this Bill because the sale and purchase of a property was an issue of great importance and involved great public interest, and they did not wish to delay the passage of the Bill. However, they said that amendments seemed to be warranted in many aspects of the Bill. Dr Margaret NG also raised this point in her speech yesterday and particularly, many provisions in it would create confusions to professionals who handled property transactions and may even cause them to incur criminal liability though they may be innocent. In this connection, I have to particularly mention clause 66 of the Bill on the dissemination of false or misleading information. Under this clause, a person commits an offence if the information disseminated is false and the person knows that, or is reckless as to whether, the information is false. In fact, it is often the case that professionals who handle property transactions may not necessarily know each and every detail, and they are concerned that they may fall foul of the regulatory provisions of the Bill and will hence face prosecution. Both Law Society and The Hong Kong Conveyancing and Property Law Association Limited are gravely concerned about this clause. For this reason, the Government must re-examine the legislation after the passage of the Bill to look into ways to make the professionals feel more at ease in handling property transactions.

Moreover, the two organizations have expressed a lot of views on many clauses. They pointed out that if no amendment was made, professionals would encounter difficulties in handling property transactions. They, therefore, hope that after the Bill is passed, the Government can really sit down to carefully discuss the relevant provisions with the two organizations and when necessary, propose further amendments before putting them into practice. Otherwise, when problems emerge in future, the officials concerned may have to be held accountable or make an apology to the public. This is not what we wish to see. As there is still some time before the legislation comes into effect, we very much hope that the Government will practically propose amendments to it.

Thank you, President.

MR ALAN LEONG (in Cantonese): President, the Residential Properties (First-hand Sales) Bill (the Bill) is a long-awaited bill. Just now quite a number of Members mentioned a lot of unfair situations encountered by the people when buying properties.

If you buy one catty of vegetables and you are given 10 taels, you may sue the vendor. The vendor, if convicted, will be sentenced to imprisonment and a fine. However, the buyer of a property, if encounters unfairness, may not be able to pursue the matter even though a substantial amount of money is involved. For example, when a buyer who has bought a flat of 800 sq ft finds that the flat is only 580 sq ft upon handover of the property, he may have been cheated more than $1 million, assuming that the price per square foot is around $10,000. However, the buyer will never know why and cannot pursue the case. This is really ridiculous. We have also heard of stories about some buyers, who bought residential flats after viewing show flats which were not "unmodified flats" in shopping malls, were caught by surprise upon handover of the completed flats because they thought they had mistakenly entered others' flats as the condition of the completed flats was totally different from that of the show flats. Mirrors were used in the show flats to make the flats look more spacious. In addition, tailor-made furniture was used. A five-foot-long bed was placed there instead of a normal six-foot-long bed. As people would not measure the furniture with a measuring tape while viewing and thus the problems would go unnoticed. All these examples are too numerous to mention.

The Bill seeks to tackle many of the problems I mentioned just now and provide protection for investors. Certainly, the Government, before drafting the Bill, has required property developers to exercise self-discipline through The Real Estate Developers Association of Hong Kong (REDA). But President, as you may also understand it, self-discipline alone is not effective. Although internal guidelines have been issued by REDA, some of its members have often failed to comply with the guidelines. Mr Stewart LEUNG told a press conference that another set of guidelines would be formulated after discussion. Despite repeated formulation of guidelines, the effect is not obvious. In view of this, we very much welcome the introduction of the Bill.

The Bill seeks to regulate activities such as market manipulation and price rigging. For instance, a property developer solicits his relatives and friends to subscribe for his properties, or even advises somebody to subscribe for his

properties at an astronomical price. However, these transactions are not completed in the end, which are just publicly gimmicks to boast that the units are sold at $100,000 per square foot, giving people an impression that one can hardly or even unlikely buy such units at $99,000 per square foot, and has to offer more than $100,000 per square foot in order to buy it. However, it is eventually found that the transaction at $100,000 per square foot is a scam. President, if such market manipulation and price rigging activities are found in the financial market, it will certainly constitute a criminal offence. The object of the Bill is to bring the regulation of the sale and purchase of properties and property development projects in line with the regulation of market manipulation and price rigging activities in the financial market mentioned just now, so that such irregularities will be subject to the same treatment. This also very much ties in with the situation of Hong Kong.

The Bill will basically impose regulation on various aspects, such as the sales brochures, the requirements in respect of the price lists and show flats, as well as the requirements in respect of the viewing of the show flats and dissemination of information on sales arrangements. Concerning the preliminary agreement for sale and purchase and the agreement for sale and purchase, the Bill provides that many clauses be set out in schedules to prevent honest investors from being misled or cheated by the developers. Besides, the Bill also seeks to provide for registers of transactions; impose restrictions on advertisements for sale promotion; provide for criminal offences in connection with misrepresentations and dissemination of false or misleading information; and provide for the appointment of a public officer to be the authority to supervise the implementation of the legislation upon passage of the Bill.

Investors who have bought a property think that they enjoy a full sea view. Surprisingly, the sea view is blocked five years later by screen-like buildings, or obnoxious facilities such as incinerators are constructed nearby. I very much hope that such cases will not happen again after the passage of the Bill.

President, regarding the Bill, I would like to express my views on some salient points. As for other individual clauses, I will discuss them in detail at the Committee stage. One of the points I wish to raise is about the saleable area. The Bills Committee, when scrutinizing the Bill, has spent plenty of time discussing this issue. It has considered whether the reference to the gross floor area should be retained. In this connection, the Civic Party has all along

supported that only the saleable area should be cited. In our opinion, if various references are retained, it will allow abuses by the developers because not everyone is so smart. Many consumers and investors will be confused by so many references. They do not know whether they should make the decision to buy a flat on the basis of the saleable area or the gross floor area.

When scrutinizing the Bill, members of the Bills Committee have expressed different views on the standardization of the reference, especially for the sale of second-hand properties. They have had no idea where information on the saleable area can be obtained. In this connection, the Government has clearly stated that the Rating and Valuation Department has kept a record of the saleable area of all properties and it is not difficult for property agents to check it out if they wish to.

Furthermore, a member has queried whether standardizing the use of the saleable area as reference will contravene the Basic Law or the Hong Kong Bill of Rights Ordinance. In my opinion, such an argument has extended the application of "free speech" or "freedom of expression" to inappropriate situations. If developers deliberately mislead the public by using such tricks, it should not be tolerated. The Basic Law should never be used as a shield for developers to mislead consumers.

I would like to highlight another point in the Second Reading debate, and that is, the policy. Should the Hong Kong Housing Authority (HA) be entirely exempted from the applicability of the Bill? Certainly, concerning the clauses about the price lists or viewing the flats, I also agree that exemption should be granted to the HA. However, no exemption should be granted in respect of misleading statements or misrepresentations. After members' efforts, the authorities have finally heeded good advices and dealt with these two aspects separately. Concerning the latter, namely misrepresentations, false statements or providing misleading information, the HA will also be bound by the Bill. The Civic Party welcomes this revision by the authorities.

The third point I wish to discuss is about sales brochures. The Bill provides that a vendor of a residential property development must make public the bilingual sales brochure seven days before the date of sale. There are also clauses stipulating detailed requirements, including those for the font size. We consider these good provisions.

I would like to highlight one point: what should be included in sales brochures. President, you may also notice that the Bill has clearly set out what information should be included in sales brochures. However, the Civic Party considers that a separate clause should be formulated in this regard so that apart from the information in the Schedules, information that has come to the knowledge of the developer but not the general public should be stated in sales brochures if it will affect the public's decision on buying a flat. Such an arrangement was not provided in the Bill initially and was introduced in the form of an amendment by the authorities after hearing our views. A clause is now added to the Bill to require vendors to disclose in the sales brochure specific information about a residential property development which is known to the vendor but not to the general public, and is likely to materially affect the enjoyment of the residential property. We welcome this revision by the Government.

Concerning the price lists, we have also expressed our views in the Bills Committee. At present, the residential units set out in the price lists provided by the property developer are not all offered for sale. So buyers may be misled by the tricks used by the developer. For example, the property developer has put up for sale 10 units, the prices of which have been clearly set out. But finally only one unit is for sale and the remaining nine units are basically not for sale. As the remaining nine units are not for sale, this constitutes price rigging. Unfortunately, the authorities have not adopted our views. In fact, not only the Civic Party has held this view, the Consumer Council has also expressed the same opinion when attending the public hearings. Perhaps I should raise this point here first so that the authorities may consider it when perfecting the Ordinance in the future. The authorities may consider whether it is necessary to formulate rules in this respect in the light of the experience after the operation of the legislation for a period of time.

President, the last point I wish to mention is that during the scrutiny of the Bill by the Bills Committee, the Government has agreed to add a new clause 65(A). During the scrutiny of the Bill, the Civic Party, to a certain extent, has also fought for the adding of clause 65(A), requesting that property investors, who have bought a flat because of being misled or misrepresentations, are not required to go to the court to testify but prove the legal responsibility of the property developer or the offender by citing the criminal judgment so that the court can decide the compensation. It is very strange for the Government,

whenever it is facing such a situation, not to complete the whole journey even though it is just a few steps away from the goal. And clause 65(A) is just one step away. By the look of things, I do not think property investors will surely not be required to prove the legal responsibility of the property developer and the court will award compensation solely by relying on the outcome of the criminal prosecution.

I hope that after the operation of this Ordinance for a while, convenience will really be brought to investors who have been misled in the next review. However, though clause 65(A) is not effective enough, it is better than none.

With these remarks, I support the resumption of the Second Reading debate on the Bill on behalf of the Civic Party.

DR PAN PEY-CHYOU (in Cantonese): First of all, President, I have to declare interests here. I have never bought any first-hand properties before. Another declaration is that the information contained in my speech today is actually provided mainly by my wife. My wife has no particular hobby, only that she enjoys "viewing flats" during her leisure time. She knows how to entertain herself probably because I am too busy at work. She used to enjoy "viewing flats" very much, but she has become increasingly upset over the years. In recent years, she has even refused to view first-hand properties again. When I tried to find out what happened, she told me that the problem of "inflated flats" was really worsening and she was getting more and more annoyed about it.

We all know that there was some so-called "water-soaked pork". In the past, some unscrupulous pork vendors sought to increase the size and weight of pork by pumping water into it through a water pipe. The problem of "inflated flats" is also commonplace. As we all know, a plot of land actually has a fixed plot ratio, which means that its usable floor area, regardless of its size and the height of the building on the plot, is fixed. Nevertheless, the Government has some policies to allow certain plots of land to be exempted from the calculation of plot ratios. As a result, many smart property developers in Hong Kong will optimize the space excluded from the calculation of its plot ratio and include it in the flats purchased by small owners. Subsequently, the space taken up by, for instance, a clubhouse and other common facilities such as a podium garden,

children's playground, car park, management office, grand lift lobby, and so on, are all included in flat sizes.

In fact, after someone has bought a flat, what are really used every day are only the one or two living rooms, the kitchen, toilet, bedrooms and other facilities inside the flat. Let us imagine this. If the purchase price of the flat covers the clubhouse — many housing estates nowadays have a large and beautiful clubhouse — but how long will ordinary people spend in the clubhouse? Some people have the misconception that they only need to pay when they use the facilities inside the clubhouse without the slightest idea that they have also bought a share of the plot of land on which the clubhouse is situated when buying their own flat.

As regards the podium garden, many Hong Kong people usually go out to work early in the morning and go home late in the evening. When they return home, it is already quite late. Children might have to go to bed after dinner. So, how can these people have any opportunities to use the garden? As regards children's recreation facilities, nowadays many families in Hong Kong do not have children and do not find these facilities useful. Some people who have no children prefer to keep pets, but then they are not allowed to keep pets according to the Deed of Mutual Covenant of their housing estate — these children's recreation facilities are not useful to them, too.

As for the grand lift lobby, I have visited some places where the lift lobby is as glamorous as a palace. However, many people might not realize that they have paid for it. The grand lift lobby is actually included in the area of their property. Worse still, we cannot possibly sleep in a lift lobby. Hence, consumers in general cannot possibly make use of these "inflated" areas, which are already included in the calculation of their flat size. However, these areas are included by property developers for the calculation of flat sizes when consumers are not cautious. Hence, consumers have really been treated like "big fools".

Another problem concerns "shrunken flats". In fact, there is no clear distinction between "shrunken flats" and "inflated flats". Generally speaking, a "shrunken flat" refers to the efficiency ratio of a flat, that is, the relatively low ratio between its saleable area (SA) and its gross floor area (GFA).

As I mentioned just now, I do not like buying first-hand properties and have never bought one. In fact, the efficiency ratios of most old properties are so high that they can reach 80% or even 90%. Second-hand properties with such an efficiency ratio are actually available. But I do not understand why, over the past decade or so, the efficiency ratios of buildings are getting lower and lower. We should already be pleased and thank God if we can find newly-constructed first-hand properties with an efficiency ratio of nearly 70%, as 60% to 70% is already considered not bad at all. The efficiency ratios of some buildings are just between 40% and 50%. In the worst case, the efficiency ratio is even less than 40%. What sort of a building is it if its efficiency ratio is less than 40% of its GFA?

Mr Abraham SHEK of this Council is a very good colleague. I believe many property developers in Hong Kong are actually very good, too. Nevertheless, the practices of some property developers are really shameful, for they can only be described as "unscrupulous". Let us imagine this. A young person who has started working may be dating. They may also hope to save up money to pay for the down payment when they buy a flat. Some people might even need to seek financial assistance from their parents, for they still cannot get enough money even though they have been saving up for 10 years. Their parents' lifelong savings may have to be invested in it, too. Hence, the purchase of a flat involves the injection of the savings accumulated by two generations through arduous work. But what sort of a property can they buy? These properties, which make my wife increasingly annoyed, are commonplace nowadays.

Although the GFA of some flats claims to exceed 300 sq ft, its actual interior measurement may just be 100 sq ft or so, that is, the SA is just 40% to 50%. What sort of a concept is this? In fact, the occupant of a flat like this does not have to leave the living room, which also doubles as a bedroom, to boil water in the open kitchen. After waking up in the morning, he must fold up his bed to make room for him to stand up. In many of these so-called one-person flats, washing machines and wardrobes must be put in the stairway. Let us imagine this. If there are several flats on the same floor, and all occupants put their relatively large furniture in the stairway, what will happen in the event of a fire? Hence, I call these flats "deluxe sub-divided units", for they are really "sub-divided", only that they are newly-built and claim to have a size of more than 300 sq ft. This is the present situation.

Despite its actual size, these flats even boast huge bay windows half the size of a person. And there are large balconies, too. Let us imagine this. If there is even no space for a proper bed, what can we do with a large balcony? To hold barbecues there? Such a design is the result of excluding these areas from the plot ratio when the flats are sold. The Government has actually allowed these unscrupulous property developers to make profits without costs.

As we all know, essential facilities must have back-ups. Hence, generally speaking, very few buildings have just one elevator. However, there is only one elevator in these 30-odd-storey-high buildings where there are several households on each floor. Normally, maintenance will be carried out to the elevator twice a month. What will happen when maintenance is being carried out? What can you do if you live on the 32nd floor? You may either climb up the stairs from the ground floor or wandering on the streets until after the elevator is properly serviced. What happens in the event of an accident or when the elevator has been taken up for several hours because some people are moving in? There are also some elevators used for "connecting" purpose. One elevator serves the lower floors. Then people must walk a very long distance to connect to another elevator to go to the upper floors. This is what I have seen. Is such a design a big insult to consumers?

Even after seeing a property advertisement, you might still have no idea where you can find the development appearing in it. You might think that you can get a clue from the name of the development. However, a development claiming to be in Ho Man Tin is actually in To Kwa Wan. I think Members should be aware of the great distance between To Kwa Wan and Ho Man Tin. This development, which is situated at the heart of Hong Kong according to the advertisement, is actually located in Tai Wai. It turns out that the heart of Hong Kong has been relocated to Tai Wai. You will also find in the advertisement many good-looking Westerners, such as beautiful women and handsome men, and the sceneries there do not look like any places in Hong Kong. They are very likely to be found in Europe only, for they simply resemble nowhere on earth. With the miraculous computer techniques nowadays, these advertisements may leave you disoriented.

When it comes to show flats, as Mr Alan LEONG mentioned just now, you will often find them in shopping malls. Strangely enough, some of the furniture you find in these show flats is purpose-made miniature furniture, like in the

Lilliput. You will also find that, despite their small size, the show flats can accommodate a lot of furniture and stuff. Some prospective buyers might even believe it to be true. Actually, these show flats have made use of a lot of mirrors to more than double their actual size.

When you find that you want to buy a flat, you will also find many flats shown on the price list already crossed out and given the "sold out" stamps. Many of these flats are either considered good or situated on high floors, whereas the unsold ones are either situated on low floors or facing the west or the north. This will cause you panic and believe that all the flats except a few are already sold out. If you do not buy now, there will be no more flats left tomorrow, and so you must hurry. It is under such pressure that consumers are compelled to immediately make a decision, the greatest decision in their lives. These decisions are always made under these circumstances. Hence, it is quite vivid to describe small property buyers as sheep waiting to be slaughtered, for they are open to exploitation.

It is only after making payments and really moving into the flat that you would discover that the actual situation is way different from what you saw in the advertisement. It turns out that the flat is really small, and the furniture is not supposed to be used by humans, or at least by adults. Hence, there is a strong sense of helplessness. As mentioned by a colleague just now, a flat situated on the fourth floor is actually built at the ground level with a road situated right outside, so that pedestrians can even put their hands into your home. How can this be acceptable? Not only have property developers cheated the people of their money, but the people being cheated will find themselves very stupid and useless, for their lifetime savings have been cheated. Such a sense of humiliation can really leave some people depressed for their entire lives. Moreover, this has led to discord in many families.

As a Legislative Council Member as well as a man in the street, I often advise young people that it might be more practical to buy second-hand properties, for at least such properties really exist and their location and direction as well as the people living there can be clearly seen. Moreover, after a period of time, these properties can basically reflect their market values. Buying first-hand properties will indeed cause too much misgivings and fear. Honestly, although we have been living in Hong Kong for many years, there are times when

we dare not enter the market and buy first-hand properties, not to mention young people without the experience of buying properties.

It is good that we can finally see this Bill today. I believe many of its clauses can help many aspiring home owners. I so submit.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR ABRAHAM SHEK (in Cantonese): President, before I come to my speech proper, I would like to respond to the speeches made by several Members on the Bill. First of all, I wish to respond to barrister Ronny TONG. He said earlier that everybody in Hong Kong supports this Bill, except real estate developers. This is his first mistake. President, in fact, the real estate developers also support this Bill. Therefore, sometimes I hope that he can first get a clear picture of the situation before speaking, because he is a barrister rather than an ordinary member of the public.

Secondly, President, he said that several barristers called in by The Real Estate Developers Association of Hong Kong (REDA) had incredibly, in his view, expressed their legal point of view claiming that the Bill affected freedom of speech. However, we have the responsibility to point it out, because protecting the people of Hong Kong is the basic principle. If he thinks that the Bill has not affected freedom of speech, he should explain it from legal perspectives and viewpoints, rather than simply saying that neither freedom nor rights are absolute. In my view, the fact that he spoke in such a manner is already a departure from basic principles. What holds importance is detailed arguments put forward during our debate. This is why I hope that the Government will give us a reply in this regard, rather than saying imprudently that freedom is not absolute. This is absolutely not an answer.

The second Member I wish to respond to is Mr Alan LEONG. He said earlier that many real estate developers did not abide by the rules. Regarding the sale of properties, particularly the pre-sale of uncompleted flats, real estate developers and the Government have entered into The Consent Scheme, and both parties agreed to the guidelines under many ordinances. Non-compliance seldom occurred in the past few years. THE ICON, which Miss Tanya CHAN

mentioned earlier, does not fall into the category of the pre-sale of uncompleted flats. President, I have to declare that I am a member of REDA. As the Bill aims at regulating the sale of first-hand residential properties, we are in support of it. In fact, many real estate developers support most of the clauses of the Bill. They have raised some questions just because they have queries about several points. President, I will elaborate on them later.

The third Member I wish to respond to is Mr WONG Kwok-hing. He said in his speech that REDA did not agree to use the saleable area and stuck with the gross floor area instead. President, this statement is also false. In fact, REDA has agreed to use the saleable area. It is just that we hope to include the gross floor area as well.

President, the fourth Member I wish to respond to is Mr LEE Cheuk-yan. He said rightly, and we also agree, that this Bill should regulate second-hand residential properties as well. Before I speak, I just wish to respond to these aforesaid Members.

MR ABRAHAM SHEK: President, as benign intentions may sometimes engender undesirable consequences, the Residential Properties (First-hand Sales) Bill, which now undergoes the Second Reading debate, is of no exception. On behalf of the real estate industry, I spare no unremitting support for the spirit of the legislation. We support the legislation. Nevertheless, during different stages of consultation and legislative process in which sound and solid advice from the industry and the community, particularly the legal community, has been relayed to the Government, it is lamentable to observe that our Government has heard but purposely not listened. Thus, albeit our support to the legislation of the Bill remains unwavered, it is difficult for me to toe the same line with our Government regarding some of the clauses of the Bill that on one hand I find not reasonable, fair and practical for its implementation, and on the other, the clauses concerned, I am afraid, may have subliminally dragged the vessel of Hong Kong into a sea of mystery in which the overall interests of Hong Kong will be at stake, and the provisions concerning the individual's constitutional rights, including property rights and freedom of expression enshrined in the Basic Law and the Bill of Rights, may as well come under ferocious challenges. If we were wrong, if our legal consultants are wrong, challenge us, give us an explanation. That is what we ask for, and this is for the protection of Hong Kong citizens.

During the Bills Committee stage, deputations, including The Law Society of Hong Kong (Law Society), the Hong Kong Conveyancing and Property Law Association Limited, REDA, Hong Kong Institute of Real Estate Administrators, Property Agencies Association Limited, Professional Property Services Limited, to name a few, have raised in their submissions a number of inadequacies and deficiencies of the Bill, the Administration, however, retains its hard-core position in most of the cases, making the Bill full of flaws.

President, two fundamental flaws in the Bill are the prohibition of the use of the gross floor area (GFA) in sales brochures, price lists and advertisements and the mandatory requirements to provide a minimum number of flats in price lists. There were legal opinions highlighting legal arguments in detail to show the probable, I repeat, probable deprivation of freedom of expression bestowed under Article 16 of the Bill of Rights and Article 27 of the Basic Law in the former, and the violation of Article 6 and Article 105 of the Basic Law in the latter. Despite so, the Administration has either repeatedly refused to provide valid legal proofs to substantiate the constitutionality of the Bill, or provided biased, selective responses to water down the challenges and hastily jump to the predetermined conclusion. Whilst supporting the use of the saleable area (SA) as a mandatory requirement for determining the area of the residential flats and for price calculation, however, the GFA issue also pinpoints that the Administration harbours double standard. On the one hand, the Administration permits the Estate Agents Authority to continue using the GFA when selling second-hand properties, saying the collective wisdom of the market will eventually lead the market to use the SA as the unique standard for the sale of second-hand properties, it just fails to explain why there is a need to wield the visible hand to discriminate against first-hand properties, if the Administration is a true believer of the market which I doubt it is. The double standard of the Administration also shows its lack of understanding of the daily operations of the industry by dichotomizing first-hand completed residential properties and second-hand residential properties. REDA has pointed out that there is no fundamental difference between a completed first-hand property and a second-hand property in that both can be physically inspected. Discriminating against first-hand completed residential properties will only serve to confuse property buyers. That is why we are also asking that the second-hand market to be legislated too.

The Administration has also failed to address the need for *mens rea* or knowledge of the inaccuracy before imprisonment is imposed and the request for the exemption of solicitors and other professionals from criminal liability, as raised by Law Society and the Hong Kong Conveyancing and Property Law Association Limited. These, coupled with the widened definition of "vendors" to particularly include "property developer" — defined in the Bill as a person who will co-ordinate and supervise each and every major aspect in the process of undertaking a first-hand residential development for the purpose of offering the residential properties for sale — make the Bill a draconian one in that vendors, solicitors and relevant professionals could easily be found fault with mispresentation, and the dissemination of false or misleading information relating to advertisement, which shall be liable for criminal offences punishable by up to seven years. Thank you.

Although the Administration claims it does not intend to catch vendors, solicitors and professionals for their mere negligence or mistake as long as they have taken "reasonable precautions" and exercised "due diligence", it will probably turn out the other way round when the law comes into practice because the ambiguity of the relevant clauses of the Bill will leave room for subjective interpretation by the Government. That is what the stakeholders worry about most.

President, the exemption arrangements under the Bill are discriminatory. Committee members and deputations, including Property Agencies Association, the Hong Kong Conveyancing and Property Law Association Limited, have expressed their objection to the exemption for the Housing Authority (HA). Although the Administration eventually agrees to introduce the CSAs to the effect that developments constructed by the HA, including the new and residual Home Ownership Scheme (HOS) flats, and not the Private Sector Participation Scheme flats will be exempted from requirements under Part 2 of the Bill, this patch-up is just not enough. As the Hong Kong Conveyancing and Property Law Association Limited puts it: "There are no convincing reasons why purchasers of HOS flats should not be entitled to the same protection of the law."

By the same token, concerning exemption for the New Territories Exempted House (NTEH), Law Society, the Hong Kong Conveyancing and Property Law Association Limited and REDA all hold the view that exemption

should be granted to other types of house development in Hong Kong, in addition to the NTEH single houses. The Administration, again, has turned a deaf ear to the deputations' concern and their call is not reflected in the Bill.

On the proposed exemption for completed development with at least 95% of the residential properties in the development being leased out for at least 36 months, I doubt that the Administration had consulted the industry in this respect given the threshold is too high. The Administration says it has taken the views of the real estate sector, but few will trust this saying, even people outside the trade find it unconvincing: Law Society, for example, considers it impractical and unrealistic to set such a high and rigid threshold and suggests lowering the threshold for exemption. The Hong Kong Conveyancing and Property Law Association Limited further proposed to scrap such a provision under clause 10(3) and (4) given that there is already exemption for sale of units to sitting tenants of at least one year in clause 56.

President, the Administration has shown how overbearing it is capable of being, from the consultation and deliberation of the Bill all the way to going ahead with a Second Reading of the Bill today, despite us supporting the Bill: it has turned a blind eye to divergent views; it has heard but not listened to opinions; it has sabotaged the well-established procedures of the Bills Committee. To the Government, this aspect is not of significance for it has the mandate and support from the political parties. Who dare to go against them? The Bills Committee was set up in late March and the meeting with deputations was well attended on 24 April, when deputations offered valuable comments on the Bill to the Administration for consideration. As required by the Administration, all written submissions relating to the Bill from the public, including the invited stakeholders and concern groups, were submitted by 20 April.

To everyone's dismay, it took the Administration more than a month to review the deputations' submissions and comments and prepare its Response Paper. The Response Paper was only distributed to members of the Bills Committee for consideration one day before the Bills Committee meeting scheduled for 22 May. The worse case involved REDA, a major stakeholder of the Bill. It was not until 30 May that the Administration finally turned in its response to REDA's submissions made on 20 April.

Worse still, most of the responses given by the Administration in the Response Paper simply repeated previous responses verbatim without providing further elaboration, justification or examples to substantiate the Administration's position. President, I must declare that I was one of the victims of this governmental abuse of power. I submitted three letters to the Administration on 28 May, 31 May and 11 June, respectively, seeking the Administrations' detailed explanations and legal justifications for not accepting the Counsel Opinion submitted by REDA, only to find that the Administration's responses to my letters were full of platitudes, biased and selective in nature, but lacking in legal reasoning. If from day one, the Administration already had a predetermined position on the Bill, what was the point of the consultation exercise? What was the point of discussing the Bill in the Bills Committee? And if the Administration treats answering members' questions as a perfunctory task, it not only undermines the deliberation work of the Bills Committee, but also does a disservice to good governance.

Thank you.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Transport and Housing to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I am very pleased to see the resumption of the Second Reading of the Residential Properties (First-hand Sales) Bill (the Bill) within the current term of Government and I hope that with the support of Members, it can pass the Third Reading.

A Member said that it was my wish to see the passage of the Bill within the current term of Government. It is certainly desirable if I can complete the legislative work of the Bill personally. However, it does not matter at all if this

is my wish or not. The most important thing is the wish of the public — that is, the passage of the regulatory framework under this Bill as soon as possible.

The legislative work of the regulation of the sales of first-hand residential properties, just like my other duties, is based on the established objectives:

First, public interest is our primary concern. It has always been the Government's policy objective to safeguard the legitimate interests of consumers. The purchase of a residential property is a major undertaking for most Hong Kong people, so they should all the more be afforded protection and it is only a matter of course that legislation should be enacted to regulate the practices in property sales.

Second, to adopt a reasonable basis as the starting point. When implementing a policy, I abide by the principle of bringing people over with reasons. This also applies to the legislation on the regulation of the sales of first-hand residential properties. Our proposals are all highly reasonable, as well as fair and just. They are beneficial to both vendors and purchasers.

Third, to forge a consensus in society. Although it is the Government's responsibility to formulate and implement policies, I believe that a policy not founded on the consensus of society will not be successful. Today, there is a chance for this piece of legislation to be passed by the Legislative Council. For the first time, there will be a piece of legislation for regulating the sale of first-hand residential properties. In fact, the process of forging a consensus in society has been followed.

Fourth, to secure the support of the Legislative Council. For a Bill that protects public interest, is reasonable and supported by society, the ultimate and most important hurdle for it to become legislation is naturally its passage in the Legislative Council. Therefore, we have all along striven to co-operate with the legislature sincerely. Be it in answering the queries raised by Members or providing the relevant information, we did our utmost to secure the support and co-operation of the Legislative Council, in the hope that the Bill could be smoothly passed as soon as possible, so that protection can be provided to property purchasers at an early date.

President, the Bill has special significance to me because it is the last policy initiative to be accomplished by me in my nearly 30-year career as a civil servant, and also because this is an important, fair and equitable policy the formulation of which has taken on board the views of various people without losing sight of the principles, so it is a policy that has balanced the interests of various parties and won the support of the public.

Here, I have to express my gratitude to the Chairman of the Bills Committee on Residential Properties (First-hand Sales) Bill (The Bills Committee), Mr CHAN Kam-lam, all members of the Bills Committee as well as everyone in the Legislative Council Secretariat for their dedicated efforts and devotion in the past several months that made it possible for the scrutiny of the Bill to be completed smoothly. I must thank the Chairman of the Bills Committee, Mr CHAN Kam-lam, for making it possible for the Second Reading of the Bill to resume in time today. Thanks entirely to Mr CHAN's flexibility in arranging as many as 20 meetings for the Bills Committee to have meticulous discussions on every important clause and his efficiency and fairness in dealing with and discussing the views raised by members and deputations on the Bill, after adequate discussion by the Bills Committee, the scrutiny of this highly important Bill on first-hand property transactions in Hong Kong could be accomplished. I also thank the Bills Committee and the House Committee for agreeing to resume the Second Reading debate the Bill today.

The Bill is the fruit of the co-operation and concerted efforts of various parties. It is also an extremely important milestone in the Administration's effort to regulate the sales of first-hand residential properties over the years. For many years, the Transport and Housing Bureau has imposed regulation in various areas through the Lands Department's Consent Scheme (the Consent Scheme) and the guidelines issued by The Real Estate Developers Association of Hong Kong (REDA) to enhance the transparency and clarity of the information on the sale and transaction of uncompleted first-hand private residential properties. The most well-known regulatory measures include the standardized definition of "saleable area" adopted in October 2008 for first-hand residential properties, and the implementation of what is called the "nine new measures and 12 requirements" on sales brochures, price lists, show flats and the disclosure of transaction information introduced with effect from June 2010.

To enhance the transparency and fairness of the sales arrangements and transactions of first-hand residential properties across the board, and to further strengthen the protection for consumers the Chief Executive announced in his 2010-2011 Policy Address the establishment of the Steering Committee on Regulation of Sale of First-hand Residential Properties by Legislation (the Steering Committee) to discuss specific issues on regulating the sales of first-hand residential properties by legislation. Members of the Steering Committee comprise representatives from the Law Society of Hong Kong (the Law Society), Hong Kong Institute of Surveyors, Hong Kong Institute of Architects, REDA, the Consumer Council, the Estate Agents Authority (EAA), Legislative Council Members, academics and professionals, as well as representatives from relevant government departments. Both Mr LEE Wing-tat and Prof Patrick LAU are members of the Steering Committee. The Steering Committee spent nearly a year on discussing in detail the regulation in this area and submitted specific legislative proposals in October last year. I take this opportunity to thank the members of the Steering Committee for their efforts. In particular, I wish to thank Mr LEE Wing-tat and Prof Patrick LAU for their continual support for the legislative work of the Bill and their valuable advice.

The Bill is based on the proposals made by the Steering Committee. Subsequently, from November last year to January this year, we carried out public consultation in the form of a proposed piece of legislation — that is, a white bill — and having considered the views collected, we improved the Bill and tabled it before the Legislative Council for consideration in March this year.

The Bill mainly seeks to establish a regime that is clear, fair, balanced, feasible and effective, so as to regulate the sales arrangements of first-hand residential properties. It is hoped that by enhancing market transparency, ensuring the accuracy of the information on the relevant properties and transactions and criminalizing irregularities, the protection given to consumers can be enhanced comprehensively. At the same time, the Bill creates a level playing-field for the industry. The regulatory measures under the Bill are legal and constitutional, their intensity is appropriate. The overriding principle is to enhance the transparency of information, so that a certain degree of flexibility in commercial decision making is preserved for developers to respond to market changes.

The proposed regulatory framework under the Bill has the following salient points: The first is standardized criteria, clearly stated and genuine flat prices and high transparency. The Bill prescribes mandatory provisions for sales brochures, price lists, show flats and the Agreement for Sale and Purchase (ASP), as well as comprehensive, detailed and practical requirements on sales arrangements. They include the provision relating to property information which specifies that vendors are required to make public the sales brochure at least seven days before the sale commences, and to make public the price list and sales arrangements at least three days before the sale commences. Price lists must be set out in the prescribed format and the number of units set out in each price list must be no less than that prescribed by the law.

In addition, we also propose to require that the flat size and flat price per square foot/metre should be quoted on the basis of saleable area. As for the area of those features which the owners of a residential property will have exclusive use and the sizes of the common facilities in the development, they should not be included in the calculation of the saleable area, rather, they should be set out as separate items.

We also propose to make it clear that the vendor may seek and accept expression of intent on and after the first day on which the specified residential property is offered for sale.

The second salient point is accurate information and timely disclosure. The Bill has stipulated the time frame within which transaction information must be disclosed to duly reflect the actual transaction status. For example, property sellers are required to disclose information on the Preliminary Agreement for Sale and Purchase (PASP) within 24 hours and to disclose information on the ASP and the cancellation of the ASP within one working day.

The third salient point is the criminalization of irregularities. For instance, it will be an offence for a person to make misrepresentation or disseminate false or misleading information.

Lastly, the Bill prescribes the penalties for the breach of various provisions, with the maximum penalty being a fine of $5 million and imprisonment for up to seven years.

The above measures can help prospective purchasers make decisions on purchasing properties after getting hold of and considering full and accurate information, and receive the protection afforded by the legislation.

President, the Bills Committee has put forward many valuable views during the scrutiny of the Bill. Moreover, we also received representations on the Bill from relevant professional organizations and REDA. The Administration has taken on board the views of Members and stakeholders that were deemed to be reasonable as far as possible and has proposed Committee stage amendments (CSAs). The Bills Committee has carried out in-depth deliberations on the Bill and the CSAs proposed by the Administration.

The Administration's amendments mainly include:

(1) On sales brochures, we propose to require that the sales brochure being made public has to be the one which is printed, examined within the past three months, with updates where appropriate. Moreover, we propose to require vendors to disclose in the sales brochure specific information known to the vendor but not generally known to the general public about a residential property the fact of which is very likely to materially affect the enjoyment of the residential property. This can help enhance the accuracy and reliability of sales brochures further;

(2) regarding a purchaser entering into an ASP, having taken into consideration views from Law Society, we propose to extend the period in the requirement for a purchaser to sign the ASP within three working days after the signing of the PASP to five working days. Apart from giving the lawyers of both the vendor and purchaser sufficient time to deal with the transaction papers, this proposal also gives potential purchasers a longer time to consider whether or not to enter into a formal ASP after signing the PASP;

(3) regarding the liability for misrepresentations, we accepted the Bills Committee's views and propose to add civil liability provisions to facilitate the civil claims made by a purchaser against a person who made a fraudulent misrepresentation by which the purchaser is induced to purchase a specified residential property; and

(4) having considered the views of Law Society and REDA, we propose to exempt the sale of first-hand residential properties among immediate family members, and that between a body corporate and an associate corporation or a holding company of the body corporate from the requirements on the sales arrangement in the Bill. However, when the residential properties are subsequently offered for sale to the general public, they will have to fully comply with all the requirements under the Bill.

Here, I wish to respond to the concerns raised by Members in the debate just now.

The Law Society and the Hong Kong Conveyancing and Property Law Association Limited (HKCPLAL) have given us a lot of advice. Firstly, I wish to point out that in fact, the Law Society is also represented in the Steering Committee and has participated fully in all our discussions. We have also submitted to the Bills Committee detailed written responses to the comments made by the Law Society and the HKCPLAL.

Among our CSAs, many are proposed after considering the comments made by Law Society and the HKCPLAL. For example, the sales of first-hand residential properties among immediate family members and that between a body corporate and an associate corporation or a holding company of the body corporate are, as I said just now, exempted from the sales arrangement requirements in the Bill.

A Member has proposed to exempt the transfer of ownership of first-hand residential properties held under a family trust to the family members. After detailed deliberations, we have considered it not necessary to allow exemptions in this regard because the disposal of a property among family members under a family trust does not involve "selling" or an "offer to sell" the property, thus the disposal of the property does not fall within the scope of the Bill.

Moreover, it is explicitly pointed out in the Bill that the holding company of the vendor may also be held liable for the criminal offences in the Bill.

As said earlier on, based on the views obtained by us, we propose to extend the period in the original requirement in the Bill for a purchaser to sign the ASP within three working days after the signing of the PASP to five working days.

In addition, having taken into account the fact that many solicitors' firms are not in business on Saturdays, we exclude Saturdays from the definition of "working day". As for issues of concern to Members such as black rainstorm or typhoon signals, the definition of "working day" under the Bill does not include public holidays, Saturdays, or days when the black rainstorm signal or typhoon signal No. 8 is hoisted.

Members can be rest assured that after the passage of the Bill, when drafting the detailed implementation arrangements and formulating the operation guidelines, as before, we will continue — and I stress the word "continue" — to communicate with the Law Society and the HKCPLAL to seek their views.

However, regarding the balance between professional administration and consumers' interests raised by Members, we regret to say that we have found some of the views unacceptable. For example, Law Society and the HKCPLAL have advocated that there should be a mechanism for exemption from the relevant requirements on a case-by-case basis. We consider that it will be difficult to do so because the most important requirement for a piece of legislation is clarity, explicitness and the absence of ambiguity. If exemption can be given to individual cases, it would be impossible to specify clearly which categories of cases can be granted exemptions. This kind of discretion should be avoided as far as possible.

Moreover, they have also suggested exempting lawyers from the offences in the Bill unconditionally. We have also considered it difficult to do so. Of course, lawyers are already excluded from the definition of a "vendor". As to other offences under the Bill, such as the requirements under the Bill on advertisements or inducing others to purchase a specified residential property, our present definition is that any violation of the provisions will be subject to the regulation of the Bill. We think that there should be an appropriate balance between purchasers' interests and that of the professionals.

Mr WONG Kwok-hing has been concerned about the transitional period because it would take about a year before the enforcement agency can come into operation. In fact, at present, the Government has adopted a multi-pronged mechanism to enhance the transparency of the sales of uncompleted first-hand residential properties. This includes the Lands Department's Consent Scheme,

the guidelines issued by REDA, the regulation by the EAA, and the publicity and education efforts of the Consumer Council.

During the transitional period before the commencement of the legislation, we will continue to monitor the sale of uncompleted first-hand private residential properties to ensure that developers comply with the requirements of the Consent Scheme and REDA's guidelines. We will also continue to examine, among other things, the sales brochures, price lists and show flats of uncompleted first-hand private residential properties and will refer cases of non-compliance with the Consent Scheme requirements or REDA's guidelines to the Lands Department or REDA for appropriate follow-up actions.

Also, the EAA will take disciplinary action against licensees that are found to be in breach of the Estate Agents Ordinance, its Code of Ethics or Practice Circulars. The Consumer Council will take follow-up actions, including mediation, upon the receipt of complaints. We will continue to pay close attention to Members' concerns.

President, I would like to talk about the exemption arrangements for the Housing Authority (HA) under the Bill.

At first, we proposed that developments constructed by the HA should be fully exempted from the Bill because the Home Ownership Scheme (HOS) flats sold by the HA are subsidized flats, and the HA has to follow set parameters to dispose of these flats (in terms of determining the target group, the eligibility, sale arrangements and flat allocation quotas, and selection priorities among different categories of eligible applicants) which are completely different from normal private market practices. The Bill seeks to target the malpractices of vendors in the sale of first-hand residential properties in the private market, so many of the requirements in the Bill cannot fit squarely into the mode of sale of HOS flats.

However, in view of the views of the Bills Committee, we propose CSAs to narrow down the exemptions for the HA to Part 2 of the Bill only, that is, the requirements on sales brochures, price lists, show flats, and so on, since there are technical difficulties in applying the requirements to the HA. According to the proposed CSA, the HA must comply with the requirements on advertisements under the Bill and will be subject to the provisions on misrepresentation and the dissemination of false or misleading information.

Notwithstanding that under the proposed CSA, the HA will not be subject to Part 2 of the Bill, it will continue to sell HOS flats in accordance with the principle of transparency as reflected in Part 2 of the Bill in future. As a matter of fact, the HA has observed the administrative regulatory measures applicable to the sale of uncompleted first-hand residential properties in the sale of HOS flats in the past. Being an organization providing subsidized housing, there is also no incentive for the HA not to comply with various requirements.

Regarding Members' CSAs, Mr LEE Wing-tat proposes to make a preliminary deposit of 3% of the purchase price payable on entering into a PASP. The effect is that a purchaser must sign the ASP after the signing of the PASP within five working days, otherwise the forfeiture amount is set at 3% of the purchase price of the residential property. We do not support this proposal. At present, the forfeiture amount is set at 10% of the purchase price of a residential property in the case of projects under the Consent Scheme. The proposal in the Bill has already lowered the forfeiture amount from the existing 10% to 5% of the purchase price taking into account the particular characteristics of the residential property market in Hong Kong, including the volatility of the market and the exuberance of speculative activities, as well as the need to deter abuse by speculators or hasty purchase decisions by prospective purchasers. It is therefore considered not desirable to further lower the forfeiture amount.

Mr LEE Cheuk-yan's CSA proposes to provide a definition for a "material fact" in relation to the clause about disseminating false or misleading information. The proposed definition says, "includes specific information about a residential property which is not generally known to prospective purchasers but which would if it were generally known to them be likely to materially affect the price of the residential property." Mr WONG Yuk-man says all the time that the provisions drafted by the Government are tongue-twisters but in fact, so are Members' amendments. The foregoing means that when disseminating information, if a person omits information that is likely to materially affect the sale price of the residential property or provides false or misleading information when providing such information, he then commits an offence.

When I have briefed Members on the major CSAs proposed by the Administration just now, I have said that one of the CSAs requires sales brochures to provide information on any matter that is known to the vendor but is not known to the general public and is likely to materially affect the enjoyment of any residential property of the development. We believe that the

Administration's CSA is in a better position to achieve the effect that Mr LEE Cheuk-yan intends to achieve through his amendment because relevant material refers to information that is likely to materially affect the enjoyment of the residential property and it is likely the vendor knows clearly if such a situation exists with regard to the residential property, so it would be difficult for the vendor to shun the responsibility and he must provide the relevant information in sales brochures. Since the Administration has proposed the CSA, we do not consider it necessary to further add Mr LEE Cheuk-yan's CSA to the Bill.

President, after the passage of the Bill, the next step of our work is to establish a law-enforcement agency. To facilitate the early implementation of the legislation, so that public resources can be utilized optimally, we will set up a law-enforcement team under the Transport and Housing Bureau. Our goal is to launch the operation of the law-enforcement agency within 12 months and the legislation will also come into operation formally at that time. Depending on the need, we will seek additional resources for the establishment of the law-enforcement agency by going through the established resources allocation procedures at an appropriate time, including seeking the support of the Panel on Housing, the Establishment Subcommittee and the Finance Committee.

To ensure smoother implementation of the new legislation and a clear understanding among stakeholders of the requirements of the legislation, after the passage of the Bill, the Administration will issue guidelines on the more complicated provisions or certain measures. In the process of drafting the guidelines, we will maintain close contacts with the stakeholders to ensure that the relevant guidelines can effectively assist the industry in complying with various requirements.

In addition, we will also organize public education activities to inform the public of the details of this new piece of legislation and give them a better idea of the consumer rights under the legislation.

President, the Bill and the CSAs proposed by the Administration have the support of the Bills Committee. The Bills Committee did not propose any CSAs. I implore Members to support the Bill and the CSAs proposed by the Administration.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Residential Properties (First-hand Sales) Bill be read the Second time. Will those in favour please raise their hands? Will Members please proceed to vote.

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Miriam LAU, Ms Emily LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM, Mr Alan LEONG, Miss Tanya CHAN and Mr Albert CHAN voted for the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 47 Members present and 46 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Residential Properties (First-hand Sales) Bill.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

RESIDENTIAL PROPERTIES (FIRST-HAND SALES) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Residential Properties (First-hand Sales) Bill.

CLERK (in Cantonese): Clauses 1, 3, 5, 13, 14, 15, 17, 25, 40, 41, 45, 47, 57, 59, 64, 67 to 71, 73 to 76, 78, 81, 82 and 83.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MS AUDREY EU (in Cantonese): Chairman, I wish to speak. Chairman, I wish to speak on clause 67 of the Bill, to which no amendment is proposed. I request to speak because I hope that my views will be put on record. Chairman, as you might remember, I mentioned the heavy concerns of Law Society when I spoke in the resumed Second Reading debate on the Bill earlier. One of the

major concerns is that lawyers may incur criminal liability because of the Bill and clause 67 provides the defence.

Chairman, the latter part of the Bill contains a lot of clauses related to the agreement for sale and purchase and relevant procedures, which should be complied with by relevant parties. Any mistakes, or error or omission committed inadvertently may give rise to criminal liability.

Clause 67 of the Bill provides the defence. Chairman, I would like to read it out: "If a person is charged with an offence under Part 2 or 3 ……" Part 2 is related to issues concerning sales brochures and Part 3 is related to advertisements, and so on. Let me continue: "(other than section 60), it is a defence to prove that the person took all ……" Chairman, I have to place particular emphasis on the word "all" — "all reasonable precautions and exercised all due diligence to avoid the commission of the offence by that person." At first glance, this clause seems to have nothing wrong with it. However, the Law Society has been very much worried that a lawyer or his subordinate will be prosecuted due to fleeting oversight. In response, the Government has said that a criminal offence has nothing to do with oversight because the person concerned should have the *mens rea* in the commission of a criminal offence. However, as I said just now, many clauses in the Bill not only involve the lawyers themselves, but also their staff. If a lawyer is prosecuted because his staff have made mistakes in assisting him to go through the documents, the lawyer has to prove that he has taken "all" reasonable precautions and exercised "all" due diligence. In that case, the lawyers are very worried because they may commit trivial omission due to oversight and will not be regarded as having taken "all" reasonable precautions or exercised "all" due diligence, then they may lose the defence.

Therefore, the Law Society has raised two requests: first, to delete the word "all" and second, to request the authorities to make it clear that mistake or accidental omission may be adopted as elements of defence. In this connection, I have explained it clearly to Law Society that the stage for proposing amendments has been passed and the stage for scrutinizing the Bill clause by clause has also been passed. However, Law Society has still requested me to express their views on clause 67 so as to put them on record in the hope that the Government would state it clearly in the guidelines for the Authority that

prosecution would not be initiated by citing the provision in such circumstances, and oversight would not constitute an offence. This is their request.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, I understand that basically there are no amendments to these clauses and the Bills Committee has shown its support for these clauses. Chairman, on the enactment of the law on the sale of first-hand residential properties and the problems associated with it, I have been following these up for years. When the Bill was being scrutinized, incidentally there were many other meetings held by committees and Panels in the Council and so I did not join this Bills Committee. However, there are many clauses and the contents of which I have conveyed my views to the Government. Now I would just want to make use of this opportunity to express my views.

First of all, about documents relating to the sale of properties, that is, sales brochures which are provided in clause 15, a breach of the requirements is liable to a fine of $1 million. Chairman, we know clearly that property transactions involve huge amounts of capital and profits. The Asia Television (ATV) was fined for $1 million and that seems to be a very severe punishment. It is because the ATV is not rich and it does not have a large income. But for the property developers, their profits are in the region of tens of billion dollars. During the Second Reading of the Bill, I cited the example of Maywood Court. In some ways the developer was trying to fish in troubled waters and certain information was not disclosed. This enabled the developer to make an extra amount of profits by $1.7 billion. In this example of Maywood Court, when $1 million is compared to $1.7 billion, this is really nothing. I would think that the amount of fine as a penalty is too small. Besides, there is no penalty in the form of prison terms. For economic offences, I have said during these few days on various Bills that the Government is biased in respect to penalties for those white-collar people. This Bill is another example that a more lenient approach is adopted for the white-collar people, especially with respect to economic offences. As there is no penalty in the form of imprisonment, I think it is biased.

Then with respect to clause 17 of the Bill on the penalty which is set at a fine at level 6, that is, $100,000, this clause is only about the font size of the sales brochure. If anyone does not observe the requirement of this clause, he will only fail to comply with the clause with respect to certain very important words. This is because these important words will constitute misleading or the purchaser may be misled into buying a unit because he thinks it is appealing. So the penalty in this regard is too light.

This is the same case with respect to clause 40 of the Bill. Chairman, if the residential property is not made available for viewing, the fine imposed is $500,000. Why is a property not made available for viewing before sale? There are of course many excuses or reasons that can be put up. It could be that certain things are dubious and the developer makes use of some procedures and refuses to make the property available for viewing. Then someone may think that is a problem and it is in the end that the developer is fined for $500,000. But as many as 10 units may have been sold and the developer may have already reaped a profit of $50 million. So we can see that the penalty is extremely light. This goes the same with clause 45 of the Bill and the fine is set at level 6, that is, $100,000. But this amount of $100,000 is for the developers as trivial as a meal with Donald TSANG. Therefore, on the surface, there seems to be some penalties imposed in law, but in actual fact, this fine of $100,000 is almost like nothing.

Chairman, another thing is like what Ms Audrey EU has talked about just now and that is on clause 67. On clause 67 which is about defence, I do have some worries. This is because it is written in the clause that "it is a defence to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by that person." I have just made a comment to Mr LEUNG Kwok-hung that this sounds like what LEUNG Chun-ying has been doing recently. This is the same line of argument that LEUNG Chun-ying is taking. He says, "I have no responsibility in this. I have got some consultants and I have got some lawyers and I have recently hired four experts." So how can we talk about "due diligence" with the giant consortia and the rich people? They will not do anything by themselves. On the sale of properties in a development by these big developers, the bosses will get their executive directors and these executive directors will get their general managers and these general managers will get the senior managers and these senior managers will get the managers to handle such matters. In the end when

problems are found in the sales brochure or when the sale commences, the bosses may have never visited the site or read the papers or examined the advertisements. In law we find a great disparity of liability to be borne by the persons responsible and the persons who actually take the orders. On top of that, now there is a defence clause available.

I should have slapped my face as a punishment because I have not taken part in the deliberations on this Bill. To a certain extent, this is a dereliction of duty on my part. I have missed a goal which I have been fighting for over the years. Chairman, this is because I was too busy earlier on and I had to attend too many committee meetings. I really could not afford to spare the time to join this Bills Committee. When I look back at this Bill, it is like the tiger is being freed and it is like these giant consortia are given a secret passageway and should any mistakes and problems appear in future, they can get away with them by acting on the defence clause. I am sure in many of the lawsuits in future, this clause will become the mascot of these rich men and unscrupulous businessmen and the clause will be abused. Of course, Mr Abraham SHEK will rise later and say that he disagrees with what I say. Whenever I criticize these big developers for their shameless and unscrupulous tactics, there are bound to be people in this Chamber who come out to the defence of the interest of the developers and they will express a different view from my own.

Chairman, we can see the recent spate of political incidents and they are about problems in the sale and purchase agreements and procedures in the sale of properties. Putting aside the situation in Hong Kong, we can see many problems in the sale and purchase of properties in developments on the Mainland and the victims come to Hong Kong and make a petition. Some people are prosecuted as a result. For the small property owners, they are certainly the ones who are treated unfairly. This is why they come every few years or every year to Hong Kong to stage a petition or a protest. There are certainly something unfair which is involved. However, when the clauses are drafted in such a lenient manner or when some special favour is shown to certain people, I would think that this law is inadequate. Of course, I will not refute the entire Bill because of this defence clause. There are some other clauses which are definitely useful. I would think that when there are some major developments or where huge amounts of profits are involved, the developers will feel that they can act in an unbridled manner because of the defence clause or they will order their subordinates to do

this and that. This is because they know well that when problems arise, they will not have to bear any liability themselves.

Chairman, clause 69 of the Bill is on "Defence: issue or reproduction of information or advertisement" and this clause has got the same problem. As I have just said, for all advertisements or other publicity materials, only the persons responsible will know clearly. But they can always say that they have not read about these materials and they have only delegated some people to do it. In this way they can act on the strength of the defence clause and shirk their responsibility for problems like whether the advertisement or information is false, misleading or correct. Chairman, as this clause is about to be passed, I must show my worries and dissatisfaction. When these clauses are to be put to vote later, we will abstain from voting.

CHAIRMAN (in Cantonese): I now declare that the meeting is suspended and it is to be resumed at 8 pm.

6.52 pm

Meeting suspended.

8.00 pm

Committee then resumed.

CHAIRMAN (in Cantonese): Committee now continues to examine a group of clauses without amendments. Does any Member wish to speak?

MR ABRAHAM SHEK (in Cantonese): Chairman, in his speech earlier, Mr Albert CHAN criticized me by name that I disagreed with him on everything. However, this time I agree with some of his viewpoints. He said that he would

give himself two slaps in his face. I also agree that he should give himself two slaps in his face to wake himself up, so that it is no more necessary for him to make the second part of the comment to slander and groundlessly criticize the real estate sector. I just wish to point this out.

MR ABRAHAM SHEK: Chairman, I like to comment on clauses 8, 18 to 21. Chairman, the Bill provides that property sizes ……

CHAIRMAN (in Cantonese): Mr Abraham SHEK, do you wish to speak on clauses 18 to 21?

MR ABRAHAM SHEK (in Cantonese): No, Chairman, they are clauses 8, 18 to 21.

CHAIRMAN (in Cantonese): Those clauses are supposed to be debated in the next part.

MR ABRAHAM SHEK (in Cantonese): Chairman, these are clauses without amendments.

CHAIRMAN (in Cantonese): No. In the case of clauses 8, 18 to 21, the Secretary has proposed amendments.

MR ABRAHAM SHEK (in Cantonese): Alright, Chairman.

CHAIRMAN (in Cantonese): Please carefully read the script. On which clauses are you speaking?

MR ABRAHAM SHEK (in Cantonese): Sorry, Chairman, I cannot identify which part these clauses are in the script.

CHAIRMAN (in Cantonese): You cannot do so?

(Mr Abraham SHEK flipped through the script)

MR ABRAHAM SHEK (in Cantonese): Chairman, you are right. Those clauses should belong to another part. I had better speak later. Thank you.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, Ms Audrey EU has expressed her views on clause 67. Subsequently, Mr Albert CHAN has also expressed his views on clause 67 and queried whether the penalty is too lenient.

First of all, I would like to point out that Ms Audrey EU and Mr Albert CHAN actually hold opposite views. Ms Audrey EU is concerned about the inadequacy of the defence offered by the clause, while Mr Albert CHAN, on the contrary, is worried that clause 67 will "set free" some people.

Chairman, in our opinion, the right balance must be struck between professional administration and consumer protection. When drafting clause 67, we have made reference to other ordinances which are now in operation, particularly the Trade Descriptions Ordinance, which are related to consumer protection. Therefore, there are already similar defence provisions in operation. As this is the case, we believe the effectiveness of such provisions has actually been given full play.

Besides, if there are other ordinances, particularly those which contain the element of consumer protection as I mentioned just now, these ordinances contain

similar defence provisions. If we delete the …… For instance, as Ms Audrey EU said, a sector has asked whether it is feasible to delete the word "all" in the phrase "exercised all due diligence". If this is the case, the threshold of the defence in the Residential Properties (First-hand Sales) Bill will be lower than that in other ordinances relating to consumer protection. It seems unjustified.

In fact, we have made reference to the views of many people in formulating the whole Bill and the amendments. We also wish to strike the proper balance. The example I mentioned just now is one of them. Take clause 66 as another example, which is concerned with dissemination of false or misleading information. In that provision, it also stipulates that a person only commits an offence if the person disseminates such information and if the person knows that, or is reckless as to whether, the information is false or misleading. Such clauses are drafted with reference to existing ordinances, and are examples which, in our opinion, have struck a proper balance.

Chairman, we implore Members to endorse this group of amendments. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 3, 5, 13, 14, 15, 17, 25, 40, 41, 45, 47, 57, 59, 64, 67 to 71, 73 to 76, 78, 81, 82 and 83 stand part of the Bill. Will those in favour please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 2, 4, 6 to 12, 16, 18 to 24, 26 to 39, 42, 43, 44, 46, 49 to 56, 58, 60 to 63 and 65, the heading of Division 2 of Part 5, as well as clauses 72, 77, 79 and 80.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move that the clauses and the heading read out just now be amended as set out in the paper circularized to Members by the Legislative Council Secretariat.

The amendments mainly serve to reflect the proposals made by the Bills Committee and deputations. They also serve to more clearly reflect the Administration's policy objectives and ensure that the measures are more practicable, thereby facilitating the enforcement of the ordinance more smoothly after its commencement and further enhancing the transparency of the sale of first-hand residential properties, while providing appropriate protection to consumers.

I will now briefly explain the main contents of the amendments.

We propose to add the definition of "corporation" under clause 2 to mean a company as defined by the Companies Ordinance or a company incorporated outside Hong Kong, so that the Bill will also apply to a vendor company set up outside Hong Kong.

In the light of the discussions of the Bills Committee, we propose that the drafting of clause 11 be amended to clarify the application of the Bill to a residential property where a preliminary agreement for sale and purchase (PASP) or an agreement for sale and purchase (ASP) is terminated, or is declared void by the court.

In respect of the sales brochure, having considered the views expressed by members of the Bills Committee that the vendor should be prevented from setting out important information by way of an explanatory note or remark in smaller font size on the sales brochure, we propose that clause 22 be amended to provide that an explanatory note or remark on the sales brochure must not qualify the contents of the main text.

There are at present no clear guidelines regarding the reservation of residential properties under the Consent Scheme. The objective of clause 30 of the Bill is to set out clearly the time point at which vendors may seek and accept various types of expression of intent. Our principles on when reservation of residential properties is allowed are as follows: A vendor must not seek and accept any form of reservation before the price list is made available; after the price list is made available but before the first day on which the specified residential property is offered to be sold, the vendor can only seek and accept reservation for residential properties that are not specified; on and after the first day on which the residential property is offered to be sold, the vendor may seek and accept reservation for a specified residential property. The purpose is to prevent vendors from using reservation as a disguise to start any sale before the first day of sale as announced. To improve the clarity of these requirements, we propose that clause 30 be amended, so that vendors will clearly understand that they can seek and accept specific expression of intent only from the first date of sale of a specified residential property.

During the discussions of the Bills Committee, some members have pointed out that the sales brochure is prepared on the basis of the latest approved building plans. However, show flats will likely include wall finishes, such as plaster, but building plans will not take into account such features. For this reason, the actual dimensions of the show flats may not be exactly the same as shown in the sales brochure. In response to this view, we propose that clauses 32 and 33 be amended to the effect that even though the dimensions of the show flat are different from those specified in the sales brochure, it will not be considered as a breach of the requirement under the ordinance if the difference is due to finishes on walls.

Chairman, over the past few months, the Administration has repeatedly exchanged views with The Law Society of Hong Kong (Law Society) on the Bill. After listening to the views of the Law Society, we propose that clause 31 be amended to enable the vendor to revise the price of a residential property after signing the ASP under certain specified circumstances, which include (i) if the price revision is due to alteration of the approved building plans which leads to changes in the measurements of the property; (ii) if the price revision is due to changes in the terms of payment as set out in the price list; and (iii) if the price revision is due to the availability of any gift, financial advantage or benefit as set

out in the price list. Consequential amendments are also proposed to clause 52 which is related to the disclosure of information on transactions.

With regard to the signing of the ASP by the purchaser, having considered the views of Law Society, we propose that clause 49 be amended to provide five working days, instead of three working days as originally proposed in the Bill, for a purchaser to sign an ASP after signing the PASP. This proposal will enable the lawyers of both the vendor and the purchaser to have ample time for handling the transaction documents and also allow more time for the prospective purchaser to consider whether or not to sign the ASP after signing the PASP.

The Bills Committee has discussed these amendments in detail and broadly agreed on them. I hope that Members will support these amendments. Thank you, Chairman.

Proposed amendments

Clause 2 (see Annex II)

Clause 4 (see Annex II)

Clause 6 (see Annex II)

Clause 7 (see Annex II)

Clause 8 (see Annex II)

Clause 9 (see Annex II)

Clause 10 (see Annex II)

Clause 11 (see Annex II)

Clause 12 (see Annex II)

Clause 16 (see Annex II)

Clause 18 (see Annex II)

Clause 19 (see Annex II)

Clause 20 (see Annex II)

Clause 21 (see Annex II)

Clause 22 (see Annex II)

Clause 23 (see Annex II)

Clause 24 (see Annex II)

Clause 26 (see Annex II)

Clause 27 (see Annex II)

Clause 28 (see Annex II)

Clause 29 (see Annex II)

Clause 30 (see Annex II)

Clause 31 (see Annex II)

Clause 32 (see Annex II)

Clause 33 (see Annex II)

Clause 34 (see Annex II)

Clause 35 (see Annex II)

Clause 36 (see Annex II)

Clause 37 (see Annex II)

Clause 38 (see Annex II)

Clause 39 (see Annex II)

Clause 42 (see Annex II)

Clause 43 (see Annex II)

Clause 44 (see Annex II)

Clause 46 (see Annex II)

Clause 49 (see Annex II)

Clause 50 (see Annex II)

Clause 51 (see Annex II)

Clause 52 (see Annex II)

Clause 53 (see Annex II)

Clause 54 (see Annex II)

Clause 55 (see Annex II)

Clause 56 (see Annex II)

Clause 58 (see Annex II)

Clause 60 (see Annex II)

Clause 61 (see Annex II)

Clause 62 (see Annex II)

Clause 63 (see Annex II)

Clause 65 (see Annex II)

Heading before Division 2 of Part 5 (see Annex II)

Clause 72 (see Annex II)

Clause 77 (see Annex II)

Clause 79 (see Annex II)

Clause 80 (see Annex II)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ABRAHAM SHEK: Chairman, the Bill provides that property size and property price per square foot/metre may only be quoted on the basis of the saleable area (SA) in sales brochures, price lists and advertisements, and the Administration proposes that any person giving information in an advertisement on the property price and property size other than making reference to the SA will be liable to a fine of $500,000.

A blatant flaw of the Bill lies in the omission of the gross floor area (GFA), which runs against public demand for more transparency in the property market. Transparency means disclosure of more information, and this should be encouraged. The Administration's rejection to include the GFA as supplementary information in addition to the SA is an obvious contradiction to this very principle.

The Administration says that allowing the use of the GFA for a property will cause confusion rather than enhancing the comprehensiveness of information provided to purchasers, given that there is no commonly-accepted definition of the GFA at present. But this claim does not hold water.

The provision of an objective, accurate and standardized definition of the GFA is not a daunting task, as claimed by the Administration. In fact, REDA has proposed to adopt a standardized definition of the GFA which is objectively verifiable, the key features of which may include: (a) only the GFA of common area serving exclusively residential parts will be included and apportioned to the

flats; (b) such apportionment will follow the corresponding undivided shares actually allocated to a particular unit; (c) both accountable and non-accountable GFA will be included, so long as they serve exclusively the residential parts; (d) all other GFAs which do not serve exclusively the residential parts of the development will not be mentioned; (e) a plan delineating the relevant part of the GFA will be prepared and annexed to sales brochures.

The Administration's argument that it would take a considerable time for all stakeholders to agree on a standardized definition is not a valid reason when set against the proposed interference with vendors' freedom of speech as highlighted earlier.

Recently, the Estate Agents Authority, a statutory body, issued a new practice circular which will come into effect on 1 January 2013. It requires estate agents to provide information to clients on the SA of second-hand residential properties in advertisements, and states that in the provision of the floor area information of the property, the use of the GFA in the sale of second-hand properties will be permitted for an indefinite period. It also specifies that the deadline for allowing only the SA to be used will depend on how quickly the general public adopts the use of SA.

What confuses the real estate sector most is why first-hand properties should be discriminated against. If the Administration believes that the collective wisdom of the market will decide the exact timing for the SA to be adopted as the sole standard in the sale of second-hand properties, it should do the same in the sale of first-hand properties. On the other hand, clause 19(1) of the Bill requires that the sales brochure shall disclose information relating to exemption or concessions of the GFA granted by the Building Authority under section 42 of the Buildings Ordinance or regulations 22 or 23 of the Building (Planning) Regulations. If information relating to the GFA exemption and concessions is to be disclosed in the sales brochure, then why can the relevant GFA apportioned to each particular flat not also be disclosed? The GFA (whether exempted or accountable) is still calculated on the same basis in accordance with the same requirements under the Buildings Ordinance and Building (Planning) Regulations. If vendors are legally obliged to disclose information relating to the GFA exemptions and concessions, then, as a matter of fairness and equal treatment, vendors should be bound to make full disclosure of all GFA-related information. The double standard of the Administration on the

GFA disclosure demonstrates that it is being hypocritical or schizophrenic. The Administration's position will not only discriminate against vendors of first-hand flats, but will also create confusion for prospective purchasers.

Interestingly, notwithstanding the Administration's inconsistent logic in its brutal dichotomization between first and second-hand properties, in its written response to my letter dated 11 June, the Administration stressed that the relevant information must be accurate, honest and not misleading. Determining what is "accurate" may be difficult and the manner in which the information is presented may lack balance, objectivity and impartiality if the person conveying the information has a conflict of interest. In other words, the Administration does not deny that the proposed standardized GFA by REDA is accurate and can be objectively verified. The Administration then argued that the mere fact REDA's proposed standardized GFA is accurate and not misleading does not necessarily mean that its publication may not be subject to any restriction.

However, this deceptive reasoning is based only on the Administration's baseless conjecture. REDA's submission cited the Court of Appeal's decision in the Kwok Hay Kwong case, and the similarity of the information presented in the Kwok Hay Kwong case and in the Bill. In the Kwok Hay Kwong case, the Court allowed the disclosure of the relevant information based on the need to protect free speech, even in a commercial context for private benefit. Similarly, if the proposed standardized GFA is accurate and can be objectively verified (that is, only then GFA attributed to domestic areas will be included, to be certified by Authorized Persons), and the Government cannot show that such GFA is deceptive or misleading, then, applying the principles established in the Kwok Hay Kwong case, there is no reason why GFA information attributed to individual properties must be banned. If the Administration challenges this reasoning, it should provide evidence and legal proof to justify its claim instead of simply ignoring the doubts raised by REDA.

Although the Administration claims that the lack of standardized GFA is only one of the reasons why the SA should be the sole basis for presenting the floor area and price per square foot/metre in the sale of a first-hand residential property, in all the responses provided by the Administration so far, the Administration has remained ambivalent and evasive in its justifications for rejecting the inclusion of the GFA as a piece of legitimate information supplementing the SA in sales brochures, price lists, and advertisements. Apart

from this "lack of standardized GFA" reason, there is no other reason. The so-called "another consideration" stated in its final response to my letter dated 11 June that "the use of GFA for a property is not a suitable way of showing the public and the prospective purchasers the floor area of a residential property" is in essence the same as the "lack of standardized GFA" reason. This is a chicken and egg question: the Administration considers that the GFA is "not a suitable way" because the GFA lacks a standardized definition.

By sticking to this infinite loop of tautology, the Administration has played tricks on the Bills Committee and "successfully" avoided the legitimate call for including a standardized GFA as supplementary information to enhance the right to know of prospective purchasers of first-hand residential properties.

Thank you.

MS AUDREY EU (in Cantonese): Chairman, I would speak on several clauses. To begin with, I would speak on clause 10, for it concerns the overall scope of application of the Residential Properties (First-hand Sales) Bill. If Members can take a look at clause 10, they will see that this legislation only applies to residential properties in Hong Kong. It does not apply to residential properties outside Hong Kong.

As I pointed out repeatedly in the Bills Committee, Hong Kong people do not only buy properties developed in Hong Kong. More often than not, many other developers from Canada, Australia, the United States or the Mainland will come to Hong Kong to promote the sales of their property developments, and many Hong Kong people are interested in buying these properties. I have, therefore, requested that the application of this Bill should be extended to properties developed outside Hong Kong but sold in Hong Kong. However, the Government has explained that this would be out of the question because of the very pressing time frame, adding that the relevant clauses, such as the information required for provision in the sales brochure, may not be applicable to places overseas. Therefore, the Government hopes that we can first accept the Bill and deal with properties outside Hong Kong in due course.

I have said that I do understand some of the clauses may not be applicable to properties developed overseas, but as the Bill particularly mentions

misrepresentation — I am referring to clause 65 or clause 66 "Dissemination of false or misleading information" — should we at least apply these two clauses to properties outside Hong Kong? It is because this is obviously necessary. If other people provide information to a person, especially in the case of a "long-distance" purchase where uncertainties are involved, we have asked during discussions on the scope of application of clause 10 whether the part on misrepresentation that I have just mentioned should at least be included for application to those properties. In other words, if some people come to Hong Kong to promote the sales of overseas properties and if misrepresentation is involved, should this Bill be applicable also to the transactions of this type of first-hand residential properties? However, the Government has refused to take on board even such a view, which is tantamount to making a concession. The Government has said that this does not matter because there are provisions in the Theft Ordinance that can deal with cases of fraud and refused to make an undertaking to clearly provide for the application of the two clauses relating to misrepresentation specifically to overseas first-hand residential properties.

I think this is an omission in the Bill. I have time and again striven for this in the Bills Committee but the Government has still refused to include such properties into the scope of application. Here, I must clearly point out this omission, and in the event of a case of fraud involving overseas properties sold in Hong Kong in future, and if consumers find that there is no way for them to seek compensation, this will obviously point to a loophole in the blue bill.

Besides, Chairman, I also wish to talk about clause 7 in which the definition of "vendor" is provided, and this is also a very important part of the Bill. It is because all — let us not say all, but almost a majority of legal liabilities (or resultant criminal liabilities) is imposed on the "vendor". This is why the definition on "vendor" in clause 7 is very crucial. With regard to this definition, we have particularly discussed subclause (2), because "vendor" is defined not only to mean the owner. It provides that if the owner engages a person to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development or phase, "the person so engaged" is also included in the definition of "vendor". In other words, "the person so engaged" is also subject to all the criminal offences or criminal liabilities under this Bill.

I have asked time and again in the Bills Committee why this provision has to be drafted in such a way. It is because the provision as drafted means that it

has to be the same person who takes up all these areas of work, in order for this person to meet the definition of "vendor". For example, of the six areas mentioned in the provision, a person who is only responsible for work in the three areas of constructing, fitting out and completing the development is not considered a "vendor" under this definition. The question that I have asked then is this: The Bill actually covers a lot of responsibilities, such as the marketing responsibility, the required responsibility under the agreement for sale and purchase, the responsibility of designing the development or the responsibility of constructing the development. These responsibilities are often taken up by different persons. Why is it provided that all the responsibilities must be taken up by the same person in order for this person to be considered the vendor, rather than holding all the persons responsible for the area under their responsibilities respectively if different persons are charged with different areas of responsibilities? For example, if it is a mistake in the agreement for sale and purchase, why is it not the party responsible for the agreement for sale and purchase who should take the criminal liability?

However, the Government has explained that there is a special meaning in drafting the clause this way, as the purpose is not to target architects, lawyers, public relations agencies or the professionals concerned. This way of drafting basically seeks to target the developers. In general, there must be one person to be held responsible for all these areas. In other words, there may be a situation where the land owner is not responsible for constructing and developing the properties and the land owner has passed all these responsibilities to another person (who is the developer). The Government has said that the clause is meant to target the developers. Then I have said that if that would be the case, a major loophole would be opened up, because it would be easy for the developers to absolve themselves from responsibilities. For example, in respect of property transactions, they must have hired the most famous legal firm in the territory to take up these responsibilities, and they certainly have to fulfil the responsibilities under clause 67 — This is exactly the question raised by Mr Albert CHAN earlier on: Will clause 67 spare certain people and let them get away? Because clause 67 provides for a defence if all responsibilities have been fulfilled. Such being the case, my question is: Will it not be very easy for the developers to get away? It is because when the developer has hired experts in each of these areas, it means that they do not have to take any responsibility, but the individual expert also does not have to take any responsibility as he is responsible for a certain area only, rather than taking up work in all the six areas mentioned in the Bill. I have

said to the Government that it would be impossible to institute prosecution against anybody if the provision is written in such a way.

The Government has not agreed with me and considered that this would not be a problem. All that the Government has said in its explanation is that even if you have appointed the most famous expert in Hong Kong, it does not mean that you have fulfilled all your responsibilities. But then, how can prosecution be instituted against a developer under such circumstances? I have cited an example at that time. All Hong Kong people know that Woo Kwan Lee and Lo is the most well-known legal firm that handles property transactions in Hong Kong. If a developer has appointed Woo Kwan Lee and Lo and if the latter has committed a mistake, how can prosecution be instituted against the developer? The Government has said that under such circumstances, they will continue to take prosecution actions against the developer, because the Government thinks that the developer still has to be held responsible.

Chairman, these are the questions that I have raised on "vendor", because I think under such a provision, it is possible that nobody will ultimately be held criminally liable, as the defence provided under clause 67 can be easily used to absolve any person from responsibilities. The Government, however, has not shared this view and considered that the proposed provision is sufficient for instituting prosecution against the developers.

Chairman, I wish to raise another question which concerns clause 11, because clause 11 provides for the situations under which this Bill does not apply. As the Secretary said in her speech earlier on, after discussion with The Law Society of Hong Kong (Law Society), the Bureau has taken on board many views put forward by Law Society and included in the amendments many situations for exemptions to be granted which are originally not listed in the Bill, such as cases involving modifications of the area or the sale of a property to a family member. Exemption means that compliance with the legislation is not required and the publication of the sales brochure is not required. The Secretary has said that all the situations under which exemption should be granted have been included in the amended version of the Bill.

However, as I said in my speech during the resumption of the Second Reading debate, the representatives of Law Society had come to us in all seriousness and said that they had put forward their views to the Government but

the Government told them only at the very last moment that these amendments would be proposed. Having read these amendments, they considered that there were still a lot of omissions, one of which concerned the liquidation of a family trust or a company as mentioned by Dr Margaret NG before, in which case property transfers may be involved. In her speech earlier on the Secretary said that this would not be a problem, for these properties were not included since these were not cases of sale and purchase. But Chairman, when it comes to property transactions, I think the representatives of Law Society should know better than the Secretary. Law Society does not agree with the view of the Secretary or the Bureau, and they hope to further discuss this point with the Government. Chairman, this is the situation of clause 11.

Chairman, I would also like to talk about clause 31, as the amendments to clauses 26 to 39 concern the price list. Mr Alan LEONG also mentioned this issue in his speech. The proposed practice of the Government is so inflexible. Developers are required to provide a price list three days before the date of sale. But Chairman, the problem is that with regard to the price list and the number of flats provided by the developer in each sale, there are very rigid requirements on how many flats should be covered on a price list, and depending on the scale of each phase of the development, the developer is required to set out at least a certain number of flats. A certain number is prescribed for the price list in each sale and the number of flats set out on it must not be less than a certain number. When 50 flats are set out on a price list, people will think that the developer plans to put up 50 flats for sale.

But Chairman, this is not the case. While it is provided that the price list must set out a certain number of flats, the vendor is nevertheless not required to put up the flats on the price list for sale. As in the example that I have just cited, if there are 50 flats on a price list, it does not mean that you can ask the developer to sell those 50 flats to you. The clause only requires that these flats must be set out on the price list, but the vendor or the developer can decide whether to sell one, two or three of these flats. We have really found this incomprehensible during discussions in the Bills Committee because if that is the case, it means that the price list is a fake. It is because although 50 flats are set out on the price list, it may turn out that only two of the flats are put up for sale. The Government has explained that it cannot force the developer to put up a specific number of flats for sale but the developer must be forced to set out a specific number of flats on the price list.

Chairman, there is something very strange too and that is, if amendments have to be made, amendments must be made to "the price list". For example, if a price list covers 50 flats and only two flats are left unsold after sale, and when the developer is going to publish another price list consisting of 100 flats and would like to include the two unsold flats in the next sale, the Bill provides that the original price list should be published, meaning that amendments must be made to "the price list". It means that the developer is not allowed to add the two unsold flats from the previous sale in the new price list consisting of 100 flats and state clearly that these are the unsold flats from the previous sale and that how much their previous purchase prices were or whether their prices have now gone up or come down. This is not allowed, as the developer is required to make amendments to the original price list. I wonder if this requirement will result in the felling of even more trees. If many of the flats on the last price list have been sold and only one or two flats are left, why should the price list be written out all over again? This is also a point on which our discussion with the Government has not come up with any agreement.

Furthermore, the third point that I wish to talk about also concerns the price list. As Dr Margaret NG mentioned in her speech, Law Society is also very concerned about this point. Sometimes when market prices fall or buyers cannot secure a mortgage loan, the buyers may ask the developer to reduce the price and under such circumstances, the developer is sometimes willing to do so. But this is not allowed under the Bill, for it is provided that once a property is purchased, the transaction has to be entered into the Register and no change can be made. So, rigid requirements have been made in these aspects. The Law Society considers that if the price is changed to effect a reduction of the price, which is beneficial to consumers, why should this not be allowed?

These questions have all been raised. I hope that when the Government will soon review the legislation or further discuss it with Law Society and the Consumer Council, it can more flexibly address these rigid requirements that I have just mentioned. Chairman, I also hope that the Government can consider extending the application of these requirements to second-hand residential properties in future, rather than just applying them to first-hand residential properties, because a lot of such information is helpful to consumers or buyers. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEE WING-TAT (in Cantonese): Chairman, with regard to these several clauses and the speeches made by colleagues earlier, I would like to express my views on two or three points.

First, Mr Abraham SHEK has spent much time discussing the gross floor area (GFA) and the saleable area (SA). In Hong Kong, this is quite troubling to buyers because many home buyers do not understand very well the definition of the SA. Buyers often think that the "carpet area" is the SA. The "carpet area" actually is not equal to the SA. "Carpet area", which means the area where carpet can be put, is known as the IFA (internal floor area), but it is not exactly the SA. The SA at least includes the widths of walls, and if a flat is connected to an adjoining flat, half of the wall's width will be factored into the SA.

To consumers, the SA at least has the merit of having a clear definition. This definition was not made by the developers, but by the Hong Kong Institute of Surveyors many years ago after discussions and studies over the years. After this definition was put forward, it seemed that there was not strong opposition from the industry, or from the Consumer Council and the Government in the course of property sales, because the definition is very clear.

Mr Abraham SHEK has said earlier that they are not proposing the sale of properties on the basis of the GFA. They are just asking permission for developers to put down the GFA beside the SA. I have reservations about this proposal. It is because during the sale of residential properties, the atmosphere is very tense. Sometimes I feel even more tensed up at the sales venue than watching a "ghost movie". A "ghost movie" means a thriller movie. It is like watching "Sadako 3D" in the middle of the night, which makes people feel tense and nervous.

How are residential flats sold in Hong Kong nowadays? Buyers have to wait at the sales office at 10 pm and then the sale would start only at 1 am. It causes the adrenaline to …… I wonder if buyers are allowed to go to the washroom during this three hours' wait. They cannot go away even if they have this need, and this is all because they have to wait for the developer to start the sale, so that they can take a look at the price list and pick a flat. I would

describe this process of flat sale as an unequal information dissemination process. Why? Because most of the information is not in the hands of the consumers, and most of the information is in the hands of the developer and the sales staff. They will always tell the buyer: "Mr TSANG, 18C is sold at $9,600 per square foot; only 18D is left now for $9,700 per square foot. Do you want it or not? If you do not buy it, there will be no more." Mr TSANG, I mean our Chairman Mr TSANG, is that the case in reality? Nobody can verify it. I mean nobody can be sure about it. But this is the atmosphere during the sale of properties. This is why I said that the atmosphere of flat sale sometimes makes people feel tenser than watching "Sadako 3D" which is a thriller movie, a Japanese thriller movie.

So, if the price of a flat is quoted in many different ways, it will be a big headache to the public. When a sales staff says nervously, "Mr TSANG, $9,700 per square foot for 18D", what does it mean when he says that it is "$9,700 per square foot"? Does it mean $9,700 per square foot based on the GFA or $9,700 per square foot based on the SA? There is simply no time for buyers to ask these questions, and if they do ask one or two questions, the sales staff will say, "It has gone. 18D has gone. There is 18E, and do you want it?"

So, with regard to such sales practices …… I actually do not like these sales practices. But Chairman, nothing can be done about it, as this is how residential flats are sold in Hong Kong. Where there are more chances for the dissemination of information to become more confusing, the more unfavourable it will be to consumers.

Certainly, Mr Abraham SHEK may say he does not propose that the information should be verbally given by the sales staff and he only proposes that it should be written on the price list. But if it is written down, the sales staff and the people concerned will repeat it verbally. I think this will cause confusion. So, this is the first thing that I do not like.

The second thing that I do not like is the lack of a uniform standard. In respect of the SA, as I have just said, the Hong Kong Institute of Surveyors has provided a definition. The GFA, however, means that on top of the SA, other components of A, B, C, D, E, F, G are also included in it. In some cases, it includes the apportioned share of the area of the lobby, and in some cases, it includes the apportioned share of 100% of the clubhouse area. Some better

developers may not adopt the approach of sharing out 100% of the clubhouse area but only 50%. There are numerous different ways to do it.

Of course, Mr Abraham SHEK may say that the Government can come up with a good idea to standardize the practice. Although the Secretary is said to be tough and hard-nosed, she cannot neglect the need to conduct consultation. She must first consult the developers, and is it easy to reach a consensus view? The Hong Kong Institute of Surveyors has to be informed, and the consumers must be consulted on whether they will support the inclusion of such information. Therefore, I think this is very difficult to achieve within such a short span of time.

Chairman, regarding the second point that I wish to bring to the Secretary's attention, I have actually said it before. Under the Bill, a person may commit a criminal offence for giving false information or statement in the sale of residential properties. Clause 80 is about the offences that may be committed by various parties, including the company, officers or employees. In the course of the scrutiny of the Bill, most of the questions that I have asked are about the "headaches" concerning subsidiaries, joint ventures and overseas companies.

With regard to property developments in Hong Kong, the sites are generally not developed by the mother company but a subsidiary of the mother company. But nowadays, the companies are generally fair. Assuming that a company, such as Sun Hung Kai, has made its subsidiary responsible for a property development and when an advertisement is put up on newspapers, the development is still said to be the product of Sun Hung Kai. This way, we can trace the mother company of the subsidiary responsible for the development.

I have asked this question previously: If a real estate developer, which is middle-sized and not large in scale or not commonly known to the public, owns several lots in the New Territories and if it has commissioned an overseas company to develop these lots, and when we look it up on the Internet, we have found that this company is registered in the British Virgin Islands, what can we do then? We will not be able to find out its mother company, and if there is really a case of dissemination of false information, how are we going to pursue responsibility?

I do not remember clearly whether the reply given by the Permanent Secretary and the Secretary at that time was comprehensive, but I am rather

concerned about it. It is because the registration of a company does not cost much. Even though the development of a site is costly, it is easy to register a company. I hope that the Secretary can provide more information to me on this issue if there is a chance for her to do so, so as to allay my concern.

Third, Ms Audrey EU mentioned the price list, and I agree with her analysis but at this stage …… I am a person who prefers to adopt more rigid practices in the hope that there can be greater clarity. I think at the initial stage, less flexibility should be allowed because first, I share Ms Audrey EU's concern that even if a price list has set out 50 flats and stated that these 50 flats can be purchased at these prices, a most extreme situation can still arise and that is, the developer can say, "Mr TSANG, I am just providing the price list. I have not said that these flats will be sold to you." The developer is allowed to do so, because the legislation does not prohibit it, only that this will be a very discreditable thing to do, and I hope that this will be reported in the press. It is unreasonable that a price list setting out 50 flats is published but some of the flats on it will not be sold, or they will not be sold to me because I am LEE Wing-tat.

Under these circumstances, what can we do? There will be an enforcement agency responsible for these matters in future. If that really happens in future, the enforcement agency must openly alert consumers of such practices of the company. Generally speaking, unless the developer intends to play foul or has other considerations, it will not publish a price list consisting of 50 flats but refuse to sell them when the public wish to purchase them. If the developer wishes to increase the prices, there are requirements for the developer to meet. With regard to the new price list showing the increased prices, it seems that it has to be ready three days in advance. But Chairman, theoretically, the developer can really just publish the price list and refuse to sell the flats, as in the example that I have just mentioned. I think the only way to tackle it is to carry out publicity and education targeting consumers through the enforcement agency. If that really happens in future, the enforcement agency should intervene and even criticize these practices — No, it should not criticize them but it should inform the public of them, because developers cannot be barred from doing so under the law. If that happens too frequently, the Secretary or the next-term Government will have to do something about it. Now that the Government has replied that it is impossible to force people to sell the flats. Indeed, developers cannot be forced to sell the flats, but it is very strange if they publish a price list and yet refuse to sell the flats.

Besides, some developers have asked me whether it is possible not to require them to give notice in the case of price reduction. Developers are required under this Bill to make available the price list a few days in advance, so that the public will not obtain the price list only when they arrive at the sales venue, telling them which flat is put up for sale at what price. The public should be able to access it on the Internet or read the information from the copy distributed to them a few days in advance. The proposed requirement is very stringent in stipulating that a price list has to be published a few days in advance even in the case of price reduction. In fact, I have thought about this for a long time and considered about whether flexibility should be allowed, so that prior notice is not required for a price reduction, or the requirement of giving notice three days in advance can be amended to allow developers to give notice half a day or three hours in advance. After consideration for some time, I think this is not quite feasible, because I have thought of a problem. What if the price is reduced by only $10? A price reduction of $10 is still a reduction, and if a developer which reduces the price by $10 is not required to provide the price list three days in advance, it means that all the requirements will have to be waived and the developer does not have to meet any of these requirements. Even for a reduction of $100 per square foot or a reduction of $5,000 for each flat, the amount involved is actually still very small, let alone a reduction of $10.

I have thought about this for a long time and considered whether flexibility can be allowed in the case of price reduction. Finally, I have decided that from the perspective of ensuring stringency, flexibility should not be allowed, because developers are very clever. They can definitely think of what I can think of. What if the price is really reduced by $10? A reduction of $10 is still a reduction indeed, and in that case, can the requirement of giving notice three days in advance be waived to allow the price list to be distributed on the spot at the sales venue? I am most opposed to distributing the price list on the spot at the sales venue, for this will make it impossible for consumers to have discussions with family members or their wives at home, nor will it be possible for them to find out about the information on the Internet, so as to consider whether the prices are reasonable or compare them with the prices of second-hand residential properties or newly-completed flats on the adjacent street, in order to ascertain whether the prices are reasonable.

I support the objective of this Bill, which seeks to ensure that home buying should be based on discussions with family members and friends at home calmly

and in a relaxing manner to find out how a purchase can be best made, and only such a process can ensure that consumers will make the least mistakes. What I dislike most is the distribution of the price list on the spot at the sales venue, for consumers will only feel at a loss as to what to do. So, on this point, I am not saying that there is no possibility for changes to be made. I accept the Government's explanation for the time being, saying a lower degree of flexibility should be allowed insofar as the price list is concerned, and I support this approach. Having said that, I agree with some colleagues that if the regulatory body sees some changes or phenomena in enforcing the ordinance, the Government can conduct a review and introduce amendments. Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): I would talk about clause 16 of the Bill. The amendments proposed by the Government to clause 16, including deleting subclauses (2), (3), (4), (6) and (7) and adding clause 16A, are a major surgery. What is clause 16A about? It is about examination and revision of the sales brochure, meaning that a revision has to be made if necessary. So, what will be deleted? Subclause (2) reads, "Any inaccuracy identified at an examination must be corrected by a revision to the sales brochure for the development". This subclause is well presented and should be readily understood. Subclause (3) reads, "The vendor must, within three working days after the date of a revision, notify in writing each of the entities specified in Schedule 3 of the revision", meaning that the prescribed period will be deleted. Subclause (4) reads, "If subsection (2) is contravened, the vendor commits an offence and is liable to a fine of $500,000". As for subclauses (6) and (7), I will not elaborate on them further in detail ……

CHAIRMAN (in Cantonese): Mr LEUNG, the subclauses read out by you just now are under the new clause 16A, not the subclauses proposed to be deleted. Would you please take a closer look.

MR LEUNG KWOK-HUNG (in Cantonese): I see. I cannot read them because my eyesight is not good. Moreover, I do not have the text on hand. That means these provisions are added. My argument is that sales brochures ought to be examined and revised. The purpose of our lengthy discussion is to examine the need to revise sales brochures if they are misleading.

Clause 16 is revised …… excuse me, I cannot read it. Sorry. Clause 16(2) reads, "If there is any change to the specified information set out in the sales brochure for the development in compliance with Part 1 of Schedule 1, the vendor — (a) must, as soon as practicable after the change, revise the sales brochure to reflect the change; and (b) must, within three working days after the date of the revision, notify in writing each of the entities specified in Schedule 3 of the revision.".

A problem generally found with this revision has not been addressed by the Administrations. The problem is: What about the time limit? There is a time limit of "within three working days". But three working days are too long. As pointed out by Mr LEE Wing-tat just now, buying properties is like joining the army to fight a battle, as there is nothing worse than getting less as compared with others. As I mentioned earlier, the trade engaged by LEUNG Chun-ying, such as Jones Lang LaSalle, Debenham Tie Leung Limited, and so on, operates like pimps to get vendors and buyers together. Like a pimp, these firms collect money from both parties. For the purpose of market making, relatives and friends get involved in transactions among themselves so that a property can be rumoured to have been sold for 10 times.

I am certainly not referring to market manipulation, but they are similar in nature. Time is extremely crucial. If the market is manipulated, seven transactions a day are possible, though the transactions are actually conducted by the same family or the lawyer representing it. Hence, the time limit is crucial to the real estate industry. For instance, a property can be sold for $50 million in the morning, but its price can soar to $120 million through speculation by 3 pm. In those days, the Bond Centre outside was a well-known example in the territory. I guess LEUNG Chun-ying should have a part to play in it at the time.

Having said that, 24 hours and three days can make a big difference. Twelve hours may be acceptable, too. Nevertheless, I think I should not make things difficult for others. Twenty four hours are still acceptable. If a three-day time limit is set, Chairman, it took God only three days to create the world for mankind …… no, three days time two are six days. Sunday was a day-off. As six days were long enough for the world to be created, half of it could have been created in three days. During the legislative process, some people attributed the enactment of the legislation to either the trouble stirred up by us or public grievances. As buyers are misled by sales brochures under

various pretexts, why should three days be given? What was the origin of this idea? Was it the result of dividing the number of days taken for the human world to be created according to the Bible by two or were there any other reasons?

Hence, it seems to me that this sort of revision, whereby subclauses (2), (3), (4), (6) and (7) of clause 16 are retained, is inappropriate. Since these subclauses can be revised, we might as well revise them once and for all by stipulating that the revision must be notified within 24 hours. This is actually not a problem for the vendor, or a property developer. Honestly, if they cannot deliver within 24 hours, the blue bill will still provide for reasonable excuse, so to speak. A person will have a disclaimer if it is proved that he has exercised due diligence in "filibustering" or fulfilling his duty "as a royalist". If the clause is amended so that the revision must be notified within 24 hours, then property developers may either make a disclaimer or prove that due diligence has been exercised, though they still fail to meet the time limit.

As the saying goes, "Without a pair of compasses and a set square it is hard to draw a perfect circle and a square". A set of rules must therefore be put in place. If the time limit can be set at either three days, that is, 72 hours or 24 hours, I consider 24 hours more appropriate. Though not a member of the Bills Committee, I find it inappropriate insofar as this issue is concerned. When it comes to the time limit, this shows that the Government cannot behave in an upright manner under the pressure from property developers.

Let me cite an example. With respect to subclauses (2), (3), (4), (6), which the Government proposes to delete, subclause (6) reads, "If subsection (2) or (3) is contravened, the vendor commits an offence and is liable to a fine at level 6". The new subclause (4), however, reads, "If subsection (2) is contravened, the vendor commits an offence and is liable to a fine of $500,000". The fine imposed here is $500,000, but the fine stipulated in subclause (5) is $1 million. In other words, there are two different penalties.

Honestly, for property developers, a fine of $500,000 or $1 million might be equivalent to just the amount of money donated to a certain political party. As I already mentioned today, the amount of money donated by property developers to the DAB …… when the President was chairman of the DAB, you once made the remark that the DAB had a lot of money. I forget whether you

said the DAB could spend $70 million or $7 million annually. Anyhow, the DAB is very rich. It is probably due to its outstanding contribution to Hong Kong economy and excellent performance in the Legislative Council that property developers have donated so much money to the DAB.

How can a fine of $500,000 or $1 million produce a deterrent effect? In my opinion, the fine for violating subclauses (2) or (3) should be set at a certain percentage of the total earnings from a specific property development. To me, a fine of $500,000 or $1 million is certainly a severe penalty. Honestly, even if all my bank savings are added up, the figure will not carry many zeros. I will certainly find a fine of $500,000 or $1 million very frightening. But, for property developers, will they be afraid if they are told that they will be fined $500,000 or $1 million should they fail to do what they are supposed to within 72 hours?

In fact, the fine is one of the "organic" components of the cost to be borne by property developers. In other words, when they see this provision, they will say, "Mr Albert CHAN, insofar as the sales brochure is concerned, if we do not notify the revision within 72 hours and accept the penalty, we might be able to close two more major deals." As a maximum fine — a fine will usually be imposed for the first offence — of $500,000 or $1 million will be imposed regardless of which subclause is contravened, how can a deterrent effect be achieved?

During the discussion on the Competition Bill — the discussion at which the President repeatedly corrected my repeated comments — the penalties for non-compliant enterprises are calculated on the basis of 10% of the global turnover. Some people will say, "How terrible can it be if a fixed fine is imposed, as in the case of illegal parking?" Chairman, if only a fixed fine is imposed on illegal parking, the rich people will simply put down a $500 banknote and then say, "Keep it and give me a penalty ticket. I am going to park my car here, for it is very troublesome to park my car elsewhere." If the penalty is imposed in the form of removing the four rubber tyres from his car immediately, do Members think they will still be willing to accept the penalty? They will certainly refuse to accept it, for they will have no way to drive their car away.

Hence, when it comes to the penalty, we must find out during the legislative process whether the penalty imposed on offenders is considered by

them to be light or heavy. To them, a light penalty is not a problem at all. Hence, I think we should make reference to other methods to deal with "big masters", or the very rich, by taking away a certain part of their lives but not their lives. Hence, it is actually appropriate to set the level of fine at a certain percentage of the amount of money involved in the transactions conducted by property developers, so that they will know that it hurts.

Last but not least, a condition for pursuing the matter on grounds of incomplete title can then be created. This is crucial, why? In fact, this is a protection for many people, except for LEUNG Chun-ying, who said that he would not pursue the matter on grounds of incomplete title, despite his obvious knowledge of the presence of unauthorized structures after an inspection made by a professional. It is really remarkable that he is willing to give up his own right. This is contrary to the behaviour of most consumers.

Do Members consider it better to bring home to property developers that the revision made to the sales brochure must be notified within 72 hours, which can obviously manage to do, to prevent buyers from buying a wrong house, since they can pursue the matter on grounds of incomplete title in future? In other words, the vendor, that is, the deceiving party, should most preferably get nothing at all in the end.

I think that the Government has actually heeded a lot of advice and made some revision. Nonetheless, to those invincible property developers, the revision is off the mark. Moreover, they simply do not take the Government seriously. Hence, I hope the outgoing Secretary can give us a reply before she leaves as to why the Government refuses to adopt my proposed punishment method of setting the amount of fine at a certain percentage of the turnover of the property developers or creating the condition for pursuing the matter on grounds of incomplete title.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, the string of clauses and relevant amendments to be introduced next is extremely important to the

regulation and compliance of this piece of legislation. Nevertheless, Members in this Chamber have all kept their mouths shut probably because they are anxious to call it a day or they just wish to defend or protect the chance of the passage of the motion on five Secretaries of Departments and 14 Directors of Bureaux. Members have been campaigning for the law on regulating the sale of first-hand properties for years. Relevant amendments to the clauses are most important to future owners and their protection, for some people in Hong Kong might only have one chance in their lifetime to buy a property, whereas some do not stand any chance at all of doing so.

If the string of amendments to the blue bill, including those to clauses 2, 4, 6 to 65, are not seriously addressed, and if these important clauses are addressed in a slipshod manner, and if the definitions in the Bill are unclear or biased, thus causing problems and resulting in a lack of legal protection for small owners, Members might be sorry when it is too late, for they might have already become victims because many Members here are already owners of numerous properties, and some might be prepared to buy properties for themselves or their children in the future.

Chairman, I would like to point out the significance of the expression "material date" in clause 2. The Chinese definition of "material date" is certainly more difficult to comprehend, and so it is better to refer to its English definition. Simply put, the English text reads, "(a) in relation to an uncompleted development or an uncompleted phase" to be followed by (i), (ii), and then (ii)(A) and (ii)(B), under which certain parameters are defined. Nonetheless, they are basically related to the conditions of the land grant, the development project and the material date.

I would like to point out this question to the Secretary. Chairman, I have repeatedly mentioned the case involving Maywood Court. To both owners or buyers, what matters most in the entire provision is, besides the area and the requirements on the sales of properties, the formal handover date stipulated in the law, whether it is stated in preliminary agreements for sale and purchase, agreements for sale and purchase of uncompleted properties, or formal agreements for sale and purchase. This information is considered by me to be extremely crucial. The problem with Maywood Court was precisely stemmed from the requirements on the handover dates of the sale and purchase of uncompleted properties, the legal liability arising from the failure of handing over

properties in accordance with the handover date, the protection offered by the relevant provisions, and the complete lack of protection in the past, which made owners suffer losses as a result.

Chairman, why are handover dates so crucial? As we all know, the property market in Hong Kong is like a roller coaster ride. During the period of turbulence in 1997, property prices could experience a rise or fall of 10% to 20% in three months and, coupled with the impact of other dates, possibly a fall of 30% in six months — a 30% fall during the period between mid-1997 and end-1997. But in comparison, property prices in 1997 were less steep than at present. Furthermore, the price of a property in Maywood Court or Vista Paradiso at that time was merely several million dollars. But now, some luxury properties can be sold for over $10 million, or even tens of millions of dollars. Hence, a rise or fall of 20% to 30% means an enormous financial commitment to both parties. This is why I consider it extremely crucial to provide for a legal definition of the relevant dates through providing for these dates in the law.

Nonetheless, Members may go through the definitions and find in the interpretation provision many other definitions, including the definition of "working day", but the only relevant date is "material date". After reading the clause on the "material date", however, I can still not find the handover dates as stipulated in the agreements for sale and purchase of uncompleted properties. So, are the handover dates protected by these provisions in the law? Please forgive me for my poor understanding of the definitions in the law. I really cannot find it in these provisions. If you tell me that the definitions of the relevant dates in the provisions of the agreements for sale and purchase of uncompleted properties are not addressed in this Bill, I would consider it a grave omission or an extremely serious defect, for it will cause an enormous impact on a large number of owners in the future.

Chairman, why are these dates so crucial? I have gradually learnt from the numerous meetings held with small owners, negative equity holders or victims that many ingenious arrangements can be made regarding those dates. Even the so-called handover dates spelt out in agreements can be interpreted in many ingenious manners. Certainly, the so-called completion date can be a certain date specified in a sale and purchase agreement. But most importantly, Chairman, many small owners or ordinary citizens are unaware of the fact that, insofar as common agreements or the approval of the Lands Department are

concerned, the so-called completion or handover dates can eventually be revised in certain circumstances with the approval of an authorized person, though this is not clearly stated in the agreements. For instance, the handover date given to me, which is 31 December, can be revised due to such reasons as typhoon, rain, and so on. Property developers have the right to revise the deadline. Hence, if there is no common understanding of the relevant dates in respect of the law and the agreements — I hope Prof Patrick LAU can give us some advice later on — if there is a lack of common understanding in terms of the provisions in the agreements and definitions in the law, so much so that the masses expect a property to be handed over by 30 October according to the terms and conditions without realizing that it is specified in other provisions that, with the approval of a so-called authorized person, property developers may apply for an extension on grounds of a no. 8 typhoon signal being hoisted during the period in question or for some other reasons.

Nonetheless, I sometimes found it baffling because many development projects were completed during the same period when I offered assistance to the small owners of Maywood Court, right? But why could a Sun Hung Kai development project be completed on time? Tin Shui Wai and its vicinity could not possibly be the only place to be hit by heavy rains and strong winds, right? Why was the relevant developer allowed to apply for an extension with the support of an authorized person on grounds of so-called rains or strong winds, thereby allowing the date of completion to be revised with legal effect (not only for administrative purposes)? As for other districts — Hong Kong is so small. Unlike Mainland China where the situation may be different when Shanghai and Beijing are being hit by the storm at the same time, Hong Kong is such a small place. Both Tuen Mun and Sheung Shui are not very far from Tin Shui Wai …… not to mention those relatively distant places, let me cite the town centre of Yuen Long as an example. Why could a certain development project in Yuen Long, which was only one to three kilometres away, be completed on time, whereas another development project could use such excuses to apply for an extension when they both faced the same weather conditions?

Obviously, as was the case of LEUNG Chun-ying, who knew very well how to make use of professionals, these people — I do not want to humiliate the profession in which the Professor (Prof LAU) is engaged — very often, professionals are commissioned to compile reports according to the requirements stated, right? — both the Professor (Prof LAU) and Mr Abraham SHEK are

smiling — it is because, as the saying goes, money can make the world go round, right? Given that he has been paid to ward off calamities, the report can be compiled in an arbitrary manner. Now LEUNG Chun-ying may even commission four consultants to prove that the basement …… it is really most ridiculous that they even believe that he has nothing to do with the basement. This is utterly absurd. Hence, the so-called authoritative opinions of the professionals have gradually been cast aside by members of the public because of their impression that the professionals are serving the power.

Hence, Chairman, regarding the handover dates involved in the sale and purchase of properties as specified in the provision — I do not wish to use the expression "completion date" because we can often find different interpretations of this expression — To sum up, in the absence of specific definitions of handover dates in the provision, I believe the sale and purchase of many properties in the future, particularly in respect of the sale and purchase of uncompleted properties, given that their completion dates may range from a year to 18 months, we will have to count on other guidelines to provide for the handover dates, though these guidelines may very often vary due to different interpretations.

Chairman, I have another major problem with subclause (2) of the clause on Interpretation — I wonder if all the provisions are drafted in this manner. I hope Mr Ronny TONG can give us some advice — the subclause reads, "A note located in the text of this Ordinance is provided for information only and has no legislative effect". We have gone through many provisions, particularly those concerning the sale and purchase of properties, and found that the relevant sales brochure carries a large number of remarks, right? Very often, adjectives aimed to appeal can be found in these remarks. For instance, according to these remarks, Italian marble is to be used as the material for kitchen counter tops. What I mean is that one can always find the most appealing, vivid, and tempting adjectives in the remarks. If given the opportunity, I can look up the sales brochures distributed during the launch of properties and developments in the past — the same goes for advertisements. When you read newspaper advertisements, you will often find the use of the most vivid and appealing adjectives in the remarks to describe the properties, so much as that buyers are given the impression that the properties are worth the money spent or even more than the money spent.

Now, this remark reads, "A note located in the text of this Ordinance is provided for information only and has no legislative effect". Chairman, insofar as this remark is concerned, should disputes concerning this remark arise in the future, I wonder if the remark will become some sort of protection or favour for property developers. In comparison, small owners in general are not protected, because I have absolutely no doubt that most small owners, or 99.9% of them, are not necessarily aware of the remark made in subclause (2) of the clause on Interpretation. As regards the actual circumstances …… I might have misinterpreted it. Secretary, I hope my interpretation is wrong. If not, I hope you can explain to me *(The buzzer sounded)* the actual impact of the provision.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ABRAHAM SHEK: Chairman, I would like to further comment on the price list arrangement. As a past practitioner in the trade, I am at a loss to understand the logic of stipulating in the price list the minimum number of residential properties. The Administration's purported aim in setting this requirement is to enable prospective purchasers to get a fuller picture of the prices of a considerable number of properties. It is open to doubt whether the requirement will actually achieve this aim because it is strongly arguable that the price list will only give the purchasers a fuller picture of the prices if the properties on the price list were in fact going to be offered for sale at the prices stated on the price list. However, in the Bills Committee, the Administration repeatedly contended that the vendors do not need to offer all the properties on the price list for sale.

It is therefore difficult to see how the objective of giving the customers a fuller picture of the prices will be met by providing them with prices of properties which are not for sale. Further, such a price list may be amended prior to sale. The price list could create confusion and obfuscation rather than the transparency which the Administration says is its end. And also, the reason that was given by the Administration at the Bills Committee meeting was it cannot force the developer to sell the property. This really reflects the point that we were talking about: it is a violation of Article 105 of the Basic Law.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

PROF PATRICK LAU (in Cantonese): Chairman, the main purpose of the Residential Properties (First-hand Sales) Bill (the Bill) is to require vendors to provide important relevant information on uncompleted flats to purchasers, so that purchasers can know the conditions of the uncompleted flats. For this reason, the requirements of the Bill in this regard are quite complicated and one of the most important points therein is the requirements relating to the area of units, as raised by Mr Abraham SHEK earlier.

At various stages, for example, in the Steering Committee or the Bills Committee, we have had this point discussed many times. When I spoke earlier, I said that the Bill adopted the saleable area as the standard, so that a formal method of measuring the area of first-hand residential properties could be established. However, in the case of second-hand properties, the gross floor area is still used. As far as I understand, this would lead to a problem — Mr Abraham SHEK has also talked about it a number of times — that is, this would cause great confusion because the area of second-hand and first-hand residential properties would be expressed in different measurement methods. Therefore, he believes that sales brochures should specify both the saleable area (that is, usable area) and the gross floor area of the units. This would provide greater clarity, so he hopes that property developers can do so. However, after considering this proposal, the Steering Committee believes that such an approach would cause even greater confusion, so the Government has decided that it should be specified that only one kind of area can be set out.

Chairman, please take a look at clause 18. Property developers or vendors can actually set out other information, for example, the area of the clubhouse or lobby, in the sales brochure because the areas of these facilities would not be factored into the saleable area of a residential unit. If the vendor wants to set out such information clearly, he can do so. Apart from knowing the saleable area of their unit purchasers can also know the areas of the facilities they can enjoy, such as the lobby and the clubhouse, so that everyone can have a better idea of the areas of various facilities. This is their way of expression.

As regards Mr Albert CHAN, queries about the importance of professionals just now, I wonder if he intends to downplay the role of

professionals. But why does the Bill specify that professionals have the say on many matters? It is because professionals are responsible for building design as well as for such tasks as the supervision of construction works and the completion time of building construction. Even when property developers take out loans from banks, they also have to obtain a certificate issued by professionals informing the banks of the progress of the works on the relevant property before property developers can take out loans successfully. The reason that professionals (including lawyers, architects and surveyors) are called as such is that they are bound by their professional codes. It is not because, as Mr Albert CHAN said, they provide information that owners like to see at the request of property developers who give them money. This kind of things cannot possibly happen at all. Therefore, the comments made by him just now are not facts. Even if the progress of a construction project is hindered due to weather conditions, as he said just now, we would still specify in the agreement for how many days the construction project will be delayed under various circumstances such as a typhoon. These requirements are laid down in the agreement and cannot be changed arbitrarily.

Regarding the amendments under discussion now, they are actually proposed after the careful scrutiny of the Bill to see if there is any room for improvement. One very important point that I wish to raise is that the Buildings Department is responsible for the approval of the design of buildings in Hong Kong. So apart from asking for sales brochures and other relevant information at various property sale venues, purchasers can also ask for the approved plan to check if things are in order. Purchasers can also check the plan against other information to understand the true state of the building. I think this point is very important.

Chairman, Members all say that purchasing a property is a major investment in life. I agree with this view and therefore believe that education for intermediaries is very important. I hope that by means of the Bill, the efforts in this regard can be stepped up. Just now, Mr LEUNG Kwok-hung talked about such things as "pimps" and I think we should not address people in such a way. They are "brokers", "agents", and "property agents" but he called them such a bad name. I do not know the reason why. However, it is probably only because Mr LEUNG Kwok-hung wished to explain the situation that he cited such negative examples. Anyway, intermediaries are really important.

In the course of a property transaction, an intermediary receives quite a lot of commission for briefing clients about the flat, so I think education for intermediaries is very important. Chairman, you may also have viewed some properties developments. You seldom do so? It does not matter. So long as you have viewed property developments before, you would know that sometimes, these agents would just say anything. And this is where the problem lies. Therefore, I hope that after the passage of the Bill, they will understand that this is a law and when they promote a flat to a purchaser, they cannot provide wrong information to the purchaser. I think very often, they do not understand this point.

Concerning the Bill, there are several very important points and I wish to briefly explain them to Members. Apart from the floor plan, the Bill also requires to set out the elevation plan. Why is it necessary to set out the elevation plan? This aims to let purchasers know clearly …… earlier on, someone bought a flat in Tseung Kwan O but it turned out the unit was not located on the podium but very close to the road. When the purchaser bought the unit, he did not know the elevation of the unit. If the legislation requires that an elevation plan has to be provided, property developers must provide all the relevant information.

In sum, when people purchase first-hand residential properties, sometimes, the relevant buildings may not have been completed, so everything is still like a castle in the air. The most important purpose of enacting the legislation is to improve the current property sales arrangements, so that purchasers can know clearly the true and full features of the buildings concerned. As to other requirements, such as the time for the release of price lists, they are also intended to protect consumers. I think the amendments are proposed after careful examination at different stages, so I hope Members will support all the amendments. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr Abraham SHEK, this is the third time you speak.

MR ABRAHAM SHEK (in Cantonese): Chairman, I wish to respond to the issue of price lists raised by Mr LEE Wing-tat just now. It has to do with price reduction.

He claimed that in the Steering Committee, a very simple issue would turn into something very complicated. I understand this because there are 10 members in the Committee, are there not? However, nine of them are not members of the real estate sector, so even in respect of such simple matters as a price list, when prices are reduced, it is necessary to compile a new price list again.

Why is it necessary to compile a new price list? There is already a price list, only that the prices on the price list are reduced. However, he said that this would not do and that a new price list had to be provided within three days. Why is it necessary to complicate matters in this way? Why cannot members of the Steering Committee even understand such a simple matter? Chairman, the overall situation reflects the fact that outsiders are regulating insiders. In this regard, I think these provisions should be simplified, so that they can be understood by the public. They cannot even understand such a simple matter as price reduction. Therefore, Chairman, I just want to make a little bit of clarification here. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR CHAN KAM-LAM (in Cantonese): Chairman, concerning this series of clauses in the Bill, they are actually very important components in the framework for regulating the sale of first-hand residential properties and they cover such matters as the required contents of sales brochures, price lists and even the saleable area. All these are topics to which we have all along attached great importance.

Just now, some Honourable colleagues raised some issues and in fact, many of these issues have been discussed in great detail in the Steering Committee or during the scrutiny of the Bill. At this stage, the Chairman is putting these questions to vote and at the most, we can express our views on whether or not we agree with certain clauses rather than embark on a discussion of them again. For example, a Member raised the issue of price lists just now. There are reasons for our support for the present decision made by the Government. In fact, even if property prices fluctuate in different market conditions, we still hope that there can be greater transparency to let consumers or property purchasers know about the changes in property prices.

We also understand that this approach is more rigid and that in fact, there is no need to revise the price list and it would do just to set out the latest prices of unsold units when publishing a new price list. However, the Government thinks that the latter approach may conceal the previous prices, thus resulting in a lack of transparency. However, I hope that the authorities would conduct review from time to time in light of the actual situation after the implementation of the Bill.

In addition, in respect of the saleable area, in the course of scrutinizing the Bill, many people have expressed the hope that the information on the gross floor area can also be included. We have expressed our understanding because the gross floor area has been used in property transactions in Hong Kong for many years, and all of us are accustomed to this. Be it an "inflated flat" or a "shrunken flat", we all know about how large a flat of 1 000 sq ft is and that the saleable area of the flat is about 75% or 80%. It can be said that this is common knowledge. In the future, after the implementation of the new requirements, if only the saleable area is used, we may not know how large a flat roughly is based solely on the saleable area as compared with the gross floor area used in the past. Therefore, not only do property developers hope that this piece of information can be included, even ordinary people hope that this can be done, so that consumers can have a better grasp of the actual situation.

However, the Government has also explained that providing both the saleable area and the gross floor area may lead to confusion because the calculation of property prices is based on the saleable area and in the future, unnecessary disputes may arise on account of this. This is a very sound justification because in fact, no standardized method of calculating the gross floor area can be found in the market as yet. Therefore, we hope that in the future, after the passage of the Bill, the Government can have discussions with the industry as soon as possible to examine how a standardized method of calculating the gross floor area agreed to by all parties can be identified. If information on the gross floor area and the saleable area can be provided at the same time, in the future, no matter if they are included in price lists or sales brochures, doing so may serve to enhance the transparency of the market.

Under the existing arrangement, in the information provided in sales brochures, property developers are also allowed to include the areas of all other common areas, the clubhouse or gardens of the property development and set out

their proportions in sales brochures. This can also enhance the understanding of property purchasers of a property development. I hope very much that the Government can conduct reviews from time to time after the implementation of such a novel and complicated Bill, so that the new requirements can be implemented properly in the future. However, recently, in the course of scrutinizing the Bill, I have visited many new property developments and got quite a number of sales brochures. I have found that many property developers have begun to implement the numerous requirements under these clauses one after another on the basis of the Consent Scheme and a lot of the contents are basically closely aligned with the requirements under the Bill. Of course, some property developers have not yet included very detailed information but I have found that basically, many property developers have already achieved compliance with the law.

I hope very much that the requirements on property sales under the Bill can inspire greater confidence in consumers and property purchasers and help improve the Government's regulatory efforts in the future. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, do you think this meeting will abort when we have a headcount now? But I will not request a headcount now. Please do not stare at me. We will definitely keep our promise.

On clause 42, actually the amendment is related to clauses 40 and 41. I have talked about one thing earlier today and that is about Cheung Kong Holdings asking the prospective purchasers to pay a "sincerity deposit" of $150,000 before they could have a sales brochure. After this Bill is passed, similar practices will not be perpetrated in such an unscrupulous manner.

Many people have said that buying a property is unlike buying vegetables. It is about buying a property, irrespective of whether the property in question is large or small. When some people want to buy a property, they ask Uncle Fat whether these village houses have got any unauthorized structures. If there are such structures at the rooftop, they have to pay an extra $200,000 for the

property. So they will certainly inspect the property before the purchase and certainly know that there is some part which should not have been there. If an air-conditioner is fixed, they have to pay an extra $50,000. This is probably the situation, right?

When there is nothing actual available for inspection and when people have to pay to get a sales brochure, this of course is related to market demand. Ours is a society which makes capitalism and free economy its supreme values. If a certain property development is in great demand, the developer will certainly succeed in playing such tricks, even to the extent that people are left with a muddled mind. Then there is the so-called case of properties offered for internal sale. As we all know, people who had a drinking straw in their mouth and who lined up as prospective purchasers of a property development in Whampoa, Hung Hom were all queued for other people for money. So all depends on the market situation. But to be honest, this kind of practice is really way over board. After this law comes into force, these developers or their agents of course cannot act in such an excessive manner.

Now we can often see some young people who are nicely dressed chase after people in the busy streets, asking if they want to view some nice and attractive residential units. Does the law have some ways to curb this kind of nuisance? I recall once I went to a Chinese restaurant in a certain shopping mall and I was chased by these people all the way.

Let us take a look at Part 2-Division 5 of the Bill. This is about viewing of property in completed development or phase. Detailed stipulations are set out in clauses 40 to 42. The Government proposes to amend clause 42 and this amendment to clause 42 is actually related to clauses 40 and 41. In the original clause 42, it is about "Measurements and photographs to be taken in residential property for viewing". There are three subclauses to it: "(1) The vendor must not restrict any person who views a residential property for the purposes of section 40(1) or (2)(b)(i) from taking measurements, or taking photographs or making video recordings, of the residential property." So there are no restrictions in this regard. "(2) Subsection (1) does not apply to any restriction that is reasonable in the circumstances for ensuring the safety of the persons viewing the residential property." But now there is an amendment to clause 42 and that is to add subclause (2A): "Subsection (1) does not apply if the residential property is held under a tenancy (other than a Government lease)." Then

clause 42(3) points out that "If subsection (1) is contravened, the vendor commits an offence and is liable to a fine at level 6." This amendment has improved the original clause. For these practices, we will give certainly our support. The Bill has plugged some loopholes. Just now I have said that buying a flat is not like buying vegetables. It is unlike buying a toy to children. The purchaser or prospective purchaser must be allowed to have greater understanding of the units which are completed or in phases. This is only reasonable and it can protect the interest of consumers.

So with respect to this part, detailed requirements are set out in clauses 40 to 42. Clause 41(1) provides that the vendor must allow the prospective purchaser to view the specified residential property he prepares to buy. Otherwise, the vendor cannot sell that property. This requirement is reasonable and it is always better than letting people just do whatever they want. Before this Bill comes into force, we can often see that there are all kinds of publicity and advertisements for property sale used by the developers to mislead purchasers or prospective purchasers. In the advertisement, they say there is a superb sea view, commanding a panoramic view from the top. But actually the view is just from three floors above. There are really many examples of this kind of publicity. We know very well why this law has to be enacted.

It is the same in the case of a property development in Ma On Shan offered for sale this February. Some owners have complained that they have purchased a large seaside garden flat on the podium below the fifth floor for $7 million. Only when they have taken possession of the flat that they have found the flat is next to the road. The flat is situated at a level no higher than a double-decker bus. So this is the so-called large seaside garden flat at the podium of the fifth floor. Of course, the developer has explained that these blocks of flats are built according to the terrain. But as we refer to the publicity materials, we find the descriptions really appealing.

This is what we often see in the newspapers the advertisements for residential developments offered for sale. Now Taiwan is following the example of Hong Kong. I have seen full-page advertisements for these property developments in newspapers in Taiwan. So the malpractices in Hong Kong are now found in Taiwan too. What are described are beautiful surroundings with blue sky and green sea. Only when the purchasers take possession of the flats, they find that the flats are facing some garbage dumps. What is more, they can

actually see housewives cooking in the opposite building. The place is very noisy. But what are said in sales brochures, publicity materials and newspaper advertisements are extremely nice and beautiful.

We certainly lend our support to this Bill because by enforcing this law, there is a chance that these deceptive practices can be eliminated. Actually, these developers should be severely censured. But there are people in this Council who speak up for these developers who sell "shrunken flats", deceive people and hike up property prices. They sell flats at high prices. We used to say that a foot of land costs an ounce of gold, but now, to be honest, this remark is inopportune.

In such circumstances, developers still want to cheat. But there are still people who want to buy a flat for whatever it takes, and they grumble after they find that they are cheated but they can do nothing about it. So these owners will go on cheating the next buyer when the market is robust. They do not care at all because they just speculate on properties. Some people may not have even taken a look at the flat before the purchase. Now when these rich people from the Mainland come here, they regard buying houses on the Peak as a status symbol and some kind of protection.

Now it is 15 years since the reunification ……

CHAIRMAN (in Cantonese): Mr WONG, please speak on the clauses and amendments being discussed now.

MR WONG YUK-MAN (in Cantonese): Yes, Chairman, then I should talk about the viewing of properties, right? When people can take measurements and photographs, they will not be cheated. When it is now 15 years after the reunification, why are the hearts of people not reunified? We can have a clue when we see so many people buying properties here. People from the Mainland come to Hong Kong to buy properties. Why are the hearts of people not reunified? The blame is put on the hearts of Hong Kong people not being reunified. Then the blame is put on those who oppose China and cause chaos in Hong Kong. Things are slightly better now because we do not hear remarks like these so often these days.

Clause 42 requires developers to display in a show flat information about the specified property and the show flat for comparison of prospective purchasers. So this clause achieves this effect. It also provides clearly that such information includes dimensions of the property, internal partitions, bay windows, air conditioning plant rooms, balconies, utility platforms and verandahs and so on. Purchasers of properties and prospective purchasers must know about such information. Clause 41 of the Bill sets out specific requirements of the provision of show flats for viewing purposes. These requirements are very important. Without these requirements, there will be no point viewing show flats. If there are no such requirements in clause 41, may I ask what is the point of viewing show flats? There is no point at all. Therefore, details are set out in the clause and it is only when these requirements are met that the ensuing transaction can be said to be fair. We can see that clause 41(3) is written in a very explicit manner. Developers must clearly show which fittings, finishes and appliances in the show flat will be provided in the specified property. These requirements are therefore essential.

Often when we go to view show flats, we find "shrunken" furniture and appliances being placed there. This gives people a wrong impression because these items are not in their actual sizes. Once I went with a friend to a show flat of a development project — I just went with a friend and I did not want to buy any property. I have also visited the home of the Chairman but it was many years ago. A friend of mine told me that he found the flat he had bought not quite the same as the show flat. It turned out that the furniture pieces in the show flat were "shrunken" and not of the original ……

MR LEUNG KWOK-HUNG (in Cantonese): A point of order. I request Yuk-man to clarify whether or not he has viewed the Chairman's home.

MR WONG YUK-MAN (in Cantonese): No.

CHAIRMAN (in Cantonese): Mr WONG, clause 41 which you are talking about should belong to the scope of debate on the previous group of clauses.

MR WONG YUK-MAN (in Cantonese): I know. But clause 42 being discussed now is related to clause 41. I was only referring to clause 41 again when I talked about clause 42.

CHAIRMAN (in Cantonese): Right. But I would suggest that you should not put forward irrelevant views.

MR WONG YUK-MAN (in Cantonese): I of course know that. But I was just trying to make Members feel a bit refreshed.

Now I would talk about clause 42. On clause 42, it is definitely related to clauses 40 and 41. This is clear enough. There is an amendment to clause 42. I have just talked about it. Whenever clause 42 is discussed, clauses 40 and 41 will be involved. And at that time I did not speak. Had I done so and when I repeat now, then you would have your point. But at that time I thought, well, perhaps I would not talk about it though there were heaps of materials. Just for this reason, you should not prevent me from ……

CHAIRMAN (in Cantonese): The Committee has just voted on clause 41.

MR WONG YUK-MAN (in Cantonese): I have just said that the amendment to clause 42 is related to Division 5 on viewing of property. As we all know, the Chinese text of the Bill is drafted in a lousy manner. Division 5 is on "參觀已落成發展項目或期數中的物業" (Viewing of Property in Completed Development or Phase). I think the term "睇樓" (viewing of property) will do, right? There were some imperfections in the original clauses 40 to 42. Some members put forward their views in the Bills Committee back then. Usually, regarding the amendments proposed by the Government, if it considers that the views of members of the Bills Committee are acceptable, such views will be put in the amendments proposed by the Government. This is what we all know. I would think that this amendment is very good. It is precisely because I think this amendment is good that I talk about clauses 40 and 41.

Clause 42 clearly stipulates that the dimensions, internal partitions and so on of a flat must be set out. Viewers can then take measurements and photographs inside the show flat. And, there will not be discrepancies between

the show flat and the completed flat. So we would think that we should lend our support to this amendment. However, there is another problem and that is, there are some clauses to which I do not agree but since they are tied in with the rest, so we are not sure how we should vote later.

I would now digress a bit farther. When the Government proposes amendments, sometimes it should single out some of these amendments. But the Government is convinced that all the amendments it proposes will get passed in this Council, given the present organizational structure of this Council. So it refuses to do such things, making those of us who should have given our support to the Government unable to lend our support. But the Government does not seem to care. It thinks that all the amendments can definitely be passed. There is really a problem with this attitude. But these things will cease to be your concern soon. Although you have done a lot of these things before, you are about to retire. I am saying these only because I want to tell your successor as well as the Government that regarding government amendments, although they can be said to be discussed by the Bills Committee, it will not do just like that. The Government is not willing even to lobby Members, right? I have read the clauses and I think clause 42 deserves our support most. But when voting in this way, I am against other clauses. So I would think that this is a problem worth our consideration.

I predict that the Residential Properties (First-hand Sales) Bill will go through the Committee stage tonight. So the Secretary can rest assured.

Thank you, Chairman.

CHAIRMAN (in Cantonese): To hold a joint debate and to group clauses together for voting jointly are the arrangements I adopt in accordance with past practices when amendments proposed by the Government have been discussed in the Bills Committee and received no differing views. However, as Members all know, if a Member requests to single out certain clauses for voting separately, he can certainly propose to do so.

As a matter of fact, when dealing with the two previous Bills, I have also acceded to Members' request and put certain clauses which should have been voted jointly for voting separately.

Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, now I would discuss clause 18 of the Bill. This clause is about information required to be set out in a sales brochure.

Generally speaking, I would think that clause 18 deserves our support. Subclause (g) which is on "an aerial photograph of the development" is very important. If aerial photographs are provided to the purchasers well in advance, I would think that problems would not have appeared. Let me give the example of the two mansions on 4 and 5 Peel Rise on the Peak. I do not know if these two mansions were bought first-hand or second-hand. I do not have this information so far. Suppose they were bought first-hand, if the developer had some aerial photographs of that development at that time, then there would not be any dispute today such as that on whether the grape canopy existed at the time of purchase or whether these unauthorized structures were already there or whether the owner or the developer had built these structures.

From this it can be seen that clause 18 of the Residential Properties (First-hand Sales) Bill which is on "Contents of sales brochure: information required to be set out" that I am talking about is necessary. A very important point is that both the purchaser and the vendor can have equal access to information and hence their rights are equally protected. Prof Patrick LAU has pointed out that my comparison of this to "pimping" is grossly improper. Actually, I did that on purpose. "Pimping" is what is commonly called "being a bawd". The situation is actually the same. When someone procures the service of a prostitute, the intermediary will certainly say that the prostitute is very beautiful and this gives the would-be patron a fancy — I do not use the wrong term this time.

What are the problems that we have to deal with in this case? When the owner, that is, the vendor, misleads the agent on purpose, or when the agent conspires with the vendor …… Chairman, why am I saying that? This is because agents want to seal a deal, especially property transactions and they rely on group force. Since purchasers act as individuals, they do not have the force as a group, like what is called on the Mainland as group purchasing power. So agents rely on group selling power. Had it not be specified in clause 18 that a sales brochure should set out the information concerned, that is, what is required

in paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) under clause 18(2), as well as in paragraph (i) which is on the "plans relating to the development", I do not think the rights of property purchasers can be protected. Let me give a very simple example.

Chairman, Pacific Place in Admiralty is an obvious example of the misleading practices used by a developer. By all appearances, the basement, that is, levels 4, 3, 2 and 1 of the LG floor are beneath Queensway. But I cannot make head or tail out of these and I am always deceived. Back in those years the developer even deceived the Government. They asked the Government if they could continue digging underground. These few levels in the basement are unauthorized structures and they have been constructed in a blatant and open manner in another section of the road. I do not know if this is the result of collusion between the business and the Government at that time or if the Government was deceived. But this sort of so-called mistakes did happen.

In my opinion, it will not work if nothing is done to require such information to be set out in a sales brochure. This is the question of plans. The vendor can say anything fanciful about the development. Like in the case of a certain housing estate, actually it is located next to a landfill but it is described as a beautiful garden-like paradise. How is that possible? What people can smell is the rotten stink of a landfill and nothing else.

There is something I cannot make myself feel assured. The Secretary or the Government has realized that information in paragraphs (a) to (i) are required to be set out in a sales brochure, and in future, along with developments over time, paragraphs (j), (k), (l), (m) and so on will be added. Clause 18(1) is on the "steps that a person is advised to take for the person's own protection before deciding to purchase a residential property in the development." This is odd to require the vendor to do that by setting out in detail certain kinds of information. But there is a glaring loophole in that and that is, what is the result after setting out such information in detail?

The Secretary has indeed proposed an amendment, right? And the amendment has the effect of making the original clause fitting more the conditions of clause 18(1). But the case is like requiring a cat not to eat fish. Before the cat is going to eat the fish, it will tell the fish that it will use the left

paw first and then the right paw to grab the fish. The fish could have avoided it if everything is said beforehand. But the question is, if the cat does not keep its promise by using its left paw first and then right paw and it just bites the fish, then what can be done? It is a matter of meting out the penalties.

For any piece of legislation, once it fails to produce any deterrent effect on an offender, then although we cannot say that it is "an ear drawn on the wall", the law has become nothing more than the remains of some Chinese herbal drugs after the medicine is prepared. In other words, it does not have any effect and it is just some remains and devoid of any medical efficacy. Since a sales brochure is so important, why in the course of making amendments, the Secretary has not considered the point that a developer in breach of clause 18 should be imposed a more severe penalty? Or why is nothing done to make such a developer feel the pain more sharply?

Let me read out from clause 18(6) which is like this: "If subsection (1), (2), (3), (4) or (5) is contravened" — I will not quote these subsections — "the vendor commits an offence and is liable to a fine of $500,000." Chairman, given the property prices these days, and if the property concerned is a flat with a high price, it can be said that buying a brick in it will cost $500,000. When a sales brochure is required to set out so many kinds of information as those stated from paragraphs (a) to (m), and if anything is done to fabricate or mislead others on purpose, or if nothing is done to "set out the steps that a person is advised to take for the person's own protection before deciding to purchase a residential property in the development", then what should be done?

Does a fine of $500,000 have any deterrent effect at all? Why can it not be the following? First, the penalty is imprisonment; second, a penalty is to be meted out pro rata according to the number of persons being deceived or the amount of money being cheated; third, forming a ground for the purchaser to refuse to execute the transaction and allowing the purchaser to claim a compensation, that is, the purchaser can rescind the agreement and pursue a claim for compensation. Of course, people can say that after a fine is imposed on the offender, the purchaser can also lodge a claim in civil action. But I would think that it would be better if all these are set out in statutory law, then everything can move on as if the automatic gear is put.

I have just talked about clause 16. I consider that there is an imbalance in clause 18. It is provided in clause 18(2) that "The sales brochure for the

development must then set out the following information in compliance with Part 1 of Schedule 1". All the information required is set out in a very detailed manner. But nothing is done to change the penalties. We can see that the Bill as a whole has got a certain amount of power in that people will think that they may be caught by the long arm of the law. But unfortunately, at the end of the day, it is like the football match between Spain and Portugal last night and the result was a nil-nil draw. The match was sensational but there was no score in the end. It would be alright if it was a draw. But the result is that the advantage is on the vendor and there is even no penalty. Who will win or lose is not decided by a penalty shootout.

Let me tell Members, the Government has put in such painstaking effort in stipulating such requirements in detail in clause 18 with a view to achieving an immediate effect. It is like when a pole is set under the sun and people will be able to know how long the pole is from seeing the shadow cast. Or they will not be able to know where the sun is. What then is the immediate effect? It is punishment. If the Government is afraid, then it can add in some kind of legal jargon like "a reasonable excuse". If the Government is afraid that the developers will say that the law is too harsh and the immediate effect is like a death penalty, then they can be allowed to put up a reasonable excuse. If they have tried their best, then they will not be punished. But what should be done first is to make developers shiver in fear by imposing harsh punishments and stringent laws, then allowing them to make some valid or reasonable excuse in defence.

Chairman, I have said so much but I have not repeated anything. When this clause was drafted, a haunting ghost kept leaping out from the law and biting people. In other words, this clause does not help much and it only appears to be forceful but in reality it is lame and powerless.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): Chairman, the more we pay attention to the clauses and the more we read about their details, we find that there exists a

difference in comparison between the clauses and there are more and more contradictions and irrationalities in them. I would just talk about the comparison between clauses 20, 60 and 61.

We notice something very odd about clause 20 of the Bill and it is about the level of fine. In clause 20 and it is stated in subclause (3) …… (4), that "If subsection (1) is contravened, the vendor commits an offence and is liable to a fine of $500,000". Subclause 5 states that "If subsection (2) is contravened, the vendor commits an offence and is liable to a fine of $500,000 and to imprisonment for 12 months." And in subclause 6 it is stated that "If subsection (3) is contravened, the vendor commits an offence and is liable to a fine at level 6". If I understand it correctly, a fine at level 6 means a fine of $100,000.

Chairman, the unique thing about it is that when similar offences are committed, there are certain punishments …… clause 21 of the Bill is also about inaccurate information and other problems regarding information. Clause 21 provides that the sales brochure for the development must not set out any information other than the information required. Subclause (2) of the clause provides that "If subsection (1) is contravened, the vendor commits an offence and is liable to a fine of $500,000." When this is compared with clause 20(5), we can find that in that subclause, an offender is liable to an imprisonment for 12 months and in both subclauses, the fine imposed is $500,000. The difference between the two is that there is a penalty of imprisonment in clause 20. In clause 21, it is about sales brochures but actually clause 20 is also about sales brochures.

We can see that in some clauses, there is no penalty in the form of imprisonment. But if other matters are involved, like in clause 20(2) which states "The information set out in the sales brochure for the development must be accurate in every material respect". If this provision is contravened, the offender is liable to imprisonment for 12 months. But it is hard to tell whether the offences in other clauses are relatively not so severe or important.

If you ask me, I would say it is obvious that the importance of those clauses which are not about the penalty of imprisonment may not be lighter than those which have a penalty of imprisonment. So this makes people think that in many

respects, the law deliberately condones and is lenient towards the developers. This is because the developers are the vendors.

I have just mentioned clauses 60 and 61 of the Bill. These two clauses are on advertisements. If Members read carefully, they will find something very interesting about these clauses. The advertisements mentioned in clause 60 are for everybody. This clause provides that "Advertisement must not contain any false or misleading information". Subclause (1) states that "A person commits an offence if the person — (a) publishes an advertisement containing information that is false or misleading ……" And subclause (2) states that "A person who commits an offence under subsection (1) is liable — (a) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years; or (b) on summary conviction to a fine of $1,000,000 and to imprisonment for 3 years."

But if Members would take a look at clause 61, they will find that it is about general requirements for advertisements. Subclause (1) states that "If the information set out in an advertisement is provided by the vendor of the specified residential property, the advertisement must state that fact." Then subclause (2) provides that the vendor must state the estimated material date for the development. Then we can look further and find in subclause (6), "If subsection (2), (3) or (4) is contravened, the person who publishes the advertisement, or causes the advertisement to be published, commits an offence and is liable to a fine of $500,000." What is referred to is about inaccuracy in information and so on.

So this is about information provided by the vendor. Of course, the extent of inaccurate information here may not be as serious as false or misleading information as stated in clause 60. But the impact produced by inaccurate information here may not be lighter than the impact caused by what is called false or misleading information. We can look at clause 61(5) which says "If subsection (1) is contravened, the person who publishes the advertisement or causes the advertisement to be published, commits an offence and is liable to a fine at level 6." The fine imposed here is even smaller in amount and this is because a fine at level 6 is only $100,000.

All these clauses are on advertisements which contain wrong information. It is clearly stated in clause 61 that if the information set out in an advertisement is provided by the vendor of the specified residential property, that is, the

developers, and if the developer does not comply with certain basic requirements, that is, the advertisement in question contains wrong information or is in breach of certain requirements in law, and hence the information provided does not meet the requirements provided in the clause, the penalties imposed when compared to what are set out in clause 60 and that is, a fine of $5,000,000 and imprisonment for seven years, or a fine of $1,000,000 and imprisonment for three years, the difference here can be said to be vast indeed. When the Government formulated the policy, it always imposed a lighter penalty with respect to the publication of wrong information by the vendor or the provider of residential properties and their non-compliance with the law when compared to the penalty in other provisions.

When I spoke earlier on many of the other clauses, I pointed out that the penalties imposed were often just a fine and there was no imprisonment. With respect to other clauses where no reference is made to the developers, such as clause 60(1)(a) and clause 60(1)(b), what is being referred to there is "a person". This means any person. But for "a person" in these clauses, that person may act under the instruction of the developer. It could be that the developer intentionally asks some people to produce some advertisement with false information in order to create certain market sentiments or disseminate some information. And such information may result in the developer reaping a huge amount of profits. The kind of advantage that these people may get may be very substantial. But the penalties they face are indeed more severe when compared to those which the developer will face when inaccurate information is provided. This situation can be seen throughout the Bill and we can notice a sharp distinction here.

Mr LEUNG Kwok-hung has just talked about new clause 16A. I would also like to talk briefly about the importance of the time factor. The clause states that if any revision is to be made to the information set out in a sales brochure, it must notify in writing within three working days to each of the entities specified in Schedule 3 of the revision. And in terms of the penalties, if the offence is about subclause (2), it is stated that "If subsection (2) is contravened, the vendor commits an offence and is liable to a fine of $500,000." And when the offence is about subclause (3), that is, it is an offence if the revision is not notified within three working days, then the penalty is a fine at level 6, that is, $100,000. And there is also no imprisonment. So this string of practices are consistent.

Chairman, this is the same in clause 18 of the Bill. Clause 18 is also a very important clause. This is because it is about the sale and purchase of residential properties in large amounts where the developer is involved …… that is, this is about the steps that a person is advised by the vendor to take for the person's own protection before deciding to purchase a residential property in the development. A number of procedures are involved here. The information concerned and the requirements are very important. But the penalty in this part again does not include any imprisonment and the fine is only from $100,000 to $500,000.

I am sure this Bill and the amendments will be passed today. I only hope that the Secretary — I am sure this Bill will certainly be passed either tonight or tomorrow morning — after the passage of this Bill when a reasonable period of time lapses, will conduct a review of the penalties to see if they carry any deterrent effect and whether they are proper and reasonable. This is to ensure that the law is "a tiger with teeth". For if not, even if the law is enacted, in the end people can get away with it by paying money. A fine does not have any deterrent effect on the developers at all. They do not care about paying a fine of some hundreds of thousand dollars or even $1 million. So the penalty of imprisonment must be added. I would think that whenever economic offences are involved, especially concerning property transactions, there must be a penalty of imprisonment. Otherwise, as I have said, this will give people a strong impression that there is bias and connivance, and even that people can get away simply by paying money and things can be settled just by paying a fine.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr LEUNG Kwok-hung, speaking for the third time.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, the devil is in the details. I pointed out earlier that it was like a haunting ghost. A haunting ghost is one that you cannot get rid of.

As regards clause 19 of the Bill, which is right between clauses 18 and 24, it must be an extension of clause 18 because its heading is "Contents of sales

brochure: further information". Just as I wished to express my views on clause 18 when clause 19 was being discussed, I would like to say a few words about clause 20, as we are now discussing the clauses between clauses 18 and 24. Clause 20 provides that a vendor who fails to state in the sales brochure the date on which it is printed, that is, when the sales brochure is printed, is liable to imprisonment for 12 months. It is like selling overnight "siu-mai" or wine of an unknown date. A period of 12 months (*in Putonghua*), equivalent to one year, is indeed very long. But why is this penalty found in this clause only? Obviously, the Secretary has considered this and concluded that this penalty should be prescribed in this clause only. From my point of view, a haunting ghost can be found in all these clauses, namely clauses 18 to 24, and demon hunter Zhongkui is the only person who can catch it. However, he must be given a peach wood sword before he can accomplish his mission. Otherwise, even though a ghost is there, it will only smile at you.

Clause 20 provides that the sales brochure must state the date on which it is printed, and if this requirement is contravened, which means that a deliberate attempt to omit in the sales brochure the date on which it is printed, the vendor commits an offence and is liable to imprisonment for 12 months. In my opinion, this penalty is impartial. Members might consider it relatively harsh to provide for a 12-month imprisonment in other clauses. However, offenders must be put to jail. Besides a fine, this is the only possible penalty. Honestly, to the rich people, a fine of $300 million is a far cry from imprisonment for three months. They are like heaven and hell, or a prince and a pauper. A prince fallen from grace will become a pauper. Hence, for the sake of achieving deterrence, imprisonment penalty should be found in all the penalty provisions in the Bill. While the legislation ought not deprive people of freedom arbitrarily, for I object to the imposition of 12-month imprisonment on people taking part in rallies in many laws, the penalties currently provided for in this Bill are inconsistent.

To return to the subject, I will now say a few words about clause 19 "Contents of sales brochure: further information". The Bureau proposes that subclauses (2) and (5) should be deleted. Why should these two subclauses be deleted? What are the contents of these two subclauses? Subclause (2) reads, "The sales brochure for the development — (a) may set out a plan showing all elevations of the development; and (b) in setting out the plan, must comply with Part 3 of Schedule 1." Subclause (5) reads, "The sales brochure for the development must set out the address of the website designated by the vendor for

the development for the purposes of this Part. That address must be set out in such a manner that it is reasonably visible to any person reading the sales brochure."

What are the justifications for subclauses (2) and (5) to be deleted altogether? Both subclauses are regarded as further information. Without the information stated in these two subclauses, perfection cannot be achieved. This is not the best arrangement. Clause 19(2) provides that "the sales brochure for the development may set out a plan showing all elevations of the development", but what does the Chinese expression "立面" mean? I am really puzzled. I originally thought that it should mean something like "dimensions", but it turns out to mean "all elevations". Why should such information be deleted? It can be said that this cannot be explained. Will buyers benefit from not knowing "all elevations", or not providing such information in the sales brochure for the development?

Chairman, you ought not to feel confused. In a nutshell, although the goddess of justice was blind, she had the scales of justice in her hand. The scales, as I mentioned earlier, should be tilted slightly towards the disadvantaged. In other words, putting a weight of 60 on the scale should produce a weight of 70, because the disadvantaged should be given a strong platform when the situation is different in order that a balance can be achieved. This is a modern concept. Hence, as the saying goes, "If I speak at all, I will tell all I know". In other words, one should tell the truth and the whole truth. So, if subclause (2) is amended, what should we do with subclause (5)?

Subclause (5), in which the Internet is involved, provides that "the sales brochure for the development must set out the address of the website designated by the vendor for the development for the purposes of this Part". This means that people obtaining the sales brochure will be invited to visit the website specified therein. This is similar to the present practice of the League of Social Democrats (LSD). In the leaflets it distributes, the LSD would also invite the public to go online to view certain YouTube clips. The public would also be given the links through which they could view the throwing of eggs by LSD members and how its chairman was expelled by the President of the Legislative Council. This is what we are doing at present. After all, what is the present era? Subclause (5) also provides that "that address must be set out in such a manner that it is reasonably visible to any person reading the sales brochure".

This is indeed the crucial point. It can be said that the obvious is already stated. Like the colorectal cancer advertisement we can often find on the Mass Transit Railway, intestines are explicitly shown on it to draw attention. Can the buyer, as a single purchasing power, who is not in a balanced position in terms of the information acquired, gain more balance against the syndicated vendor through the access to information on the Internet? Should subclauses (2) and (5) be deleted, the situation will become something like "once the general quits, his followers will scatter". This is the crux of the issue. Hence, the original purpose of providing for the provision of further information was to guard against any omissions, and so every detail is included. It is a pity that the Administration has proposed to delete these two subclauses, which means that an all-out attack has now become inevitable.

In fact, if these subclauses are deleted, the ultimate outcome is that buyers might find it impossible to get a clear idea of all the relevant changes. I am actually referring to "all elevations" as referred to in subclause (2) and the browsing of the website in order to see the whole picture with a more up-to-date and better method in subclause (5). So, why should these two subclauses be deleted? In my opinion, it is inappropriate to delete subclauses (2) and (5). Clause 19, which is about further information, provides for the penalty in subclause (6), which reads, "If subsection (1), (2)(b), (3), (4)(b) or (5) is contravened, the vendor commits an offence and is liable to a fine at level 6". What does a fine at level 6 mean? Chairman, let me tell you. It means a fine of $100,000 (*in Putonghua*) ……

CHAIRMAN (in Cantonese): Mr LEUNG, the Secretary should supposedly respond to the remarks you made just now. However, to prevent you from spending your precious time on making unnecessary remarks, I am going to tell you now that regarding the two subclauses you mentioned, subclause (2) has actually been replaced with the new clause 18A, which provides that all relevant information, including the elevation plan, must be set out. In other words, the requirement of the elevation plan has actually been moved entirely to Part 2 of Schedule 1. In addition, the part concerning the Internet in subclause (5) is still retained. Hence, there is no need for you to elaborate on this anymore.

MR LEUNG KWOK-HUNG (in Cantonese): I see, but it does not matter. Chairman …… I will not dwell on this anymore, because I know that you are right. Given your quick-wittedness, if you need to spend 10 minutes looking it up, I believe no one else can manage to do so. You obviously were competing with me to find out the truth before I exhaust my 15-minute speaking time. Chairman, however, bygones are bygones. As for the penalty issue I raised just now, I really do not entirely understand it. If the amount of fine is set at $100,000 (*in Putonghua*), it will really be like "scratching an itch", right? At least, a consequential provision should be made. For instance, a grading system should be set out in the subsidiary legislation. As in a game of Snake and Ladder, each drop of a grade should carry a deterrent effect. In the worst scenario, a vendor will even be prohibited from buying land. "A sum of $100,000 is simply too small (*in Putonghua*)".

Hence, after mulling over this issue, I still believe that the problem should be solved at its roots. As the saying goes: "Let him who tied the bell on the tiger take it off." It was the Government who tied the bell on the tiger back then. Today, the Government has come up with another solution, and yet it refuses to take off the bell and let it go on ringing. In my personal opinion, should the Government refuse to take off the bell, the tiger will die sooner or later, as if it has taken a chronic poison. After it dies, someone will take off the bell without the need for the Government to do anything. Hence, I reiterate, if the penalty is too light, the legislation will simply serve no purpose.

Chairman, I am really grateful to you for spending your precious time on pointing out the flaws in my speech and identify what I am unable to see. Thank you, Chairman.

CHAIRMAN (in Cantonese): I would like to remind Members that regarding the clauses under this joint debate, the relevant amendments, which are proposed by the Government, have been discussed by the Bills Committee, and no objection has been raised. Some of these amendments obviously involve the issue of wording only, though some involve a substantive change in the position of some provisions. To avoid wasting time, I would advise Members to, first, refer to the Bills Committee report; and second, examine whether or not the position of the relevant provisions has been changed, before expressing their views.

Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, thanks for your advice. As it is getting late, I am sorry that I cannot see quite clearly. I have said that the meeting should not be dragged on until it is too late.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, insofar as clauses 43 to 47 are concerned, although clauses 43 to 47 are related, the Government has proposed to amend clauses 43, 44 and 46 but not clause 47. I would like to state some of my viewpoints at this stage.

The Bill provides that the vendor must make public all sorts of major information related to logistic arrangements on its website at least three days before the date of sale, and the vendor commits an offence if he does not comply with this requirement. Hence, clause 43 is controversial, for the market believes that its operation will be affected if the vendor is required to make public the information as, for instance, it might then be impossible for additional flats to be put up for sale or prices to be revised when the market is robust. The most popular practice of property developers is to raise prices when properties are selling like hot cakes.

The Bill also provides that, should the vendor need to revise its sales arrangements, the revised arrangements must also be made public on the Internet, and the flats cannot be put on sale until three days after the publication of the revised arrangements. Although such arrangements might bring inconvenience to the real estate sector, the requirements must not be relaxed, for once they are relaxed, we will fall into the trap of the sector, so that it can circumvent the requirement set out in clause 43.

Just now, Mr LEUNG Kwok-hung also mentioned clause 43 in relation to the Internet issue, though I do not see completely eye to eye with him. During the scrutiny of the Bills Committee, some Members considered it inadequate for the key information to be published on the website only. Despite the popularity of the Internet, some people with the means to acquire properties do not necessarily go online. Moreover, some prospective home buyers do not necessarily have access to the Internet or the relevant information on the Internet.

Hence, some Members expressed concern about the inadequacy of publishing key information on the website on the grounds that a small fraction of home buyers might not have access to the relevant information published on the Internet.

I support the Government's proposed amendment to clause 43 simply because property developers will then be required to provide hard copies of key information for collection by the general public free of charge in addition to publishing such information on the Internet. But the problem is, if a property development is very popular, there might not be enough hard copies made available for collection free of charge, for the supply of hard copies prepared by the property developer might not be able to meet the demand. The amendment has failed to address this issue. Nevertheless, the property developer, if found contravening the relevant requirement, might be held to have committed a criminal offence. Hence, this issue warrants our consideration.

Both clause 43 and its amendments require property developers to give an account in the key information of the method to be used to determine the order of priority in which each of the persons who is interested in purchasing any of those specified residential properties may select the property that the person wishes to purchase. This requirement certainly makes sense because disputes can thus be avoided. We have often seen reports of the inappropriateness or unfairness of property developers in dealing with the sale and purchase of properties. Hence, we consider this requirement reasonable: property developers should give an account of the method to be used to determine the order of priority in which each of the persons interested in purchasing any of those specified residential properties may select the property that the person wishes to purchase.

In addition, clause 44 requires the vendor to make available to general public plans and certain documents at the place where the sale is to take place, whereas clause 45 requires the property developer to make available the aerial photograph and deed of mutual covenant of the development on the website. We support all this, because the transparency of the sales arrangements can thus be enhanced and buyers can have a better understanding of the properties. Certainly, there is a difference between clauses 44 and 45. While clause 44 only requires the property developer to make available to general public documents free of charge at the place where the sale is to take place, clause 45 requires the vendor to upload the aerial photograph and deed of mutual covenant of the development to the Internet. I think these two requirements should be

consistent, that is, plans and documents should be uploaded to the website as well. Otherwise, the buyers will be subject to space and time constraints if inspection is to be conducted at the place where the sale is to take place, and the restraints will become even larger if the development is popular. Hence, we consider that clause 44 should be brought in line with clause 45. It is more convenient for the information specified in both clauses to be uploaded to the website.

Chairman, I would like to say a few words about clause 8 in relation to the gross floor area (GFA). As mentioned by Ms Audrey EU just now, The Law Society of Hong Kong (Law Society) has made many recommendations on the relevant provisions. During the consultation period, however, only three-minute speaking time was allowed during the discussion. Furthermore, the Government was unable to give a clearer response, and many of the recommendations, including the one on clause 8, were rejected.

In my opinion, the Government should take the views of Law Society seriously, but I have no idea why the Government treated them with indifference. Clause 8 provides that the saleable area (SA), in relation to a residential property, excludes the area of every one of the items specified in Part 1 of Schedule 2 to the extent that it forms part of the residential property, whereas "an air-conditioning plant room" can be found in Schedule 2.

According to the argument advanced by Law Society, many expressions nowadays posing as something else are actually "air-conditioning plant rooms". Hence, it will not work to simply point out in a Schedule what sort of area is not considered as SA. Are the expressions in Schedule 2, such as "an air-conditioning plant room", "a bay window", "a cockloft", "a flat roof", "a garden", "a parking space", "a roof", "a stairhood", "a terrace" and "a yard" clearly defined?

Simply put, if property developers make some changes to the spaces of different functions I just mentioned, they will be exempted from the requirement provided for in clause 8(1)(c) for the purpose of excluding a certain area from SA. Such queries, which are not unfounded, are possible. Having said that, we often believe that all property developers are bad, for they will definitely exploit the loopholes should they have the opportunity to do so, or else they will consider

themselves stupid. Members will know what I mean by taking a look at those "inflated properties".

Obviously, the Schedule was formulated in an extremely rash manner. For instance, a swimming pool is not mentioned therein. What should be done if there is a swimming pool in a garden? We also find the definition of SA in clause 8 "Interpretation" far from clear. It is thus worthwhile for the Government to need the advice of Law Society. But unfortunately, the Government has turned a blind eye to it. As Ms Audrey EU already explained this clearly just now, I am not going to repeat it.

Chairman, the issue of GFA in clause 8 has also been mentioned in the Bills Committee report. This explains why you instructed Members just now to read the report. Paragraph 23 of the report is about SA. I have a copy of this report with me, too. Do you want me to read out that paragraph? Can I read out a paragraph to explain clause 8? Just now, I said that "saleable area in relation to a residential property ……"

In fact, members of the Bills Committee understood that many deputation representatives supported using SA only to express the area and price of a property, though certain representatives of deputations that include property developers proposed that SA and GFA should be used simultaneously. Obviously, the recommendations of the representatives of deputations that include property developers are made in their own interests. Hence, it is worth reviewing the unclear definitions in the Schedule.

Certainly, Members think that this law has taken a long time to take shape. Hence, this responsibility is too immense for us to bear if this Bill cannot be passed during this Legislative Session due to our filibustering. Chairman, your body is shaking. You have affected the delivery of my speech profoundly. I am very worried about you. I wonder if there is any problem, for you have been shaking your body for almost one minute. Chairman, are you alright? Or are you simply not paying attention to my speech? Is my speech very boring? My speech ends here.

DR MARGARET NG (in Cantonese): Chairman, I understand that some Members, such as Mr WONG Yuk-man, Mr Albert CHAN and Mr LEUNG

Kwok-hung, believe that this Bill should not be passed in a hurry because it is extremely important and more time should be spent discussing it. Hence, Chairman, you should have noticed that I have strived to stay here all the time to prepare to listen to Members' speeches.

Nonetheless, even if it is not suitable for this piece of legislation to be passed too quickly, I still think that it can be handled differently at this stage. Like writing an article, consideration should be given to the areas that warrant more treatment.

Chairman, I notice that people will become less concentrated as the night grows late. However, we will stay completely sober if we are discussing a major issue. Chairman, I notice that some amendments to be proposed later are highly controversial. For instance, Mr LEE Wing-tat has given notice to amend a very important issue. He seems to think that the forfeiture amount of 5% is too high and should be revised to 3%, though I understand that an association considers that it should be revised to 1%. Hence, Chairman, I will find it refreshing if this subject can be debated at an early stage. Mr LEE Cheuk-yan will also propose another important amendment. In this respect, I believe the several Members mentioned just now will definitely make a lot of contribution in the debate.

Chairman, I have a confession to make. I have been reading this book entitled *The Compilation and Explanations of the Colloquial Terms Found in Classical Poetry and Operas* while listening to Members' speeches for most of the time this evening. Some examples are cited in this book to explain the meaning of certain words and expressions. Chairman, I know that Members are not allowed by the Rules of Procedure to read books unrelated to the meeting because such behaviour is regarded as disrespectful to the debate and the Council. Why am I doing this? If I do not do so, I cannot stand listening to Mr WONG Yuk-man's speeches because they are simply too ordinary and uncontroversial, for I have already read all those details in the Bills Committee report.

Hence, I wonder if I can invite these several Members through you, Chairman, to discuss more controversial matters, so that we can clear our heads late in the night.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, no Member wishes to speak.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I will now call upon the Secretary to speak again.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, as many issues have actually been discussed in the Bills Committee, I will give an integrated and concise response here.

The issue mentioned by Mr Abraham SHEK concerning the gross floor area of properties has already been discussed by the Steering Committee and during the subsequent consultative exercise conducted on the white bill. Certainly, very detailed discussions have been conducted by the Bills Committee, too. Just now, Mr SHEK has questioned why the Government has refused to adopt the so-called dual-track approach to allow the inclusion of the gross floor area of properties (the apportioned share of common areas of each flat) in the Bill and queried whether or not the Government has been adopting a double standard or slightly schizophrenic. I would like to point out that our goal is clear and our mindset is extremely clear, too. We think that the same standard should be adopted for the measurement and calculation of the area of first-hand residential properties to avoid possible confusion and unsatisfactory conditions arising from the use of the gross floor area of properties.

One of the reasons for using the saleable area (SA) to quote property size is that a method of measurement and clear definition must be provided for in the law. At present, the definition of SA of a residential property has been in use, but there is no generally accepted definition for the gross floor area of a

residential property. Hence, it is still impossible for us to use precise wording to provide for the definition of the gross floor area of a residential property. Allowing the gross floor area of a residential property, which has yet to have a unified definition, to be used to quote property size and price will only cause confusion rather than provide buyers with more comprehensive information.

Many small owners find it unfair that different property developers will count different items towards the apportioned share of common areas in calculating the gross floor area of properties. For instance, lift shafts and management offices might be counted towards the gross floor area in some cases. As every property developer has its own calculation method, the use of the gross floor area as the basis of calculation is not only inconsistent but also lacks transparency. It will also prevent prospective buyers from comparing different residential properties and the gross floor areas, prices and efficiency ratios of different properties on the same basis — that is, in the usual manner described as "an apple versus an apple, and an orange versus an orange".

Furthermore, more factors have to be considered for the establishment of a unified definition for the gross floor area than SA. It is envisaged by the Hong Kong Institute of Surveyors that it will take a very long time before various stakeholders can discuss and come up with a proposal. In fact, within the Steering Committee and during the consultation, the Hong Kong Institute of Surveyors, the Hong Kong Institute of Architects and the Consumer Council agreed that SA should be used as the only basis to quote property size and property price per square foot/metre.

More importantly, we consider that it is inappropriate to use the gross floor area of properties as the basis to quote property size to prospective buyers. Moreover, the problem which has been a cause of criticism will remain unsolved. There is simply no need for the area of common facilities outside residential properties to be apportioned to the area of each of the properties in a residential development.

On the contrary, we consider that the approach currently proposed in the Bill will enable purchasers to know exactly the SA of a residential property, the area of those facilities which owners will have exclusive use, and holistically the types and sizes of common facilities in the development. We believe this requirement can offer practical assistance to consumers by, on the one hand,

enabling them to purchase residential properties according to clear flat prices and, on the other, enabling them to have a comprehensive understanding of the size and scale of the overall common facilities in a residential development.

Regarding the point raised by Ms Audrey EU concerning cross-boundary properties, that is, the sale of overseas properties in Hong Kong, and her query about the presence of loopholes, I am afraid I have to take issue with her. I do not consider this a problem with loopholes. The scope of the Bill, if expanded, will be different from the scope covered according to its legislative intent — that is, regulating the sale of first-hand residential property in Hong Kong. Furthermore, no discussions have been held on this subject in the Steering Committee or during the consultation. Hence, for these reasons, we do not think that it is timely for the scope of the Bill to be extended.

Members have also mentioned the definition of the term "vendor". I believe I have attempted to offer an explanation in the Bills Committee. Despite the current definition of the term "owner", a property owner might entrust a partner similar to a property developer, which has not yet been clearly defined or defined in the law. This is why we are attempting to define "property developer". We hope the Bill can regulate not only an owner, but also the property developer on his behalf or in collaboration with him.

Members have also mentioned the issue of price lists. Does it mean that a flat must be put on sale if its information is set out on the price list? Certainly, many different issues are involved here, including the regulation of properties as well as private properties, and protection of private properties. Yet on the other hand, we must bear in mind that some of the proposals put forward in the Bill are actually intended to deal with the current use of price lists or sales methods in an overly flexible manner. These are the problems relayed to us by the Consumer Council and many people.

Members should recall the reports about buyers being rounded up in a sales office and the adoption by the property developer of a sales tactic resembling the squeezing of a toothpaste tube by announcing the property prices one by one in the middle of the night. If prices on the price lists can be slashed at any time, will it lead to confusion in the market as a result of first raising the prices and slashing them afterwards?

I share Mr LEE Wing-tat's point of view and positioning. In the beginning, our parameter might need to be slightly tightened. If it is generally felt that the parameter can be relaxed after a period of time, I believe the incoming Government will be more than pleased to heed advice in this respect. At present, however, we just hope to deal with the many problems left over from the past. Certainly, we might not be able to tackle such a large number of problems once and for all. Therefore, it is more appropriate for us to be strict rather than lax in the beginning, because we hope to put in place a set of laws that can offer protection to consumers.

As regards the issue raised just now by Mr LEE Wing-tat in respect of parent companies, subsidiary companies and overseas companies, I believe clause 72 of the Bill should be able to answer his question to a certain extent. Just now, Mr Albert CHAN also mentioned the regulation of "material date" and asked whether a buyer would be protected in the event of a late handover of a property. In fact, some mandatory provisions in the Schedules are precisely intended to protect consumer rights in this respect. For instance, in the event of a late handover by a property developer, regulation will be imposed on the basis of the material date. In certain circumstances, a late handover can be used as an excuse for the challenge of an "incomplete title".

Just now, Mr Albert CHAN also mentioned some issues about interpretation. In fact, they are the interpretations in the Bill, not the footnotes to be included in the sales brochures in the future. Perhaps there is some confusion in this respect, so I must in particular give an explanation here.

Furthermore, Members have raised a number of other issues, such as whether this penalty is too lax or that penalty is too harsh. Insofar as the overall penalties are concerned, we have distinguished between offences punishable by a fine or imprisonment in a very rational manner. As well as striking a balance for the Bill itself, we have also borrowed the experience of other laws, such as the Trade Descriptions Ordinance and the Securities and Futures Ordinance, with regard to their penalties for the determination of various penalties in the Bill. The views received during the consultation generally agree that the penalties prescribed are appropriate.

Chairman, my response ends here. Thank you.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Transport and Housing be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr WONG Yuk-man voted for the amendments.

Mr Abraham SHEK abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 45 Members present, 43 were in favour of the amendments and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CLERK (in Cantonese): Clauses 2, 4, 6 to 12, 16, 18 to 24, 26 to 39, 42, 43, 44, 46, 49 to 56, 58, 60 to 63 and 65, the heading of Division 2 of Part 5, as well as clauses 72, 77, 79 and 80 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended and read out just now stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr WONG Yuk-man voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 44 Members present and 43 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clause 48.

Schedules 1 and 4.

CHAIRMAN (in Cantonese): Mr LEE Wing-tat has given notice to move amendments to clause 48 and Schedules 1 and 4. The Secretary for Transport and Housing has also given notice to move amendments to Schedules 1 and 4.

Irrespective of whether Mr LEE Wing-tat's amendments to clause 48 and Schedules 1 and 4 are passed or not, the Secretary for Transport and Housing may move amendments to Schedules 1 and 4.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions of clause 48 and Schedules 1 and 4, as well as the amendments to these provisions. I will first call upon Mr LEE Wing-tat to speak and move his amendments, followed by the Secretary for Transport and Housing but the Secretary may not move amendments at this stage.

MR LEE WING-TAT (in Cantonese): Chairman, I move that clause 48 and Schedules 1 and 4 be amended.

Chairman, my amendments are simply about the amount of deposit to be forfeited if the transaction of an uncompleted property does not proceed when the preliminary agreement for sale and purchase is due.

If my memory is correct, a 10% deposit was once forfeited when Hong Kong property market was at its peak. This ratio is very high indeed. As I mentioned in my speech during the resumption of Second Reading debate, the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation has once commissioned a consultancy to undertake a study to find out more about how various countries in the world tackle this issue concerning the sale and purchase of properties.

Chairman, let me tell you. It is a most uneasy experience to buy properties in Hong Kong, because properties prices here are very high. Except for the occasional refreshment treated by property developers, buyers will not receive any other favours. In most of the countries or regions around the world, however, property buyers are given a cooling-off period ranging from several days to one or even three to four weeks. Most importantly, there are no requirements for deposits to be forfeited in most countries. In some countries, property buyers are even exempted from the payment of deposits. They just need to go to the sales office and inform the agent or property developer there of their intention to buy a certain property and then they can go home to think over it for two weeks before informing the agent or property developer of their final decision. Even if they decide not to buy the property two weeks later, they are not required to pay a cent.

Certainly, these countries are different from Hong Kong in that the supply of properties there is not as tight as in Hong Kong. Hence, the buyers and

vendors in these places are on a relatively equal footing in the market, and there is no need for them to adopt the system practised in Hong Kong.

To a certain extent, the system in Hong Kong is designed to accommodate property developers. Why do members of the public often complain of "property hegemony" in Hong Kong? It is precisely because everything is tailored to accommodate property developers. As the saying goes, "What becomes customary is accepted as right." The habit developed over the past decades has been regarded as a reasonable or sensible arrangement. What reasons can property developers give to justify the forfeiture of such a large amount of deposit? The percentage of forfeiture, once reached as high as 10%, is now standing at 5%. The only excuse used by property developers is that doing so can prevent someone from walking into a sales office and saying casually that he would like to buy a certain flat but eventually fail to do so several days later, thereby creating confusion in the market. I cannot say that this excuse is totally untenable.

Honestly, we can find in Hong Kong a small number of speculators engaging in the sale and purchase of properties. However, they are often closely related to property developers. Chairman, Honourable Members, I believe you will sometimes see Mrs so-and-so and Mr so-and-so on the real estate pages of newspapers. I can find in my iPhone a list of these people, who are actually professional speculators well acquainted with property developers. When a property development commences sale, these people will subscribe for a large number of properties from the property developer. I have been told that sometimes property developers will even offer preferential conditions to these well-acquainted speculators for the sake of creating an atmosphere of good sale performance. The sale performance will naturally be good if a large number of properties are already subscribed. For instance, if 15 of the 20 flats on the first price list are swiftly bought by speculators, with only five flats left, the whole lot will surely be sold out very quickly. This will create a good performance of a sold-out. Very often, property developers will enter into agreements with speculators specifying that if profits can be made by speculators through resale of the properties they have bought, the profits will go to them. If no profits are reaped, the properties will be returned to property developers. These cases were frequently found in the past.

On the contrary, property developers say they are concerned that some people might say casually in the sales office they would like to buy a flat but eventually decide not to buy it a few days later. These cases are indeed rarely seen. Hence, I propose that the percentage of forfeited deposit be slightly lowered to 3%. This percentage is the same as that proposed by the Consumer Council.

As pointed out in my speech earlier, the prices of many new properties nowadays …… a colleague asked me just now about the prices of residential properties at present. Let me cite a property development situated in Wong Tai Sin and commenced sale around six months or a year ago as an example. It was sold for $10,000 per square foot. This is real. I am not making it up. The price for the development, which is situated beside a public housing estate in Wong Tai Sin, was $10,000 per square foot, which means that the price tag for a 600 sq ft unit was $6 million. If a 3% deposit is to be forfeited, it would mean a loss of $180,000. As it takes a very long time for many grass-roots people to save up $180,000, I do not think they will make any casual remarks which will cost them $180,000.

Of course, the market may fluctuate, and property developers might worry about incurring big losses should a group of customers give up on their transactions a while after they have bought the properties. I do not think that this will happen frequently because the period we are talking about is actually very short. Furthermore, we have seldom seen property prices experience fluctuations of up to 10% within one or two days.

Chairman, I hope colleagues will support these amendments. I have recently read some newspaper reports about colleagues' concern that these amendments will encourage people to speculate on properties. It seems to me that Mr WONG Kwok-hing from the Hong Kong Federation of Trade Unions is one of them. I hope Members can listen to my explanation calmly. These amendments will not encourage property speculation. First, since the introduction of a special stamp duty, as Members are aware, the number of speculators engaging in "confirmor sale" has dropped by 70% to 80%, or even 90%. The number of people engaging in "confirmor sale" is very small now. Second, people speculating in properties have to risk losing a 3% deposit. As I pointed out just now, when there is no reason for us to maintain the forfeited

deposit at a unreasonable level, is it unfair to consumers should the existing practice be retained?

I hope colleagues can spend some time debating this. I know that the ratios proposed by other institutes are even lower than my proposed ratio of 3%. I have no intention to prolong this debate. My point of view is very simple. I just hope Members can give me support. Thank you, Chairman.

Proposed amendments

Clause 48 (see Annex II)

Schedule 1 (see Annex II)

Schedule 4 (see Annex II)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, Mr LEE Wing-tat's amendments seek to set the deposit rate for the preliminary agreement for sale and purchase (PASP) at 3% of the purchase price of a residential property. Its purpose is to allow the vendor to forfeit 3% of the purchase price of a residential property when no agreement for sale and purchase (ASP) is signed within five working days after the purchaser has signed the PASP. I have to reiterate here that we do not concur with Mr LEE's amendments.

With respect to the developments currently regulated by the Lands Department's Consent Scheme, should a purchaser fail to enter into an ASP within three working days after the signing of a PASP, the vendor may forfeit 10% of the purchase price of the residential property in question. Having regard to the particular characteristics of the residential property market in Hong Kong, including the volatility of the market and the exuberance of speculative activities, we have proposed in the Bill to lower the forfeiture amount from the existing 10% to 5% of the purchase price.

Our concern is, should the forfeiture amount be lowered further, the cost of entering into a PASP will be reduced, thereby indirectly encouraging speculators to enter the market. Moreover, consumers might make hasty purchase decisions

as a result. Hence, we think that we should look at this matter with an all-embracing approach rather than merely focusing on the percentage. We should also look at the starting point, which now stands at 10%, and we have proposed to halve it to 5%. I think we should wait and see and be careful about the risk I mentioned just now.

Furthermore, the cooling-off period has been extended from three to five working days. As regards the period for the signing of an ASP after the signing of a PASP, we have introduced amendments to the effect that a purchaser should sign an ASP within five working days, instead of three working days, after the signing of a PASP, having regard to the practical difficulties envisaged by The Law Society of Hong Kong as well as the Hong Kong Conveyancing and Property Law Association Limited for conveyancing solicitors to complete advising their clients and arranging them to sign an ASP within three working days counting from the date on which the client has signed a PASP. This proposal will, apart from allowing the conveyancing solicitors representing the purchaser and the tender ample time to deal with the transaction documents, also give the prospective purchaser a longer period to consider whether or not to enter into a formal ASP after the signing of the PASP. This amendment has already been passed earlier.

Some Members have proposed that reference should be made to overseas places with respect to the forfeiture amount. In fact, as pointed out by Mr LEE Wing-tat just now, the Steering Committee has made reference to the practices of various economies. Nevertheless, we must understand that the residential property markets in various economies have their unique characteristics, and not all economies have a cooling-off period. Even if they do, they each have their own arrangement and forfeiture policy to suit their individual needs. I believe Members also agree that the property market in Hong Kong has its unique characteristics. As I mentioned just now, our property market is relatively volatile and its speculative activities are more exuberant. Hence, measures applicable to other economies might not be applicable to Hong Kong.

In fact, the Bill has provided for a series of measures to assist consumers in acquiring essential information for making their purchase decisions before the signing of a PASP. For instance, the sales brochure will be provided by the vendor at least seven days before the commencement of sale; the price list will be provided and sales arrangements be made public at least three days before the

commencement of sale; transaction information will be made public within 24 hours after the signing of a PASP; and transaction information should be made public one working day after the signing of an ASP. As I mentioned just now, we should look at these matters with an all-embracing approach. Furthermore, prior to the first day of the provision of the relevant properties for sale, the vendor are not allowed to seek or receive reservations for a specified residential property. Hence, having regard to the unique characteristics of the residential property market in Hong Kong and the fact that adequate measures have been provided for in the Bill to protect consumers, we implore Members to vote against Mr LEE Wing-tat's amendments.

As regards our proposed amendments to Schedules 1 and 4, the relevant contents are already printed on the paper circularized by the Legislative Council Secretariat to Members. Schedule 1 is intended to serve clauses 18 and 19 of the primary legislation with respect to the requirements on the contents of sales brochure and the provision for more detailed requirements. The relevant requirements are broadly in line with the requirements in the present Consent Scheme. Schedule 4 is about the mandatory provisions required to be contained in a PASP. The Administration's proposed amendments to the Schedules are mainly technical in nature. Furthermore, some amendments are proposed in response to the recommendations made by the Bills Committee. For instance, Schedule 1 seeks to include the elevation plan of a property development as essential information in the sales brochure. In addition, some amendments are proposed in response to the recommendations made by The Law Society of Hong Kong. The Bills Committee has held detailed discussion on the various amendments and generally agreed to the relevant amendments. I hope Members will support these amendments.

I so submit. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR LEE CHEUK-YAN (in Cantonese): Chairman, just now I heard the Secretary say she found the 3% deposit too low, for purchasers would then put down a deposit casually. And then, she seemed to say that it was already very good for the deposit to be slashed from 10% to 5%. To begin with, 10% is way

too high. Nevertheless, we should not think that slashing it to 5% is an act of benevolence. A deposit of 10% is by itself unreasonable. For some luxury properties, 5% …… nowadays properties costing $10 million are no longer considered as luxury properties. Let us not mention properties with a price tag of $10 million. For a $5 million property, 5% represents $250,000, whereas 3% represents $150,000. $250,000 is indeed a large sum. Hence, it appears to be an act of benevolence for the deposit to be reduced from $500,000 to $250,000. If we think carefully, we should really not make such a remark.

Someone say that property purchasers may give up their deposits easily. Even if Mr LEE Wing-tat's proposal is cited as an example, giving up the deposit for a $5 million property would have cost $150,000. Members should not think that $150,000 means nothing. As we all know, $150,000 really means a lot for some people. For some property buyers, they have to invest their life-long savings in their properties. Should they give up the deposit, a substantial ratio of their life-long savings will be gone.

Hence, given these conditions and circumstances, the Labour Party supports Mr LEE Wing-tat's amendments. We really do not want consumers to bear such a heavy burden. While 3% is already heavy, 5% is excessive and 10% is outrageous. Hence, we hope Members will give joint support to Mr LEE Wing-tat's amendments.

Thank you, Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, it is undoubtedly a marked change for the rate of deposit to be revised from 10% to 5%. The gap between the two is relatively large, too. Nevertheless, as Mr LEE Cheuk-yan pointed out earlier, the 10-odd percentage points represent a relatively high standard. Having said that, it does not mean we will definitely consider 5% reasonable.

The most important point I often make is that a large number of ordinary people, who have been victimized and made "shell-less snails", are desperately looking for a shelter. On the issue of accommodation, however, society as a whole has been facing an inadequate supply of housing for more than a decade. As a result, many people looking for a shelter are often compelled to put down a

deposit immediately when they find an ideal property as they fear that it will be snapped up by someone else if they make up their mind one or two days later. This is a very common phenomenon.

The market is so tight that it seems purchases must be made immediately orelse things will be gone the next day. As a result, many people are compelled to make some hasty purchase decisions, even though they actually do not wish to do so. However, the Government's land and housing policies have led to this result. In this respect, instead of giving serious consideration to this issue, the Government has only explained that the reason behind raising the deposit rate is to make purchasers to give serious consideration and prevent them from making hasty purchase decisions. Actually, who does not want to give serious consideration? The entire market has developed in such a way that properties are being snapped up. The Government has, however, failed to give consideration to this issue.

Chairman, spiralling property prices have led to speculation. This is definitely what we do not want to see. We hope the Government can work out a solution to deter speculation. Nevertheless, the deposit should not be considered as a solution to this issue. The best solution is for the Government to formulate good housing and land supply policies to prevent property developers from exploiting these policies to engage in speculation in the market, for this is the root of the problem. Nevertheless, instead of solving the problem at its root, the Government has resorted to this method. I think there is no point at all.

As pointed out by Mr LEE Wing-tat just now, this phenomenon is simply absent in some countries, why? Because the land and housing supply in these places are better. As people living there need not snap up properties, they can give careful consideration to their intended purchases. Furthermore, purchasers in Hong Kong have only five days to think after their signing of a preliminary agreement for sale and purchase. This period is indeed too short. This is why I consider it necessary for the ratio between the deposit and purchase price to be lowered.

In addition, the reality is, as mentioned by Mr LEE Cheuk-yan just now, that it is really extremely hard to find properties with a price tag in the range of $1 million to $2 million, for they invariably cost at least $3 million. Moreover, the number of properties costing around $3 million is small. In general,

properties are now offered at $4 million to $5 million. For ordinary people, acquiring a home will indeed cost their lifelong savings. Under the pressure of finding a shelter, however, sometimes they cannot but make hasty purchase decisions. Hence, I think that the Government must consider the plight of these people.

Just now, the Secretary indicated that she did not want to see speculation or someone invest indiscriminately in properties. If the Secretary really wants to tackle this problem, she must identify its root cause. Her proposal can simply not address the problem at its root. How can speculation be curbed by lowering the deposit to 5%? Given that speculation could still be found when the deposit was set at 10% of the purchase price, I do not think the Secretary's proposal is going to work. Hence, there is simply no point for the Secretary to say today that the ratio should be maintained at 5% to prevent speculation. If 10% did not work, how can 5% work? It is even harder for 5% to serve the purpose. As the deposit must be lowered anyway, it would be even better to lower it further.

As I pointed out during the Second Reading debate of the Bill, it is most important for the Government to formulate better housing and land policies in the long and short terms, for this is the only way to curb speculation, and the deposit cannot be used to resolve the problem or curb speculation. I absolutely disagree with doing so. Hence, the deposit rate has to be lowered. We should even, as mentioned by Mr LEE Wing-tat, follow the footsteps of some other places to lower the deposit to 1% or 2% of the purchase price. It would be even better if no deposit is required at all. Of course, we cannot propose such a low ratio as 1% or 2% today. Given Mr LEE Wing-tat's proposal of setting the deposit at 3%, I hope colleagues can support this ratio as well as Mr LEE Wing-tat's amendments.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, just now, when listening to our speeches, Dr Margaret NG found our language insipid and mundane, so she asked us explicitly and implicitly to stop causing any more delay. She said that Mr LEE Wing-tat's amendments were fine as they enabled Members to discuss the controversial issue of changing 5% to 3%. However, her subjective wish fell

through because hardly anyone has spoken. Even Mr LEE Wing-tat's fellow party members did not speak and instead, it was Mr LEUNG Yiu-chung who said something in support of Mr LEE Wing-tat's amendments. He did say something but other people did not utter a word. Just now, Dr Margaret NG gave us a gentle reminder out of good intentions, telling "Big Guy", "Long Hair" and I not to cause any more delay since we had nothing more to say anyway and we were only saying the same things over and again and our speeches were not in the least pleasant to listen to, so much so that she had to read prose and poetry. However, the reality now is that no one wants to speak, so this is really not giving the Secretary face because at the end of the day, the Secretary is going to retire in honour very soon. And now, I want to speak and talk about clause 48.

What is set out in Division 7 of the Bill are mandatory provisions. By mandatory, it means that no matter what terms are laid down in a contract entered into by the two parties to a contract, the provisions in this Division still have an overriding effect. Such an arrangement is not unique to this Bill. One of the Schedules to the Building Management Ordinance also has an overriding effect on the Deeds of Mutual Covenant. The aim of this arrangement is very simple, that is, to remedy the injustice in the market, particularly when one party to a contract is at a disadvantage and the stronger party can exploit its advantage to force the other party to accept unjust terms. In such circumstances, it is necessary for us to enact mandatory provisions as it is not acceptable for the two parties to a contract to decide the terms of a contract on their own. Otherwise, the situation of the strong preying on the weak would surely arise and the stronger party could force the weaker party to accept some unreasonable terms.

Sometimes, similar situation would also occur in the transaction of first-hand residential properties. Of course, such problems cannot be found with regard to second-hand properties because the actual units are available for inspection but the majority of first-hand residential properties are uncompleted flats put on pre-sale. Even if they are not uncompleted flats, property developers may still lay down very harsh terms and force purchasers to accept them. Today, many Members have already talked about similar problems. Transactions of first-hand residential properties are different from those in the secondary market in that usually, purchasers in the secondary market can make inspections before purchasing their properties, so both parties are carrying out transactions on a more equal footing. However, purchasing first-hand residential properties is mostly a matter of "hitting the bull from the other side of

the mountain". Decisions are made on the basis of sales brochures consisting of a few pages of exaggerated descriptions, retouched photos and fanciful images, or according to word of mouth because there are always some guys who would help boasting and bragging. Since property developers have loads of money, they always hire this sort of people and even a large team of public relations personnel to carry out promotional work for them.

In the past, when I was working for a newspaper, I was also a member of the management of the newspaper. Regarding the reporters and editors of the financial pages, we had to check their backgrounds. Of course, this does not matter anymore nowadays and it is only a matter of course that they would speculate on stocks in their capacities at the same time, and even Members are no exception — I am not saying that it is you people and I am not talking about anyone. Among those who have worked as the editors and reporters for the financial and real estate pages of newspapers, who has not had some goodies? What is the price for this? It is to help property developers boast and brag. In these circumstances, they would describe everything as though they were divine, so one can see how easily readers would fall into the trap. Chairman, for this reason, we have to adopt a higher standard in regulating the transactions of first-hand residential properties.

Therefore, clause 48 proposes the introduction of a cooling-off period and this is a very important point. In fact, the Consumer Council has also advocated the cooling-off period arrangement for consumer activities that can easily lead to disputes, only that there is no such arrangement for electoral activities. In other places, there are cooling-off periods for electoral activities and where can you find people carrying out electoral campaigns furiously outside polling stations in breach of the rules even on the day of ballot? Why not introduce a cooling-off period? The Consumer Council has introduced a cooling-off period for promotional activities, for example, one-year beauty and fitness packages, so consideration can actually be given to applying the same to property transactions as well.

Clause 48 has prescribed a percentage and allowed purchasers and owners to opt out of signing the agreement for sale and purchase (ASP) within six workings days after signing the preliminary agreement for sale and purchase. If purchasers make such a decision, the price is the payment of an initial deposit equivalent to 5% of the price of the property to the owner and this is what is

called the forfeiture of the deposit. In fact, there is the arrangement of the forfeiture of initial deposits in many ASPs and this has all along been the established practice. The present requirement in the Bill just provides for the mandatory legal status for the forfeiture of deposit. Of course, we agree in principle with the introduction of such a cooling-off period but the scope of the cooling-off period under the Bill is debatable. The applicable scope of the cooling-off period must be limited to instances in which owners are not involved in any misdeed and we insist that if purchasers are misled or are subjected to undesirable sale tactics, they must have the right of not honouring the contract. Only in this way can their losses be contained and this would also be fairer.

Recently, the Mediation Bill has been passed in this Council and in recent years, the Government has also strongly promoted the mediation process by introducing mediation into many industries. We can also see many such instances, for example, the Financial Dispute Resolution Centre and the large number of mediations arising from the Lehman Brothers minibonds incident. Why is the mediation process not introduced when this requirement on a cooling-off period is introduced? In fact, it is also worthwhile to make reference to this concept when dealing with transactions in first-hand residential properties.

Chairman, the Bill sets the price for cancelling a transaction at 5% of the purchase price but the cooling-off period consists of just three days. Three days are really too short and the problem is quite obvious. From the angle of common sense, this is indeed far too short. In the Bills Committee, many Members voiced their views on this but in the end, the Government was only willing to extend the cooling-off period to five days. If we look at the example of Singapore, it is provided there that if a purchaser has been granted an Option to Purchase but chooses not to proceed with the transaction within three weeks upon receipt of the relevant document, a booking fee equivalent to 1.25% to 2.5% of the purchase price will be forfeited. It seems the requirements there are comparatively speaking more generous.

I remember that in the early days of Hong Kong's reunification with China, TUNG Chee-hwa often said that we had to learn from Singapore, as though it were our major rival. Now, two casinos have been opened in Singapore and as early as in 1997, I already proposed to the former Financial Secretary Donald TSANG that a casino be opened and the convention centre business be developed

on Lantau to attract visitors but he inveighed me as being crazy. Now, Singapore is so very remarkable and it has struck a gold mine after opening two casinos. However, this is already another matter. Therefore, why is it necessary to compare with others all the time and what is the point of doing so? However, we have to learn from that country when it comes to the violation of human rights. If we look at this, nowadays, we have imitated the essence so well and we have such people as TSANG Wai-hung to thank for this. You can see how formidable it is now and there are the "East Yard", the "West Yard" and the "South Yard" in the new Government, and the "Western District" has already come into power and the "Central District" is already prostrating on the ground …… then, there are also the "East Yard" and the "West Yard", so this is so very formidable. Therefore, Mr LEUNG Kwok-hung said to me just now that we were eking out an existence with a knife hanging over our heads but I do not think so. He will go to jail soon and I also have a case for which I expect to go to jail because I have been charged with three offences. In that case, it would be necessary to have gone to jail before one can be a Member, so that would be great.

Some people have queried that the price of cancelling a transaction, at 5% of the purchase price, is still too high, so Mr LEE Wing-tat has proposed that it be reduced to 3% but the Government has disagreed, believing that it could not be too low because it wants to prevent the abuse of this arrangement by speculators or potential purchasers' hasty decisions, and vendors must be protected. In fact, in the market, do property developers or owners really mind the cancellation of transactions so much? On this issue, I wonder if Mr Abraham SHEK can give me an answer later on whether or not they mind the cancellation of transactions so much. If the answer is in the negative, why is it necessary for the Government to set the threshold at such a high level of 5% and make the cooling-off period so short, as though one has no choice but to complete a transaction?

As Mr LEUNG Yiu-chung said just now, to the general members of the public belonging to the grassroots or who have better means, having saved a sum of money to purchase a property of some $4 million to $5 million, 3% of the price of a property is definitely no small sum to them. To people with great means and in possession of many properties, of course, this is quite a paltry sum that they can make in no time, so this amount of money is not much to them. They can enter the market with no ammunition, purchase long and sell short, but there

are also a lot of people whose aim is not to speculate. Often, their decisions to purchase or sell cannot be described as hasty ones but due to many other factors, subjective conditions and objective factors, it may be necessary for them to forfeit the deposit. However, the Government would not consider this point.

Of course, we also agree that the whole Bill is a desirable and well-meaning piece of legislation. Nowadays, given the general mood of utter disgust with the property hegemony and antipathy towards the rich in Hong Kong, it is basically desirable and well-intentioned for the Government to introduce this Bill in such a setting and milieu. However, there is no harm in being a nice guy through and through, so why does it leave some room for plutocrats and property developers to continue to exploit loopholes and plunder us by hook or by crook? To people who already own properties, it is nothing for them to purchase one or two more properties because he has the spare capacity. As in a recent court case, someone gave four properties as a gift to his third or fourth mistress or the like and subsequently, he filed a writ to reclaim 1.5 properties. He advised those women who made money out of men not to think that things given to them as gifts could not be taken back. He could now reclaim 1.5 properties from those four properties. To these people, does a forfeiture of deposit matter? However, to "wage earners" spending all their savings made in the course of 10 or 20 years, they may have made a wrong decision and they have to pay a price for this. As Mr LEE Wing-tat said, would the rate not be excessive to change to 3% of the price of a flat, or even to 1%.

Although the Government has laid down these requirements in clause 48 and a cooling-off period has been prescribed, it is being so miserly and its behaviour is so furtive as to be baffling. In fact, concerning clause 48, even if the rate is changed from 5% to 3% as proposed by Mr LEE Wing-tat, I still consider it to be on the high side. It is possible for a fee equivalent to 1% of the purchase price to be forfeited. Why is this not possible? What is wrong with cancelling a transaction? Do property developers really mind the cancelling of transactions that much? The incident relating to the development project of 39 Conduit Road, which happened not long ago, is still fresh in our memory. It seems no one ever took action against that young man surnamed TSUN after he had forfeited the deposit. In fact, it is commonplace for some speculators to use shell companies to carry out property transactions. If some loopholes can be plugged, they should be plugged. But the cost of 5% of the purchase price for the cancelling of transactions specified in clause 48 is relatively high and the

cooling-off period is also too short. Therefore, clause 48 is the provision that one finds the most regrettable in this Bill, so Mr LEE Wing-tat has proposed very conservative amendments. Dr Margaret NG said just now that this issue was highly controversial. But I think it is not in the least so because hardly anyone has spoken.

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): I now suspend the meeting to 9 am tomorrow.

Suspended accordingly at five minutes to Twelve o'clock at midnight.

Annex II

Residential Properties (First-hand Sales) Bill

Committee Stage

Amendments moved by the Secretary for Transport and Housing

Clause	Amendment Proposed
Long title	By deleting "an agreement for sale and purchase nor an assignment has ever been entered into and" and substituting "a preliminary agreement for sale and purchase nor an agreement for sale and purchase has ever been entered into and in respect of which no assignment has ever been".
2(1)	In the definition of ***associate corporation***, by deleting "company or" (wherever appearing) and substituting "corporation or".
2(1)	In the definition of ***authorized person***, in paragraph (a), by deleting "supervises" and substituting "is appointed by the owner of the land to supervise".
2(1)	In the definition of ***building contractor***, in paragraph (b), by adding "general" after "registered".
2(1)	In the definition of ***sales brochure***, in paragraph (b), by deleting "section 16(2)(a)" and substituting "section 16A(2)".
2(1)	In the definition of ***specified body***, by deleting "under" and substituting "by".
2(1)	In the definition of ***working day***, in paragraph (a), by adding "or a

Saturday" after "holiday".

2(1) By deleting the definition of ***company***.

2(1) By adding—

"***corporation*** (法團) means—

(a) a company as defined by section 2(1) of the Companies Ordinance (Cap. 32); or

(b) a company incorporated outside Hong Kong;

immediate family member (家人), in relation to an individual, means a spouse, parent, child, sibling, grandparent or grandchild of the individual;

preliminary agreement for sale and purchase (臨時買賣合約), in relation to a residential property, means an agreement in respect of the residential property that is entered into with a view to making an agreement for sale and purchase in respect of the residential property;".

2 By adding—

"(1A) In computing time for the purposes of this Ordinance, section 71(1) of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply.".

4(2)(a) By deleting subparagraph (iii) and substituting—

"(iii) neither a certificate of compliance nor a consent to assign has been issued by the Director of Lands in respect of the development; and".

4(2)(b)(ii) In the Chinese text, by deleting "及" and substituting "而".

4(2)(b) By deleting subparagraph (iii) and substituting—

"(iii) neither a certificate of compliance nor a consent to assign has been issued by the Director of Lands in respect of the phase.".

6 By deleting subclause (1) and substituting—

"(1) In this Ordinance—

residential property (住宅物業), in relation to a development or a phase of a development—

(a) means any real property in the development or the phase constituting a separate unit used, or intended to be used, solely or principally for human habitation; and

(b) excludes any premises used, or intended to be used, solely or principally as a hotel or guesthouse as defined by section 2(1) of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349).

(1A) In subsection (1), a reference to use excludes any use in contravention of the land grant or the occupation permit (if any).".

7(3)(b) By deleting "52(1)(g) or (2)(e)" and substituting "52(1)(i), (2)(a)(vi) or (3)(f)".

7(3)(c) By adding ", (ha)," after "(h)".

7(3)(d) By deleting "38(1) or (2),".

8(5) By deleting "by a wall that is not" and substituting "otherwise than by".

9 By adding "and (1A)" after "sections 2(1)".

10(1)(a) By deleting "no" and substituting "neither a preliminary agreement for sale and purchase nor an".

10(1)(b) In the Chinese text, by deleting "為之" and substituting "就該物業".

10(2) By deleting "any of the 3 situations specified in subsections (3), (5) and (6)" and substituting "either of the situations specified in subsections (3) and (5)".

10(4)(a) By deleting "under lease" and substituting "under a tenancy".

10(4)(b) In the Chinese text, by deleting "除".

10 By deleting subclause (6).

11(1)(a) By deleting "an agreement for sale and purchase" and substituting "a preliminary agreement for sale and purchase, or an agreement for sale and purchase,".

11(1)(a) By deleting "any of the 3 situations specified in subsections (2)," and substituting "either of the situations specified in subsections".

11 By deleting subclause (2).

11 By deleting subclause (3) and substituting—

"(3) The first situation for subsection (1)(a) is that the preliminary agreement for sale and purchase, or the agreement for sale and purchase—

(a) is entered into between—

(i) a corporation or a specified body; and

(ii) an associate corporation, or a holding company, of the corporation or specified body; or

(b) is entered into between an individual and an immediate family member of the individual.".

11(4) By deleting "third" and substituting "second".

11(4)(a) By adding "one or more" after "consists of".

11(4)(a) By deleting "the agreement for sale and purchase is the single agreement for sale and purchase" and substituting "the preliminary agreement for sale and purchase, or the agreement for sale and purchase, is the single agreement".

11(4)(b) By deleting "the agreement for sale and purchase is the single agreement for sale and purchase" and substituting "the preliminary agreement for sale and purchase, or the agreement for sale and purchase, is the single agreement".

11(4)(c) By adding "one or more" after "consists of".

11(4)(c) By deleting "the agreement for sale and purchase is the single agreement for sale and purchase" and substituting "the preliminary agreement for sale and purchase, or the agreement for sale and purchase, is the single agreement".

11 By deleting subclause (5) and substituting—

"(5) The situation for subsection (1)(b) is that the assignment—

(a) is made by a corporation or a specified body to an associate corporation, or a holding company, of the corporation or specified body; or

(b) is made by an individual to an immediate family member of the individual.

(5A) On and after the date on which a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in respect of a residential property is terminated, or is declared void by the court, the preliminary agreement or the agreement is to be regarded as having never been entered into in respect of the residential property for the

purposes of section 10(1).".

11(6) By deleting "(2),".

11(6) By deleting "the agreement for sale and purchase mentioned in that subsection is entered into, terminated or declared void (as the case may be)" and substituting "the preliminary agreement for sale and purchase, or the agreement for sale and purchase, mentioned in that subsection is entered into".

11 By adding—

"(6A) Subsection (5A) applies whether the preliminary agreement for sale and purchase, or the agreement for sale and purchase, mentioned in that subsection is entered into, terminated or declared void before, on or after the commencement of this section.".

12 By deleting the definition of ***relevant price list***.

12 In the Chinese text, in the definition of ***示範單位***, by deleting "潛在買方" and substituting "準買方".

16 In the heading, by deleting "**Provision supplementary to section 15**" and substituting "**Prohibition on preparation of sales brochure by other person**".

16(1) By adding ", for the purpose of making it available to the general public," after "prepare".

16 By deleting subclauses (2), (3), (4), (6) and (7).

New — By adding—

"16A. Examination and revision of sales brochure

(1) The vendor may examine for the purposes of section 23 the sales brochure for the development to ascertain whether or not the information set out in the sales brochure is accurate as at the date of the examination.

(2) Any inaccuracy identified at an examination must be corrected by a revision to the sales brochure for the development.

(3) The vendor must, within 3 working days after the date of a revision, notify in writing each of the entities specified in Schedule 3 of the revision.

(4) If subsection (2) is contravened, the vendor commits an offence and is liable to a fine of $500,000.

(5) If subsection (3) is contravened, the vendor commits an offence and is liable to a fine at level 6.".

18(2) — In the Chinese text, by deleting "然後須" and substituting "須繼而".

18(2)(h)(i) — In the English text, by adding "that is" after "form,".

18(3) — In the Chinese text, by deleting "然後須" and substituting "須繼而".

18(5) — In the Chinese text, by deleting "不適用於該項目的資料" and substituting "的任何資料不適用於該項目".

18(5)(a) — By deleting "and".

18(5)(b) — By deleting the full stop and substituting "; and".

18(5) — By adding—

"(c) must comply with this section with respect to the location of that paragraph as if the information had been set out in

the paragraph.".

18(6) By deleting ", (4) or (5)" and substituting "or (4)".

New By adding—

"**18A. Contents of sales brochure: other information required to be set out**

(1) The sales brochure for the development must set out relevant information that is specific to a residential property in the development, or relevant information that is specific to the development, if—

(a) the information is not otherwise required to be set out in the sales brochure; and

(b) the information is known to the vendor but is not known to the general public.

(2) Subsection (1) does not authorize the sales brochure for the development to set out any information on the size or unit price of any residential property in the development otherwise than by reference to the saleable area of that property.

(3) The sales brochure for the development must set out the address of the website designated by the vendor for development for the purposes of this Part. That address must be set out in such a manner that it is reasonably visible to any person reading the sales brochure.

(4) The information specified in subsection (1) and (3) must be set out in the sales brochure after the information required by section 18.

(5) If subsection (1) is contravened, the vendor commits an offence and is liable to a fine of $500,000.

(6) If subsection (3) or (4) is contravened, the vendor commits an offence and is liable to a fine at level 6.

(7) In this section—

relevant information (有關資料)—

(a) in relation to a residential property, means information on any matter that is likely to materially affect the enjoyment of the residential property; or

(b) in relation to a development, means information on any matter that is likely to materially affect the enjoyment of any residential property of the development;

unit price (單位售價), in relation to any specified residential property, includes—

(a) the price of the property per square foot; and

(b) the price of the property per square metre.".

19 By deleting subclause (2).

19(3) By deleting "or (2)".

19 By deleting subclause (5).

19(6) By deleting "(2)(b), (3), (4)(b) or (5)" and substituting "(3) or (4)(b)".

20(1) By deleting "must state the date on which it is printed." and substituting—

"—

(a) must state the date on which it is printed; and

(b) must state, for each examination of the sales brochure under section 16A(1)—

(i) the date of the examination; and

(ii) the part of the sales brochure that has been revised to correct the inaccuracy (if any) identified at the examination.".

20(2) By deleting "as at the date on which it is printed." and substituting—

"—

(a) as at the date on which it is printed; or

(b) if the sales brochure has been examined under section 16A(1), as at the date of the last examination.".

21 By adding—

"(1A) If, under the land grant, the consent of the Director of Lands is required to be given for any sale and purchase of residential properties in the development that takes place before the conditions of the land grant have been complied with in respect of the development, the sales brochure for the development is not to be regarded as contravening subsection (1) for setting out any information that is required by the Director of Lands to be set out in the sales brochure as a condition for giving the consent.".

22 By adding—

"(7) In this section, a reference to an explanatory note or remark for the main text of the sales brochure excludes a note or remark that qualifies the contents of the main text.".

23(1) and (3) By adding "immediately" after "7 days".

23 By adding—

"(9) In this section, a reference to the sales brochure for the development is a reference to the sales brochure for the development printed, or examined under section 16A(1), within the previous 3 months.".

New By adding—

"**23A. Application of sections 16A to 22 to sales brochure made available**

Sections 16A(2) and (3), 17, 18, 18A, 19, 20, 21 and 22 apply only to a sales brochure, copies of which have been made available under section 23.".

24 In the heading, by deleting "**16**" and substituting "**16A**".

24(1) By deleting "16, 17, 18" and substituting "16A, 17, 18, 18A".

26 By deleting subclause (4) and substituting—

"(4) If the price of a specified residential property is set out in a price list, any change to that price must be reflected in the price list by a revision to the price list.".

27(7) In the Chinese text, by deleting everything after "中，" and substituting "提述發展項目中的住宅物業的數目，就指明新界發展項目以外的發展項目而言，即提述經批准的建築圖則中所列的住宅物業的數目。".

28(1) By deleting paragraph (b).

28(1)(c) By deleting "specified residential properties in the development." and substituting "residential properties in the development;".

28(1) By adding—

"(d) must set out the date on which it is printed;

(e) must state its order among all the price lists for the development in terms of the date on which it is printed; and

(f) must, in relation to each revision made under section 26(4), set out the date on which the revision is made.".

28(2)(a) In the Chinese text, by deleting "對".

28(4)(b) In the Chinese text, by deleting "潛在買方" and substituting "準買方".

28(6)(a) By adding ", and the stamp duty," after "solicitors' fees".

28(8)(b) By deleting "that estate agent or another estate agent" and substituting "any estate agent".

28 By adding—

"(9A) In subsection (1), a reference to the number of residential properties in a development or a phase of a development is, in the case of a development other than a specified NT development, a reference to the number of residential properties as set out in the approved building plans.".

28(11) By deleting "or (9)" and substituting ", (9) or (10)(a)".

29(1) and (3) By adding "immediately" after "3 days".

29 By adding—

"(7) In this section—

relevant price list (有關價單), in relation to a sale of a specified residential property, means the price list for the development or a phase of the development, that sets out—

(a) the price of the specified residential property; or

(b) where that price list has been revised under section 26(4) to reflect a change of the price of the specified residential property, the price of the specified residential property as last revised.".

New By adding—

"**29A. Application of sections 26 to 28 to price list made available**

Sections 26(3) and (4), 27 and 28 apply only to a price list, copies of which have been made available under section 29.".

30 By deleting subclauses (1) and (2) and substituting—

"(1) The vendor must not seek any general expression of intent from any other person on the specified residential properties in the development, and must reject such a general expression of intent, before the first day on which copies of any price list setting out the prices of those specified residential properties have been made available under section 29(3).

(2) The vendor must not seek any specific expression of intent from any other person on a specified residential property in the development, and must reject such a specific expression of intent, before the first day on which the specified residential property is offered to be sold.".

30(4) In the definition of ***specific expression of intent***, by deleting "to specified residential properties" and substituting "to a specified residential property".

30(4) In the definition of ***specific expression of intent***, by deleting everything after "purchase" and substituting "the specified residential property on the basis that subject to an agreement being made, the expression does not bind the maker.".

30 By adding—

"(5) If the development is divided into 2 or more phases, subsections (1) and (2) apply as if a reference in those subsections to the development were a reference to the phase of which the specified residential property forms part.".

31 In the heading, by deleting "**Sale of specified residential property at price in relevant**" and substituting "**Specified residential property to be sold or offered at price in**".

31 By deleting subclause (1).

31(2) By adding ", or offer to sell," after "only sell".

31(2)(a) By deleting "relevant".

31(2)(b) By deleting "where the relevant" and substituting "where that".

31(2)(b) By deleting "the relevant price list" and substituting "the price list".

31 By adding—

"(2A) After the owner has sold the residential property to another person at the price mentioned in subsection (2)(a) or (b), that price may only be revised by virtue of any or all of the following—

(a) clause 23 of Schedule 5, as contained in the agreement for sale and purchase under section 50A;

(b) a change in the terms of payment as set out in the price list for the development under section 28(5)(a);

(c) the availability of any gift, or any financial advantage or benefit, as set out in the price list for the development under section 28(5)(c), in connection with the purchase of the residential property.".

31(3) By adding "or (2A)" after "(2)".

32 By adding—

"(1A) Even though the dimensions of the show flat, or of any bay window, air-conditioning plant room, balcony, utility platform or verandah in the show flat, are different from those specified in relation to the residential property in the sales brochure for the development, subsection (1)(b) is to be regarded as being satisfied if—

(a) the difference is due to the finishes on the enclosing walls or boundary walls for, or internal partitions of, the show flat; and

(b) a notice stating the difference is displayed in the show flat.".

32(3) By adding "(1A)(b) or" after "subsection".

33 By renumbering the clause as clause 33(1).

33 By adding—

"(2) Even though the dimensions of the show flat, or of any bay window, air-conditioning plant room, balcony, utility platform or verandah in the show flat, are different from those specified in relation to the residential property in the sales brochure for the development, subsection (1)(b) is to be regarded as being satisfied if—

(a) the difference is due to the finishes on the enclosing walls or boundary walls for, or internal partitions of, the show flat; and

(b) a notice stating the difference is displayed in the show flat.

(3) A notice under subsection (2)(b) must be displayed in such a manner that the notice is reasonably visible to any person entering the show flat.".

34 In the heading, by deleting "**Setting up**" and substituting "**Viewing**".

34(1) By deleting "set up any show flat" and substituting "make any show flat available for viewing by prospective purchasers or by the general public".

34(2) In the English text, by deleting "to set up" and substituting "to make available for viewing by prospective purchasers or by the general public".

34(2) In the English text, by deleting "first set up" and substituting "first make available for viewing by prospective purchasers, or by the general public,".

34(2)(a) In the Chinese text, by deleting "設置未落成發展項目中的住宅物業的示範單位" and substituting "開放未落成發展項目中的住宅物業的示範單位供準買方或公眾參觀".

34(2)(b) In the Chinese text, by deleting "設置未落成期數中的住宅物業的示範單位" and substituting "開放未落成期數中的住宅物業的示範單位供準買方或公眾參觀".

34(2) In the Chinese text, by deleting "設置該物業的無改動示範單位" and substituting "開放該物業的無改動示範單位供準買方或公眾參觀".

34 By deleting subclause (3) and substituting—

"(3) If an unmodified show flat of a residential property has been made available for viewing by prospective purchasers, or by the general public, under subsection (2), the vendor—

(a) may also make available for viewing by prospective purchasers, or by the general public, a modified show flat of the residential property; and

(b) must not make available for viewing by prospective purchasers, or by the general public, any other show flat of the residential property.".

34(4) By deleting "If the vendor has set up a show flat under this section, the show flat" and substituting "A show flat of a residential property".

34(4) By deleting "before the vendor has made copies of the sales brochure for the development or the phase" and substituting "under subsection (2) or (3) before copies of the sales brochure for the development or the phase have been made".

34(5) By adding ", (3)(b)" after "(2)".

35(1) By deleting "set up" and substituting "made available for viewing by prospective purchasers, or by the general public,".

36(1) By deleting "set up" and substituting "made available for viewing by prospective purchasers, or by the general public,".

37(1) By deleting "set up" and substituting "made available for viewing by prospective purchasers, or by the general public,".

38(1) By deleting "the vendor has set up an unmodified show flat of a residential property" and substituting "an unmodified show flat of a residential property is made available for viewing by prospective purchasers, or by the general public,".

38(2) By deleting "the vendor has set up a modified show flat of a residential property" and substituting "a modified show flat of a residential property is made available for viewing by prospective purchasers, or by the general public,".

39 By deleting "sets up, in the case of section 14(2)(b)," and substituting ", in the case of section 14(2)(b), makes available for viewing by prospective purchasers, or by the general public,".

42 By adding—

"(2A) Subsection (1) does not apply if the residential property is held under a tenancy (other than a Government lease).".

43 By deleting subclause (1) and substituting—

"(1) During a period of at least 3 days immediately before a date of the sale mentioned in section 14(1), and on such a date, the vendor—

(a) must make hard copies of a document containing the information specified in subsection (1A) available for collection by the general public free of charge;

and

(b) must, in accordance with subsection (2), make the information specified in subsection (1A) available for inspection on the website designated by the vendor for the development for the purposes of this Part.

(1A) The following information is specified for the purposes of subsection (1)(a) and (b)—

(a) the date and time when, and the place where, the specified residential property will be offered to be sold;

(b) the number of specified residential properties in the development that will be offered to be sold on that date, and at that time and place;

(c) a description of the specified residential properties mentioned in paragraph (b);

(d) the method to be used to determine the order of priority in which each of the persons interested in purchasing any of those specified residential properties may select the residential property that the person wishes to purchase;

(e) the method to be used, in any case where 2 or more persons are interested in purchasing a particular specified residential property, to determine the order of priority in which each of those persons may proceed with the purchase.".

43(2) By deleting "The information must be published under subsection (1)" and substituting "For the purposes of subsection (1)(b), the information must be published".

43(3) By deleting "(1)(a)" and substituting "(1A)(a)".

44(1)(a)(i) In the English text, by adding "that is" after "approved form,".

46(1) In the English text, by adding ", the floor plan" after "residential property".

46(1)(a) By deleting "the floor plan".

46(1) By deleting paragraph (b) and substituting—

"(b) must show the dimensions of the furniture (if any) shown on that plan.".

49 By adding before subclause (1)—

"(1A) This section applies if a person enters into a preliminary agreement for sale and purchase with the owner in respect of the specified residential property.".

49(1) By deleting "specified residential property within 3" and substituting "residential property within 5".

49(1) By deleting "6" and substituting "8".

49(2) In the Chinese text, by deleting "某人如" and substituting "如某人".

49(2) By deleting "specified residential property within 3" and substituting "residential property within 5".

50 In the heading, by deleting "**or agreement**".

50 By deleting subclauses (2), (3), (4), (5), (6), (7) and (8).

New By adding immediately after clause 50—

"**50A. Owner must not enter into agreement without certain provisions**

(1) This section applies to—

(a) where a preliminary agreement for sale and purchase has been entered into in respect of the

specified residential property, an agreement for sale and purchase in respect of the residential property; or

(b) where no preliminary agreement for sale and purchase has been entered into in respect of the specified residential property, an agreement for sale and purchase in respect of the specified residential property.

(2) The owner must not enter into the agreement for sale and purchase with any person unless that agreement contains the provisions set out in Schedule 5, 6 or 7 (as applicable in accordance with subsection (3))—

(a) with additional information inserted in accordance with the instructions specified in those provisions as printed in italics; and

(b) with deletions made in accordance with the instructions specified in those provisions as marked with an asterisk (*), a gamma (γ), a beta (β), a theta (θ), a pi (π), a sigma (Σ), an omega (Ω) or a psi (Ψ).

(3) For the purposes of subsection (2), the agreement for sale and purchase—

(a) must contain the provisions set out in Schedule 5 in either of the following situations—

(i) the development is an uncompleted development;

(ii) for a development divided into 2 or more phases, the phase of which the residential property forms part is an uncompleted phase;

(b) must contain the provisions set out in Schedule 6 in either of the following situations—

(i) the development is a completed development pending compliance;

(ii) for a development divided into 2 or more phases, the phase of which the residential property forms part is a completed phase pending compliance; or

(c) must contain the provisions set out in Schedule 7 in either of the following situations—

(i) the development is a completed development but is not a completed

development pending compliance;

(ii) for a development divided into 2 or more phases, the phase of which the residential property forms part is a completed phase but is not a completed phase pending compliance.

50B. Provision supplementary to sections 50 and 50A

(1) For the purposes of sections 50 and 50A, a preliminary agreement for sale and purchase, or an agreement for sale and purchase, is to be regarded as having contained the provisions set out in Schedule 4, 5, 6 or 7 (as applicable) if—

(a) in the case of a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in English, the preliminary agreement or the agreement contains the provisions set out in Part 1 of that Schedule;

(b) in the case of a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in Chinese, the preliminary agreement or the agreement contains the provisions set out in Part 2 of that Schedule; or

(c) in the case of a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in English and Chinese, the preliminary agreement or the agreement contains the provisions set out in Parts 1 and 2 of that Schedule.

(2) Where a preliminary agreement for sale and purchase, or an agreement for sale and purchase, contains a provision set out in Schedule 4, 5, 6 or 7 in compliance with section 50 or 50A(2), the provision prevails over any other provision of the preliminary agreement or the agreement that is inconsistent with it.

50C. Offences relating to sections 50 and 50A

(1) If section 50 or 50A(2) is contravened, the owner commits an offence and is liable to a fine of $500,000.

(2) Section 50 or 50A(2) is not to be regarded as having

been contravened only because—

(a) when a provision set out in Schedule 4, 5, 6 or 7 is incorporated into a preliminary agreement for sale and purchase or an agreement for sale and purchase—

(i) the provision has been assigned as a schedule to that preliminary agreement or that agreement; or

(ii) the clause number of the provision has been reassigned; or

(b) a cross reference to that provision in another provision in that preliminary agreement or that agreement has been revised accordingly.

(3) Subject to section 48(2), a contravention of section 50 or 50A(2) does not affect the validity or enforceability of the preliminary agreement for sale and purchase or the agreement for sale and purchase.".

51(1) and (2) By deleting "keep one" and substituting "keep for the purposes of section 53 one (and only one)".

52 By deleting subclauses (1), (2), (3), (4) and (5) and substituting—

"(1) The Register of Transactions for the development must, in relation to each residential property in the development that is a specified residential property on the first day on which the Register is required to be kept under section 51(1), set out the following information in the form specified by the Authority—

(a) a description of the residential property;

(b) a description of the parking space that is sold together with the residential property under one single preliminary agreement for sale and purchase or agreement for sale and purchase;

(c) the date of any preliminary agreement for sale and purchase to which subsection (2)(a) applies;

(d) the date of any agreement for sale and purchase to which subsection (2)(b) or (3) applies;

(e) the price of any transaction under the preliminary

agreement mentioned in paragraph (c) or under the agreement mentioned in paragraph (d);

(f) the details and date of any revision of that price under section 31(2A);

(g) the terms of payment (including any discount on the price, and any gift, or any financial advantage or benefit, made available in connection with the purchase);

(h) the date on which any agreement for sale and purchase to which subsection (2)(b) or (3) applies is terminated;

(i) whether the purchaser under the preliminary agreement mentioned in paragraph (c) or under the agreement mentioned in paragraph (d) is or is not a related party to the vendor.

(2) If the owner enters into a preliminary agreement for sale and purchase with another person in respect of a specified residential property in the development—

(a) the vendor must, within 24 hours after the owner enters into the preliminary agreement, enter in the Register of Transactions for the development the following particulars—

(i) a description of the residential property;

(ii) a description of the parking space that is sold together with the residential property under that preliminary agreement;

(iii) the date of that preliminary agreement;

(iv) the price of the transaction;

(v) the terms of payment (including any discount on the price, and any gift, or any financial advantage or benefit, made available in connection with the purchase);

(vi) whether the person is or is not a related party to the vendor;

(b) within 1 working day after the date on which the owner enters into an agreement for sale and purchase with that other person in respect of the residential property, the vendor—

(i) must enter the date of that agreement in the Register of Transactions for the development; and

(ii) if there is any change in the particulars of the transaction mentioned in paragraph (a)(vi), must revise the entry in the Register of Transactions; and

(c) where that other person has not entered into an agreement for sale and purchase with the owner in respect of the residential property within 5 working days after the date on which the preliminary agreement is entered into, the vendor must, on the 6th working day after that date, indicate that fact in the Register of Transactions for the development in relation to the residential property.

(3) Within 1 working day after the date on which the owner enters into an agreement for sale and purchase in respect of a specified residential property in the development (for which property no preliminary agreement for sale and purchase has been entered into), the vendor must enter in the Register of Transactions for the development the following particulars—

(a) a description of the residential property;

(b) a description of the parking space that is sold together with the residential property under that agreement;

(c) the date of that agreement;

(d) the price of the transaction;

(e) the terms of payment (including any discount on the price, and any gift, or any financial advantage or benefit, made available in connection with the purchase);

(f) whether the person is or is not a related party to the vendor.

(4) Within 1 working day after the date on which the price of a residential property is revised under section 31(2A), the vendor must enter the details and that date in the Register of Transactions for the development.

(5) If an agreement for sale and purchase to which subsection (2)(b) or (3) applies is terminated, the vendor must, within 1 working day after the date of termination, enter that date in the Register of Transactions for the development.".

52(7)(a) By deleting "a company" and substituting "a corporation".

52(7)(a)(vi) By deleting "; or" and substituting a semicolon.

52(7)(b)(ii) By deleting the full stop and substituting "; or".

52(7) By adding—

"(c) where that vendor is a partnership, the person is—

(i) a partner of that vendor, or a parent, spouse or child of such a partner; or

(ii) a private company of which such a partner, parent, spouse, child is a director or shareholder.".

52 By deleting subclause (9) and substituting—

"(9) This section applies only to a Register of Transactions that has been made available under section 53.".

53(3) By deleting "date on which the first assignment of each specified residential property in the development" and substituting "day on which the first assignment of each residential property in relation to which section 52(1) applies".

New By adding—

"**53A. Purpose of Register of Transactions**

The purpose of the Register of Transactions for the development is to provide a member of the public with the transaction information relating to the development, as set out in the Register, for understanding the residential property market conditions in Hong Kong.".

54 By deleting "specified".

55(2) By adding "one or more" after "consisting of".

55(2)(a) and (b) By adding "preliminary agreement for sale and purchase or" after "single".

55(3)(a) and (b) By adding "preliminary agreement for sale and purchase or" after "single".

55(4)(a) and (b) By adding "preliminary agreement for sale and purchase or" after "single".

55(5)(a) By adding "one or more" after "consisting of".

New By adding—

"**55A. Exception: property sold or offered to be sold to associated entity**

Divisions 2, 3, 4, 5, 6 and 7 do not apply if—

(a) the specified residential property is sold by a corporation or a specified body, or is offered by a corporation or a specified body to be sold, to an associate corporation, or a holding company, of the corporation or specified body; or

(b) the specified residential property is sold by an individual, or is offered by an individual to be sold, to an immediate family member of the individual.".

New By adding—

"**55B. Exception: development constructed by Housing Authority**

Divisions 2, 3, 4, 5, 6, 7 and 8 do not apply if the development is constructed by the Housing Authority.".

56(2) By deleting paragraphs (a) and (b) and substituting—

"(a) who holds that property under a tenancy (other than a Government lease); and

(b) who, as at the date of that property being sold or offered to be sold (as the case may be), has so held that property for a continuous period of at least one year.".

58 In the heading, by deleting "**unsold**" and substituting "**specified residential**".

58 By deleting subclause (1) and substituting—

"(1) If a specified residential property in a completed development, or a completed phase of a development, is offered by the owner to be sold to a person, the vendor must, as soon as practicable after the offer is made, provide the person with a single document (***vendor's information form***) printed within the previous 3 months.".

60(1) In the English text, by deleting "if the person" and substituting "if".

60(1)(a) In the English text, by adding "the person" before "publishes".

61 By deleting subclause (1) and substituting—

"(1) If an advertisement is published by the vendor or by another person with the consent of the vendor, the advertisement must state that fact.".

61(4) By adding "size or" after "on the".

61(6) By deleting "(3)" and substituting "(3)(b)".

62(4) In the Chinese text, by deleting "潛在買方" and substituting "準買方".

63(3)(a) By deleting "a company" and substituting "a corporation".

63(3)(b) By deleting "company" and substituting "corporation".

63 By adding—

"(3A) An advertisement must, in the case of a specified NT development, state—

(a) the period for which the authorized person for the development is appointed to supervise the construction of the development; and

(b) the period for which the building contractor for the development is appointed to construct the development.".

63(11) By adding "(3A)," after "(3),".

New By adding immediately before clause 65—

"**64A. Interpretation of Part 4**

(1) For the purposes of this Part, a person makes a fraudulent misrepresentation—

(a) if the person makes a statement that, when it is made, is to the person's knowledge false, misleading or deceptive;

(b) if the person makes a promise that, when it is made—

(i) is to the person's knowledge incapable of being fulfilled; or

(ii) the person has no intention of fulfilling; or

(c) if—

(i) the person makes a statement; and

(ii) the person intentionally omits a material fact from the statement, with the result that the statement is rendered false, misleading or deceptive when it is made.

(2) For the purposes of this Part, a person makes a reckless misrepresentation—

(a) if the person recklessly makes a statement that, when it is made, is false, misleading or deceptive;

(b) if the person recklessly makes a promise that,

when it is made, is incapable of being fulfilled; or

(c) if—

(i) the person makes a statement; and

(ii) the person recklessly omits a material fact from the statement, with the result that the statement is rendered false, misleading or deceptive when it is made.".

65 In the heading, by adding ": **criminal liability**" after "**Misrepresentation**".

65 By deleting subclauses (3), (4) and (5).

New By adding—

"**65A. Misrepresentation: civil liability**

(1) This section applies if a person makes a fraudulent misrepresentation or reckless misrepresentation by which another person is induced to purchase a specified residential property.

(2) The person who makes the misrepresentation is liable to pay compensation by way of damages to the other person for any pecuniary loss that the other person has sustained as a result of the reliance by the other person on the misrepresentation. This subsection applies whether or not the person who makes the misrepresentation also incurs any other liability.

(3) An action may be brought against a person under subsection (2) even though the person has not been charged with or convicted of an offence by reason of a contravention of section 65.

(4) To avoid doubt, if—

(a) a court has jurisdiction to determine an action brought under subsection (2); and

(b) apart from this section, the court has jurisdiction to entertain an application for an

injunction,

the court may grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it thinks fit.

(5) This section does not affect, limit or diminish any rights conferred on a person, or any liability that a person may incur, under the common law rules or equitable principles or any other Ordinance.".

Part 5 — In Division 2, in the English text, by deleting the heading and substituting—

"**Division 2—Defence for Offences in Relation to False or Misleading Information**".

72 — In the heading, by deleting "**Liability of company officers etc. for offence committed by company**" and substituting "**Liability of officers etc. for offence committed by corporation or specified body**".

72(1)(a) — By deleting "company" and substituting "corporation".

72(1)(b) — In the Chinese text, by deleting "公司或" (wherever appearing) and substituting "法團或".

72(1)(b)(i)(A) — In the English text, by deleting "the company" (wherever appearing) and substituting "the corporation".

72(2) — By deleting "company" and substituting "corporation".

72(3) — In the definition of ***officer***, by adding "as defined by section 2(1) of the Companies Ordinance (Cap. 32)" after "a company".

72(3)	In the definition of ***officer***, in paragraph (a)(ii), by deleting "section 2(1) of the Companies Ordinance (Cap. 32)" and substituting "that section 2(1)".
72(3)	In the definition of ***officer***, in paragraph (b), by adding "a company incorporated outside Hong Kong or" after "to".
72(3)	In the definition of ***officer***, in paragraph (b)(i) and (ii), by adding "company or" before "specified body".
77(1)(b)	By deleting ", (5) or (6)" and substituting "or (5)".
79	By adding— "(8) The Authority or a public officer appointed under section 74(1)(b) may not require a person to produce any record or document, or disclose any information, that the person would on grounds of legal professional privilege be entitled to refuse to produce or disclose.".
80(5)	By deleting "company" (wherever appearing) and substituting "corporation".
Schedule 1	By deleting "[ss. 7, 16" and substituting "[ss. 7".
Schedule 1, section 2(2)(a)	By deleting "a company" and substituting "a corporation".
Schedule 1, section 2(2)(b)	By deleting "company" and substituting "corporation".
Schedule 1,	By adding—

section 2

"(3) The sales brochure must, in the case of a specified NT development, state—

(a) the period for which the authorized person for the development is appointed to supervise the construction of the development; and

(b) the period for which the building contractor for the development is appointed to construct the development.".

Schedule 1, section 3(2)(a)

By deleting "a natural person" and substituting "an individual".

Schedule 1, section 3(2)

By adding—

"(ab) the vendor or a building contractor for the development is a partnership, and a partner of that vendor or contractor is an immediate family member of such an authorized person;".

Schedule 1, section 3(2)(b)

By deleting "a company" and substituting "a corporation".

Schedule 1, section 3(2)(c)

By deleting "a natural person" and substituting "an individual".

Schedule 1, section 3(2)

By adding—

"(ca) the vendor or a building contractor for the development is a partnership, and a partner of that vendor or contractor is an immediate family member of an associate of such an authorized person;".

Schedule 1, section 3(2)(d)

By deleting "a company" and substituting "a corporation".

Schedule 1, section 3(2)(e) — By deleting "a natural person" and substituting "an individual".

Schedule 1, section 3(2) — By adding—

"(ea) the vendor or a building contractor for the development is a partnership, and a partner of that vendor or contractor is an immediate family member of a proprietor of a firm of solicitors acting for the owner in relation to the sale of residential properties in the development;".

Schedule 1, section 3(2)(f) — By deleting "a company" and substituting "a corporation".

Schedule 1, section 3(3)(a)(i) — By deleting "(b), (c)" and substituting "(ab), (b), (c), (ca)".

Schedule 1, section 3(3)(a)(ii) — By adding ", (ea)" after "(e)".

Schedule 1, section 3(3)(b) — By adding "partner," after "contractor,".

Schedule 1, section 3(4)(c) — By deleting "a company" and substituting "a corporation".

Schedule 1, section 3(4) — By adding—

"(ca) the vendor or a building contractor for the development is a partnership, and such an authorized person, or such an associate, is an employee of that vendor or contractor;".

Schedule 1, section 3(4)(f)	By deleting "a company" and substituting "a corporation".
Schedule 1, section 3(4)	By adding— "(fa) the vendor or a building contractor for the development is a partnership, and a proprietor of such a firm of solicitors is an employee of that vendor or contractor;".
Schedule 1, section 3(4)(g)	By deleting "a company, and the company" and substituting "a corporation, and the corporation".
Schedule 1, section 3(4)(h)	By deleting "a company" and substituting "a corporation".
Schedule 1, section 3(5)(a)(i)	By deleting "or (c)" and substituting ", (c) or (ca)".
Schedule 1, section 3(5)(a)(ii)	By deleting "or (f)" and substituting ", (f) or (fa)".
Schedule 1, section 3(6)	In the definition of ***associate***, in paragraph (b), by deleting "company" and substituting "corporation".
Schedule 1, section 3	By deleting subsection (7).
Schedule 1, section 10(2)(a)	In the English text, by deleting "have that scale marked on the plans" and substituting "has that scale marked on the plan".

Schedule 1, section 10(2)

By adding—

"(ab) must show the dimensions of the furniture (if any) shown on the plan;".

Schedule 1, section 13(2)(c)

By deleting "3 working days after the date on which the purchaser signs" and substituting "5 working days after the date on which the purchaser enters into".

Schedule 1, section 15(2)(e)

By adding "or facilities" after "structures".

Schedule 1

By adding—

"**18A. Elevation plan**

(1) The sales brochure must set out a plan showing all elevations of the development.

(2) The plan showing the elevations must be in colour.

(3) The plan showing the elevations must be certified by the authorized person for the development that the elevations—

(a) are prepared on the basis of the approved building plans for the development as of a date specified by the authorized person; and

(b) are in general accordance with the outward appearance of the development.".

Schedule 1, section 26(1)(b)

By deleting "and".

Schedule 1, Part 3

In the heading, by deleting "**and (2)**".

Schedule 1	By deleting section 29.
Schedule 1, section 33(b)	By deleting "Part 3 of this Schedule applies as if section 29(3)(a)" and substituting "Part 2 of this Schedule applies as if section 18A(3)(a)".
Schedule 3	By deleting "[ss. 16" and substituting "[ss. 16A".
Schedule 3	In the heading, by deleting "**16(2)(b)**" and substituting "**16A(3)**".
Schedule 4	By deleting "[ss. 9, 50" and substituting "[ss. 9, 50, 50B, 50C".
Schedule 4, Part 1, clause 1(b)	By adding "(1)" after "section 2".
Schedule 4, Part 1, clause 4(a)	By deleting "third" and substituting "fifth".
Schedule 4, Part 1, clause 4(b)	By deleting "sixth" and substituting "eighth".
Schedule 4, Part 1, clause 7	By deleting "3" and substituting "5".
Schedule 4, Part 1, clause 10	By deleting "The Vendor shall not restrict the Purchaser's right" and substituting "Without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser's right under the law".

Schedule 4, Part 2, clause 1(b)	By adding "(1)" after "第2".
Schedule 4, Part 2, clause 4(a)	By deleting "第三" and substituting "第五".
Schedule 4, Part 2, clause 4(b)	By deleting "第六" and substituting "第八".
Schedule 4, Part 2, clause 7	By deleting "3" and substituting "5".
Schedule 4, Part 2, clause 10	By deleting "賣方不得限制買方" and substituting "在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律".
Schedule 5	By deleting "[ss. 9, 50" and substituting "[ss. 9, 31, 50A, 50B, 50C".
Schedule 5, Part 1, clause 1(f)(i) and (iii)	By deleting "the Government Grant" and substituting "the conditions of the Government Grant $^{\Sigma}$[in so far as they relate to the Phase]".
Schedule 5, Part 1, clause 1	By deleting sub-clause (i) and substituting— "*[(i) "expiry date of the Building Covenant Period" means— (i) the last day of the period within which the Development is required to be completed under the *Government Grant/Exclusion Order/ Redevelopment Order; or

(ii) if that period has been extended by the Government, the last day of the extended period;]".

Schedule 5, Part 1, clause 1(o)

By deleting "Blocks [*insert block numbers*" and substituting "[*insert description of buildings comprising the Phase*".

Schedule 5, Part 1, clause 1

By adding—

"*[(pa) "Redevelopment Order"—

(i) means *a redevelopment order (as defined by the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337))/an order for sale (as defined by the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)), dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*]; and

(ii) includes any order amending that *redevelopment order/order for sale;]".

Schedule 5, Part 1, clause 3

By deleting sub-clauses (a) and (b) and substituting—

"[*insert payment terms in such a way that the operation of clause 15 will not be affected*].".

Schedule 5, Part 1, clause 4(c)

By adding "$^{\Sigma}$[in so far as they relate to the Phase]" after "of the Government Grant".

Schedule 5, Part 1

By deleting clause 5 and substituting—

"*[5. Despite clause 4(c), the Vendor shall complete the Development by the expiry date of the Building Covenant Period as required under the *Government Grant/Exclusion Order/Redevelopment Order. If at any time it appears likely in the opinion of the Authorized Person that the Development will not be completed by the expiry date of the Building Covenant Period, the Vendor shall promptly apply for and obtain such extension of time for completing the Development as is required and shall pay any premium to the Government for such extension.

The Vendor shall notify the Purchaser in writing of such application and the terms of extension granted within 30 days after each event.".

Schedule 5, Part 1, clause 6 — By deleting "*Building Covenant Period/period allowed by the Redevelopment Order or such extension period as may have been granted" and substituting "Building Covenant Period".

Schedule 5, Part 1, clause 6 — By adding "]" after "Agreement.".

Schedule 5, Part 1 — By deleting clause 14 and substituting—

"14. (a) Where, under the Government Grant, the consent of the Director of Lands is required to be given for this sale and purchase, the Vendor shall notify the Purchaser in writing that the Vendor is in a position validly to assign the Property within one month after the issue of the Certificate of Compliance or the consent of the Director of Lands to assign, whichever first happens.

(b) Where, under the Government Grant, the consent of the Director of Lands is not required to be given for this sale and purchase, the Vendor shall notify the Purchaser in writing that the Vendor is in a position validly to assign the Property within six months after the issue of the Occupation Document.".

Schedule 5, Part 1, clause 16 — By deleting ", the Vendor shall not restrict the Purchaser's right" and substituting "and without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser's right under the law".

Schedule 5, Part 1, clause 24(c) and (d) — By adding "and all other solicitors (if any) acting for the Vendor in the sale of the residential units in the [Phase/Development]" after "of the

Vendor's Solicitors".

Schedule 5, Part 1

By deleting—

"π Applicable where, under the Government Grant, the consent of the Director of Lands is required to be given for the Vendor to enter into this Agreement. Delete as appropriate."

and substituting—

"π Applicable where, under the Government Grant, the consent of the Director of Lands is required to be given for the Vendor to enter into this Agreement. Delete as appropriate.

Σ Applicable for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance (of 2012)) except the final phase of a phased development. Delete as appropriate.".

Schedule 5, Part 2, clause 1(f)(i) and (iii)

By adding "的條件Σ[只限於與本期有關的範圍內]" after "批地書".

Schedule 5, Part 2, clause 1

By deleting sub-clause (i) and substituting—

"*[(i) "建築契諾屆滿日期"指 —

(i) 須根據*政府批地書／豁除令／重新發展令完成本發展項目的限期的最後一日；或

(ii) (如政府已延長該限期)經延長的限期的最後一日；]".

Schedule 5, Part 2, clause 1(o)

By deleting "第[*填上座數*]座" and substituting "[*填上組成本期的建築物的描述*]".

Schedule 5, Part 2, clause 1

By adding—

"*[(pa) "重新發展令" —

(i) 指日期為[*填上文書的日期*]並於土地註冊處以註冊摘要第[*填上註冊摘要編號*]號註冊的、*(《已拆卸建築物(原址重新發展)條例》(第337章)所界定的)重新發展令／(《土地(為重新發展而強制售賣)

條例》(第545章)所界定的)售賣令；及

(ii) 包括修訂該*重新發展令／售賣令的命令；]".

Schedule 5, Part 2, clause 3

By deleting sub-clauses (a) and (b) and substituting—

"[*填上不影響第15條的施行的付款條款*]。".

Schedule 5, Part 2, clause 4(c)

By deleting "遵照$^{\pi}$[政府批地書的條件" and substituting "符合$^{\pi}$[政府批地書的條件$^{\Sigma}$[只限於與本期有關的範圍內]".

Schedule 5, Part 2

By deleting clause 5 and substituting—

"*[5. 即使有第4(c)條的規定，賣方須根據*政府批地書／豁除令／重新發展令的規定，於建築契諾屆滿日期或之前，完成本發展項目。如認可人士在任何時間認為，本發展項目相當可能不會於建築契諾屆滿日期或之前完成，則賣方須即時申請及取得完成本發展項目所需的延期，並須就該項延期，向政府支付補價。賣方須將申請一事及批予延期的條款，分別於提出申請及獲批予延期後的30日內，以書面通知買方。".

Schedule 5, Part 2, clause 6

By deleting "*建築契諾屆滿日期／重新發展令容許的限期的屆滿日期或獲批予的延期的屆滿日期" and substituting "建築契諾屆滿日期".

Schedule 5, Part 2, clause 6

By adding "]" after "申索。".

Schedule 5, Part 2

By deleting clause 14 and substituting—

"14. (a) (凡根據政府批地書，進行本買賣需獲地政總署署長同意)賣方須在合格證明書或地政總署署長的轉讓同意(以較先發生者為準)發出後的一個月內，就賣方有能力有效地轉讓本物業一事，以書面通知買方。

(b) (凡根據政府批地書，進行本買賣不需獲地政總署署長同意)賣方須在佔用文件發出後的六個月內，就賣方有能力有效地轉讓本物業一事，以書面通知買方。".

Schedule 5, Part 2, clause 16

By deleting "，賣方不得限制買方" and substituting "及在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律".

Schedule 5, Part 2, clause 24(c) and (d)

By adding "及在[γ]本期／本發展項目的住宅單位的買賣中代表賣方行事的所有其他律師(如有的話)" after "如賣方律師".

Schedule 5, Part 2

By deleting—

"π 凡根據政府批地書，賣方訂立本合約需獲地政總署署長同意，即適用。將不適用者刪去。"

and substituting—

"π 凡根據政府批地書，賣方訂立本合約需獲地政總署署長同意，即適用。將不適用者刪去。

Σ 適用於分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)但分期發展項目的最後一期除外。將不適用者刪去。".

Schedule 6

By deleting "[ss. 9, 50" and substituting "[ss. 9, 50A, 50B, 50C".

Schedule 6, Part 1, clause 1(f)(i) and (iii)

By deleting "the Government Grant" and substituting "the conditions of the Government Grant [Σ][in so far as they relate to the Phase]".

Schedule 6, Part 1, clause 1(m)

By deleting "Blocks [*insert block numbers*" and substituting "[*insert description of buildings comprising the Phase*".

Schedule 6, Part 1, clause

By deleting sub-clauses (a) and (b) and substituting—

3	"[*insert payment terms in such a way that the operation of clause 13 will not be affected*].".
Schedule 6, Part 1, clause 4(c)	By adding "$^{\Sigma}$[in so far as they relate to the Phase]" after "Government Grant".
Schedule 6, Part 1, clause 14	By deleting ", the Vendor shall not restrict the Purchaser's right" and substituting "and without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser's right under the law".
Schedule 6, Part 1, clause 21(c) and (d)	By adding "and all other solicitors (if any) acting for the Vendor in the sale of the residential units in the $^{\gamma}$Phase/Development" after "of the Vendor's Solicitors".
Schedule 6, Part 1	By deleting— "θ Delete "Development" for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance (of 2012)) except the final phase. Otherwise delete "Phase"." and substituting— "θ Delete "Development" for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance (of 2012)) except the final phase. Otherwise delete "Phase". Σ Applicable for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance (of 2012)) except the final phase of a phased development. Delete as appropriate.".
Schedule 6, Part 2, clause 1(f)(i) and (iii)	By adding "的條件$^{\Sigma}$[只限於與本期有關的範圍內]" after "批地書".
Schedule 6, Part 2, clause	By deleting "第[*填上座數*]座" and substituting "[*填上組成本期的建*

1(m) *築物的描述*]".

Schedule 6, Part 2, clause 3 By deleting sub-clauses (a) and (b) and substituting—

"[*填上不影響第13條的施行的付款條款*]。".

Schedule 6, Part 2, clause 4(c) By deleting "遵照政府批地書的條件" and substituting "符合政府批地書的條件$^{\Sigma}$[只限於與本期有關的範圍內]".

Schedule 6, Part 2, clause 14 By deleting "，賣方不得限制買方" and substituting "及在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律".

Schedule 6, Part 2, clause 21(c) and (d) By adding "及在$^{\gamma}$本期／本發展項目的住宅單位的買賣中代表賣方行事的所有其他律師(如有的話)" after "如賣方律師".

Schedule 6, Part 2 By deleting—

"θ 如屬分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)及除最後一期外，刪去"本發展項目"，否則刪去"本期"。"

and substituting—

"θ 如屬分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)及除最後一期外，刪去"本發展項目"，否則刪去"本期"。

Σ 適用於分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)但分期發展項目的最後一期除外。將不適用者刪去。".

Schedule 7 By deleting "[ss. 9, 50" and substituting "[ss. 9, 50A, 50B, 50C".

Schedule 7, Part 1, clause 3 By deleting "as stakeholders".

Schedule 7, Part 1, clause 3	By deleting sub-clauses (a) and (b) and substituting— "[*insert payment terms in such a way that the operation of clause 4 will not be affected*].".
Schedule 7, Part 1, clause 5	By deleting ", the Vendor shall not restrict the Purchaser's right" and substituting "and without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser's right under the law".
Schedule 7, Part 1	By adding— "11A. If and so long as there is a mortgage of or charge on the Property, any part of the purchase price shall be paid to the Vendor's Solicitors as stakeholders and shall be applied by them only for the purpose of obtaining reassignment/ release of the Property unless a sufficient sum is held to obtain such reassignment/release in which case the Vendor's Solicitors may release to the Vendor the amount of excess over and above the sum sufficient to discharge the mortgage or charge.".
Schedule 7, Part 2, clause 3	By deleting "作為保證金保存人的".
Schedule 7, Part 2, clause 3	By deleting sub-clauses (a) and (b) and substituting— "[*填上不影響第4條的施行的付款條款*]。".
Schedule 7, Part 2, clause 5	By deleting "，賣方不得限制買方" and substituting "及在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律".
Schedule 7,	By adding—

Part 2	"11A. 如有本物業的按揭或押記，則在有上述按揭或押記之時，售價的任何部分均須支付予作為保證金保存人的賣方律師，賣方律師只可將該款項運用於取得本物業的再轉讓／解除，但如賣方律師所持的款項足以取得該項再轉讓／解除，則屬例外，而在此情況下，賣方律師可向賣方發放超出足以解除該按揭或押記的款項的剩餘款額。".
Schedule 8, section 1(1)	By deleting paragraphs (a), (b) and (c).
Schedule 8, section 1(1)	By adding— "(ha) any notice received by the vendor from the Government or requiring the vendor to demolish or reinstate any part of the development;".
Schedule 8, section 1(1)(i)	By deleting the semicolon and substituting a full stop.
Schedule 8, section 1(1)	By deleting paragraphs (j) and (k).
Schedule 8, section 1	By deleting subsection (2).
Schedule 8, section 2	By deleting "and (h) and (2)" and substituting ", (h) and (ha)".

Residential Properties (First-hand Sales) Bill

Committee Stage

Amendments moved by the Honourable LEE Wing-tat

Clause	Amendment Proposed
48	By deleting subclause (1) and substituting— "(1) A preliminary deposit of 3% of the purchase price is payable by a person to the owner on entering into a preliminary agreement for sale and purchase in respect of the specified residential property with the owner.".
Schedule 1, Part 1 section 13(2)	By deleting paragraph (a) and substituting— "(a) that a preliminary deposit of 3% is payable on the signing of that preliminary agreement;".
Schedule 4, Part 1	By deleting clause 2 and substituting— "2. The purchase price of the Property is HK$ [*insert amount*], which shall be paid by the Purchaser to the Vendor in the manner as follows— Preliminary deposit in the sum of HK$ [*insert amount*], which is equal to 3% of the purchase price shall be paid upon signing of this Preliminary Agreement.".
Schedule 4, Part 2	By deleting clause 2 and substituting— "2. 本物業的售價為港幣 [*填上款額*]元，並須由買方按以下方式付予賣方—— 為數港幣 [*填上款額*]元（即售價的 3%）的臨時訂金，須於簽署本臨時合約時支付。".