

## LCQ2: Sale of properties situated outside Hong Kong

Following is a question by the Hon Chan Han-pan and a reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (November 18):

Question:

In recent years, it has been increasingly common for Hong Kong people to purchase properties outside Hong Kong, and scenarios in which the uncompleted properties failed to be delivered in the end or Hong Kong buyers suffered losses as a result of being misled by estate agents have been heard from time to time. In this connection, will the Government inform this Council:

(1) of the number of complaints received by the authorities in the past three years about the sale of properties outside Hong Kong, and the total amount of money involved; whether there were cases in which the estate agents concerned were disciplined or prosecuted; if so, of the number and details; if not, the reasons for that;

(2) given that an estate agent who deals exclusively with properties outside Hong Kong may be exempted under the Estate Agents (Exemption from Licensing) Order from obtaining a local estate agent's licence, and is in effect not subject to the regulation by the Estate Agents Authority, whether any legislation and codes are currently in place to protect the interests of Hong Kong buyers; if so, of the details; if not, whether it will enact legislation or introduce legislative amendments to enhance the protection for Hong Kong buyers; and

(3) of the measures or legislation through which the authorities currently assist Hong Kong buyers in seeking compensation for the losses incurred in respect of their purchase of properties outside Hong Kong; whether there were cases in the past three years in which they assisted buyers in successfully seeking compensation; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Security Bureau, the Commerce and Economic Development Bureau, the Financial Services and the Treasury Bureau and the Estate Agents Authority (EAA), I set out my consolidated reply to the question raised by the Hon Chan Han-pan as follows:

(1) From 2017 to 2019, the EAA received 32 complaints that related to sale and purchase of properties situated outside Hong Kong. However, the EAA does not have statistics on the amount of money involved in these cases. Of the 32 cases, four were substantiated and one case is still under investigation. The

remaining 27 cases included complaints that were unsubstantiated, withdrawn, not pursuable due to insufficient information or referred to the Police for investigation. Among the four substantiated complaints, the respective estate agency companies or estate agents have been reprimanded and fined, or the EAA has issued a reminder of good practice to the concerned estate agency company.

Over the same period, the Consumer Council received 99 complaints related to properties situated outside Hong Kong and the amounts involved totalled over \$36 million. The Customs and Excise Department (C&ED) received 37 complaints that related to purchase of properties situated outside Hong Kong. C&ED has completed the investigation of 32 cases with no offence under the Trade Descriptions Ordinance (Cap. 362) detected, and referred the remaining five cases to relevant regulatory bodies for follow-up. As some complainants did not provide the amount of money involved in the cases, such information could not be provided. Besides, the Securities and Futures Commission (SFC) received 60 complaints which involved collective investment schemes with non-local real estates, but the SFC has not compiled statistics on the amount of money involved in these cases.

The Police has been maintaining the statistics of non-local property investment deception cases it received since 2018. In 2018 and 2019, a total of eight relevant cases were received, involving a total loss of around \$182 million. The Police has arrested 12 persons in relation to these cases, including six holders of estate agent licences. The cases are still under investigation.

Since the complainants could lodge complaints to different organisations and the organisations could refer individual case(s) to another organisation, the complaints or cases received by the above-mentioned parties may involve the same cases.

(2) Pursuant to the Estate Agents (Exemption From Licensing) Order (Cap. 511B), a person shall be exempted from the requirement for obtaining an estate agent's licence if he handles exclusively properties outside Hong Kong; and states in all his documents (including pamphlets and brochures, etc.) and advertisement that he is not licensed to deal with any property situated in Hong Kong. However, if the concerned company or individual performs estate agency work for properties both within and outside Hong Kong, one should have obtained a licence issued by the EAA and should be regulated by the EAA. If a licensed estate agent/salesperson is suspected of breaching the Code of Ethics and practice circulars issued by the EAA in the course of the sale of properties, regardless of whether the properties concerned are Hong Kong properties or not, the EAA will investigate the matter.

In December 2017, the EAA had issued a practice circular to provide guidelines to estate agent licensees on the appropriate practices and measures to be adopted in handling the sale of uncompleted properties situated outside Hong Kong. These practices and measures, amongst others, include due diligence measures and record keeping requirements. The guidelines have taken effect since April 1, 2018. Licensees who breach the

guidelines may be subject to disciplinary actions. The guidelines are not only binding on the licensed estate agents, but also provide a reference for consumers to assess whether the sales arrangements adopted by individual persons (including the exempted persons) are appropriate.

There could be substantial differences between the sale of properties situated outside Hong Kong and those in Hong Kong from both the perspectives of market operation and conduct regulation. Moreover, the sale of properties situated outside Hong Kong involves not only various stakeholders (e.g. non-local developers, intermediaries and agents) but also the laws and regulations as well as tax regimes of different jurisdictions. Furthermore, as it is not mandatory for Hong Kong buyers to engage estate agents in purchasing non-local properties, and vendors can carry out sale and promotional activities easily through the Internet, the issue could not be completely addressed even if there is no exemption granted to persons who handle exclusively with properties situated outside Hong Kong from obtaining estate agent licences. We consider that enhancing public education should be a more effective approach. The EAA and the Consumer Council have all along been putting much efforts in educating the public. They have from time to time reminded consumers, through various channels, to be aware of the risks and issues to pay attention to before deciding to purchase non-local properties.

(3) From 2017 to 2019, the Consumer Council successfully assisted complainants in 13 cases through conciliation in recovering the deposits paid for the purchase of properties situated outside Hong Kong. Separately, as at September 2020, the Police are still investigating the eight cases of non-local property investment deception mentioned in Part (1) above. If the persons arrested are convicted in legal proceedings, the court is empowered by the Magistrates Ordinance and the Criminal Procedure Ordinance to order the offenders to pay the aggrieved persons such compensation that it considers reasonable.