

LCQ6: The purchase of properties outside Hong Kong

Following is a question by Hon Cheung Kwok-kwan and a written reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (April 28):

Question:

It has been reported that Hong Kong people purchasing properties outside Hong Kong (in countries such as the United Kingdom, Australia, Canada and Thailand) has become a common phenomenon in recent years. Last year, the Estate Agents Authority received 66 complaints about the sale of properties outside Hong Kong, which is a tenfold surge from the six complaints received in the year before last. On protecting Hong Kong people who purchase properties outside Hong Kong, will the Government inform this Council:

(1) of the number of complaints, received by the authorities in each of the past five years, about uncompleted properties which had become default property developments in the end, and the total amount of losses involved, with a breakdown by the country/region in which such properties were located;

(2) whether it will consider afresh enacting legislation to regulate the practices of selling in Hong Kong properties outside Hong Kong (including the contents of advertisements), and to prohibit persons who are neither licensed estate agents nor licensed salespersons from engaging in estate agency work for properties outside Hong Kong;

(3) as there has been an upward trend of complaints about purchases of properties outside Hong Kong in recent years, whether the authorities will consider establishing communication and co-operation mechanisms with the relevant regulatory authorities in those countries/regions in which the properties are hot commodities for Hong Kong people, so as to protect the rights and interests of Hong Kong people who have purchased properties therein; and

(4) whether the authorities will step up publicity efforts to remind members of the public about matters requiring attention and common traps to avoid when they purchase properties outside Hong Kong, so as to avoid falling prey to frauds?

Reply:

President,

Having consulted the Commerce and Economic Development Bureau, the Constitutional and Mainland Affairs Bureau (CMAB), the Financial Services and the Treasury Bureau, the Security Bureau and the Estate Agents Authority

(EAA), the consolidated reply to the question raised by the Hon Cheung Kwok-kwan is set out below:

(1) For complaints received by Government departments/organisations which involved properties outside Hong Kong, there is no classification on whether the properties concerned were not completed on schedule (or referred to as "default property developments"). As regards the number of complaints received by departments/organisations which involved uncompleted properties outside Hong Kong in the past five years, the breakdown by year is shown at Annex. Since the complainants could lodge complaints to different departments/organisations and the departments/organisations could refer individual case(s) to another department/organisation, the complaints or cases received by different departments/organisations may involve the same cases.

(2) Regarding the engagement in estate agency work involving properties situated outside Hong Kong, 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/she handles exclusively properties outside Hong Kong; and states in all his/her documents (including pamphlets and brochures, etc.) and advertisement that he/she is not licensed to deal with any property situated in Hong Kong. However, if the company or individual concerned performs estate agency work for properties both within Hong Kong and outside Hong Kong, that company/individual is required to obtain a licence issued by the EAA and 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 issued a practice circular to provide guidelines on the appropriate practices and measures to be adopted in handling the sale of uncompleted properties situated outside Hong Kong for estate agent licensees to comply with. These practices and measures include, amongst others, due diligence measures and requirement on providing important sales documents. The guidelines have taken effect since April 1, 2018. Licensees who breach the guidelines may be subject to disciplinary actions from the EAA.

There are likely substantial differences between the sale of properties situated outside Hong Kong and those in Hong Kong from the perspectives of market operation and conduct regulation. Moreover, the sale of properties situated outside Hong Kong involves laws and regulations as well as tax regimes of different jurisdictions, and also various stakeholders (e.g. non-local developers, intermediaries and agents). Furthermore, vendors of non-local properties can easily conduct sales and promotion activities through the internet, which is very difficult to regulate. It has been a more effective approach for the EAA to educate the consumers through various channels and continue to enhance public education by reminding consumers the issues that they should pay attention to before deciding to purchase non-local properties.

Regarding the regulation of practices (including advertising content) for the sale of non-local properties in Hong Kong, according to the relevant codes of practice on advertising standards issued by the Communications Authority, all advertisements on television and radio are required to be legal, clean, honest and truthful. For advertisements of real properties outside Hong Kong, the codes of practice require the broadcasting licensees to seek certain substantiation information from the advertisers, unless the advertiser is an estate agent licensed under the Estate Agents Ordinance (Cap. 511). The codes of practice further require such advertisements to carry an advisory message reminding the audience to obtain and review all relevant information relating to the real properties before making any purchase decisions and seek professional advice if in doubt.

(3) & (4) The EAA has from time to time reminded investors and the public the risks and points-to-note before deciding to purchase properties situated outside Hong Kong (especially those uncompleted ones) through articles in newspapers and other media, educational booklets and public seminars, etc. The EAA also set up a designated section about purchasing properties located outside Hong Kong under its consumer education website and published a new educational booklet entitled "Purchasing Non-local Properties Be SMART" in early 2020, reminding consumers about the risks of purchasing properties situated outside Hong Kong. The EAA also rolled out its online promotion campaign to attract the public to visit its consumer education website and read the booklet.

Apart from organising two large-scale public seminars on purchasing non-local properties, the EAA also held two online seminars in 2020 and 2021 respectively, which generated over 80 000 views of the online seminar video. Besides, the practice circular issued to licensees as mentioned in Part (2) of this reply is not only binding on the licensed estate agents, but also provides a reference for consumers to assess whether the sales arrangements adopted by individual persons (including the exempted persons) are appropriate.

Moreover, the Consumer Council has from time to time published articles in its publications to remind the public of the risks involved in the purchase of properties outside Hong Kong, for example, by extracting actual complaint cases relating to the purchase of properties outside Hong Kong in the "CHOICE" magazine.

Besides, the Securities and Futures Commission (SFC) updated in 2016 its FAQs in relation to the Securities and Futures Ordinance to provide guidance on collective investment schemes involving real estate interests. Furthermore, the SFC and its subsidiary, the Investor and Financial Education Council (IFEC), have issued educational materials on overseas property investment and reminded the public of the potential risks involved through various channels (e.g. IFEC's educational website "The Chin family", social media, newspaper and seminars) from time to time. The SFC and the IFEC will continue to enhance investor education on this front.

Apart from the above, one of the main functions of the five Mainland Offices of the Hong Kong Special Administrative Region Government (namely the Beijing Office and the Hong Kong Economic and Trade Offices in Guangdong, Chengdu, Shanghai and Wuhan) is to provide assistance to Hong Kong residents in distress in the Mainland. If the Hong Kong residents seeking assistance wish to make complaints or appeals to the Mainland authorities as regards properties in the Mainland, the Mainland Offices will refer their cases to the relevant Mainland authorities on request. Besides, the Hong Kong Economic and Trade Office in Guangdong has commissioned an organisation to provide free legal advisory service to Hong Kong residents in need through a telephone hotline or by arranging Mainland duty lawyers to meet the assistance seekers to provide preliminary advice on Mainland related legal matters.

To enhance the public's understanding of matters related to property purchase in the Mainland, the Mainland Offices published the Practical Guide for Hong Kong Residents Living in the Mainland, a booklet on living in the Mainland covering practical information about property purchase such as points to note for entering contracts on sale and purchase. A link to the webpage of the EAA containing practical information on the purchase of property outside Hong Kong has been provided on the websites of the Mainland Offices to facilitate access by citizens. The CMAB has also published an article in the "CHOICE" magazine of the Consumer Council in February 2021 to remind citizens of the points to note when purchasing property in the Mainland. The web link of the article has been added to the websites of the Mainland Offices.