

7 December 2016

Professor Anthony Cheung, GBS, JP
Secretary for Transport and Housing
Transport and Housing Bureau
22/F, East Wing, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear *Secretary*,

Regulating the Sales of First-hand Residential Properties in Hong Kong

1. We are grateful to the Sales of First-hand Residential Properties Authority (“SRPA”) for briefing the Hong Kong General Chamber of Commerce’s Real Estate and Infrastructure (“REI”) Committee on 14 September regarding its work in regulating the sales of first-hand residential properties (“FHRP”) in Hong Kong.

2. We note that the objectives of the Residential Properties (First-hand Sales) Ordinance are to

- (a) create a fair and balanced mechanism to regulate the sales of FHRP;*
- (b) protect the interest of purchasers of FHRP through enhancing transparency of property and transaction information; and*
- (c) provide a level playing field ¹ for sellers of FHRP.*

3. While the Ordinance has made progress in enhancing the availability of property and transactional information, which the Chamber supports unequivocally, there are reservations whether the law has achieved the objective of a level playing field through a balanced and fair mechanism. In our opinion, the Ordinance has had the unintended consequence of creating unbalanced distortions in the market mainly in the form of (a) curtailing smaller trade practitioners’ ability to operate, and (b)

¹ This cannot be achieved if there are differential treatments whereby village houses in the New Territories and residential units developed by the Government are exempted, but not residential units developed by the private sector.

fostering a climate of uncertainty and caution that will, to some extent, inhibit the supply of new properties, which is not conducive to the Government's long-term housing policy of maintaining a healthy property market in providing sufficient housing units to prospective homebuyers. We respectfully suggest that the regulatory provisions, as they currently stand, should be reviewed thoroughly so that the Ordinance can serve its intended purpose of safeguarding the rights of prospective purchasers through access to comprehensive and accurate information, without imposing excessive compliance and cost burdens on trade practitioners of all profiles. However, we recognize that this will necessarily take time, and would therefore propose, as an interim measure, that the SRPA be vested with the powers as directed by the Secretary for Transport and Housing to deal with cases in consultation with all stakeholders and raise proposals to amend the Ordinance.

4. The Chamber, through the REI Committee, has therefore set forth its views and proposals, which are detailed as under.

Review Exercise

5. We believe that the Ordinance, which has been in effect for three years, would benefit from a comprehensive and thorough review. To that end, the Government should consider developing a clear roadmap for implementing the review process in the medium to longer term so that stakeholders, including both industry practitioners and consumers, can work together in accordance with a defined timetable to evaluate the law and, where appropriate, make refinements and amendments. We would further suggest that some of such improvements, which could easily be implemented by the Government, could take the form of guidelines and/or practice notes at the outset instead of legislative amendments, so that the requisite changes can be introduced fairly quickly.

6. As part of this review, we suggest that the priority be given to the treatment of discrepancies in the measurement of saleable areas between actual and show flats. Currently, the Ordinance mandates that there cannot be any deviation in size, no matter how negligible, between finished and showroom flats. We hope that the Government agrees that this is neither reasonable nor practicable. We propose that some leeway be provided to allow for a modest variance. The Government may consider conducting a consultation on determining the acceptable level of variance, among other issues which concern the industry. It is an industry practice to expect some variance between construction drawings and built conditions of residential units.

7. The Ordinance's treatment of infringements as a criminal offence is excessive, particularly in view of the fact that some 120 criminal offences are provided under the law. In the interest of proportionality, we would therefore propose that, going forward, transgressions should be regarded as offences of a civil nature, and that a reassessment be conducted on the approach to imposing penalties. The flat penalty, as it currently stands, is disproportionate and fails to reflect the difference in utility/associated value between private and public spaces (or amongst various public spaces) to a homebuyer. We therefore suggest that a sliding scale be adopted to determine the amount of penalties that should be levied, which would in turn be contingent on the gravity of offences, and the space in question. For example, measurement disputes arising from saleable areas for residential units would be subject to a set of review principles and penalties, whereas contentions regarding public areas such as E&M rooms, ramp facilities and parking lots could be subject to another set or further subsets of assessment principles and penalties. As such, there should be different classes of treatments and penalties depending on the issue at hand.

Regulatory Impact Analysis

8. The Government should consider conducting a regulatory impact analysis to assess the effectiveness of the law, and provide relevant and illustrative statistics to justify its effectiveness. If the number of court cases² is deemed to be an inappropriate assessment indicator, perhaps other indicators such as reduced consumer complaints, enhanced public awareness and increased consumer protection in first-hand residential property transactions could serve as useful alternatives in gauging the extent to which best practices are being adopted in the industry.

Sales Brochures and Advertisements

9. We support the Ordinance's objective of providing prospective purchasers with the options of accessing information on the sales of residential properties through both online and offline means. On the other hand, we feel that the requirement on vendors to make available publicly both hard and softcopies of sales brochures at midnight seven days prior to the commencement of sales is neither sensible, nor well thought out. We believe that providing information to prospective homebuyers at the start of and during regular business hours should be reasonable enough in ensuring that appropriate notice is provided.

² Only two developments/phases of a development have so far been subject to prosecution.

10. As responsible businesses, we are concerned about the hazards of inconsistent terminology, which could give rise to confusion and miscommunication, or worse, misrepresentation. An example of this is the interpretation of certain areas in a property unit. When is a balcony a verandah, and when is it a terrace, or even a garden? Uncertainties such as the foregoing could inadvertently give rise to breaches of the law. There are also concerns over the inconsistencies between the English and Chinese interpretations of the phrase “saleable area”. Currently, saleable area is translated as “usable area” (實用面積) in Chinese. To be more precise, the correct Chinese equivalent should be “floor area to be sold” (出售面積). To avoid the likelihood of disputes that may arise from any interpretative differences in the meaning of such terminology as “saleable area” in bilingual publications, the Government should harmonize variations and clarify ambiguities that currently exist between English and Chinese terminologies when embarking on the aforementioned review exercise.

11. The law as it currently stands is too harsh in several areas. For example, the failure to provide mandated information in sales brochures when this involves simply missing a line, a piece of information or a deviation in the order of presentation could sometimes be regarded as a transgression of the law. Businesses need to spend a substantial amount of time and efforts to understand and comply with the law. For example, it is too burdensome, if not impossible and impractical, to collect and provide such information as (a) the locations of buildings, facilities or structures; (b) peripheral developments; and (c) proposed land uses that are respectively within 250 metres of (a) & (b) of the foregoing and 500 metres of (c) of the subject development. This can be a real drain on resources, which is especially the case for smaller trade practitioners who are presented with greater difficulties than their larger counterparts in achieving compliance.

Exemptions

12. Under the current legislation, the building and disposal of private houses are subjected to the same requirements as the sales of first-hand residential flats in larger-scale development projects. Individual owners (either through personal or corporate ownerships) who have been granted government leases to build their own homes prior to the enactment of this legislation could then be faced with unexpected legal issues when disposing of their homes. We suggest that the Government consider exempting owners of individual houses or non first-hand stock, who are involved in

the sales of single houses on the basis that they are individual owners rather than developers, as it would not be legally proportionate to require individual sellers to meet the requirements of the legislation.

13. There are also cases concerning “left-over” flats that remained unsold after the Ordinance came into force. These units, which often exist in small quantities, are subject to the Ordinance when offered for sale in the market, despite being completed before the implementation of the law. We suggest that the Government consider exempting these left-over units or first-hand stock in existence for certain years from the documentation requirements as required under the Ordinance, and allow prospective purchasers to conduct pre-sale site visits to examine the quality of these units, the surrounding environment and associated facilities.

14. We hope you will agree that our proposed amendments to the Ordinance are helpful in striking a balance between promoting transparency in the sales of first-hand residential properties, and maintaining a healthy property market in Hong Kong. The Chamber is pleased to work with the Transport and Housing Bureau and SRPA in ensuring that the Ordinance is fair, effective and relevant.

Yours sincerely,



Shirley Yuen
CEO

cc:

Mr Philip Chan, Director of the Sales of First-hand Residential Properties Authority
(email: srpa@hd.gov.hk)

Mr Stanley Ying, Permanent Secretary for Transport & Housing (Housing) / Director of Housing, JP (email: psh@housingauthority.gov.hk)