

# OFFICIAL RECORD OF PROCEEDINGS

Friday, 29 June 2012

The Council continued to meet at Nine 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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

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.

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:**

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

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

DR THE HONOURABLE LEUNG KA-LAU

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE AMBROSE LEE SIU-KWONG, G.B.S., I.D.S.M., J.P.  
SECRETARY FOR SECURITY

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

**CLERK IN ATTENDANCE:**

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

**BILLS****Committee Stage**

**CHAIRMAN** (in Cantonese): Good morning. Committee will continue to examine clause 48, and Schedules 1 and 4.

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

**RESIDENTIAL PROPERTIES (FIRST-HAND SALES) BILL**

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

**MR ALBERT CHAN** (in Cantonese): Chairman, according to the practice over the past few weeks, when Members' attendance at a meeting is so low in the morning, I should have requested a headcount, but I am worried that the ringing of the bell, which some people have referred to as the "Big Guy's ominous ring" will cause the meeting to abort. As it is absolutely not my wish that the deliberations on the Residential Properties (First-hand Sales) Bill (the Bill) cannot be completed within the Secretary's term of office because of the abortion of the meeting, I may as well take it as a farewell gift to the Secretary in not requesting a headcount in the hope that the deliberations can be completed by noon today.

The People Power will continue to express views on the major clauses of the Bill and issues of public concern. I hope that the Secretary can remain patient for another two hours or so. She should be able to attend the farewell banquet arranged by her colleagues for her today.

Chairman, with regard to these clauses, as I said in my speeches on other clauses and during the Second Reading debate yesterday, I have strong views on the Bill and great concerns about it. I am particularly concerned about whether the clauses in the Bill can protect the interests of small owners and prospective purchasers in the transaction of uncompleted residential properties.

Mr LEE Wing-tat's amendments involve clause 48, Schedule 1 and Schedule 4. Chairman, clause 48 provides for a deposit on entering into a

preliminary agreement. I understand that for the purpose of an agreement for sale and purchase, if a deposit is made on signing the preliminary agreement and if a party cannot honour his obligations, the deposit will have to be forfeited. But very often, it may not be possible to set out all the various reasons for the forfeiture of deposit or failure to honour an agreement for sale and purchase in the ordinance.

In the example of Maywood Court that I have repeatedly cited, the deposits of over 200 buyers were ultimately forfeited but the developer still proceeded to file a lawsuit against the buyers for breach of contract after forfeiting their deposits. The developer even commissioned professional surveyors to assess the deficiency in prices and took actions against the buyers to recover the deficiency in prices as a debt.

From this we can see that the loss suffered by small owners or the legal liabilities and payment borne by them are not limited to a deposit. As we all know, the failure to fulfil contractual obligations will result in forfeiture of the deposit as well as recovery actions against the buyers for all the expenses on litigation costs and interests involved in subsequent proceedings. I do not know if I have overlooked any information. I hope the Secretary can briefly give a response on whether the Bill has exempted buyers from paying other expenses incurred from their failure to complete a preliminary agreement for sale and purchase as I have just said. In other words, is it that buyers are only required to pay the deposit and the Bill has provided that developers cannot take recovery actions against buyers for other legal liabilities? Or, are there other arrangements in place?

Take Maywood Court as an example. The developer (namely, Cheung Kong) obviously breached the term in respect of the date of completion stated in the contract, for the properties were delivered about five months behind the schedule. However, the prospective purchasers were not aware that there was actually a clause in the agreement for sale and purchase providing that they could inform the vendor (that is, the developer) of termination of the contract and recovery of the deposit within three months after the scheduled date for the delivery of properties. All the 1 700 owners were not aware of this clause, and had they known it, they definitely would have resorted to termination of the contract with Cheung Kong, because if they bought the flats again after termination of the contract, they could at least gain \$500,000 to \$600,000 each.

It is impossible that property owners in Hong Kong would be so stupid in not taking this step had they known that they could terminate the contract and then buy the flats again in the market at lower prices.

In this example, the prospective owners were, on the one hand, unable to take possession of the properties on schedule as a result of the failure of Cheung Kong to fulfil its obligations under the agreement for sale and purchase, and on the other hand, they did not ask for termination of the contract and recovery of the deposit under the agreement for sale and purchase because their lawyers did not inform them of this safeguard provision in the agreement. As we all know, these safeguard provisions are basic terms and conditions drawn up jointly by the Government, the Lands Department and The Law Society of Hong Kong (The Law Society) for transactions of uncompleted flats, and they are, to a certain extent, introduced for the protection of the interests of small owners.

However, from this experience we can see that although the Government and The Law Society have drawn up standard terms and conditions to enable property transactions to be carried out more fairly, with a view to protecting the powerless small owners and ensuring that they will not be bullied by major developers, it is ridiculous that the vendor and the purchasers were represented by the same lawyers back then, and in order to protect the interests of the major developer, these lawyers did not inform any of these 1 700 small owners of these safeguard provisions in the agreement for sale and purchase at such a crucial moment. The ordeal of owners of Maywood Court has fully revealed how lopsided and absurd the property sale system is in Hong Kong.

In fact, we should publish a book on this issue and give a detailed account of the tragic experiences that small owners have been made to go through in the absence of legislation for regulating the transactions of first-hand residential properties in Hong Kong, and this can be said as a history of blood and tears. It was more than 14 years ago that buyers of Maywood Court forfeited their deposits but hundreds of buyers are still being pursued for the deficiency in prices now. It means that their ordeal has not yet ended. Some buyers are still hiding. Worrying about being found by Cheung Kong, they were forced to leave Hong Kong and have hitherto lived a secluded life overseas, not daring to return to Hong Kong. Chairman, this is an iron-clad fact. Hong Kong does not have sound legislation for the regulation of transactions of first-hand residential

properties and as a result, small owners who have purchased their own home are plunged into a tragedy for the rest of their lives.

Let us now turn to the amendments to clause 48 and the Schedules. Schedule 1 is basically about information in the sales brochure and the detailed requirements for specific information required to be set out in both English and Chinese. Schedule 2 concerns provisions required to be contained in a preliminary agreement for sale and purchase. Excuse me, Chairman, it should be Schedule 4.

Chairman, I have read the provisions in Schedule 4 very carefully but with regard to the concern that I have just raised, that is, on the question of civil claims arising from the termination of contract ..... As I have just mentioned, a purchaser may not be able to complete the transaction 18 months or 12 months after he has purchased the property for some reasons, such as banks refusing to grant a mortgage loan. As far as I know, in other countries and places, such as Canada, insofar as property transactions are concerned, if the buyer and vendor have signed a preliminary agreement for sale and purchase but banks eventually refuse to grant a mortgage loan for some reasons (which may be due to problems concerning the buyer's personal liability or financial arrangement), thus resulting in the buyer not being able to complete the contract, the buyer in the agreement for sale and purchase is not required to take the remaining legal liabilities because the terms of the contract will protect the buyer by stipulating that the contract can be terminated and the buyer is not required to take legal liabilities if the buyer cannot secure a mortgage loan from a bank. I think this is a very important safeguard. As I said just now, in the event that a transaction cannot be completed or the buyer cannot fulfil his contractual obligations, while it seems on the surface that the legal liabilities shall fall on the buyer, what actually happened may be that the developer has had certain problems or the completion of the development has been delayed, hence causing changes in property prices and making it impossible for the buyer to take out a mortgage loan for the property. In times of property price movements, especially when prices go up ..... No, it should be when prices come down, buyers applying for a mortgage loan with banks may have to meet further expenses on second mortgage or an increase in deposits, and this will cause uncertainties in their borrowing.

As regards Mr LEE Wing-tat's amendments, if I do not understand them wrongly, they seek to adjust the deposit downwards to 3%. I have read the



report of the Bills Committee that the President of the Legislative Councils has suggested us to read, and paragraph 72 of the report has explained the amendments proposed by Mr LEE Wing-tat. The People Power supports Mr LEE Wing-tat's amendments. If an agreement is not honoured on reasonable grounds, I think even the deposit should not be forfeited. The amendments propose a lower percentage of deposit, and this can be some kind of protection to the buyers.

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

**MS AUDREY EU** (in Cantonese): Chairman, in common law, if the payment of a deposit is involved in any transaction, the deposit amount is generally 10% of the transaction amount. This is a rule, and this 10% deposit is the so-called "earnest payment".

Chairman, why is there such a thing called deposit? The reason is that it usually takes a long time from the payment of a deposit to the formal transaction. There may be changes in the market conditions in the interim and so, the payment of a 10% deposit is a long-standing convention and rule. Interestingly, while the deposit is generally paid at 10% of the transaction amount, if a deposit of more than 10% is paid due to a particularly long-term transaction and if the contract is not completed eventually, any amount paid in excess of 10% should be refunded to the purchaser. Why? It is because an earnest payment is generally paid at only 10% of the transaction amount, and the above practice is intended to provide protection to buyers.

Chairman, the amendments proposed by Mr LEE Wing-tat today actually do not concern the question of deposit. Although he uses the word "deposit", there is, in fact, a big difference between the application of the amendments and the history of or changes in deposit in common law that I have just mentioned.

We are now talking about the time when signing a preliminary agreement for sale and purchase (PASP). If we look at the common law or the sale and purchase of properties in Hong Kong a long time ago, we will find that buyers in the past were generally unlike those nowadays who are surrounded and persuaded by sales agents in an atmosphere of exuberance in property sales and who make a decision on buying a property just because they are tempted to do so on the spur

of the moment. Many of them do not even have time to go home and discuss it with family members before paying a deposit, but when they go home, they find that there are many problems, and their family members also tell them that there are many problems with this decision.

It is also common that some people do wish to buy the property after paying a deposit but they are unable to secure a mortgage loan for various personal reasons. Such being the case, even though the purchaser wishes to sign the agreement for sale and purchase (ASP), he is still unable to complete the transaction and sign the ASP because he cannot secure sufficient funds or take out a mortgage loan from a bank.

Therefore, what we are discussing is a very narrow question. It is not a question of deposit, but a question of a cooling-off period. For this reason, the convention and the rule of the payment of a 10% deposit as required in common law is actually not related to this issue under our discussion now. What we have to discuss is this: If a PASP is signed in a short time but it is found a few days later that the agreement cannot be completed for various reasons, what penalty should be imposed? The forfeiture of part of the payment is, to a certain extent, considered fair to both the vendor and the purchaser. We should consider this issue on this principle.

Chairman, I have listened very attentively to the views expressed by the Secretary on this point. She said that if the forfeiture amount was too small, many people would hasten to engage in property speculation before thinking about it seriously. However, I have not seen any evidence so far showing that a forfeiture of a 30% deposit or a forfeiture of a deposit in a few hundred thousand dollars can, especially in view of the current market situation, create sufficient deterrence and make many people give up speculative activities.

Chairman, the Government has all along put many other measures in place to stamp out speculative activities. Apart from the views repeatedly reiterated by the Secretary, there has not been any evidence showing that the forfeiture of a deposit of 3% (which is the percentage proposed by Mr LEE Wing-tat) will result in a heated market with widespread speculative activities and everybody wanting to lose that deposit of 3% or a few hundred thousand dollars. Chairman, for this reason, and in the light of the unique situation in Hong Kong, and given that this

is a proposal made by the Consumer Council, I only wish to say in brief that the Civic Party supports the amendments proposed by Mr LEE Wing-tat.

We all know that an amendment proposed by a Member is subject to separate voting before it can be passed. I, therefore, urge Members who have always been supporters of the Government to consider this: Who are the people that we are here to protect? In most property transactions, the purchasers are general consumers. After they have signed the PASP, they do not wish to lose the deposit, but they sometimes cannot fulfil their contractual obligations for various reasons, and in that case, what percentage of the deposit should be forfeited in order to be fair? Chairman, I hope that colleagues can think about this, especially as many colleagues have pointed out in their speeches earlier that exuberance in the property market has driven up property prices to a level beyond the affordability of ordinary citizens. Chairman, even the outgoing Chief Executive and the incoming Director of Bureau responsible for housing matters have said that it is very difficult to buy a property, let alone ordinary citizens.

Chairman, I did not particularly wish to speak at first, because I think the point here is very clear. But I wish to make my utmost effort to call on other colleagues to support Mr LEE Wing-tat's amendments, because their co-operation is necessary for Mr LEE Wing-tat's amendments to be passed. Thank you, Chairman.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Transport and Housing, do you wish to speak again?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Chairman, I have explained our views last night, but I can give a further response. Mr Albert CHAN has asked earlier whether the purchaser is required to pay for other expenses apart from forfeiting the deposit. Clause 49(2)(c) may answer

the Member's question. It provides that "the owner does not have any further claim against the person for the failure", meaning that no further claim can be made apart from forfeiture of the deposit.

Besides, Ms Audrey EU has mentioned earlier that in many cases, it seems that the purchasers are forced to buy the flats because they are surrounded by many agents who have influenced their judgment and pushed them to make a purchase hastily and therefore, we should provide assistance to this type of purchasers. In fact, this view is related to a point that I emphasized last night and that is, we should look at it from an overall perspective. Since a developer is now required to provide a sales brochure seven days in advance and a price list three days in advance, consumers will already have sufficient time for consideration when buying a property, and they can also discuss it with family members or other relevant persons. Therefore, I think we should not just focus on a single issue.

In fact, apart from ordinary members of the public and small owners, speculators are also among the property buyers. This is a fact. Setting the deposit at too low a percentage will easily give rise to problems, because the deposit is part of the cost of speculation. If a large group of people can stir up troubles in the property market by taking advantage of an excessively low speculation cost, the stability and healthy development of the property market as a whole will only be jeopardized ultimately to the detriment of ordinary members of the public and small owners.

Therefore, we do not agree to Mr LEE Wing-tat's amendments. I have nothing to add. Thank you, Chairman.

**MR LEE WING-TAT** (in Cantonese): Chairman, from what I have heard for the last two days, the point most often talked about by the Secretary is that the difference between a 5% deposit and one of 3% lies in whether speculators can be curbed in property speculation. When we discuss an issue, we actually argue with reasons. I have been citing an ordinary residential flat costing \$5 million as an example — New flats nowadays mostly cost as much as \$4 million to \$5 million — A deposit of 5% is \$250,000 whereas a 3% deposit is \$150,000. According to the Secretary's analysis, this difference of \$100,000 can create

sufficient deterrence and prevent speculators from entering the market through this so-called loophole resulting from a reduction of 2% in the deposit.

My analysis is completely different from the Secretary's. Generally speaking, those people who can stir up troubles in the market do not just buy a flat once in a while. Rather, they are the speculators. There are generally two types of activities in the market. One features regular property transactions, which are genuine speculative activities. As I said in my analysis yesterday, some developers will co-operate with their "regular customers". I read the property pages every day, not for the purpose of buying a property. I read them in order to keep abreast of the situation in the property market. I find that dozens of names always appear on the property pages. They are known as the "professional investors", or speculators.

To create a good sales atmosphere, developers often ask a Mrs so-and-so or a Mr so-and-so to buy their properties. Apart from giving them priority to select flats, developers may sometimes offer a special discount to them to reduce their cost of speculation. So, these people basically do not care about whether the deposit is 3% or 5%. These "professional speculators" ..... I wonder if the Secretary has paid attention to these names when reading the property pages. Everyone in the market knows these people. I took part in several debates on properties and housing on television before, and these speculators even called in to debate with me, telling me who they were and that they had just purchased 10 flats, and so on. Therefore, on the question of whether the deposit is set at 3% or 5%, these people in the market who frequently ..... What they do is to buy a flat first and then sell it before signing the formal agreement for sale and purchase (or before securing a mortgage loan). The signing of the preliminary agreement for sale and purchase does not involve much money, and the decision on buying a property is considered to be formally made only when applying to a bank for a mortgage loan. Many speculators will not take out a mortgage loan at this stage.

I do not know how the Secretary thinks about her own analysis. She cannot convince me, but I understand that the Secretary has made an effort to lobby support from colleagues. For the sake of the rights and interests of the public, I hope that more political parties and colleagues will be willing to give consideration to my proposal. As I said earlier on, many countries actually do not have such a procedure as forfeiture of deposit. The percentage of deposit in

Hong Kong is already very high. The Consumer Council has proposed to set the deposit at 3%, and my amendments are proposed on the basis of this proposal.

I hope that Members can support my amendments. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr LEE Wing-tat be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat 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.

Functional Constituencies:

Dr Margaret NG, Ms Miriam LAU, Mr CHEUNG Kwok-che and Dr Samson TAM voted for the amendments.

Dr Raymond HO, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN and Mr CHAN Kin-por voted against the amendments.

Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted for the amendments.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming and Ms Starry LEE voted against the amendments.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, four were in favour of the amendments, 11 against them and three abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, 12 were in favour of the amendments, five against them and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 48 stands 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 CHAN Kam-lam, 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, Mr Abraham SHEK, Ms LI Fung-ying, 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 Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Dr PAN Pey-chyou, Dr Samson TAM, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted for the motion.

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



THE CHAIRMAN announced that there were 38 Members present, 37 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.

**CHAIRMAN** (in Cantonese): Secretary for Transport and Housing, you may now move your amendments.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Chairman, I move that Schedules 1 and 4 be amended.

*Proposed amendments*

**Schedule 1 (see annex II)**

**Schedule 4 (see annex II)**

**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)

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

**CLERK** (in Cantonese): Schedules 1 and 4 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedules 1 and 4 as amended 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): Clause 66.

**CHAIRMAN** (in Cantonese): Mr LEE Cheuk-yan has given notice to move amendments to clause 66.

**MR LEE CHEUK-YAN** (in Cantonese): Chairman, I move that clause 66 be amended. I wish to use clause 66 to bid farewell to Secretary Eva CHENG, but she says that I should not stand on ceremony and I should not do it. But on the other hand, she also hopes to say goodbye to us by lending us her support. I do not know whether that means at the end of the day she will make a U-turn and support our amendment. If it is, then it can be said to be an ending that can be called "all's well that ends well". And we can shake hands and say goodbye. However, Chairman, I know that you will say that I am talking nonsense. I will therefore return to my amendment. But Chairman, it could be that it is only nonsense that leaves a lasting impression on her.

Let me come back to clause 66. Yesterday the Secretary made the comment that my amendment was not well-written. Chairman, I would say that all of us are learning from each other. It could be that I have read the kind of

legal writing by the Government so much that I am using a way to draft my amendment which cannot be said to be well-written.

Let me explain a little bit. Clause 66 is about the dissemination of false or misleading information. In my amendment, I propose to add a note to clause 66(1)(b). Let me read out subclause (1)(b). Or perhaps I will read from subclause (1)(a) so that Members can understand better. Subclause (1)(a) says: "(1) A person commits an offence — if the person disseminates, or authorizes or is concerned in the dissemination of, information that is likely to induce another person to purchase any specified residential property; and (b) if —", it refers to the dissemination of that particular information, "(i) if the information is false or misleading as to a material fact, and the person knows that, or is reckless as to whether, the information is false or misleading as to the material fact; or (ii) the information is false or misleading through the omission of a material fact, and the person knows that, or is reckless as to whether, the information is false or misleading through the omission of the material fact." In other words, it is an offence to disseminate false information.

The purpose of my amendment is to add a note on what is meant by "material fact". It is an offence to omit a material fact in the course of disseminating information because it makes the information false. Well, what in fact is material fact? My amendment proposes a very important part as follows: a material fact "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." What this means is that for any information which affects the price of a property, and if that were known to the purchaser, he would have made reconsideration. If such information is omitted and if it is omitted on purpose by the vendor, when such material information is omitted by the vendor in the relevant advertisements or information about the property development, then it will constitute a case of misrepresentation. This is because when such information is not mentioned, this will constitute misrepresentation and it is an offence.

Chairman, what is the purpose of this amendment? It is to address the problem of inequality of information between consumers and developers. When developers develop a project, there may be many plans that purchasers are unaware of and in the absence of such knowledge on the part of purchasers, if

developers deliberately do not disclose or make public certain information, then it will be considered as an offence. Such is the purpose of my amendment.

Let me give an example. Suppose a developer plans to develop a residential development with full sea view, however, he knows that some screen-like buildings will be constructed in front of these buildings and hence the sea view will be blocked. These buildings are actually the phase one and phase two developments of the project. Well, when developing phase one, the developer hides the information and does not tell anyone that he plans to build some screen-like buildings in front. The developer has full knowledge of this plan but does not reveal it. He withholds the information, then proceeds with publicity and sales. What the people see is that the site gets a full sea view, but actually the developer has withheld some information. The sea view will soon be blocked because the construction of phase two will soon commence. When this information is not revealed, what will happen? Under my amendment, this practice will constitute an offence. It is because the developer has hidden some "material fact" and this is likely to materially affect the property price. Had the prospective purchasers known that some screen-like buildings will be built in front, they would not have believed that the flats will have a full sea view in future and they would think that the price set is too expensive. They believe that the flats have a sea view, but in fact the developer has hidden the fact that some screen-like buildings will be built. So this example of screen-like buildings is just one of the many. There are other factors that may affect property prices, too. All in all, it is an offence if a developer withholds this kind of information.

I know that the Secretary will talk about another amendment later and it is about sales brochures. My amendment is on the dissemination of information. The difference between my amendment and that on sales brochures which the Secretary is going to talk about is that the amendment from the Secretary is only applicable to sales brochures whereas my amendment is applicable to all disseminated information. Sales brochures and the dissemination of information belong to two separate areas. That concerning sales brochures is narrower whereas the scope covered by the dissemination of information is wider. Later on the Secretary will explain that when the Bureau adds subclause (7) to the clause on contents of sales brochure, it is on "relevant information — (a) in relation to a residential property, means information on any matter that is likely to materially affect the enjoyment of the residential property". In other words, a sales brochure should set out information on "any matter that is likely to

materially affect the enjoyment of the residential property". Hence there are two points of difference between my amendment and that of the Secretary. I have just explained the first difference — that is, my amendment is applicable to all disseminated information and its scope is wider. The second difference is that in the Secretary's amendment, it proposes that a sales brochure should set out information "on any matter that is likely to materially affect the enjoyment of the residential property". What does this mean and what is meant by "the enjoyment of the residential property"? It is written clearly in my amendment that it is information that affects the price of the residential property. The way her amendment is written is "likely to materially affect the enjoyment of the residential property". What is meant by "the enjoyment of the residential property"? I think the Secretary can explain a bit on that point. This is because I would think that "the enjoyment of the residential property" and the price of the residential property are two different things. It is written clearly in my amendment that it is information which will affect the price of the residential property.

If the Secretary says later that the amendment from the Bureau has proposed that a sales brochure should include "relevant information" and that has in fact covered the scope in my amendment, I would think that this argument is not justified. This is because my amendment has got a wider coverage. So we hope that Members can lend their support to a wider protection and that can protect the right to know of consumers. In other words, consumers will be able to know that with respect to the dissemination of information, apart from prohibiting the dissemination of false information, there must also not be any attempt to withhold information. In fact, withholding is like being false, and withholding information which affects property prices is like making a misrepresentation and that is an offence. I am sure this can protect fully the right to know of consumers. I hope Members can support my amendment.

Chairman, I would like to listen to the reply of the Secretary. I am glad that she can listen to the arguments regarding the last amendment. Thank you, Chairman.

*Proposed amendment*

**Clause 66 (See Annex II)**

**CHAIRMAN** (in Cantonese): We will hold a joint debate on the original clause 66 and the amendment proposed to it.

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

(No Member indicated a wish to speak)

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Chairman, earlier on Mr LEE Cheuk-yan has asked me whether or not I will make a U-turn as a farewell gift to him. I would like to say that it is not my style to make a sudden U-turn and I do not want to make this a farewell gift either. Instead, I think we should act according to the principles we uphold.

The amendment from Mr LEE Cheuk-yan proposes to give a definition to "material fact" in clause 66 of the Bill, which is on the dissemination of false or misleading information. His proposed definition is and I quote: "material fact 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." (End of quote). The meaning is that it is an offence if someone in the course of disseminating information has omitted any information which is "likely to materially affect the price of the residential property", or when false or misleading information is provided in the dissemination of such information.

I can see that Mr LEE Cheuk-yan's amendment may have made reference to certain provisions in the Securities and Futures Ordinance (SFO). Since the share prices of listed companies are sensitive to market information, so it is provided in the relevant sections of the SFO that listed companies have a legal responsibility to timely disclose price-sensitive information. However, in the case of first-hand residential properties, the price is determined by the vendor and it is not affected by what is called price-sensitive information. Suppose the law requires the vendor to provide information which is "likely to materially affect the price of the residential property", the vendor will be left not knowing what should be done. He will not know what kinds of information should be provided before the requirements in law can be fulfilled. As for re-sale price of residential

properties when first-hand properties become second-hand properties, it is likewise under the influence of many different factors which are hard for the vendor to foresee. So we would think that the amendment from Mr LEE Cheuk-yan is not likely to produce the effect he desires.

With respect to the concern of Mr LEE Cheuk-yan, he has also indicated just now that he understands we have proposed another amendment and that is the new clause 18A. The new clause requires that a sales brochure should set out the information that is known to the vendor but is not known to the general public and which is likely to materially affect the enjoyment of the residential property. We consider that our amendment can better achieve the effect hoped to be achieved by the amendment from Mr LEE Cheuk-yan. Even if the two amendments can achieve the same effect, we believe our amendment can better tackle the problems concerned. As the relevant information means "information on any matter that is likely to materially affect the enjoyment of the residential property", the vendor should be well aware of whether or not such conditions exist in the residential property and it will be difficult for him to shirk his responsibility. This would be better than making property prices a standard to go by, especially when it comes to the question of judging what factors will affect property prices. In an upturn in the market, how are we to tell what factors are affecting property prices? Purchasers will find it hard to ascertain such factors. On the other hand, if the purchaser enjoys his property and regardless of whether there is a landfill or what next to his flat, what affects his enjoyment of the flat may not have any effect on property prices. This is especially the case in a market upturn. Therefore, we have proposed this amendment because in our opinion, there is no need to add the amendment from Mr LEE Cheuk-yan to the Bill.

Chairman, we believe that our amendment is more effective, workable and can better ensure consumers getting full information about residential properties. I therefore implore Members to oppose the amendment from Mr LEE Cheuk-yan.

I so submit. Thank you, Chairman.

**MR LEE CHEUK-YAN** (in Cantonese): Chairman, I must say that this is not giving a present to me but to consumers. I really hope very much that consumers can be given more protection in respect of information. If my amendment is passed and if the amendment from the Government which proposes

that sales brochures should set out the relevant information is also passed, consumers will actually be offered double protection.

The Secretary was right when she said that I had made reference to the Securities and Futures Ordinance (SFO). It is stipulated in the SFO that all price-sensitive information must be disclosed. Is price-sensitive information on shares totally different from information on property prices? I do not think so. In terms of share prices, there are of course many different developments in the daily operation of a company which will affect share prices. And when it comes to selling properties, there are many kinds of information which the prospective purchasers should know.

I therefore think that the sensitive information specified in the SFO is as important as information which affects property prices with respect to the protection given to the purchase of first-hand residential properties. Since there is such a protection in the SFO, why is this kind of protection absent in the Residential Properties (First-hand Sales) Bill? It is precisely because the Secretary has just talked about the importance of information in the SFO that I am convinced such information is likewise important to property prices as it will affect the decision made by purchasers. If purchasers get hold of such information, they will take it into account before the purchase. According to the Secretary, property prices are determined by vendors. However, if a vendor cannot sell the properties by any means after providing such information, then he has to lower the prices.

So if purchasers get hold of such information, a balance can then be struck. This is because they can choose not to buy after obtaining such information and that will force the vendor to lower the property price. Therefore, this is actually effective. As the purchasers get hold of such information, they can affect the vendor, that is, the developer, in setting the property price. Hence information is a powerful protection.

So with respect to the idea that it is vendors who make the final decision and purchasers cannot do anything to affect the pricing, I do not agree with it. When purchasers decide not to buy, this will affect the pricing and force vendors to lower prices. This kind of protection is therefore important. I hope Members can lend their support. Thank you, Chairman.



**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEE Cheuk-yan be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Cheuk-yan 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.

Functional Constituencies:

Dr Margaret NG and Mr CHEUNG Kwok-che voted in favour of the amendment.

Dr Raymond HO, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him and Dr Samson TAM voted against the amendment.

Ms LI Fung-ying, Mr IP Wai-ming, Dr PAN Pey-chyou and Mr Paul TSE abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted in favour of the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr CHEUNG Hok-ming and Ms Starry LEE voted against the amendment.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, two were in favour of the amendment, 14 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, 13 were in favour of the amendment, four against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 66 stands part of the Bill.

**CHAIRMAN** (in Cantonese): 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.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr CHAN Kam-lam, 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, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, 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 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 in favour of the motion.

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

THE CHAIRMAN announced that there were 44 Members present, 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.

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| <b>CLERK</b> (in Cantonese): New Clause 16A | Examination and revision of sales brochure                           |
| New Clause 18A                              | Contents of sales brochure: other information required to be set out |
| New Clause 23A                              | Application of sections 16A to 22 to sales brochure made available   |
| New Clause 29A                              | Application of sections 26 to 28 to price list made available        |
| New Clause 50A                              | Owner must not enter into agreement without certain provisions       |
| New Clause 50B                              | Provisions supplementary to sections 50 and 50A                      |
| New Clause 50C                              | Offences relating to sections 50 and 50A                             |
| New Clause 53A                              | Purpose of Register of Transactions                                  |
| New Clause 55A                              | Exception: property sold or offered to be sold to associated entity  |
| New Clause 55B                              | Exception: development constructed by Housing Authority              |
| New Clause 64A                              | Interpretation of Part 4   |
| New Clause 65A                              | Misrepresentation: civil liability.                                  |

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Chairman, I move the Second Reading of the new clauses which have been read out just now. The amendments are set out in the paper circularized to Members. These amendments are introduced after considering the views of the Bills Committee and the stakeholders.

I will give a brief account of these proposed new clauses. The new clauses 16A and 18A are about requirements on sales brochures. We propose that sales brochures made available to the general public should be printed within three months before the sale and a version examined and with information updated as when necessary.

After considering the views of the Bills Committee, we would think that the vendor should examine and update the sales brochure timely. In addition, we propose that a sales brochure should set out relevant information that is known to the vendor but is not known to the general public and is likely to materially affect the enjoyment of the residential property. The above requirements will help further enhance the accuracy and reliability of sales brochures.

The new clauses 23A and 29A are to stipulate clearly the application of the relevant clauses to a sales brochure and price list, that is, copies of a sales brochure and price list which have been made available to the general public under sections 23 and 29. This will help make clear the date of commission of the relevant offences for the purpose of counting the three-year prosecution time limit as specified in clause 73.

The new clauses 50A, 50B and 50C are on a preliminary agreement for sale and purchase (PASP) and an agreement for sale and purchase. Clause 50A seeks to provide that irrespective of whether or not the vendor and the purchaser have entered into any PASP, the agreement for sale and purchase they enter into must contain certain mandatory provisions applicable to the situation of the property. Clauses 50B and 50C are amendments of a technical nature and in the wording.

The new clause 53A makes clear the purpose of the Register of Transactions to prevent the relevant information from being used in purposes other than those prescribed in this Bill. This is a new clause proposed in response to a recommendation from the Office of the Privacy Commissioner for Personal Data, Hong Kong.

Clause 55A is a new clause proposed in response to the views put forward by The Real Estate Developers Association of Hong Kong and The Law Society of Hong Kong, the purpose of which is to give an exemption to first-hand residential properties sold or offered to an immediate family member, an associate corporation or a holding company.

We propose that the relevant transactions can be exempted from the requirements on sale arrangements, that is, requirements in Divisions 2 to 7 of Part 2. However, when the property in question is sold for the first time not to any immediate family member, associate corporation or holding company, the sale will not be given any exemption.

The new clause 55B is on the exemption of a development constructed by the Housing Authority from the requirements in Part 2 of the Bill. When I spoke during the resumption of the Second Reading debate, I explained the justifications for the proposed exemption and I will not repeat them here.

The new clauses 64A and 65A are on the offence of misrepresentation. We have accepted the view of the Bills Committee to include a clause on civil liability to facilitate the purchaser who is induced to purchase a specified residential property by misrepresentation to lodge a civil claim.

All these new clauses seek to clearly reflect the policy objective of the Government and ensure the practicability of the measures to facilitate the smooth operation of the Ordinance after it comes into force. It is hoped that the transparency in the sale of first-hand residential properties will be further enhanced and hence greater protection will be given to consumers.

The Bills Committee has discussed these new clauses in detail and broadly agreed to them. I hope Members will render support to these new clauses.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the new clauses 16A, 18A, 23A, 29A, 50A, 50B, 50C, 53A, 55A, 55B, 64A and 65A be read the Second time.

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

**MS AUDREY EU** (in Cantonese): Chairman, I wish to talk briefly about two of these clauses and I hope my comments can be put down on record.

The first clause I wish to talk about is clause 18A. As we know from the speech made by the Secretary earlier and the speech made by Mr LEE Cheuk-yan on the last amendment, a sales brochure should set out the relevant information as prescribed by this Bill plus other contents as well. The Law Society of Hong Kong (Law Society) has put forward many views on this issue. It has considered that certain land lease terms or land titles between owners, such as the right of way, should be disclosed to the purchaser under many circumstances. But there is no hard and fast rule about it. As this clause only sets out some terms that must be made available, it is therefore likely that a sales brochure does not include information that consumers need to know. Clause 18A is proposed by the Administration in response to comments made by Law Society.

However, The Law Society remains to have a strong view about the amendment in clause 18A. This is because Law Society has only come to know about this amendment at a very late point in time. Law Society therefore hopes that the Government will continue to discuss the matter with it and listen to its views.

The Law Society thinks that the first unclear point is about the information as referred to in clause 18A(1)(b). Just what kinds of information are included in "the information is known to the vendor but is not known to the general public"? Chairman, Mr LEE Cheuk-yan has suggested in his speech earlier that the words "material fact" should be added to another clause — that is, the clause which has just been put to vote. The Secretary replied at the time that there was no need to add these words because "relevant information" was set out in clause 18A, meaning "information on any matter that is likely to materially affect the enjoyment of the residential property". But that is somewhat different from

Mr LEE Cheuk-yan's proposal. Mr LEE Cheuk-yan has made reference to the securities law and as we know, information which affects share prices is crucial, and so he has extended this to regard information which affects property prices as crucial as well. Chairman, about "information on any matter that is likely to materially affect the enjoyment of the residential property" in clause 18A, exactly what kinds of information are included? This clause is not as clear as the amendment from Mr LEE Cheuk-yan.

Chairman, I also wish to point out that since this Bill has to be passed within a very short time in great haste, many of the amendments and changes in the wording are proposed at a very late stage in time. Chairman, Dr Margaret NG has mentioned in her speech earlier that the marked-up copy of the Bill has many colours in it — red, yellow, green and blue, which shows how frequent changes have been made. Even the wording accepted in the end still has room for improvement. This is a point I particularly wish to make.

Chairman, I wish to refer to another clause and that is clause 55A. Chairman, clause 55A is mainly about exemption given to the Hong Kong Housing Authority (HA) ..... it should be clause 55B. Chairman, this is related to the original clause 10 of the Bill, which is on the application of the Ordinance. Clause 10 of the Bill provides for situations in which the Ordinance does not apply where exemption should be given. Clause 10(6) states that a development constructed by the HA should be given exemption. During the deliberations of the Bill in the Bills Committee, many Members including myself have opposed this. We have questioned why the HA does not have to comply with the relevant requirements. In our view, even the HA is a statutory body funded by the Government, it should comply with the requirements like all other developers.

Chairman, I wish to mention in particular the fact that the HA once constructed Home Ownership Scheme (HOS) flats — though the HOS has ceased now — at that time the practice of Private Sector Partnership Scheme (PSPS) was adopted and private developers were participated in building HOS flats. In other words, about the HOS flats launched by the HA, some of them were built by the HA itself and professionals like surveyors employed by the HA were responsible for the construction; whereas the construction of some other HOS flats was contracted out to private developers and they took part in the construction by tendering for contracts. When these projects were put up for sale, the private developer and the HA would share the profits according to a particular calculation method and both parties agreed on how shopping malls were to operate. But for



those small owners of HOS flats, irrespective of those built by the HA or under the PSPS, there was no difference between the two types of flats.

I have raised a question at that time and that is: If exemption is given to projects constructed by the HA, would it be fair to the PSPS project — that is, the HOS flats contracted out to be built by private developers under the PSPS of the HA are subject to the regulation of the Bill? In the same housing estate with units offered for sale, a few blocks may be built by the HA while some others are built by a private developer. Why is it that the latter ones are regulated by the Bill and things such as the sales brochure, price list and show flat must be provided while the former ones constructed by the HA are not required to comply with these requirements?

There has been much argument over this issue. The explanation from the Bureau is that in many instances the HA is unlike a private developer which employs professionals to construct a project. Actually this is not the case. The HA also employs many professionals and it also needs surveyors and professionals to take part in the construction. Therefore, it is not true to say that no professionals are involved in the construction projects of the HA. The Bill should therefore also apply to the HOS flats constructed by the HA. It is only that the Secretary is unwilling to do so.

Chairman, the new clause 55B is the result of a compromise made between Members and the Administration. The requirements in clause 55B, as Mr Alan LEONG has said in the resumption of Second Reading debate, are the result of a compromise. The HA will still be given exemption. When we read clause 55B carefully, we will find that many parts of the Bill do not apply to the HA, especially those Divisions which I have mentioned, that is, Divisions 2, 3, 4, 5, 6, 7 and 8. That is, those requirements on sales brochures, price lists, show flats and so on will not apply to projects constructed by the HA. Only the requirement on misrepresentation will apply.

Chairman, I would think that such a compromise shows that statutory bodies and other enterprises do not stand on the same par and both of them do not abide by the same law. I only wish to have my views put on record. Since there is an urgent need for the passage of this Bill, it is only with reluctance that we accept this compromise proposed by the Bureau. Thank you, Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, I have mentioned when discussing the amendments under scrutiny earlier that after the completion of a sales and purchase agreement for a property — especially after entering into a sales and purchase agreement for uncompleted flats — if it is due to problems with the purchaser that the agreement cannot be executed and there is a problem of the purchaser being claimed the difference in prices as a result of rescinding the agreement, the Secretary has referred to clause 49(2)(c) in her reply which is the following: "the owner does not have any further claim against the person for the failure". I wish to remind the Secretary that as far as I understand it, this clause only applies to the situation where a preliminary agreement for sale and purchase is not executed within three working days after the date on which the agreement is signed. If it is the case of a transaction relating to a formal agreement for sale and purchase for uncompleted flats and if the purchaser forfeits his deposit during the period before the completion of the flat in question, I do not know if clause 49(2)(c) can exempt the liability involved when the purchaser forfeits his deposit before taking possession of his flat which is an uncompleted flat at the time of purchase. This is because the agreement which has been entered into is not a preliminary agreement for sale and purchase but a formal agreement for sale and purchase. So I have queries as to whether the purchaser under such circumstances will be protected by clause 49(2)(c) because this seems to involve a different set of circumstances.

Chairman, first of all, I wish to say that I welcome the many amendments proposed by the Secretary, especially that relating to clause 29A. Chairman, a problem we run into when we buy properties is like that faced by owners of negative equity properties who sought help from me over the past years and that is, the price list. Not only the biggest developer in Hong Kong but also two or three other developers use all sorts of tricks to withhold certain information or mislead the public with respect to price lists for residential properties. This problem does not only appear in residential properties sold about a decade ago but also those during the past few years for which we hear complaints about price list from time to time.

In the past, the problem of property prices being manipulated was very serious. I think some people here may have this kind of experience. At the time when sale for the properties in a certain development starts, the agent may ask the prospective buyer to come to his office and talk with him in private. The agent tells him that all the units which the developer has put up are sold. What I am talking about is a real-life experience. Then the agent asks the prospective buyer to wait for a while, saying that there may be some other units which can be offered for sale. Then he comes back with a slip of paper, saying that there is a certain unit, say, flat C on the 18th floor in block 1, which can be offered for sale. He tells the prospective buyer the price of that unit. But that is done verbally and there is no black and white price list. In this way the agent says all of a sudden that there is a unit for sale and he stresses that this is the only one available. He gives the prospective buyer an impression that it is a rare opportunity. He does not base on any list when he says that a certain number of units are available and he only says by word of mouth that this unit is offered at a certain price. And there is no way to tell whether or not the price is true. The prospective buyer can only trust the agent. I have once heard from senior real estate agents that people in the trade use this method to test market response. When the sale for a development commences, there may be one real estate agent or even dozens of them who manipulate prices from behind. When they see that some 100 to 200 people come to view the show flats, the actual price may be say, \$4,800 per square foot, since there are many viewers, these agents will try to offer a different price every minute or to every viewer, then adjustments or increases are made to the price from time to time. This is to gauge the demand or the upper limit of the price of the prospective buyers. So there could be some 10 to 20 agents all trying to test the market sentiments. I can tell the Secretary that this method of selling flats in a development has been widely used during the past decade or two.

This shows that developers use some improper or even extremely unethical practices to boost market sentiments. When people walk into a sales office for the flats, the first impression they get is that prices are always on the rise and the second impression is that the number of flats offered is not many. The third impression is that the real estate agents seem to be there to provide exclusive service to you. They would give you exclusive information and they are especially nice and friendly to you. It seems that they may be trying very hard to get a flat especially for you but the fact is that there may be more than 1 000 flats for sale. So in a way these agents are hiding the truth and they may even be controlling the prices. It is obvious that prospective buyers are under the

influence of the sentiments fostered by these agents and it can be said that they are misled and hence fallen into the trap set by the developers. In the absence of information which is clear, objective and legally-based, the prospective buyer may enter into a preliminary sale and purchase agreement under a confused state of mind.

The price list is an important piece of information. For myself, I actually bought my first property in the form of an uncompleted flat. It was back in the 1980s. The things I have just talked about might not be entirely nonexistent in those days, but at least they are not so common. At that time the developer might offer a few hundred or even more than 1 000 flats for sale in one go and the buyers could refer to the price list to learn clearly the prices of the flats in an entire block. They could choose the flats according to information provided by the developer. They could choose flats they liked with a particular direction. Those flats with a sea view might be some 10% more expensive and those on the higher floors might fetch a higher price. A flat which was one floor higher might be a few thousand dollars or ten thousand dollars more expensive. All these things were clear enough.

Then later on, especially in the 1990s, things I have mentioned just now, that is, those improper and unethical practices, began to take place. The real estate agents used these tactics to influence the prospective buyers and these buyers were cheated, misled and induced to enter an agreement with an unclear state of mind. They then bought the units. When they might want to back off, they had to bear the legal responsibilities. Therefore, I would think that it is right and reasonable to propose in the Bill and clause 29A that the price list should come under regulation and in particular, any change to the information shown on the price list should also be set out.

Chairman, I also hope very much — I do not know if it is provided in other clauses — that once a preliminary agreement for sale and purchase is signed, the price of the unit in question should be announced within a specified time. I have a faint memory that this is specified in other clauses. I hope the Secretary can ascertain this point. If all the property prices are announced within a short time, this will offer a greater protection to future prospective buyers. In this way they can avoid coming under the influence of the market sentiments produced by the developer. The developer may use some false information and produce an impression that prices are always on the rise and if the buyers do not immediately

buy the units today, the price of the next batch of units or the price on the following day may be 3% or 5% more expensive. All these practices and tactics have been commonplace during the decade or so in the past. Property prices may have actually gone down, but the agents have distorted the truth and the consumers have been misled and hence subject to losses.

Chairman, we therefore support the relevant amendments and we hope that these amendments can protect consumers. Thank you, Chairman.

**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, perhaps let me explain a bit. First, we will certainly keep in close contact with The Law Society of Hong Kong. And also, with respect to the exemption given to the Hong Kong Housing Authority (HA), we cannot simply consider whether or not any professionals are hired. This is because many clauses in the Bill on sales brochures are based on the regulatory regime for private buildings in general, for example, the occupation permit approved by the Buildings Department. However, with respect to buildings constructed by the HA, they are not covered under this regulatory regime but its own regime. So we cannot adopt a simplistic approach and put the HA under the present regulatory regime for first-hand residential properties. This is because many practices which are different from those found in the market are involved.

Having said that, we understand the wish of Members that the HA should comply with the requirements of the Bill as much as possible. So even the HA is exempted from Part 2 of the Bill now, it has to comply with the fundamental requirements in that Part, such as those related to sales brochures, price lists, and so on. But I hope Members can understand that some arrangements of the HA, like the use of a balloting system to determine the order of priority for the sale of its flats to eligible persons, are not market practices. It remains, of course, that the HA will comply in principle with the requirements as set out in the new regulatory regime now.

Mr Albert CHAN has asked just now about the arrangement for the announcement of the price of the unit after the signing of preliminary agreement for sale and purchase, it is specified in the Bill that such information must be made public within 24 hours. Such information not only has to be made public by the developer, but also uploaded to the electronic database set up by the regulatory body, that is, the Authority. This will greatly enhance the flow and transparency of information in the market as a whole. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the new clauses 16A, 18A, 23A, 29A, 50A, 50B, 50C, 53A, 55A, 55B, 64A and 65A be read the Second time. 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 Albert CHAN rose to claim a division.

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

(Mr Alan LEONG raised his hand to indicate a wish to speak)

**CHAIRMAN** (in Cantonese): Mr Alan LEONG, what is your question?

**MR ALAN LEONG** (in Cantonese): Chairman, since clause 55B to be put to vote involves the Hong Kong Housing Authority, I wish to declare interests. I am a member of the Hong Kong Housing Authority.

**MR IP KWOK-HIM** (in Cantonese): I also wish to declare interests. I am a member of the Hong Kong Housing Authority and also a non-executive director of the Urban Renewal Authority.

**MR WONG KWOK-KIN** (in Cantonese): Chairman, I also wish to declare interests. I do not know why a declaration has to be made but since Mr IP Kwok-him have done so, I will just follow suit. I am also a member of the Hong Kong Housing Authority and a non-executive director of the Urban Renewal Authority.

**CHAIRMAN** (in Cantonese): Since the question put is related to a government policy, offices held by Members will not affect their right to vote. Moreover, the Rules of Procedure does not require a Member to make a declaration if a provision is related to an organization that the Member serves. So, Members may decide themselves whether or not to make a declaration.

**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.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, 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, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN 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 41 Members present, 40 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): New clauses 16A, 18A, 23A, 29A, 50A, 50B, 50C, 53A, 55A, 55B, 64A and 65A.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Chairman, I move that the new clauses read out just now be added to the Bill.

*Proposed additions*

**New clause 16A (see Annex II)**

**New clause 18A (see Annex II)**

**New clause 23A (see Annex II)**

**New clause 29A (see Annex II)**

**New clause 50A (see Annex II)**

**New clause 50B (see Annex II)**

**New clause 50C (see Annex II)**

**New clause 53A (see Annex II)**

**New clause 55A (see Annex II)**



**New clause 55B (see Annex II)**

**New clause 64A (see Annex II)**

**New clause 65A (see Annex II)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be added to the Bill.

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. 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 Albert CHAN rose to claim a division.

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

(During the ringing of the division bell, THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

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

**DEPUTY CHAIRMAN** (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 Fred LI, Dr Margaret NG, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Emily LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, 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, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE DEPUTY CHAIRMAN, Ms Miriam LAU, did not cast any vote.

THE DEPUTY CHAIRMAN announced that there were 39 Members present, 38 were in favour of the motion. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was passed.

**CLERK** (in Cantonese): Schedule 2.

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

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedule 2 stands part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

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

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

**DEPUTY CHAIRMAN** (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, Dr David LI, Mr Fred LI, Dr Margaret NG, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Emily LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, 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, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE DEPUTY CHAIRMAN, Ms Miriam LAU, did not cast any vote.

THE DEPUTY CHAIRMAN announced that there were 39 Members present, 38 were in favour of the motion. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was passed.

**CLERK** (in Cantonese): Schedule 3 and Schedules 5 to 8.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy Chairman, I move the amendments to Schedule 3 and Schedules 5 to 8, as set out in the paper circularized to Members by the Legislative Council Secretariat.

Schedule 3 sets out the "entities specified" referred to in the Bill. The Administration proposes amendments to Schedule 3 purely because of the change in the positions of some provisions in the principal legislation, thus making it necessary to change the references to the relevant provisions in the heading of Schedule 3.

Schedules 5 to 7 are mandatory provisions that must be included in an agreement for sale and purchase. The Administration's amendments to the Schedules are mainly technical in nature, some of which are proposed in response to the recommendations of the Bills Committee. In addition, some amendments are proposed in response to the proposals of The Law Society of Hong Kong. For example, in Schedule 5, for projects outside the Consent Scheme, the time limit for the vendor to notify the purchaser in writing that the vendor is in a position validly to assign the property is set to be within six months after the issue of the occupation document.

Schedule 8 is about the requirements for the vendor's information form. The Administration proposes to amend Schedule 8 because we have proposed the addition of a new clause 16A which requires that vendors can only distribute sales brochures which have been printed or examined/updated within three months. Therefore, we propose that the vendor's information form for prospective purchasers of a completed property can be simplified.

The Bills Committee has had detailed discussions on the amendments and generally agreed to the amendments. I hope that Members can support these amendments. Thank you, Deputy Chairman.

*Proposed amendments*

**Schedule 3 (see Annex II)**

**Schedule 5 (see Annex II)**

**Schedule 6 (see Annex II)**

**Schedule 7 (see Annex II)**

**Schedule 8 (see Annex II)**

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

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, this is the last batch of amendments that needs to be dealt with. The large number of amendments to a certain extent reflects the fact that in the process of scrutiny, Members did not act like a rubber stamp by passing the Bill without looking. In the whole Bill, the Schedules particularly lay down many stipulations in respect of sale and purchase and these provisions in the Schedules are of paramount importance in protecting both purchasers and vendors. Therefore, the amendments to the provisions in the Schedules will also affect the interests of various parties.

Therefore, Deputy Chairman, on the addition of clause 11A to Part 2 of Schedule 7, I am somewhat worried and concerned. I am not sure if my concerns are warranted. Clause 11A in Part 2 of Schedule 7 is related to the rights of the vendor and the clause specifies that in specified circumstances, "..... 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."

Deputy Chairman, on this part, of course, such issues concerning rights and money as the amount of deposit would depend on the clauses of an agreement for sale and purchase but I am not very clear about the focus therein and I also have some concerns. The phrase in the clause is "the amount of excess". If the relevant payment, including the amount of deposit, is enough to meet all expenses, after the addition of clause 11A to Part 2 of Schedule 7, why are the

vendor's solicitors able to release to the vendor the amount of excess over and above the sum sufficient to discharge the mortgage or charge? Should the amount of excess not be returned to the purchaser rather than issued to the vendor? Of course, there may be some grounds for this clause but I think that judging from the wording on the surface, it seems there is a lack of protection for the purchaser.

Deputy Chairman, after the passage of the relevant provisions, the whole Bill will be read for the Third time and I only wish to take this opportunity to express my final concerns. Earlier on, I have raised a number of question: First, concerning the definition of "the day on which completion of the sale and purchase is to take place" in the legislation, particularly the provision of more reasonable protection for prospective buyers after the completion of a transaction on first-hand uncompleted flats, I still have some concerns and doubts and second, I am also worried that there is still the possibility that property developers may recover the price difference from purchasers as a result of the cancellation of the agreement.

Of course, I have said that the Secretary cannot address all my concerns by citing clause 49. If there is any inadequacy in the provisions in the future, I hope that a review could be conducted within a reasonable time to ensure that the newly-passed legislation can be amended further, so that it would not be biased towards protecting property developers and that buyers can also be afforded reasonable protection. Thank you, Deputy Chairman.

**MS AUDREY EU** (in Cantonese): Deputy Chairman, I wish to comment on the last group of amendments relating to Schedules 5, 6 and 7. Deputy Chairman, the contents of these three Schedules are actually similar in that they specify the clauses that must be found in a standard agreement for sale and purchase (ASP). Schedule 5 is related to uncompleted properties put on pre-sale; Schedule 6 is related to completed properties for which Letters of Satisfaction have not yet been issued with; while Schedule 7 is related to properties for which Letters of Satisfaction have been issued. On these three types of cases, there are standard provisions that must be set out in the formal ASP.

Some provisions are very similar. Deputy Chairman, I wish to talk in particular about clause 16 of Schedule 5, clause 14 of Schedule 6 and clause 5 of

Schedule 7. In fact, these three clauses are all related to the same thing, that is, what is called "raising objection in respect of title".

Deputy Chairman, the original clause reads, "Subject to clause 19, the Vendor shall not restrict the Purchaser's right to raise requisition or objection in respect of title", and section 19 is related to equitable interest. A layperson may not quite understand this clause but people involved in the preparation of ASPs know that by "raising objection in respect of title", it means that the purchaser raises queries about the vendor's title.

Deputy Chairman, this provision is a newly-added one. All along, many standard clauses in respect of property transactions exist, for example, the Consent Scheme and the Non-Consent Scheme, but the clause included in the blue bill, that is, the clause found in the three Schedules and read out by me just now, cannot be found among the existing standard clauses.

When I saw these new clauses, I was very worried. We certainly want to protect consumers and do not want to see consumers harmed in any way because of the title. However, if this clause is included to provide that consumers or purchasers/small owners may "raise objection in respect of title" up to the day of transaction, this would not do either.

After signing an ASP, the purchaser and the vendor would exchange the documents on title. The lawyer for the purchaser would assist the purchaser in looking at the documents and raising queries about the title. Then, the lawyer for the vendor will have sufficient time to give a reply. After giving a reply, generally speaking, there would not be any problem, unless a fundamental problem is discovered when the transaction is carried out and as a result, the root of title is affected. In these circumstances, of course, it is still possible to cancel the property transaction even though the final transaction is about to be carried out. Apart from this, instances of cancellation of property transactions would not occur because all documents have been exchanged and all questions have been answered.

The purchaser cannot raise queries again all of a sudden on the day of transaction due to a slump in the property market and say that since the vendor cannot answer the queries in time, the transaction cannot be carried out. Otherwise, would the scale not tilt in favour of the small owner or the purchaser?

In view of this, I said at that time that such a way of drafting had problems and also showed the uncertainty of the Government. In particular, if all small owners or purchasers raise queries on grounds already known to them when their transactions in first-hand residential properties are about to take place, just imagine what would happen?

Therefore, after I had raised these queries, the Government proposed the amendments. Deputy Chairman, I will read out the amended version, "Subject to clause 19 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 to raise requisition or objection in respect of title." How did "under the law" come about? Deputy Chairman, at that time, I pointed out that in fact, there were already relevant requirements under common law and all lawyers preparing ASPs knew when, under common law, "objection in respect of title" could be raised and when the time for "objection in respect of title" lapsed. Therefore, common law should be allowed to remain in effect, so the Government added "under the law". After The Law Society of Hong Kong (Law Society) had read it, it also raised serious queries about this provision, saying common law was common law, and Law Society did not understand what was meant by "under the law". Deputy Chairman, this is the point that I wish to explain in my speech.

Law Society has also pointed out that in many cases, the vendor really has to restrict the purchaser's right to raise queries in respect of title. For example, the land grant of the land concerned may be a term of 999 years but the term for the units sold by the property developer is only 99 years. In these circumstances, the vendor or property developer must be allowed to explain this in the agreement, so that both parties would understand that the term of the units sold is only 99 years and that no queries in respect of title can be raised over this point.

Law Society has also given another example, that is, the discussion between property developers and the Government on lease modifications — in Cantonese, we call this "lease modi". When properties are sold or formal agreements are signed, in the case of an application for modification of lease conditions pending government approval, the property developer can reserve the right to revise the relevant clauses in the future. This would also affect the title.



Of course, recently, we have also seen that there is a special clause in the ASP for Mr LEUNG Chun-ying's property on the Peak. The Fourth Schedule of the ASP states that objection in respect of title cannot be raised in relation to the completed property on grounds of known unauthorized building works. Therefore, what Law Society means is that often, it is necessary to allow the purchaser and the vendor to draw up different clauses for special cases.

I understand that in the process of drafting the Bill, the Government's original intention was that since property developers and buyers are actually not on an equal footing, if too much flexibility is allowed, purchasers would be prone to the exploitation by developers. Even so, the provisions of the Bill may end up being very inflexible and rigid and failing to take into account some situations. Some situations may not be very commonplace but in some situations, it may really be necessary for developers and purchasers to prescribe some provisos on the title. Recently, when Law Society had a meeting with us, it said that clause 16 of Schedule 5, clause 14 of Schedule 6 and clause 5 of Schedule 7 concerning objection in respect of title were still not written clearly enough and that there might still be some loopholes, so it wished to continue to have discussions with the Administration. For this reason, I have to particularly raise this point here. Thank you, Deputy Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, my concern is quite similar to that of Ms Audrey EU. Of course, she looks at this issue from the highly professional perspective of a Senior Counsel, so her arguments are even more explicit.

As I pointed out in a number of my speeches, the clauses in Schedules 5, 6 and 7 are about important requirements relating to sale and purchase, in particular, the sale and purchase of uncompleted flats as such sales and purchases have given rise to the greatest number of legal disputes. In the disputes over the past years, perhaps by dint of the manipulation of the provisions, the dissemination of information or legal proceedings, big property developers were able to secure victories in 99% of the cases, whereas many small owners were left

aggrieved and suffered losses. I hope that the relevant clauses can really protect small owners.

Just now, Ms Audrey EU talked about the issue of raising objection in respect of title and of course, the legislation has to ensure that some purchasers would not be able to cite some excuses to raise objection to title without reasonable grounds due to the fall in property prices. However, in many instances, the rights of purchasers were undermined. For example, in the past, it was only when the buildings were near completion that the purchasers found out that certain aspects were different from what they initially believed to be the case or from the information provided in the pre-sale of uncompleted flats. When the purchasers made enquiries with the property developers, the developers paid no heed to them in 99% of the cases. The property developers would say that the agreement for sale and purchase (ASP) for the properties was final, so if the purchasers wanted to raise any issue, they had to hire their own lawyers. For example, Ms Audrey EU mentioned issues relating to land lease conditions. In the past, I also assisted quite a number of small owners in trying to obtain the relevant information from developers, but for 9.9 out of 10 times, developers resolutely refused to provide the relevant information.

A typical example is a property development in Tsing Yi. Initially, while I was following up the planning of the property development concerned, I learnt that the Government had approved this site near Container Terminal 9 for hotel use. Subsequently, why were transactions of private residential properties carried out? The reason was that when the Government granted the land, it permitted the units to be sold in the form of service apartments but at that time, property owners who bought the flats were not aware of this. When the property owners bought the flats, they thought that it was only a transaction of ordinary private residential properties. Subsequently, they found that many problems existed, including noise and environmental problems. On these problems, as far as I understand, according to the town planning procedures and requirements at the time, the Government's approval for the construction of buildings was not justified.

Subsequent to our enquiries, the Government replied that when the property developer submitted the application back then, it already knew that container trucks would be allowed to use the relevant roads in the future. In order to obtain approval for the construction of buildings, the property developer proposed the adoption of an "enclosed" design for the buildings and the

installation of a central air-conditioning system. It was only after the small owners moved in that they found there was some information in this regard in the application, so they made an application to the Town Planning Board (TPB) to ask it to provide the relevant information to small owners, so as to see what requirements were imposed when the property developer made the application. However, the reply of the TPB was that this was "private information" and unless the property developer supported and made the request, such information could not be released. Subsequently, the small owners wrote to the property developer but it refused to disclose anything.

Therefore, I believe that in the future, when buildings are completed, similar situations and problems ..... because nowadays, on issues relating to their rights and the living environment, small owners are .....

**DEPUTY CHAIRMAN** (in Cantonese): Mr CHAN, what should be discussed now is agreements for sale and purchase.

**MR ALBERT CHAN** (in Cantonese): I understand, Deputy Chairman. This is precisely related to the requirements in Schedules 5, 6 and 7, that is, in the implementation of ASPs for properties, whether or not small owners are protected in respect of the release of the relevant information. Whether or not the information released is complete ..... because the provisions do not provide for the setting out the information in the application to the TPB or the Lands Department. We have tried to do this before. When a property development in Tsuen Wan had been completed, the property owners found that all the trees had been chopped down, so a complaint was lodged. Subsequently, it was found that the property developer had to provide a bond of \$50 million to the Lands Department before the Government would issue an occupation permit. Upon the completion of buildings, many problems relating to the surrounding of the buildings or the property development may occur, and these problems may affect the rights of the small owners.

As regards the clauses set out in the Schedules, just now, Ms Audrey EU raised one very important issue, that is, the power to raise objection in respect of title and under what conditions can objection to title be raised. However, concerning the several examples cited by me just now, for example, the environmental problems at that time or small owners finding the buildings just

half-completed when the property developer notified them to move in ..... in my understanding, if the Government issues a permit of occupation, it does not mean that the environment of a building is actually suitable for habitation and basically, it is only necessary to meet certain building requirements before the Government would issue a permit of occupation. With the permit of occupation, to some extent, the developer can notify small owners to take possession of their flats but their flats may not be really suitable for habitation. Therefore, when such situations arise ..... of course, such situations have occurred less often of late but they could be seen in the past.

Deputy Chairman, in talking about the aforementioned situations, I wish to understand if the clauses set out in the Schedules can adequately protect the power of small owners to request the provision of information and in the event of the refusal of such requests for information, whether or not this constitutes an unreasonable refusal by the property developer or the vendor to disclose information, so that small owners have the right to cancel the agreement according to the stipulations in the Schedules.

I know that in the case of some overseas countries, owners who find problems when moving into properties can hire independent consultants, who are similar to surveyors. The charges for their service are not very high there but it is very expensive in Hong Kong. Take Canada, which I am more familiar with, as an example. Independent consultants can carry out basic inspections on properties. And it may only cost some 1,000 Canadian dollars for them to compile a report. The report has legal effect and is professionally recognized by the Government. If the result of an inspection reveals problems with the property, this would constitute a piece of professional advice and developers cannot refuse to accept it by claiming that this kind of advice is unprofessional. Therefore, when dealing with problems, relatively speaking, this provides greater protection to owners.

Deputy Chairman, I only wish to reiterate the series of concerns voiced by me earlier. Similar cases in the past all attest to the fact that property developers are overbearing because of their great wealth and the whole system is skewed towards developers. All the provisions afford little protection to small owners. Later on, the Schedules will be passed in the voting. I only hope that the relevant clauses set out in the Schedules and their amendments can give small owners reasonable protection. Thank you, Deputy Chairman.

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

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): Secretary for Transport and Housing, do you wish to speak again?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy Chairman, I will be brief. The regulatory authority established by us will closely monitor the implementation of the entire approved framework for regulating the sale of first-hand residential properties. Of course, on Members' suggestions just now on how some of the provisions and arrangements could be made clearer, we will surely follow them up.

However, on Mr Albert CHAN's comment that he agreed with Ms Audrey EU's view just now, I am somewhat puzzled because both The Law Society of Hong Kong and the Hong Kong Conveyancing and Property Law Association Limited proposed the deletion of the mandatory clause concerning the vendor shall not restrict the purchaser's right under the law to raise requisition or objection in respect of title in the agreement for sale and purchase. We believe that not requiring the inclusion of such mandatory clauses in the preliminary agreement for sale and purchase may instead make the vendor add a clause in the agreement for sale and purchase to ban the right of the purchaser to raise objection in respect of title.

We do not find this acceptable, nor is this in line with the principle of protecting consumer interests. Therefore, we do not support the deletion but have made some changes to the wording instead. As I said just now, the regulatory authority will surely follow this up because the entire regulatory regime is new after all. We will surely follow this up and maintain close contact with all stakeholders.

Thank you, Deputy Chairman.

**DEPUTY 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)

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

(No hands raised)

Mr Albert CHAN rose to claim a division.

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

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

**DEPUTY CHAIRMAN** (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, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, 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 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, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

THE DEPUTY CHAIRMAN, Ms Miriam LAU, did not cast any vote.

THE DEPUTY CHAIRMAN announced that there were 40 Members present, 39 were in favour of the amendments. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were passed.

**CLERK** (in Cantonese): Schedule 3 and Schedules 5 to 8 as amended.

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedule 3 and Schedules 5 to 8 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Long title.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy Chairman, I move the amendment to the long title as printed in the paper circularized by the Legislative Council Secretariat to Members.

The proposed amendment is made after the Administration has taken on board the Bills Committee's views. As an amendment to the definition of "specified residential property" in clause 10(1) of the principal Bill has been proposed, a corresponding amendment has to be made to the long title. Moreover, we have also accepted the Bills Committee's view to make some changes to the wording of the Chinese text to make it smoother and clearer. The Bills Committee has already discussed the proposed amendment and generally agrees with it. I hope Members can support this amendment.

Thank you, Deputy Chairman.

*Proposed amendment*

**Long title (see Annex II)**

**DEPUTY CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Transport and Housing be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

Mr Albert CHAN rose to claim a division.

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

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



**DEPUTY CHAIRMAN** (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, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, 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, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, 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, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

THE DEPUTY CHAIRMAN, Ms Miriam LAU, did not cast any vote.

THE DEPUTY CHAIRMAN announced that there were 39 Members present, 38 were in favour of the amendment. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was passed.

**DEPUTY CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**DEPUTY PRESIDENT** (in Cantonese): Bill: Third Reading.

**RESIDENTIAL PROPERTIES (FIRST-HAND SALES) BILL**

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, the

Residential Properties (First-hand Sales) Bill

has passed through Committee with amendments. It is with a sense of gratitude for the support for the passage of this Bill and my opportunity to serve members of the Hong Kong public in my capacity that I move that this Bill be read the Third time and do pass.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Residential Properties (First-hand Sales) Bill be read the Third time.

Does any Member wish to speak?

**MR LEE WING-TAT** (in Cantonese): I will be brief. This Bill has gone through many years of discussion. Here, I must openly commend Secretary Eva CHENG and her colleagues, as well as Mr PESCOD a second time.

I have worked with the Government for many years, and during the scrutiny of this Bill, the Government has, quite rarely and in a most open manner indeed, accepted views which they have sometimes considered difficult to accept, including views put forward by me. Secretary Eva CHENG has made a lot of efforts for this legislative exercise in recent years, taxing her mind and strength to accomplish this task. This is also a laudable achievement that she has made before her departure from the Government. Here, let me once again commend Secretary Eva CHENG and Mr PESCOD as well as her colleagues for their hard work and dedication for this Bill and for making great contribution to the public.

Thank you, Deputy President.

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

**MR ALBERT CHAN** (in Cantonese): Deputy President, two or three months ago the People Power started the filibuster. Had we intended to get in the way of the proposed structure comprising five Secretaries of Departments and 14 Directors of Bureaux and continue to filibuster, the number of times that Yuk-man and I rose to speak and requested for the ringing of the bell absolutely would not have been so low as it was in the last two days, and the number could have been 10 times higher. With regard to the relevant clauses and Schedules, we can actually keep on speaking for two hours on each of the Schedule, as I have numerous cases that I can talk about. Crossing swords and fighting with Mr Abraham SHEK over property developers has been a major part of my work over the past two decades. In the districts, I have received complaints almost every month from small owners against various types of behaviours of the developers. You absolutely will not believe it. For example, a shopping mall of a major developer has even illegally tapped electricity from domestic users. The management company has, through administrative means, directed certain parts of electricity consumption in the car park and shopping mall to domestic users, which means that residential property owners are made to pay for the electricity tariffs for the major developer. Besides, a major developer has turned common areas which are not designated as parking lots into monthly carpark spaces and then pocketed the monthly rent. The wretched means adopted by the developers are just multifarious. You absolutely would not have believed that the wealthiest developers in Hong Kong would resort to such nasty and despicable means had you not personally experienced them.

This Bill today symbolizes a new beginning. It also symbolizes a change in the situation that has prevailed over the years with the Government skewing in favour of the developers and failing to provide protection for small owners. I must commend the Secretary, because I do not believe that Donald TSANG would propose this legislation on his own initiative. I have no insider information, and this is purely my objective analysis. I believe the Secretary has actively championed for this legislation and spared no effort to work for it, and I think the Secretary, with her calibre, must have been able to influence the decision-making of the Government. As it was pointed out during the Second Reading debate, this Bill should have been passed a decade ago when Dominic WONG was in office. But in the face of The Real Estate Developers

Association of Hong Kong and the leadership of Mr Abraham SHEK, the Government was finally forced to "kneel down" and give up. However, I have not heard Mr Abraham SHEK expressing very strong opposition this time around, and I wonder if it is because of the influence of the Secretary. After the passage of this Bill, I wonder if Mr Abraham SHEK will be attacked by his political enemies and hence lose his seat. It is because he has failed to defend his constituents effectively as Eva CHENG can get this Bill passed on the last or second last day of her term of office, which amounts to a heinous crime by Mr Abraham SHEK. Having said that, so long as I continue to chide him, the developers will throw weight behind him and so, I should chide him more, so that he can obtain more votes.

Deputy President, this Bill is, I think, a milestone, and I hope that it can wipe out the injustice and pain suffered by small owners in buying a property over the years. Certainly, their tragic experiences and the liabilities and the low ebbs of life that they were made to face as a result of unfair treatment on them cannot be reversed. I have stood by many of these small owners to ride out the storm with them together, and I have personally seen how they have struggled for survival by various means. I have felt the unfairness of the Government and injustice in society, and I have felt how unscrupulous, shameless and despicable the major developers are. With regard to their behaviours, I feel a great sense of helplessness, and sometimes I feel guilty of not being able to help these aggrieved owners overcome their difficulties. Of course, I have done my best to help them and it is because I want to help them that I have been involved in a lawsuit against a major consortium for 12 years. In this process, my feelings have been kind of mixed. When you are fighting against Hong Kong's wealthiest consortium in court, the pressure that you face is enormous, and while I am now facing three charges made against me by the Government, I actually feel far more relaxed. I wonder if it is an order given by Secretary Ambrose LEE that three charges have been instituted against Yuk-man and me, and we have to appear in court again on the 9th of this month. The police abused their powers and deprived the public of their right to march in a rally, and we were arrested and prosecuted for civil disobedience. This is exactly like what happened to many small owners who faced a lot of legal proceedings because of unfairness in the agreement for sale and purchase.

Certainly, the passage of this Bill today will provide protection to small owners in future. But at this moment when the Bill is about to be passed, apart

from giving the Secretary my commendation and congratulation, I wish to once again express my concern, just as I expressed my concern all those years ago when the Government endorsed the fare adjustment mechanism which allows for increase and reduction in public transport fares. I said to the then Secretary that if John CHAN would accept this proposal of the Government, I would not have much expectation of this proposal. If my understanding then was not wrong, the management of the Kowloon Motor Bus and Long Win Bus should have something to do with Mr CHAN. He is known for being resourceful and smart, and he is good especially in calculation. If even he would accept the Government's proposal to control the increase of public transport fares, I believe the regulation to be imposed on the relevant parties, especially the interest groups, would be very limited. Some people finally accepted the proposal, which was obviously a sign showing that there were definitely defects in this fare adjustment mechanism, and this was later proven to be true.

With regard to this Bill today, Mr Abraham SHEK has not voiced very strong opposition. Is it because the Bill has a lot of grey areas which can be taken advantage of by the developers? If he is resolutely against it, I would, of course, fully support it but since Mr Abraham SHEK has been so accommodating and humble and since he has not expressed strong views against it, I wonder if the Bill has many ..... Frankly speaking, with regard to these proposals put forward by the Secretary, I think the major developers have already engaged all the experts and people who are well-versed in the legislation to examine all of them. While I have heard some people expressing dissatisfaction and saying that they would sue the Government for breaching the Basic Law and many other similar comments, they have eventually let the Government off easily without giving very strong reactions.

If what I am worried about is true, I hope that the Government will introduce amendments accordingly in future. But I absolutely have no extravagant hope, because with regard to Secretary Eva CHENG's successor, who is said to be a former member of the pan-democratic camp, I must say that I absolutely have doubts about him. This guy has no political integrity at all. When he was the Vice Chairman of the Democratic Party, and in order to seek support for his election to the Legislative Council from among members of the District Councils .....

**DEPUTY PRESIDENT** (in Cantonese): Mr CHAN, please focus on the Third Reading of the Bill in your speech.

**MR ALBERT CHAN** (in Cantonese): ..... Deputy President, I am saying that I have no expectation of the future Government, especially this Director of Bureau, because he is a person who has no political integrity and who has deceived his fellow party members. As he could deceive his fellow party members back then, he can deceive members of the public now.

Let me make one more point. He has also failed his duty as an academic, because he had published a book for the Democratic Party before and it was found out that he had plagiarized a youth handbook in the Mainland .....

**DEPUTY PRESIDENT** (in Cantonese): I still have to ask you to focus on the Third Reading of the Bill in your speech.

**MR ALBERT CHAN** (in Cantonese): ..... So, I wish to put this on record. This is very important, for this can be recorded in Hansard, the record of proceedings of this Council, so that the records of these despicable, unscrupulous people can be remembered for centuries to come and their names will be cursed forever. I hope that other people who have read these records will look up information to reveal the contemptible side of these people.

As Mr Abraham SHEK clearly knows, over the past two days I have vented all the grievances that have been held back in me for more than a decade, and I have put on record how these unscrupulous developers have unfairly treated the negative asset owners, especially how owners of Maywood Court have been cheated out of this \$1.7 billion. From the hard-earned money of these ordinary citizens and small owners, the developers have, through unfair legal ..... I am not criticizing the clauses of the Bill. The clauses of the Bill have provided certain protection to small owners. But through their control of information and their control of the legal procedures, and by breaching the principle of justice unreasonably, the developers have continued to enjoy prosperity and wealth by forcing hundreds of families to live in fear and distress.

I personally wish that with the passage of this Bill, the prospective owners, especially prospective owners who buy a property under the protection of this ordinance, will no longer have to go through the ordeal in the past. However, I absolutely do not wish that the comrades-in-arms of Mr Abraham SHEK or the developers whom he represents will be given another opportunity through the grey areas of the Bill or some of its provisions which we may have overlooked.

Of course, not all the developers are unscrupulous. Mr Abraham SHEK, you do not have to worry too much, as some developers still have a little conscience. However, some developers, especially those that I have named earlier on, have taken such a shameless, unscrupulous attitude, and had you not experienced it personally, you absolutely would not have believed that there are people who can be so despicable.

Deputy President, I fully support ..... Over a period of time in the past, I have seldom given my support to the Government. I thank the Secretary once again for giving a gift to Hong Kong people just before she leaves office. I wish her well in her retirement life. Do not feel unhappy with the slight delay caused by us over the last couple of days. I also thank her for the cakes that she brought us yesterday. I ate two pieces of cake yesterday and Deputy President, it is not because I had eaten two pieces of her cakes that I did not repeatedly request the ringing of the bell to summon Members to the Chamber. We have promised her that this Bill can be passed at around noon today. Once again, I wish her a happy retirement life.

Thank you, Deputy President.

**DR RAYMOND HO** (in Cantonese): Deputy President, I would say a few words on behalf of the Professional Forum. First of all, after a persistent fight by Members, the Residential Properties (First-hand Sales) Bill can fortunately be passed today, and this is all because we have a very competent Secretary who has commanded praises and support — Ms Eva CHENG.

I think had it not been Secretary Eva CHENG who is in charge of this Bill, it would have been very difficult for the Administration to obtain the support of the League of Social Democrats and the People Power which have actively participated in the debates and activities in this Council and hence enable the Bill

to be passed before 12.30 pm today. If this Bill cannot be passed today, it will have to be reintroduced to the Legislative Council in the next term. Secretary Eva CHENG's departure from the Government is a great pity to us all. We have all along considered that she has performed remarkably well in the two major areas of transport and housing under her purview. We think that the departure of an outstanding official from the Government is a loss to Hong Kong.

Since the Bill is going to be passed, I have no intention to refute the remarks made by Mr Albert CHAN earlier about his pent-up grievances or the conspiracy theory. The several Members of us in the Professional Forum have taken part in the deliberations of the Bill but Mr Abraham SHEK and Prof Patrick LAU know the contents of the Bill best. Mr Abraham SHEK represents the property developers but it does not mean that he will unsparingly support the property developers. I think his remarks are impartial, and perhaps they are so impartial that certain property developers are not happy with them, but he still spoke boldly and righteously, in order to uphold correct principles. Prof Patrick LAU represents the middle class, and members of the Professional Forum are mostly from the middle class. He represents the middle class, and he is also happy with the Bill. I would say that the deliberations of the Bill have achieved satisfactory results, and we feel deeply gratified by this.

The Professional Forum wishes Secretary Eva CHENG all the best in future. Thank you, Deputy President.

**MR ALAN LEONG** (in Cantonese): Deputy President, I will speak briefly on the Third Reading of the Bill on behalf of the Civic Party.

First of all, the Residential Properties (First-hand Sales) Bill (the Bill) should have been brought into effect many years ago, because a White Bill on the sale of uncompleted residential properties was already published as early as in 2000. Regrettably, the previous terms of the Government did not have the resolve to return justice to property investors and members of the public in Hong Kong.

Discussions on property hegemony have proliferated in recent years. I believe this is closely related to the unjust and unfair practices adopted by the real estate sector in the sale of residential properties. I very much hope that this



breakthrough is the first step taken by the SAR Government in the face of property hegemony after striking a balance among the interests of all sides particularly for the protection of Hong Kong people. I think this is the least step taken to this end, and although it is more than a decade late, it is still better late than never. For this reason, the Civic Party is glad to see the passage of the Bill today. We will also support the Third Reading of the Bill.

Lastly, on behalf of the Civic Party, I extend our best wishes to Secretary Eva CHENG. She has accomplished a good deed before her departure. I believe this Bill will put a wonderful full stop to her political life. Here, we wish Secretary Eva CHENG a happy retirement life.

I so submit.

**MR LEUNG KWOK-HUNG** (in Cantonese): I always tell the story of the Merchant of Venice. I owe you a pound of flesh but the pound of flesh that you will cut from my body must not carry any blood with it. The Venetian merchant is obviously detestable. Are property developers detestable? I would say that they are 400% detestable. Land belongs to the people. This Bill actually has not provided a solution to the basic problem. All it has done is to slightly mitigate a problem which is obvious to all and exists extensively and which has caused sufferings to a large number of people, so that during transactions of residential properties, the purchasers, especially people who buy a property not for investment but for their own accommodation will be provided with a fairer platform for transactions.

Many colleagues have said that Secretary Eva CHENG has done a good thing at the end. This may as well be taken as a good thing, because the things that happened in the past were too bad indeed. Has the Government considered how the problem of the hegemony of and monopolization by real estate developers can be addressed, or can this Bill address the problem of excessively high property prices? No, these problems cannot be addressed. The only problem that can be addressed is the developers reaping handsome profits by cheating even when property prices are already excessively high.

This Council is already accustomed to invariably wishing all outgoing officials good luck. I can point out how Secretary Eva CHENG could have the

motivation to deal with this problem. Her motivation came from the people who have taken part in the rallies and demonstrations held every year, and the demonstrations staged at the entrance of this Council, the Government headquarters or in front of Donald TSANG's office. In the 1 July rally every year, especially the rallies held in the last one or two years, I can see "topple property hegemony" on many of the placards held up by the participants. This is a political process. In every election year — This year is the election year — Members of this Council who are returned by direct elections cannot openly oppose this Bill, disregarding their political affiliations. Let me stress once again that this Bill is not a heavy dose of medicine to address monopolization by property developers, the excessively high land prices and excessively high property prices, but to address a long-standing problem that has existed continuously for at least over a decade. The Government introduced a white bill as early as 12 years ago and it was eventually aborted. This Bill actually should have been enacted a long time ago.

Mr Albert CHAN, Mr WONG Yuk-man or I did not request for a headcount or ask questions that we could have asked only because we consider that passing this Bill is better than having no legislation to impose regulation. This Bill is good, but I wish to reiterate that — I cannot read the mind of Secretary Eva CHENG; I do not know if she has fought for it and maybe she has — I do not believe that without the support of the people or the support of strong public outcries, the Secretary would be able to return the least justice to the people under a ruling regime which is at the service of the property developers. The more Secretary Eva CHENG is commended, the more it shows that this system is corrupt.

Let me cite a simple example. Mr LEUNG Chun-ying pledged in his platform to resolve the deep-rooted conflicts in Hong Kong, vowing that he would address the excessively high property prices and the problem of the people's housing needs not being met properly. Insofar as this Chief Executive is concerned, I will not talk about his problem concerning unauthorized building works. I just do not bother to talk about it, as I do not want my mouth to smell foul from it. When he was interviewed by Bloomberg ..... A week after he was elected the Chief Executive on 25 March this year, he went to Beijing to tell Premier WEN Jiabao that he was elected and to seek recognition from the Central Authorities. It was on that occasion that a reporter quoted his remarks made to an internationally well-known financial media corporation that property prices in

Hong Kong were acceptable and that he did not see overheated prices in property development projects and asked him to give comments. He was beating about the bush at first, just as he did when he faced enquiries about the unauthorized basement. The reporter finally could not stand it and pointed out that the mortgage to income ratio in Hong Kong had already reached 49%.

Deputy President, Mr Abraham SHEK has raised his hand.

**DEPUTY PRESIDENT** (in Cantonese): Mr Abraham SHEK, do you wish to raise a point of order?

**MR ABRAHAM SHEK** (in Cantonese): Deputy President, a point of order. Deputy President, how are the remarks made by Mr LEUNG Kwok-hung just now related to the Third Reading?

**MR LEUNG KWOK-HUNG** (in Cantonese): They are related.

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG, please explain it.

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, I made these remarks in response to the digressed parts of my previous speeches.

**DEPUTY PRESIDENT** (in Cantonese): Please focus on the Third Reading of the Bill in your speech as soon as possible.

**MR LEUNG KWOK-HUNG** (in Cantonese): A minus times a minus equals to a plus. Digressing times digressing equals to no digressing. Were colleagues not digressing in saying how grateful they were to Secretary Eva CHENG, and were they not digressing in praising or chiding Mr Abraham SHEK? When Members chided Mr Abraham SHEK, how was it related to this Bill .....

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG, please focus on the Third Reading of the Bill in your speech.

**MR LEUNG KWOK-HUNG** (in Cantonese): I see. I was only expressing my heartfelt sentiments. When everybody is praising Secretary Eva CHENG, I just cannot stop myself from responding. I have no bias against Secretary Eva CHENG. I do not know her well. I wish to stress that the passage of this Bill in this Council today is not attributed to the motivation of this Council. It is because members of the public have, day and night, night and day — to quote the words of Mr WONG Kwok-hing — voiced their dissatisfaction, saying that they would make their voices heard during the 1 July Rally, that they would make their voices heard on the National Day on 1 October, and that they would point out that the property hegemony has become very serious. These have provided the greatest motivation. It is not because I am smart but because they can no longer put up with it. When he was running in the Chief Executive Election, LEUNG Chun-ying could not evade this problem and he, therefore, made this vow. All I am saying is that LEUNG Chun-ying is a hypocrite, and this should not be a surprise at all.

While we express our gratitude to Secretary Eva CHENG, we cannot forget the people who "dug the well", and we cannot forget that this is all because members of the general public have continuously expressed their dissatisfaction. When the general public answered questions in opinion polls, they continuously pointed out that they most detested property hegemony, that it was most miserable that they would never be able to buy their first home after graduating from university, that it was most miserable that they could not buy a flat under the Home Ownership Scheme, and that their greatest misery was this and that, and even Secretary Eva CHENG had to bear the brunt. I asked Mr Stewart LEUNG the other day in the Legislative Council whether he could provide a list of members of The Real Estate Developers Association of Hong Kong (REDA). It is because I suspect that some of its members have already passed away, and our query is that REDA is not an organization that can exercise self-regulation. It is because this runs counter to a simplest principle of political science: You can never expect a cat to keep watch on a fish.

Have we in this Council not sung enough praises for the officials and the bigwigs? Is it not the duty of this Council to return justice to Hong Kong

people? Is it that we must sing praises for the bigwigs in order to return justice to Hong Kong people? I have a copy of *Outlook on Classical Chinese Literature* with me. These men of letters all praised the bigwigs, because it was impossible for them not to praise the bigwigs back then. But in which dynasty are we living now? Let me say this once again. I do not have any personal grudge against Secretary Eva CHENG. I have not even talked to her before, only that I have had conflicts with her over the incident of the Express Rail Link. I am not trying to single her out for criticism, and I think that she has done a good thing. But let me make it clear that it is not the case that we have done a good thing. It is other people who have done a good thing. Had it not been the election year this year, I believe this Bill would have faced the true kind of filibustering when it was introduced — that would be unlike the filibuster staged by us as our filibustering will only cause a delay of three or four days in the Legislative Council — the other kind of filibustering would mean being dragged into the quagmire of the functional constituencies as one's foot will sink further down for every step taken .....

(Mr WONG Kwok-kin raised his hand in indication)

**DEPUTY PRESIDENT** (in Cantonese): Mr WONG Kwok-kin, do you wish to raise a point of order? Do you wish to point out that Mr LEUNG Kwok-hung has strayed away from the question?

**MR WONG KWOK-KIN** (in Cantonese): What is the relevance of the comments made by him to the Third Reading of the Bill? I call on him to explain.

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, even if you continue to speak in this direction, at the end of the day, you still have to focus on the Third Reading of the Bill in your speech.

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, I have never heard such a thing in a legislature before. When I said that it was Hong Kong people who threatened and defeated the hegemony of property developers, little

did I expect that I would be subjected to such treatment. Deputy President, I can stop speaking and I am going to stop now. Now, I want to put this shameful account into the record relating to this Bill in the Hansard. The suffering of Hong Kong people and their revolt against such suffering are not the motivation bringing about changes, rather, it is because the bigwigs have noticed the problems that changes are made.

I will shut up now. Mr WONG Kwok-kin told me to shut up. He is a representative of the FTU. Mr Abraham SHEK told me to shut up. He is a representative of REDA. The two of them are exactly alike. This time, the DAB is the best-behaved as it did not make any sound.

(A Member in the meeting said, "You shut up")

Mr IP Kwok-him and Mr WONG Ting-kwong also told me to shut up. Remember, this is a farce. We have found that praising officials are allowed, but saying that it is because of the wishes of the public that officials do a good thing is not allowed. This is really laughable.

(Mr WONG Ting-kwong raised his hand in indication)

**DEPUTY PRESIDENT** (in Cantonese): Mr WONG Ting-kwong, do you wish to raise a point of order?

**MR WONG TING-KWONG** (in Cantonese): Mr LEUNG Kwok-hung should comment on this Bill but I do not understand why he talked about issues relating to elections. Has he started his electioneering?

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, he asked me .....

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you have already finished speaking. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... and I said that had this year not been the election year, there would not have been so many people supporting this Bill.

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG, you have already finished speaking. Please sit down.

**MR WONG KWOK-KIN** (in Cantonese): Deputy President, in fact, throughout, none of us has ever denied that the public are the main driving force behind the passage of this Bill. As regards the comments just now, I believe the public will naturally make a fair judgment.

Deputy President, I took part in the scrutiny of the Bill on behalf of the FTU. After the Bill passes Third Reading, members of the public who spend all their life-long savings on buying properties will begin to have some protection and this marks the beginning of progress.

Of course, I do not think that this is a perfect piece of legislation and that in the future, all members of the public buying properties will have nothing to worry about any more. I hope that after the implementation of the legislation, the Government would regularly review the operation of the legislation and identify areas that can be improved and enhanced, so that when members of the general public spend their life-long savings on buying properties, they can be given sufficient protection.

Deputy President, since Secretary Eva CHENG is going to leave the political arena soon, I will also stray from the subject matter a little and say something. I believe that in the formulation of the Bill, of course, Secretary Eva CHEUNG has devoted a great deal of effort. I think it is worthwhile for future officials to follow her example in taking forward policies. Sometimes, the emphasis does not lie in the policy itself but in the approach and sincerity of the official in bringing about the passage of a policy. I believe this is an area in which Secretary Eva CHENG has done a better job. I wish to take this opportunity to wish Secretary Eva CHENG happy retirement and that she would have the chance to continue to serve the Hong Kong public in other capacities.

Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): I have to remind Members here that we are now reading the Bill for the Third time, not having a debate on a valedictory motion.

**MR CHAN KAM-LAM** (in Cantonese): Deputy President, although the Residential Properties (First-hand Sales) Bill (the Bill) is not a valedictory motion, it was mooted for a very long time and had been discussed in society before it was introduced.

When talking about the requirements on first-hand residential properties, we also have to remember that in the 1960s, the Government and property developers agreed to adopt the Consent Scheme, which has since then been adopted to deal with the sale of first-hand residential properties and it is true that in this period, many problems occurred because the development of the real estate market of Hong Kong was really fast. Moreover, we have experienced several economic ups and downs and the property market has also gone through many rough patches. As a result, we can see that nowadays, it is difficult for the public to buy or rent a flat. If a desirable piece of legislation can be introduced to make the future development of our property market healthier and highly transparent, of course, all parties would welcome it very much.

Of course, the efforts made by government officials are worthy of praise and mention. I hope that in the future, the retirement life of Secretary Eva CHENG ..... in fact, it is a great shame that she will retire because she is highly competent. We hope that she could continue to serve Hong Kong society in the future and offer her valuable advice on the future of Hong Kong in various areas.

Deputy President, I am the Chairman of the Bills Committee scrutinizing the Bill and of course, as all Members know, the Government tabled the Bill in the middle of March and we convened our first meeting on 30 March. We had to complete the scrutiny of this piece of legislation with more than 100 provisions within a tight timeframe, so the pressure and challenges facing us were quite great. For this reason, initially, when scheduling the meetings, I was subjected to quite a lot of pressure from Members, with some hoping that we could move faster and others hoping that we would not rush and preferring to go more slowly. Therefore, I had an idea. Since the meeting time remaining in this term was really limited but at the end of the day, the Bill had to be passed within this term,



if we did not do some overtime work and increase the frequency of meetings, the situation would really be very difficult. Therefore, I also have to thank our Honourable colleagues for their effort and co-operation in scheduling the meetings at the very beginning. The colleagues in our Secretariat also did a very good job. Since there are now more rooms in the new building, the Chairman would not be told, as was the case in the past, that no room is available, thus making it impossible for Members who had time to put it to any use.

This time, many Members complained that the meetings scheduled by me had clashed with many other meetings, so they could only run back and forth among different places. The DAB once asked me to join the subcommittee for scrutinizing the reorganization of the Government Secretariat but it was fortunate that I did not. If I had, it would not have been possible for me to chair the meetings of this Bills Committee and the reverse would also be true. Therefore, I experienced a medley of feelings in various areas relating to my work.

Of course, the role played by Mr Abraham SHEK in the scrutiny was also very important because he is one of the representatives from the sector which the Bill seeks to regulate. His performance in the meetings was excellent and he offered a great deal of valuable advice. On the possible issues of concern to the sector that the Bill may cause, for example, the difficulties or problems that may be encountered in law enforcement, he also offered a great deal of advice.

I think our Honourable colleagues were very meticulous in the scrutiny of the Bill. We were so meticulous that not only did we express views on the operation of the Bill, we also expressed a lot of views on the drafting of the legal provisions. At the same time, the Government also took on board our views in many areas, as a result, it proposed a considerable number of Committee stage amendments to the Bill this time around.

Since it is no easy task to pass within a tight timeframe a very complicated Bill that we hope could be implemented satisfactorily, we hope that after the passage of the Bill, the Government can make adequate preparations, so that if the relevant legislation can be fully implemented next year, a better job could still be done. I think that for some time to come, it is all the more necessary for the Government to maintain close contact with the sector to explain to it in detail the future implementation of the Bill, so that it can comply with the relevant requirements more easily in the future.

In addition, it is also necessary for the Government to do a proper job in publicity in this period of time. In fact, when buying properties, members of the public in Hong Kong often have a kind of herd mentality because the property market in Hong Kong is really different from those in other countries. Many Honourable colleagues have pointed out for some time in the past that, in overseas countries, it has not been necessary to pay deposits when buying properties. Members also know that the property markets overseas are not as active as that in Hong Kong and they are almost like a stagnant pool of water. So long as someone would go and have a look at a property development, the property developer would already be very glad. Therefore, compared with the situation in Hong Kong, I believe there are great differences. I also believe that in the property market in Hong Kong, it is not possible not to require buyers to put down any deposit, as is the case overseas, and let buyers pick several units, then refuse to take them a few days later. I believe this would lead to very big problems.

I am also very pleased that the Bill can be read the Third time today. I hope that in the future, the process of selling first-hand residential properties in Hong Kong can be a happy experience for both buyers and sellers and a very fair market can be created.

Here, I also have to thank all Honourable colleagues in the Bills Committee for their co-operation in various areas for some time in the past. Thank you all.

**MS CYD HO** (in Cantonese): Deputy President, as seen from the logic displayed by President Jasper TSANG when he enforced the Rules of Procedure in these past few weeks, whenever he allowed a Member to speak on a certain topic at the beginning, this would mean that other Members would be allowed to speak in reply. So Deputy President, even if it is your hope that the speeches made before or after would not become a valediction motion for Secretary Eva CHENG, I believe you would be disappointed. It is because you have missed the golden chance of forbidding this from the very first beginning. I will also say something to bid farewell to the Secretary.

This Bill has the effect of reducing the kind of unfair treatment which small buyers of properties have long been suffering. This is because these small buyers would not have too many chances of buying properties during their

lifetime. Since they do not have much experience in property transactions, so it is the aim of this Bill that they should be given some protection. This will also help remove some of the inequality that has existed for a long time. It is therefore something worthy of our recognition. The Secretary is lucky in that she can have this Bill as a wonderful conclusion to her career. However, I must also point out some of the blemishes in her term of office. These are about the demolition of the Choi Yuen Village and to change the terminus location of the express rail link all of a sudden from the New Territories to Kowloon West, thereby leading to a surge in construction costs by some \$30 billion. This plan to change the terminus location results in a problem of how law is to be enforced in the terminus station at Kowloon West and how customs clearance for two places is to take place in one location. To date no solution to this is found.

I am very willing to believe that Secretary Eva CHENG is an official with a high respect for procedures and she is committed to performing her duties. But as the saying goes, "It is the butt which determines what the brain is thinking." Since she has joined a cabinet which condones the hegemony of property developers and become part of the SAR Government which does not dare to say no to the Central Authorities, so on many occasions, this loyalty to the party overrides her conscience. Or it can be said that after she has joined such a ruling regime, there is no chance for her conscience to be given a full play.

Deputy President, I therefore would like to advise those officials who have just joined the new ruling regime that they must draw a bottom line in their political career regarding things that they should do and should not do. They must know how to choose between loyalty to the party and loyalty to the dictates of their conscience. When Secretary Eva CHENG chooses to retire, she must have a good reason to do so. For my part, I would not feel sorry for her. I would just wish that she can be an ordinary person from now on, that she can have a purity of heart and a boldness to speak out, and that her retirement life would be happy and fulfilling.

**DR MARGARET NG** (in Cantonese): Deputy President, in general, when a speech is made during the Third Reading, it should be short and concise and it should explain the voting intention of the speaker concerned.

Of course Members would want to talk about what they feel when they have finished scrutinizing a Bill which is very complicated or one which has gone through many twists and turns in the process. This has become part of the tradition of this Council. We would not mind Members doing so provided that these speeches are not too long. As Members are giving these speeches, it is natural that they would show their appreciation for those Members or groups which have worked particularly hard to make the passage of the Bill possible, or they may want to give special thanks to officials who have likewise exerted much effort in the process. However, Deputy President, on this occasion amidst a sea of praises, I would question whether it is a bit excessive. Or it may be that I do not know Secretary Eva CHENG too well and I may need to find out why praises are heaped on her.

Deputy President, with respect to the reasons why this Bill is formulated in the first place and why it is passed today, there are actually two main causes for these. First, as Ms Audrey EU has said in the debate, this Bill should have been enacted a long time ago but this was not possible because of the various kinds of obstacles it had encountered. So there is actually a process leading to this event. Second, I would like to point out that despite my great respect for Mr CHAN Kam-lam and I accept and agree that he has faced many difficulties in the course of examining this Bill because a great number of other issues have had to be handled at the same time, I think Members should not think that this is in any way a good thing or anything we can be proud of. As Ms Audrey EU has said, on many occasions there were just she herself and Mr CHAN Kam-lam who is the chairman of the Bills Committee deliberating on the Bill. This is quite a shocking thing to hear. But we have no other alternative but to pass the Bill. And, we have to study the contents of the Bill in the process. This is something we do out of sheer reluctance and it is definitely not a normal practice.

Deputy President, I wish to make special mention of one thing and that is, I think it sounds especially piercing to my ears when I hear that this Bill must be passed before midnight because Secretary Eva CHENG is about to retire and we should pass the Bill as a farewell gift for her. Deputy President, do we really want to think this way? I can say that it sounds terribly feudalistic to me. Are laws meant to be given away as presents? If we want to give such a kind of presents, should we also do the same to the Secretary for Justice Mr WONG Yan-lung? Or should we pass the Bill which Mr WONG has been in charge of after the new Secretary for Justice assumes office? I have heard this remark

many times. It would be alright if we say this as a joke. But the problem is that not only this remark has been made many times, when Mr LEUNG Kwok-hung has spoken earlier, he has made it clear that this Bill is not a gift to the people from any top officials, or any rich and powerful persons or any of the bigwigs, but the result of our fighting for it, he has not been allowed to say this way. I really think that this is very unfair. The view from Mr LEUNG Kwok-hung is not only justified and reasonable but it also sounds more pleasing to my ears than the view put forward that the Bill is meant to be a gift.

Deputy President, at first I did not intend to speak but I felt compelled to speak up against such unfairness by making these remarks. Thank you, Deputy President.

**MR JEFFREY LAM** (in Cantonese): Deputy President, I am pleased to see the Residential Properties (First-hand Sales) Bill be read the Third time and passed later today. Members from the Economic Synergy will lend their support to this Bill. With this piece of legislation, I am sure when members of the public buy first-hand residential properties, they can have a greater protection. Then are there no more things to be done in future? No, not at all. Members of the public should try as much as possible to know more about the properties they want to buy before coming up with a final decision.

Earlier on there are some Members who have made the remark that all along Mr Abraham SHEK has been standing in the way of passing this Bill and as a result, it is only after prolonged delays that this Bill can be passed. I do not agree to this view. This is because as I have noticed in the process, the Secretary has conducted many different consultation and views have been sought and collected from different trades and sectors across society as well as the public. As a result, this Bill can be read the Third time today.

We can also see that in the course of consultation, the Secretary has kept a good communication and co-operation with Members, the general public and colleagues from government departments. The Secretary considers every one of these parties as equal and different approaches are taken to handle the problems. It can be said that she is fair and impartial.

Let me repeat once more, we support this Bill be read the Third time today. Finally, may I wish the Secretary a happy retirement life. Thank you, Deputy President.

**MR ABRAHAM SHEK** (in Cantonese): Deputy President, there are a few points to which I would like to respond. First, we should not take this Bill as an opportunity for holding discussions on class struggle as well as the rich and the poor. Deputy President, if a policy is good, not only the democratic camp, the DAB, Mr LEUNG Kwok-hung and Mr Albert CHAN have the licence to support it but every member of the public, property developers, the construction industry and other trades and industries will support it, too. It is incumbent upon us, whether inside or outside this Council, to support it because this Bill can be described as a policy needed by the public. Hence, property developers will not withdraw their support for the Bill because the trade will then be regulated. This is not the case. From the outset, The Real Estate Developers Association of Hong Kong (REDA) already said that it would support the Bill. Nevertheless, a good policy has to go through a transition to become a good law.

Deputy President, it is incumbent upon us, as legislators, to turn a good policy into a good law by making it fair, impartial and open to ensure that the public will not be deprived of their rights. Deputy President, insofar as this Bill is concerned, REDA has several points of observation. Of the numerous views raised in the Bill, some can be put into practice but some cannot. While Members may discuss these views frankly, the Government will make its own judgment on whether such views should be heeded or whether it is influenced by certain Members. Nevertheless, it is incumbent upon us, as Members of the Legislative Council or members of chambers of commerce, to voice out. In fact, we have put in a lot of time because of our legal opinion that the Bill will, to a certain extent, have an impact on our fundamental right to speak — not our right to speak as an individual but as a group or company. In our opinion, freedom of speech is crucial.

The second point we have made concerns the right of property ownership, which is permissible under Article 105 of the Basic Law. Despite the making of this point, we do not mean that the Government must address it, but it is obligated to explain to us why it does not do so. Our purpose is to debate with the Government and give ourselves an opportunity to discuss and explain after the

provisions in the law are presented, so that legislators can enact legislation with peace of mind, rather than doing so blindly merely because of public support.

Some Members have criticized us for standing in the way. This is actually not the case. From the outset, property developers already knew that this Bill would eventually be passed. Why would they still stand in the way? We hope that this Bill can be implemented smoothly, unlike many laws already been passed by this Council can still not be enforced, as pointed out by Ms Audrey EU or Dr Margaret NG yesterday. As legislators, we should not shirk our responsibility.

Deputy President, our fundamental principle is to enact a good law. Hence, I would like to tell Mr Albert CHAN that this has absolutely nothing to do with property developers. Property developers are human beings as well as members of the public. Being members of the public, they should bear this responsibility, too.

Second, Deputy President, they have seized this opportunity to engage in class struggle and sow the seed of discord in society. Deputy President, property developers are businessmen. They buy land from the Government legally and seek its approval for the buildings to be constructed later. The relevant laws are passed in the Legislative Council and enforced by the Government. Property developers are required to act in strict compliance with the law. For instance, the exact dimensions must be observed. Even a difference of an inch is not allowed. When properties are put on sale, property developers are still regulated by the law. The strictness of the law will be determined in accordance with the prevailing needs of the community.

Hence, Deputy President, why will there be property hegemony? In what aspects are property developers violating the law? Can the community tolerate if property developers are regarded as hegemony? Under the close watch of the DAB and royalists, hegemony is simply out of the question. This Bill will have an impact on the future of Hong Kong as well as the sale and purchase of properties by our next generation. A good law should have this benefit. This is our responsibility.

Deputy President, despite Members' frequent mention of property hegemony, where is it? If it really exists, the Government should be the only

one to blame. Deputy President, the Government is right to sell land to the highest bidder. Given the exorbitant price of flour, and coupled with the fact that we have to buy flour to make bread, how can the price of bread be cheap? If it is considered that the price of bread should be controlled, then the Government should be called on to increase land supply.

Hong Kong people do not hate the rich and despise the poor. Depending on our own choice, we all have the opportunity to make money and move upwards. Hence, we must not create a group of hated people in society. Deputy President, we must ensure equality, openness, impartiality and fairness in society. As Members, we must not act in accordance with this sort of thinking.

Deputy President, in respect of this Bill, we have spent a lot of our time and effort. We have also raised a number of questions, some of which have been answered but some not. Deputy President, besides REDA, The Law Society of Hong Kong (Law Society) also wrote to the Bills Committee, which had already completed its work, on 27 June. Deputy President, I think I should read out the letter here, so that we can leave a proper account of the Bill in the Hansard. The letter reads,

"The Law Society's Property Committee has made two submissions on the above Bill on 23 April and 6 June 2012. We have raised, *inter alia*, two major concerns on the Bill: (1) the imposition of criminal liability on solicitors; and (2) the rigidity of the proposed legislation and the absence of a mechanism to grant exemption to the statutory requirements in appropriate circumstances."

It further reads, "We understand the Second and Third Readings of the Bill are scheduled for today and shall appreciate if you can please bring this letter to the attention of the Legislative Council Members." This point has been raised by both Ms Audrey EU and Dr Margaret NG, too.

The letter goes on to read as follows, "The Law Society supports the spirit of the Bill. However," — and here is the criticism — "we have grave concern that this complex piece of Bill should be rushed through within a short period of three months after its gazettal on 16 March without sufficient time being given to thoroughly discuss the implications of the Bill and for stakeholders to be consulted on the legislative provisions and the CSAs."



Deputy President, after reading this letter, we have to give Law Society a proper account and put on record in the Hansard to reflect an enormous problem. Insofar as this piece of legislation is concerned, both the Government and Secretary Eva CHENG have done the right thing. The Secretary has pledged to the public that this Bill will be passed by this term of the Legislative Council, and so this Bill is now being tabled before us. Given our responsibility under the separation of powers, we must scrutinize this Bill with prudence. We must not pass any bill tabled before us with our eyes closed.

Deputy President, from the time we were told on 16 March that meetings would be held to this moment when this Bill is going through its Second and Third Readings, I have heard many complaints about the large number of meetings held during the period. As three meetings could be held simultaneously every now and then, we were simply not be able to attend all of them. As pointed out just now by Mr CHAN Kam-lam, he was unable to join the subcommittee set up to discuss matters concerning the five Secretaries of Departments and 14 Directors of Bureaux. However, some meetings attended by us, such as the Bills Committee meetings held for the scrutiny of the Companies Bill and Competition Bill, were sometimes attended by only a few Members, even when it was time for the clause by clause examination. But very often, more than two Members attended the meetings because I was also there. Ms Audrey EU did not mention my name because sometimes I was present but she was not. Deputy President, she was absent because she had to attend other meetings as well. We were actually required to do the same, too. Hence, we have failed to perform our duties properly as Legislative Council Members. Under Rule 76(3) of the Rules of Procedure, we are duty-bound to scrutinize bills. Nevertheless, despite the lack of a quorum on numerous occasions, we could not but proceed with our eyes closed.

Fortunately, Deputy President, I am only sitting here to express my views. But still, some other Members would tease me and ask me whether I have any knowledge of the right of audience as a fundamental right. According to these Members, freedom is not absolute, for there is no absolute freedom. Deputy President, it does not matter whether or not there is such thing as absolute freedom. What matters most is whether or not we are keeping our eyes open to find out if there is such a challenge before us.

Hence, I think that the Government has got it right this time. Nevertheless, this Council should review whether or not we must complement the Government on every occasion by allowing bills to be tabled before this Council when time is so tight, for we will then be required to scrutinize them with our eyes shut. In doing so, how can we do justice to our posterity?

Right, this Bill is now considered by everyone to be good, and so is its legislative spirit. Deputy President, John RAWLS, a contemporary philosopher, once commented that "what is right should take priority over what is good". This Bill is good, but is it right? As Members, we must consider this point with a clear mind. Thank you, Deputy President.

**PROF PATRICK LAU** (in Cantonese): Deputy President, today, I am glad to have listened to each Legislative Council Member who expressed their views on behalf of the sectors that they represent.

Mr Abraham SHEK, who spoke just now, is the representative of the real estate sector. Of course, this Bill has the greatest impact on him. However, the People Power was right in saying we must not forget that the Bill is formulated for members of the Hong Kong public who need to buy their own properties. In fact, the present situation is that, due to the steep property prices in Hong Kong, properties have virtually become the only assets of the public. Therefore, I think the fact that the Bill can be passed within such a short time on this occasion is the result of the co-operation by many people in the Legislative Council.

Moreover, the most important point that I wish to raise is that there are representatives from many professions in the Steering Committee, which formulated this Bill, and they played a very significant role in taking forward the formulation of this piece of legislation. Members are right in saying that the passage of the legislation can actually be traced back to an idea floated long ago, that is, a decade ago. However, why has it taken such a long time to deal with this matter? Of course, this is because a process of experimentation is needed for its implementation.

As an architect, I know that property developers already understand the relevant arrangements and have been making improvements. Being an architect, I also understand very well how to express the actual situation through plans, so

that members of the public know what kind of information is available to help them understand the situation and through something insubstantial, get a picture of how the flats that they will take possession of in the future would be like.

Lawyers have also put forward a lot of views. Also, representatives from real estate agents, who are well-versed in property transactions, and representatives from the regulatory authorities have also participated in the work of the Steering Committee. Last but not the least, the Consumer Council has also brought issues of great concern to the public into the Steering Committee and assisted in formulating the relevant legislation. The Government has also taken this matter forward vigorously. Thanks also have to go to Secretary Eva CHENG and many behind-the-scene heroes, like Eugene FUNG and Mr Duncan PESCOD. This is the fruit of the joint efforts made by all parties.

I only wish to raise one very simple point: I think it is worthwhile for the Legislative Council to reflect further on the Steering Committee's team spirit of taking forward the legislation in concert. Just now, I was very pleased to find that many proposals did not encounter much opposition. If the Legislative Council can continue to take forward a task with such concerted efforts, it will surely be very easy for it to win the recognition of the public and the Government, and bring about progress in society.

In respect of implementation, architects have already fully grasped the requirements under the Bill and have done a great deal of work. Even when building show flats in the past, we were already very prudent, taking care to be very precise down to every inch. I remember that Secretary Eva CHENG also made visits to show flats in person. Such issues as whether or not taking measurements or photos in show flats should be allowed are all matters of concern to the public. Therefore, the successful enactment of this piece of legislation today is really the fruit of the concerted efforts made by many people.

Therefore, Deputy President, here, I am also speaking on behalf of them here because there are a total of 10 members in the Steering Committee and Mr Abraham SHEK often said jokingly that this was "one against nine" because often, the views of property developers were not supported but I can understand this. Mr LEE Wing-tat also made a lot of contribution in this regard. Other professionals like surveyors, architects and lawyers also contributed their efforts. Therefore, I hope that the Legislative Council can pass the Bill in the Third

Reading, so that members of the public can understand that the Legislative Council is actually very powerful. So long as we work in concert together, we can surely promote social harmony and safeguard the biggest assets of the public.

Thank you, Deputy President.

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

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr Albert CHAN rose to claim a division.

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

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

**DEPUTY PRESIDENT** (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 Fred LI, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, 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 CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Dr LAM Tai-fai, 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, Mrs Regina IP, Dr PAN Pey-chyou, Dr Samson TAM, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Mr Abraham SHEK abstained.

THE DEPUTY PRESIDENT, Ms Miriam LAU, did not cast any vote.

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

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

## **SUSPENSION OF MEETING**

**DEPUTY PRESIDENT** (in Cantonese): I now suspend the meeting until 9 am on 3 July 2012, next Tuesday.

*Suspended accordingly at twenty-two minutes to One o'clock.*

**Annex II**

## Residential Properties (First-hand Sales) Bill

**Committee Stage**Amendments moved by the Secretary for Transport and Housing

| <u>Clause</u> | <u>Amendment Proposed</u>   |
|---------------|---|
| 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 <i>associate corporation</i> , by deleting “company or” (wherever appearing) and substituting “corporation or”.  |
| 2(1)          | In the definition of <i>authorized person</i> , in paragraph (a), by deleting “supervises” and substituting “is appointed by the owner of the land to supervise”.   |
| 2(1)          | In the definition of <i>building contractor</i> , in paragraph (b), by adding “general” after “registered”.   |
| 2(1)          | In the definition of <i>sales brochure</i> , in paragraph (b), by deleting “section 16(2)(a)” and substituting “section 16A(2)”.  |
| 2(1)          | In the definition of <i>specified body</i> , by deleting “under” and substituting “by”.   |
| 2(1)          | In the definition of <i>working day</i> , 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 ( $\gamma$ ), a beta ( $\beta$ ), a theta ( $\theta$ ), a pi ( $\pi$ ), a sigma ( $\Sigma$ ), an omega ( $\Omega$ ) or a psi ( $\Psi$ ).
- (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<sup>Σ</sup>[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 “<sup>2</sup>[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 <sup>y</sup>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<sup>2</sup>[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<sup>π</sup>[政府批地書的條件]” and substituting “符合<sup>π</sup>[政府  
批地書的條件<sup>Σ</sup>[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<sup>7</sup>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 <sup>Σ</sup>[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 “<sup>2</sup>[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 ‘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<sup>2</sup>[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) 建築物的描述”。
- 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”<sup>2</sup>[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’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

| <u>Clause</u>  | <u>Amendment Proposed</u>   |
|--|---|
| 48<br>[NEGATIVED]  | By deleting subclause (1) and substituting—<br><br>“(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,<br>Part 1<br>section<br>13(2)<br>[NEGATIVED] | By deleting paragraph (a) and substituting—<br><br>“(a) that a preliminary deposit of 3% is payable on the signing of that preliminary agreement;”  |
| Schedule 4,<br>Part 1<br>[NEGATIVED]                     | By deleting clause 2 and substituting—<br><br>“2. The purchase price of the Property is HK\$ [ <i>insert amount</i> ], which shall be paid by the Purchaser to the Vendor in the manner as follows—<br>Preliminary deposit in the sum of HK\$ [ <i>insert amount</i> ], which is equal to 3% of the purchase price shall be paid upon signing of this Preliminary Agreement.” |
| Schedule 4,<br>Part 2<br>[NEGATIVED]                     | By deleting clause 2 and substituting—<br><br>“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——<br>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。”   |

## Residential Properties (First-hand Sales) Bill

## Committee Stage

Amendments moved by the Honourable LEE Cheuk-yan

| <u>Clause</u>        | <u>Amendment Proposed</u>  |
|----------------------|--|
| 66(3)<br>[NEGATIVED] | (a) In the definition of <i>disseminate</i> , by deleting the full stop and substituting a semicolon.  |
|                      | (b) By adding –<br>“ <i>material fact</i> (事關重要的事實) 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.”. |