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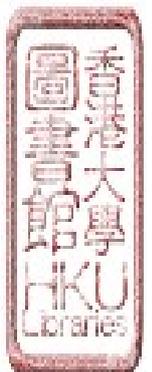
**Regulating the Sale of  
First-hand Residential Properties in Hong Kong:  
A Study of Policy and Administrative Dynamics**

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Capstone project report submitted in partial fulfillment of the requirements  
of the Master of Public Administration

Department of Politics and Public Administration  
The University of Hong Kong

2015



## DECLARATION

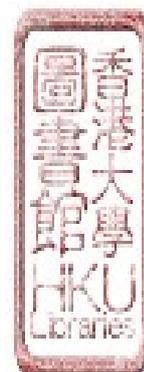
We declare that this Capstone Project Report, entitled Regulating the Sale of First-hand Residential Properties in Hong Kong: A Study of Policy and Administrative Dynamics, represents our own work, except where due acknowledgement is made, and that it has not been previously included in a thesis, dissertation or report submitted to this University or any other institution for a degree, diploma or other qualification.

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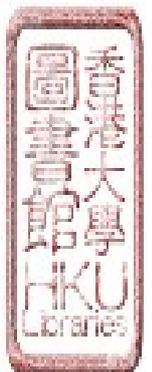
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We also appreciate the support, understanding and encouragement from our families, friends and colleagues in the completion of this capstone project, which is a memorable and rewarding experience.



## ABSTRACT

In Hong Kong, where population is dense and land space is precious, housing issue is always one of the prime concerns of the public. Although the government has been offering various public rental housing and subsidized housing schemes to the society, majority of the households still incline to purchase first-hand residential properties from the private developers when they are able to afford. Yet, for many years, the protection to the property purchasers is always criticized as inadequate. In the 1980s, unfair sales arrangement and misleading sales information were commonly found in the sale of first-hand residential properties. The malpractices of the developers were so rampant that the government decided to adopt a multi-pronged approach with four major policy tools, namely the Consent Scheme, guideline issued by REDA, regulatory frameworks by the EAA and the Consumer Council, to tackle the problems. Nonetheless, the problems continued despite repeated effort made to optimize the tools. Finally, the government introduced a big bang policy change with a centralized legislation to govern the issue in 2012.

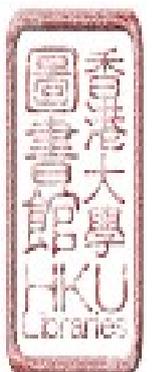
In this project, John Kingdon's three-stream model (1995) is used as the skeleton to analyze the policy and administrative dynamics regarding the regulatory framework on the sale of primary residential properties. It first examines the situation prior to the introduction of the Residential Properties (First-hand Sales) Ordinance when the four major tools are in use. It recognizes and categorizes the re-emergence of the problem stream with the Freiberg's classifications (2010). The ineffectiveness of the tools and repeated failure to reform them leading to the government decision to formulate a new legislation is analyzed through the five



assessment criteria identified by Baldwin, Cave and Lodge (2012) and two factors by Freiberg, and a policy-making cycle model developed in this project. Together with the political stream influenced by public mood and administration change, a big bang system changing, as classified according to the Elmore's theory (1987), takes place.

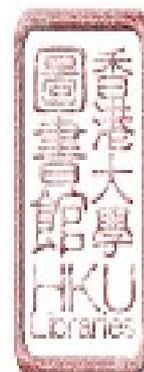
The situation after the implementation of the Ordinance is also contemplated through the Kingdon's three-stream model. The project discovered the business freedoms offered in the Ordinance are abused by the developers and the dynamic in problem stream is triggered. Applying the aforementioned policy making cycle model with various theories, it is found that the policy consideration process and the effectiveness of the Ordinance are correlated in creating the situation requiring the government to choose policy arrangement. Noting the public mood to change is not strong under political stream, it concludes the policy dynamic in the post Ordinance period is not to substitute the tool, but to optimize the existing regulatory framework under the Ordinance. Taking reference from the experience in Taiwan and Singapore, the project further suggests a number of measures based on the criteria by Baldwin, Cave and Lodge to enhance the effectiveness of the Ordinance.

The integrated policy dynamic analytical framework proposed in this project is considered conducive to formulating, reviewing and optimizing the policies. To provide appropriate, effective and timely policies to the community, the government is suggested to utilize the framework in different policy areas in future.

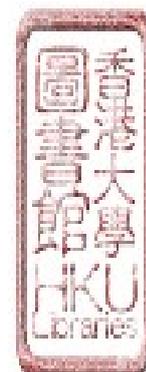


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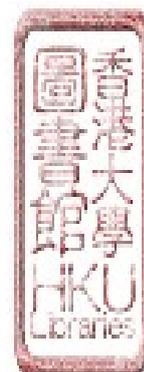


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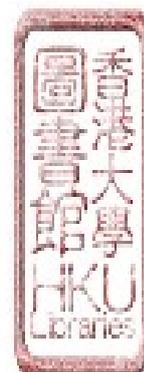


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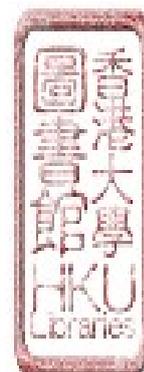
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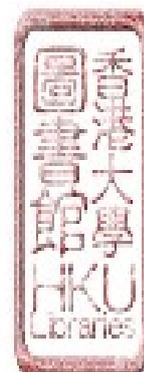
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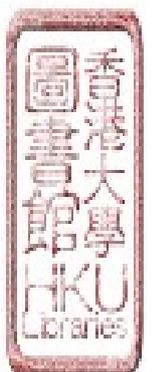
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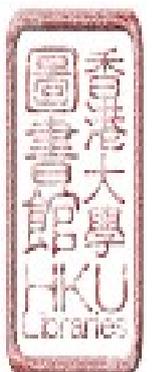


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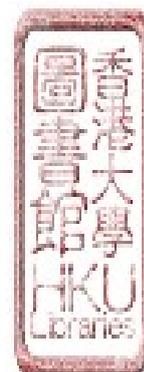
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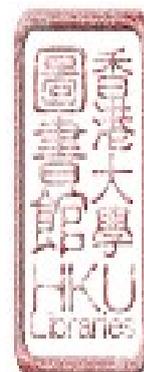


## LIST OF ABBREVIATIONS

BU P	Building Use Permit
CC	Certificate of Compliance
Circular – SCEH	Circular Regarding Information be Included and Not Be Included in The Standardized Contract of Existing Housing
Circular – SCPSH	Circular Regarding Information be Included and Not Be Included in The Standardized Contract of Pre-sale Housing
CPC	Consumer Protection Commission
DCPH-GFA	Development Control Parameters Handbook on Gross Floor Area
DDG	Disposal Directions (Guidelines) on Cases of Real Estate in Advertising
DDPS	Disposal Directions (Policy Statements)
EAA	Estate Agents Authority
EAO	Estate Agents Ordinance
FTC	Fair Trade Commission
GFA	Gross Floor Area
HDCLA	Housing Developers (Control and Licensing) Act
HDR	Housing Developers Rules
HOS	Home Ownership Scheme
HPLS	Home Purchase Loan Scheme
LACO	Legal Advisory and Conveyancing Office
Lands D	Lands Department
LegCo	Legislative Council
LRC	Law Reform Commission



PRA	Residential Property Act
PSPS	Private Sector Participation Scheme
REDA	Real Estate Developers Association of Hong Kong
RETIRPER	Real Estate Transaction Information Reporting and Pricing Enquiry Regulation
SCEH	Standardized Contract Template Regarding Existing Housing
SCPSH	Standardized Contract Template Regarding Pre-sale Housing
SPRA	Sales of First-hand Residential Properties Authority
STH	Secretary for Transport and Housing
THB	Transport and Housing Bureau
URA	Urban Redevelopment Authority



## **CHAPTER 1 - INTRODUCTION**

### **Focus, Objective and background of the Project**

At the southeastern tip of China, Hong Kong has a total area of 1104 square kilometers with over seven million populations (Hong Kong Fact Sheets, 2014). Space in this metropolitan city is limited and condensed with. Residential housing demand has been high since 1970s, when population continuously rushed into Hong Kong. Property price kept going up the slope. The growth in property values continues despite the fact that Hong Kong government implements various cooling measures.

To deal with the rising property price and housing demand, the government also increased property supply by offering public rental housing and various subsidized housing schemes to the society. However, majority of the households still incline to purchase primary residential properties from the private developers when they are able to afford. However, real estate developers in Hong Kong have been for long criticized to be keen and monopolized the household development. The sale procedure is not transparent and riddled with malpractices, and buyers can only access to limited information on first-hand residential properties, in particular those uncompleted properties. To balance the benefit of general public, the Hong Kong government adopts various policy tools to monitor the situation.

This project addresses the regulations and policy tools in Hong Kong real estate industry, in particular those adopted in the sale of first-hand residential properties. The objectives are to understand the policy making and administrative processes

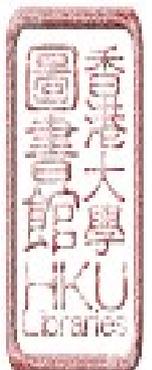


in the regulatory framework on the sale of first-hand residential properties in Hong Kong, and the dynamics under problem, policy and political streams driving the government to change or optimize its policy tools under different circumstances.

### **Research Questions and Propositions: Theory and Practice**

To study Hong Kong's regulatory frameworks in the sale of first-hand residential properties, this study will examine different tools used by the government, evaluate their effectiveness and suggest how the government can enhance effectiveness of policies. The study will base on the following research questions:

1. Why, and how, might governments seek to regulate the sale of residential properties in their communities?
2. How has the Hong Kong government traditionally responded to the issue of first-hand residential property sales?
3. What prompted the Hong Kong government to change its response to the issue of first-hand residential property sales?
4. How has the Hong Kong government chosen the policy tools in monitoring the sale of first-hand residential properties in Hong Kong?
5. How effective has the government's response been in terms of relevant evaluative criteria?
6. How might the government adjust its policy tools to strengthen the effectiveness?



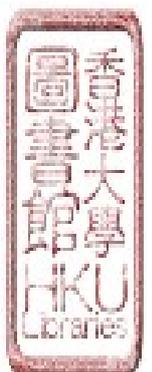
Over the years, the Hong Kong government has adopted multi-pronged approaches to monitor the first-hand residential property market. The sale of residential property is a complicated and technical process which involves a number of stakeholders, and therefore public policies implemented in the past in regulating the issue were integrated with different types of governance and policy tools, and they will be examined in this project to answer the above research questions.

In 2012, the Hong Kong government enacted the Residential Properties (First-hand Sales) Ordinance, which legislatively regulates the market. The project will also evaluate the effectiveness of the Ordinance and see whether it fulfills public expectation. Residential regulation is of no unique issue, similar measures are also found in other cities. The policies used in cities like Singapore and Taiwan will also be studied, with a view to finding ways to strengthen the relevant policy's effectiveness in Hong Kong.

### **Overview of Analytical Framework**

Policy making is a complicated process. It is affected by many factors such as socio-economic condition, political circumstances and government resources. To study the policy making process of the regulatory framework on the sale of first-hand residential properties, this project adopts various theories concerning policy making and administrative dynamic.

Kingdon's three-stream theory will be used as the skeleton to study the policy. The theory looks into situation in three streams, namely problem stream, policy



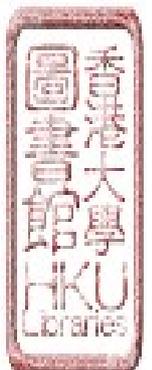
stream and political stream. The three streams study on why governments intervene, how governments may intervene, and the political dynamics. In each stream, the project has incorporated a number of theories to study respective stream in depth.

To critically look into the issue, Knill & Tosun's type of governance is used in this study. Knill & Tosun summarize the type of governance into four types, namely interventionist governance, regulated self-governance, cooperative governance and private self-governance. The four types of governance are categorized according to the level of governance and private sector cooperation and the degree of legal obligation.

The emergence of social problem can be caused by many factors, the project will adopt Freiberg's fostering factor to analyse the outbreak of the problem in a more detailed way. The categorization of market failure, public interest, risk management and trust, will give us a clearer understanding in the problem stream.

To handle the social problem, government needs to choose policy tools and formulate policies to tackle the situation. Elmore's policy tool classification of mandates, inducements, capacity building and system changing, which could be linked with policy stream, will be used.

To understand whether the regulations and policies used by the government is legitimate or worthy of support, the assessment criteria developed by Baldwin, Cave and Lodge as well as Freiberg was used. The criteria consisted of five assessment criteria and two important factors, including (i) Legitimacy; (ii)



Effectiveness; (iii) Accountability; (iv) Due Process; (v) Expertise; (vi) Efficiency; and (vii) Autonomy.

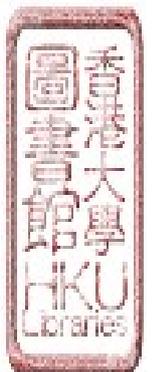
## **Research Methodology**

To study the social issue on the sale of first-hand residential properties, this project focuses on the latest market development. Apart from the overview of Hong Kong Housing History, where research was made on publications, majority of the project research was based on local and international news reports, Legislative Council (LegCo) discussion papers, consultation documents, journals, guidelines and regulations from institutions. In order to have a holistic overview on the effectiveness of the Ordinance, review report from Consumer Council, comments from LegCo members, views and comments drawn from concerned stakeholders were also included in this project.

Extensive desktop research was conducted on the Internet, which have provided the most up-to-date information and data on this social issue. Institutes websites were kept updated and offered comprehensive details. Overseas experience of Taiwan and Singapore were also researched through the Internet.

## **Chapters Outline**

This project consisted of six chapters. The current chapter, Chapter 1, provides the objective and background on the project; the research questions and propositions; analytical framework used throughout the project; and the research methodology.



Chapter 2 is the literature review of the analytical framework used, including Kingdon's three-stream theory, Knill & Tosun's type of governance, Freiberg's regulation fostering factors, Elmore's policy tools classification, and Baldwin, Cave & Lodge's regulation assessment tool.

Chapter 3 reviewed Hong Kong Housing History, the type of governance and policy tools applied over the years. It also overviewed government policies and related developments concerning first-hand residential properties.

Chapter 4 detailed the dynamics in why the government needs to alter its existing tools to the sale of first-hand residential properties and how the government decides and chooses the policy tools, and analyzed the issue using the framework illustrated in Chapter 2.

Chapter 5 discussed the policy and administrative dynamics of the Ordinance with reference to the Kingdon's three-stream model, and critically studied the Ordinance's effectiveness.

Chapter 6 provided suggested Ordinance improvement measures with reference to overseas experience, where similar regulations on sales of first-hand residential properties also enact.

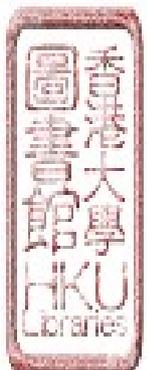


## **CHAPTER 2 - ANALYTICAL FRAMEWORK**

### **Introduction**

Under the nowadays-evolving complex and diverse environment, public managers always face many challenging social problems covering different aspects. There is a wide range of policy tools and choices of combination that governments can choose to respond to the challenges within the bounds of various types of governance. The choice between different types of governance and policy tools is not a free choice, but affected by the political problems that have to be addressed, the existing institutional structures, political context, and resources and power of different actors (Knill and Tosun 2012, p.212).

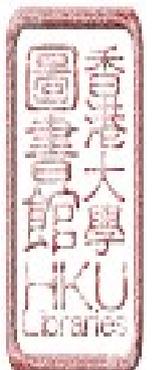
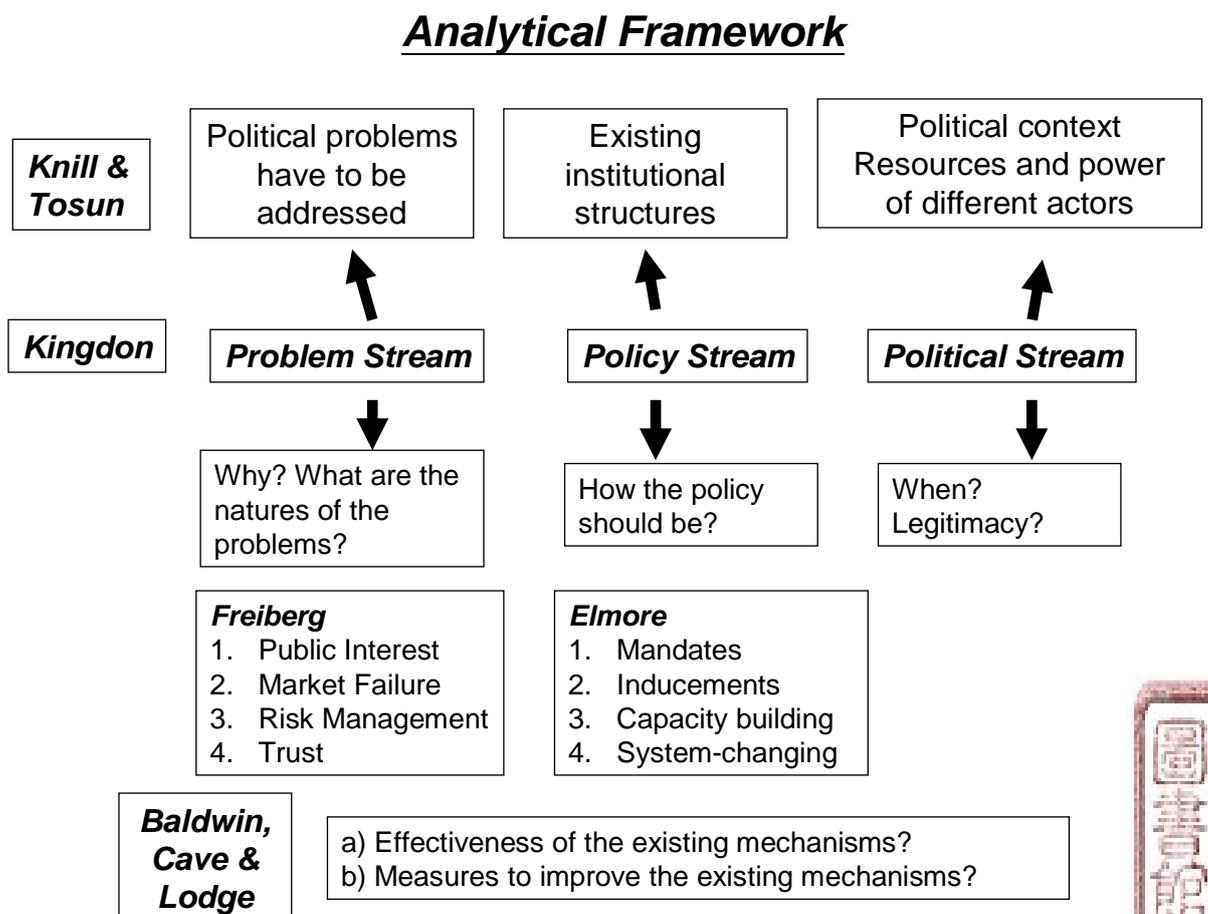
Of particular significance to types of governance and policy tools, Kingdon's (1995) three-stream theory provides a useful way to look at the issues through the problem, policy and political streams within which it is possible to analyze the justifications for why governments intervene, how governments may intervene, and the political dynamics in reaching consensus on what is appropriate and legitimate. The question of why the government intervenes mainly falls on the expectation of the general public. When the social and informal mechanisms are proven to be inadequate to protect the public, people look into the government to act on their behalf to produce some regulatory outcomes (Freiberg, 2010). Public policies are packages of policy tools. Governments could adopt a hybrid of authoritative rules, resources re-allocation, investment and change of system. Elmore's policy tool paradigm explores the nature of a policy proposal and



explains the choice of policy tools (Elmore, 1987). Next, the policy to be implemented needs to be tested to ensure it is legitimate or worthy of support under the political aspect. Various criteria, including legislative mandate, accountability, due process, expertise and efficiency, are appropriately considered as a tool for assessing the adoption of regulatory and other tools (Baldwin, Cave and Lodge, 2012 p.39).

The interlocking relationships of the above form the analytical framework of the study on regulating the sale of first-hand residential properties in Hong Kong. The main elements of the framework are set out in Figure 2.1.

**Figure 2.1 Main elements of the analytical framework**



## Types of Governance

As mentioned above, the level of government intervention determines the type of governance, which includes interventionist governance, regulated self-governance, cooperative governance and private self-governance (Knill & Tosun, 2012). The characteristics of these four broad types of governance are illustrated below.

The type of governance focuses on the patterns of political steering, which is the institutionalized relationship between public and private players in resolving social problems. As illustrated in Figure 2.2 below, Knill and Lenschow (2003), classified the type of governance into four ideal types, depending on the configuration of two dimensions, the level of hierarchical modes which is assessed through the degree of legal obligation that characterizes collective policy solutions and the degree of cooperation of public and private actors in the policy making process (Knill and Tosun 2012, p.209).

**Figure 2.2 Types of Governance**

		Cooperation of public and private actors	
		High	Low
Degree of legal obligation	High	Regulated self governance	Interventionist governance
	Low	Cooperative governance	Private self governance

Source: Knill & Tosun (2012) quoting Knill & Lenscho (2003)

### *Interventionist Governance*

Interventionist governance reflects the classical style of policy-making that hierarchical intervention of the state is required for provision of public goods and



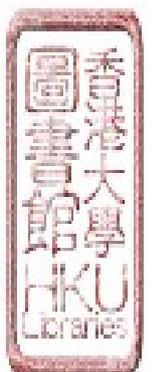
services. It does not necessarily mean there is exclusion of involvement of private actors, but the main responsibility vests on the government. This type of governance is characterized by a hierarchical relationship between public and private actors, with heavy involvement of the government adopting a top-down approach of command and control through highly detailed and legally binding requirements, that is, it clearly defined rules and regulations requiring both the public and private actors to comply (Knill and Tosun, 2012).

### ***Regulated self-governance***

For regulated self-governance, the hierarchical relationship between the public and the private actors still strongly exists. The private actors have to comply with the detailed defined rules and regulations. However, active cooperation between the public and the private actors is found in the formulation and implementation of public policy while the government retains its authoritative decision making role. This type of governance could be arranged in different ways, including inviting private actors to participate in policy making and implementation, delegating competencies to private organizations, or developing regulatory frameworks for private self-governance cooperatively (Knill and Tosun, 2012).

### ***Cooperative governance***

Different from the previous two types of governance, the cooperative governance and private self-governance dominate the role in policy formulation and implementation played by the private actors rather than the government. In cooperative governance, instead of relying on legally binding requirements, the



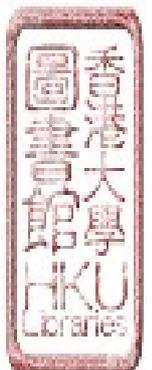
definition and application of instruments are compromised through negotiations and voluntary agreements between public and private actors. There is no authoritative top-down decision making process. For the rules of cooperative governance, it is developed by bargaining on equality between public and private actors.

### ***Private self-governance***

Compared to the cooperative governance, there is no involvement of public actors in the definition and implementation of public policies in private self-governance (Knill and Tosun, 2012). The private actors are in the sole control in decision-making process and on voluntary basis. The government only provides complementary contribution, such as guidance during the processes.

### **Types of governance and the significance of the three streams in agenda setting**

The types of governance illustrated above is interrelated to the problems have to be solved. Usually, an incident happens and it catches public or politicians' attention. It is then brought into agenda-setting process, i.e. to put in the legislative body for discussion on the way forward and the policy tools to be adopted. The decision making process depends on the bargaining power among the politicians and the stakeholders involved by consideration of a wide range of factors, including political and social aspects, and resources required. Of particular significance to types of governance and policy tools, Kingdon's (1995) three-stream theory provides a useful way to look at the issues through the

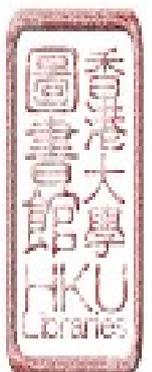


problem, policy and political streams within which it is possible to analyze the justifications for why governments intervene, how governments may intervene, and the political dynamics in reaching consensus on what is appropriate and legitimate.

To help understand the processes of agenda setting in the government towards a particular political and social problem, Kingdon's (1995) three-stream model is adopted in the project. The value of the Kingdon approach is that the problem stream asks why intervene or not intervene, the policy stream asks how the government may intervene and the political stream touches on the issue of reaching consensus on what policy tools to be chosen. To be specific, the problem stream explains the reason for regulation, the policy stream explains the process of choosing the policy tools and the political stream examines the political condition and the legitimacy of the policy. The flow of the three streams represents what creates the momentum necessary to place an issue on the public policy agenda, then to move it from the "government agenda" box to the "decision agenda" box, and finally to lead the government to change public policy. The three streams flow independently but once they couple, a policy window occurs which facilitates policy change.

***The problem stream: why regulate?***

The problem stream emerges when members of the public are persuaded that some actions have to be taken to improve the current situation. It may be brought up due to indicators, polling result, feedback about current programs or focusing events nurturing pre-existing problem that are "in the back of people's minds". In

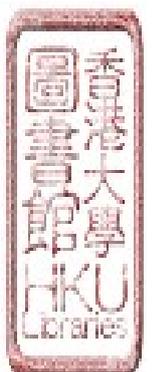


addition, budgets could be a triggering event that prompt an item up to the policy agenda or restrain an item from gaining a higher position on the agenda (Kingdon, 1995). On the other hand, a problem can be intentionally identified to affect members' attention towards the problem (Rochefort and Cobb's, 1994).

Similar to Kingdon's theory, Freiberg thinks that social and informal mechanisms are basic modes of regulating private behavior, however, people look to governments to act on their behalf to produce some regulatory outcomes, when these prove to be inadequate to protect people from serious harm, when markets fail to deliver the level or quality of goods and services desired by the community, or when the public confidence is threatened (Freiberg, 2010). Freiberg divides the fostering factors the regulation by the government into four categories, namely, market failure, public interest, risk management and trust.

The government needs to be proactive in regulating problems when public interest is harmed. In legal sense, it could be something beyond private interest that the government needs to protect, no matter how small the size the affected group is. If viewed from economical angle, it could meant a collective good to maximize the social welfare, e.g. for transparency or for human right.

Market failure can be caused by inefficient market, when there are too few suppliers, i.e. in monopoly market like utility industry. The government is then needed to step in to regulate the conduct of market participants by employing different tools, like prices setting and punishment of collusion. Another cause of market failure is externalities, which is the cost or benefit that imposes on others who do not choose to incur such cost or benefit in the market pricing mechanism.



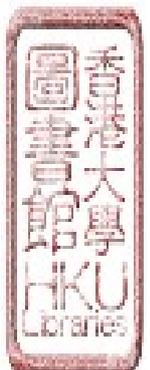
In addition, information asymmetry can fail the market. During a transaction, one side may be in favor if it holds important bearing information on the price or condition but the other side does not have.

The third aspect is on balancing of risk. Risk management is widely accepted as an important measure to be taken by the government worldwide. It is the government's responsibility to assess and manage risk so that the least loss is resulted from any possible risk. The risk assessment normally covers the area of social, economical, technical, health and environmental. Risk related regulation, e.g. regulation on work health, safety and environmental protection is regarded as a form of risk management.

The last aspect is on trust. It is of primary concern of a government to create social order and engender trust and confidence in the system. In the regulatory context, regulation lowers the transaction costs. The provision of formal way of trust saves each transaction to be verified. Have said, the formal and informal systems of trust complemented the fragile construction of economic and social orders. In other words, regulation is formulated to produce an environment in which people can act in confidence about the conduct of others.

***Policy stream: choice of policy tools***

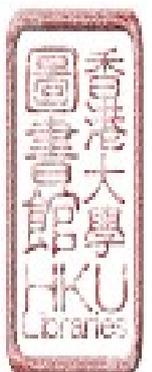
The policy stream is about how the government intervenes or on what policy tool(s) to be employed in solving the problems. It relates the policy making process in which proposals are prepared, redrafted and endorsed in the policy system. The feasibility of a proposal relies on its technical viability, costs,



supports from the public and politicians, as well as the indigenous value choices in the community (Kingdon, 1995; Cairney, 2012). The policy stream creates a short list of solutions, which is an agreement that some particular proposals are prominent (Kingdon, 1995).

There are many literatures on policy tools. Elmore provides one useful classification. It is not only because of the four sensible components defined by Elmore, but many other authors on policy tools and instruments have similar classifications. Elmore (1987) defines policy tool paradigm as the exploration of the nature of a policy proposal and explanation of the choice of policy tools. Each policy tool has its unique nature, characteristics, requirements, strengths and weaknesses. Elmore classifies policy tools into four categories, namely mandates, inducements, capacity building and system changing accordingly.

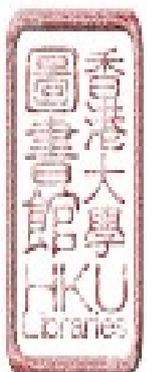
Mandates are the authoritative rules or prescriptions governing the behavior of individuals and agencies, and are intended to produce compliance (McDonnell & Elmore, 1991). It is based on the assumption that “the actions required is something all individuals or agencies should do, regardless of their differing capacities, and that the action would not occur, or would occur with less than the desired frequency, in the absence of explicit prescription.” Inducements are “conditional transfer of money in return for the productions certain goods and services”. It is based on the assumption that “in the absence of additional resources, one would not expect certain valued outcomes to be produced, or to be produced with the desired frequency of consistency required by policy, and that money is an effective way to elicit performance.” Capacity building is various



kinds of investment to enhance capabilities. As defined by Elmore (1987), it is “the conditional transfer of money to individuals or agencies for the purpose of investment in future material, intellectual, and human resources.” It carries with it “the expectation of future returns. But these are often uncertain, intangible, and immeasurable”. It is noted that capacity building is different from mandates and inducements on its proximity and tangibility of their effects. The former is for long term effect and is rather distant and ambiguous for capacity building but the latter two are more proximate and tangible. System changing is “the transfer of official authority among individuals and agencies to alter the system by which public goods and services are delivered”.

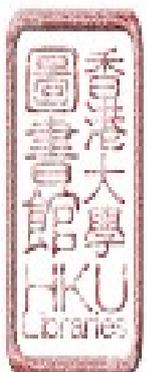
There are some other similar literatures on policy tools. Hood (2009)’s classification on social recourses namely nodality, authority, treasure and organization. Vedung (1998)’s carrots, sticks and sermons theory and Freiberg (2010)’s classification of different forms of regulation. Though they are under different classification method and by different scholars, they are actually referring to the similar underlying principles.

According to Hood’s NATO theory, nodality is the ‘property of being in the middle of an information or social network’ (Hood, 2009). It is somehow similar to capacity building concept under Elmore’s theory about investment of various kinds, including information building. Authority refers to the ‘possession of legal or official power . . . to demand, forbid, guarantee, adjudicate’ which shares similar interpretation of Elmore’s Mandates. By definition, governments are granted the power or the right to give orders or make decisions concerning others.



Authority is used through tokens such as certificates, laws, and sanctions. Treasure indicates ‘the possession of a stock of moneys or fungible chattels’. Governments can spend their financial resources to attain policy goals. Treasure is spent in salary, rewards, materials and other equipment. This is similar to Inducement under Elmore’s theory. Organization denotes ‘the possession of a stock of people . . . land, buildings, materials and equipment somehow arranged’. Governments can utilize the structure or machinery of the state as an instrument. Organization as a resource is employed in what Hood calls ‘treatments’, namely the use of people’s efforts and other material capabilities of the organization. This is comparable to Elmore’s theory of capacity building and system changing.

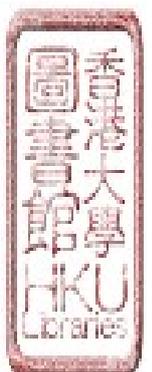
Vedung’s concept of “carrot” resembles Elmore’s classification of inducement. Carrot is about the use of economic policy instruments to give or take away economic resources by altering the monetary, time or other costs associated with the action. With reference to Vedung, “Economic tools always leave the subjects of governance a certain leeway within which to choose by themselves whether to take an action or not” (Vedung, 1998, p.32). Vedung’s classification of “sticks” is self-descriptive. It refers to the regulations taken by the government to influence people by means of formulate rules and directives (Vedung 1998, p. 31). To achieve this purpose, it is always backed by negative sanctions and all kinds of punishment. The third kind of policy tools is named as “sermon” which is kind of information instruments. Capacity building could be in another form as transfer of knowledge. Its ultimate goal is to guide the people towards the right conduct and avoid of the wrong by influencing them through transfer to intelligence. This



kind of information instrument could be in any forms, like books, public campaign or training programme.

According to Freiberg (2010), regulation is about the use of power. Freiberg classified the power that the government can employ in six board forms. The authorization as regulation is the strictest one which legitimate a particular activity, status or premises. Legal regulation is about the ability to invoke the mechanism of the legal system of applying or not applying other resources through legitimated authority. Nevertheless, regulation could also be empowered in economic way by means of manipulation of production, allocation or use of material resources such as money or property. One form of these regulations is economic regulation which is to stimulate incentive with public policy goals or deter the market by extraction of resources. Transactional regulation is a similar kind with the explicit use of contract or grant to alter the allocation of economic resources. Both the economic and transactional regulation could be a kind of reward of punishment and comparable to Elmore's classification of inducement and mandates. Structural regulation concerns the setting of the system while informational regulation is about the change on capability, advice and attitude. These two regulations are clearly analogous to Elmore's classification of system changing and capacity building.

To achieve the desired policy result, due considerations should be given to the choice of policy tools, especially about the directness and the time constraints on implementation of the policy. It is no doubt that mandates and inducement could bring direct impact to the society. However, the outcome could not be easily

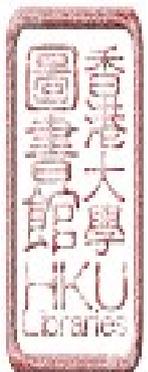


predicted due to the time required for nurturing the new institutions. On the other hand, capacity building may pave way for the success of future policies but there is a problem on how to reconcile short-term results of investments with longer-term expectations. Similarly, for changing of the present institutional arrangements, the policymakers have to consider the probability that the recipients of new authority use it in ways that are inconsistent with the expected outcomes (Elmore 1987).

***Political stream: legitimacy and support***

Kingdon (1995) pointed out that consensus building is influenced by bargaining. Both elected politicians and non-elected Governmental officials would assess the public mood normally perceived from certain active sectors of the public. Apart from the public mood, government officials would also consider the extent of consensus among organized political. Further, any turnover or change of administration would also affect the prominence of an issue on the policy agenda. In this respect, participants would take part in the bargaining process to protect their interests or gain some benefits.

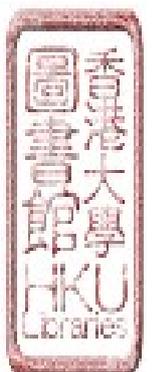
To evaluate whether a regulatory regime is legitimate or worthy of support, some benchmarks are relevant. Baldwin, Cave and Lodge (2012) suggest using five criteria namely, legislative mandate, accountability, due process, expertise and efficiency as a tool for assessing the regulation (Baldwin, Cave and Lodge, 2012 p.39).



The regulatory action gains support when it is authorized by Parliament or elected legislature. The regulators have fulfilled their mandate when they have acted in the way the people have instructed them to achieve. The regulators are often empowered with large discretion who may interpret the mandate in vary senses. In addition, the stated objectives of the regulation may invincibly cause tension and conflict. Regulators should be held accountable and properly controlled by democratic institutions so as to seek support from the public. The regulatory agency might claim that it is accountable for its interpretation of its mandate to a representative body and that this oversight renders its exercise of powers acceptable.

Procedures should also be sufficiently fair, accessible, and open which allow the public and particularly, the affected parties, to participate in the regulatory decisions and policy processes. It is the due process requirement. Very often, specific rules and regulations require the exercise of expert judgement. Regulators have to consider a number of factors and variables, of which specialized knowledge skills and experience are required. The regulators may claim support if they are expert in that area. Last but not least, the legislative mandate should be implemented efficiently. It may be measured by the level of inputs or costs compared to the outputs achieved, or in other words, productive efficiency. An alternative measurement is on the results produced, which are assessed by criteria set down with a degree of independence from the mandate.

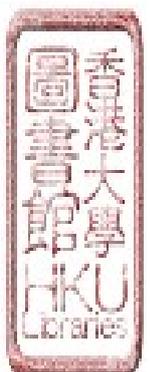
Freiberg has pointed out two important factors, effectiveness and flexibility, in evaluating regulations. It is easy to understand that effectiveness is the



measurement of whether the desired outcomes have been achieved by regulations. It addressed the issue of whether the desired regulatory objective has been achieved (Freiberg, 2010 p.260). It concerns the extent to which regulation achieves its intended objectives (at a socially acceptable cost). This not only encompasses the extent to which regulation has substantive or symbolic objectives, but also the extent to which it facilitates compliance and enforceability, and has minimal adverse or unintended consequences (Robert 1994). Flexibility means that the regulation should be regularly reviewed and kept up-to-date so as to respond timely to any changes or potential risks with appropriate adjustments. Flexibility sometimes is interpreted as autonomy in some professions or sports sectors of which they have control over its own membership and their behavior (Baldwin 2012 p.137). They have usually established institutional arrangements with the government that they are free from intervention by external bodies.

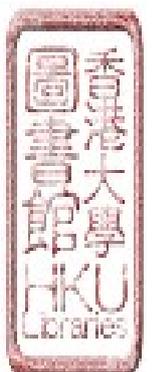
### **Concluding Remarks**

The type of governance is confined by the commitment or level of intervention of the government, which gives the blueprint of the policy. However, at the same time, the political problems, the institutional structures, the political context, and resources and power of different actors affects the development of the model of governance. Within such broad context, Kingdon's three-stream model gives an insight to analyze the problem through the problem, policy and political streams. The lens helped to study why problem catches attention of the public or politicians, the consideration on the package of policy tools to be employed and



the consensus reaching between the politicians and the legitimacy issue of the policy.

In this connection, Kingdon's three-stream model is used as the skeleton, together with other corresponding theories, to analyze the policy making and administrative processes in the regulatory framework on the sale of first-hand residential properties in Hong Kong. After that, examination on the model of governance in the regulatory framework on the sale of first-hand residential properties in Hong Kong at different stages will be conducted. The project will analyze whether the problem is caused by market failure, public interest, risk management and trust or a mix of them, the choice of policy tools, whether mandates, inducements, capacity building and system changing have been matched with the problem and the legitimacy of the policy. Applying Freiburg and Baldwin's literature, the project will assess the policy tools being employed and suggest comments on the possible improvements.

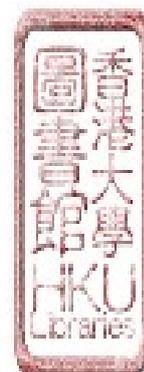


## **CHAPTER 3 - OVERVIEW OF HONG KONG HOUSING HISTORY**

### **Introduction**

Residence is important to every individual. It is more than just a place for shelter, but also what called home. Chinese are especially concerned on the place of living. They will spend most of their lifetime to work hard to earn money for a place to live. In Hong Kong, where the population density is high and land space is limited, residential properties became precious. Over the years, the colonial government and the SAR Government introduced various policies to equilibrate between the demand and supply in order to make here a better for living to the Hong Kong people.

The Hong Kong Government has adapted the positive non-interventionism towards housing policies. In the pre-war era, the government maintained Laissez-faire. Until 1960s, the government gradually promulgated resettlement housings after the Shek Kip Mei fire. Then with the huge inflow of population from the Mainland China, household became crowded and the government introduced a new of policies. Starting from the 1970s, the British government paid more concern on Hong Kong's housing development. As population gradually increased, housing became a major concern for the citizens. As a developing city, the government adapted the cooperative governance approach towards housing. It promulgated the ten-year housing policy and long-term housing strategies to benchmark the development direction. The government utilized the manpower and technique provided by private estate developers, and at the same time



provided public housing to map a development progress of Hong Kong's overall housing policies.

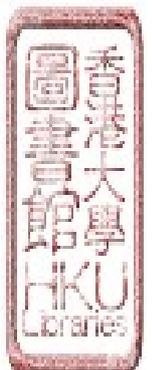
### **The Emerge of the Problem Stream: 1953 Shek Kip Mei Fire**

#### *The situation*

The population of Hong Kong grew drastically after the World War II, Hong Kong Economy began to raise results in the huge influx of immigrants from the Mainland China. At that time, one of every three Hong Kong residents was refugee escape from China. They were difficult to find a place for living due to lack of money. To look for a roof over their heads, more than 50,000 refugees built their homes on the rocky hillside of Shek Kip Mei. The living conditions in these squatter areas were unpleasant with little privacy. In some cases, 5 to 6 family members were required to squeeze into a small bathroom-sized cubical.

Inside the squatter area, there was no sanitation. Sewage was left in the alley under the sun. Drinking water had to be collected from the hillside. Households were packed without any anti-fire facilities.

On the Christmas night of 1953, a huge fire ravaged the Shek Kip Mei squatter wooden huts. Because the huts were packed and disorderly built, the fire soon spread to the whole hillside and destroyed the homes of some 58,000 people.



### *Governance and policy tools*

In the early days of Hong Kong, the government put emphasis on the economic development and maintained low level of control towards other public policies. In this private self-governance of housing policy, the public was not safeguarded by any policies because the government did not regulate the building and development of housing property.

Not until the outbreak of Shek Kip Mei fire, the public paid serious concern on the issue and sought immediate actions from the government. According to Freiberg, people look to governments to act on their behalf to produce some regulatory outcomes, when these prove to be inadequate to protect people from serious harm (Freiberg, 2010). The Shek Kip Mei fire aroused public interest, one of the fostering factors in regulating the government as categorized by Freiberg, it identified the risk of living condition might have further deteriorated if policies were not introduced. The government had no choice but to put the issue on top of the agenda list.

To immediately relieve the situation, the government soon embarked on the construction of resettlement blocks with reinforced concrete. By end of 1954, the first batch of eight six-storey blocks was built. In the following eight years, 21 more seven-storey blocks were built.



## **Policy Stream (I): 1972 Sir Murray MacLehose Ten-year Housing Policy**

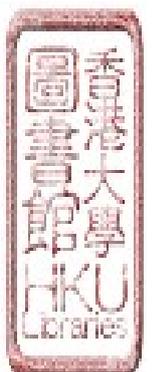
### ***The situation***

After the Shek Kip Mei fire, people became more and more concern on the living condition. At that time, housing policies were actually satisfying the needs for private commercials, industrials and residential developments instead of the need of the poor. The government became more aware on the need and determined in helping people to build a safer home.

In 1972, the Governor Sir Murray MacLehose announced the Ten-year Housing Policy. The government believed that providing low-cost housing for needy citizens would not only maintain social stability, but also t increase employment opportunities and stimulate consumption, thereby bringing further economic growth (Leung 1999, p.143). The Governor also erected the new Housing Ordinance and established the Housing Department (the former Housing Authority) to formulate and execute various housing policies toward private and public housings.

### ***Governance and policy tools***

Following the Ten-year Housing Policy, the government promulgated the Home Ownership Scheme (HOS) in order to assist the lower and middle class families. Instead of renting small flats from the government, the HOS helped residents in buying flats of their own. Through the scheme, the government on one hand can



develop new towns and on the other hand residents can have more spacious flats through the relocation of population.

Apart from the flats built by the Housing Department under the HOS, the government also invited private sector to participate in the building of HOS flats under the Private Sector Participation Scheme (PSPS). The government can then accelerate the building speed and integrate talents from the private sector.

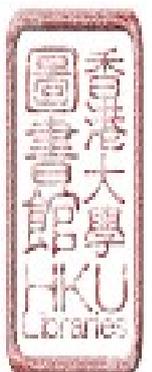
Throughout the Ten-year Housing Policy, the government has seldom cooperated with the private sector, since the government set up its own Housing Department, which provided a continuous line services in housing supplies. Though private sector was invited to participate in HOS, the authority given to private sector was minimal. According to Knill & Tosun, Hong Kong at that time was undergoing the cooperative governance model.

The implementation of PSPS involved private sector by employing outsource estate developer or contactors to participate in household buildings. According to Elmore's policy tools, it is an inducement policy. The government utilized the talents in existed in the private sector to accelerate the speed in construction. The government still withheld the policy decision.

## **Policy Stream (II): 1987 Long Term Housing Strategy**

### ***The situation***

The Ten-year housing policy announced in 1972 was highly appreciated by the public, the policy was therefore extended for another 5 years to 1978. The



government noticed the public look forwarded to long term housing policy, which can reassure Hong Kong's stability and enhance the confidence of residence.

The government conducted a review on its housing policy and took into account the following objectives:

(a) to ensure that adequate housing at an affordable price or rent is available to all households;

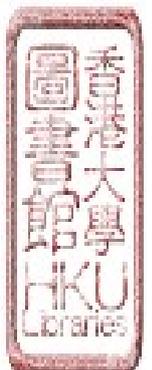
(b) to promote and satisfy the growing demand for home purchase;

(c) to ensure that the need for all types of housing is satisfied with minimum delay and in accordance with established priorities;

(d) to improve residential living conditions by redeveloping older public housing estates whose standards are below present expectations and by encouraging redevelopment of older private housing;

(e) to secure the most effective use of the resources of both the public and private sector in housing production; and

(f) to ensure that public resources spent on housing are used most efficiently by ensuring that a household's benefit from housing subsidy is in relation to its need.



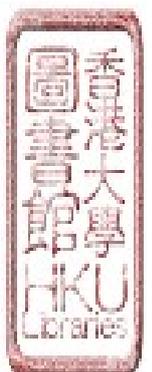
The Strategy was designed in detail and projected a number of benchmarks, which guided Hong Kong housing strategy up till 2001. Since the establishment of Housing Department, the government used its major expenses on the construction of public housing. In the Long Term Housing Strategy announced in 1987, the government introduced a new form of assistance to low- and middle-income families - the Home Purchase Loan Scheme (HPLS).

The HPLS assisted these families who wishing to purchase new private flats, the housing subsidy policy induced better-off tenants to purchase instead of continuing to rent homes, thereby releasing their rental flats for the more needy.

### ***Governance and policy tools***

The Strategy realistically reflected the public's demand with the huge upsurge of population. And most importantly, the government engaged both public and private housing units to take part in meeting the housing goal. The involvement of private sector successfully satisfied the housing demand and the housing policy regulation shifted from government driven to market driven. There was active cooperation between the private and the public sector. The HPLS in a sense controlled the amount housing flats influx to the market. The regulated self-governance is established.

The government induced money to the public to encourage them to purchase individual households. The inducement tool, according to Elmore's theory, money is an effective way to elicit performance. The policy did share the household



supply responsibility with private developers. It effectively continued the housing strategy.

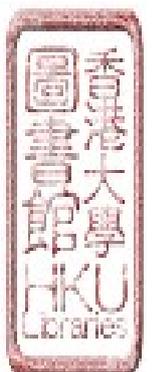
### **Policy Stream (III): Tung Chee-hwa's 1997 Policy Address**

#### ***The situation***

Starting from 1995, the property price raised drastically. According to the statistics of Global Property Guide 2009, the residential property price raised 71.5% from October 1995 to October 1997. People used more than three quarters of their salary on mortgage payment. The property price was high and unaffordable for low-class and middle-class families.

In 1997 TUNG Chee-hwa, Hong Kong's first Chief Executive, determined to suppress the housing problem. TUNG identified the high price was due to the insufficient housing supply and therefore announced the government would target to increase the overall housing supply to at least 85,000 flats per year. Apart from increasing the flats production under the government's housing scheme, it also significantly increased the number of land supply and actively competed for property buyers with developers in private property market.

The government's proactive housing policy greatly intervened the equilibrium the residential property market. Soon after the announcement of the 85,000 policy, Hong Kong's economy was impacted by the Asian financial and monetary crisis which appeared in late 1997. The property price dropped sharp to half of its original value. Governmental policy must take into consideration of its



environmental surrounds and implementations must also be adapted to the changing circumstances. Strict policies would only cause inflexible of the government.

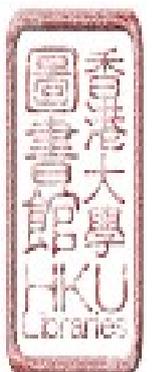
### ***Governance and policy tools***

Since the failure of ‘85,000 policy’, the government took up the strategy of ‘positive non-interventionism’. Being market driven, the housing market gradually became steady. Various measures, which the government has taken along the four directions since February 2010, ensured the healthy and stable development of the property market.

Estate developers became more and more inconsistency with the government policies and directions. Therefore a more authoritative approach on controlling household building is essential.

The top-down policy decisive is the typical interventionist governance, the governance maintained a hierarchical relationship with the private sectors. According to Knill and Tosun, the command and control highly detailed and legally binding by the Chief Executive’s policy address.

The housing policy announcement in the policy address was a mandate policy according to Elmore’s theory. The government aggressively announced the inflexible ‘85,000 policy’, without taking consideration of socio-economic status at that time. It assumed that the public and private sector would work together in fulfilling the construction target.



## **Policy Stream (IV): Government Policies and related Developments concerning First-hand Residential Properties**

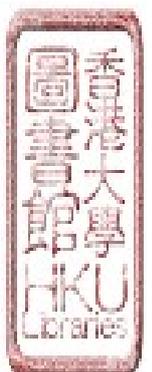
### ***The situation***

In the 80s and early 90s of Hong Kong, inadequate and misleading sales information on uncompleted residential properties is common and of up surging concern to prospective buyers as they have no opportunity to view the properties physically to understand the details of the properties before their purchase.

Many common problems such as inaccurate size of the property, misleading descriptions of fittings and finishes, misleading layout plan, sketches and location plans were rampant without proper control. Since 2000, more and more concerns have also been raised about the provision and dissemination of misleading information on the prices of property transactions and the related sales figures. As the number of such complaints grows and the properties are going up to sky-high price after the government non-intervention attitude towards housing policy with limited land supply after the failure of “85,000 policy”, there are increasing calls from the general public to establish timely measures to resolve the problems.

### ***Governance and policy tools***

To tackle the problems, government in the past adopted multi-pronged approach to monitor the sales of first-hand residential properties. More than one policy tool were used by the government to deal with the issue. This comprised the Lands Department’s Consent Scheme (“the Consent Scheme”), guideline of the Real

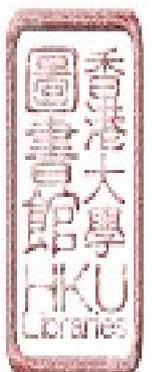


Estate Developers Association of Hong Kong (REDA), the regulatory work of the Estate Agents Authority (EAA) and the work of Consumer Council. Integrating with the theory by Knill and Tosun, the tools adopted could also be categorized into different governance models and it reflected that the Hong Kong Government had used a mixed governance model in different aspects of first-hand residential property sales to respond the issue.

(a) *Consent scheme.* The Lands Department's Consent Scheme ("the Scheme") was introduced in 1961 and is administered by the Legal Advisory and Conveyancing Office (LACO) of Lands Department (Lands D). Commencing from 1961, all new leases normally contains a provision which restricts any assignment or letting of uncompleted units prior to the issue of Certificate of Compliance (CC) unless the prior written consent of the Director of Lands is obtained. A similar clause is also added to a lease when a developer submits redevelopment application, which involves a change of land use or lease modification to the Lands D.

The Scheme allows the Director of Lands to ensure that the developer has complied with a set of requirements prior to the grant of the permission to sell the property under construction, and the purchasers will be protected by the Scheme.

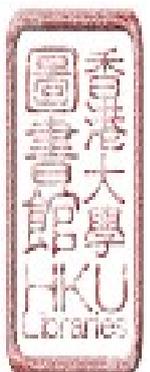
The original purpose of the Consent Scheme is to ensure the developer has adequate technical and financial resources to complete the development. Over the years, additional requirements were added in the Scheme for consumer protection and promoting fair practices in the sale of uncompleted properties. The relevant requirements include:



1. the financial standing of the developer and financing arrangements;
2. the terms of the sale and purchase agreement;
3. the terms of the deed of mutual covenant;
4. contents of the sales brochure; and
5. the way the pre-sale is to be carried out.

In the cases that the developers were found to be in breach of the requirements under the Scheme, the developers will be asked to implement appropriate measures or take actions to rectify the breach. The Director of Lands may also take actions against the developers under the Scheme. The actions includes requesting the developer to give explanation or clarification as to the alleged breach, requiring immediate rectification of the breach, referring the matter to the relevant professional body for follow-up actions, giving written warning, requiring the developer to allow the purchasers to cancel the transactions and to obtain a full refund, and suspending/cancelling the consent given in respect of the unsold units where the circumstances of the case warrant.

The Consent Scheme can be considered to be a kind of regulated self-governance. Regulated self-governance refers to constellations in which hierarchical intervention through legally binding rules is accompanied by more cooperative relationship between public and private actors (Knill and Tosun 2012, p.210). A land lease is actually a legally binding contract between the government and developer. However, the terms in the lease are not resulted from the bargaining processes between public and private actors on an equal standing. The



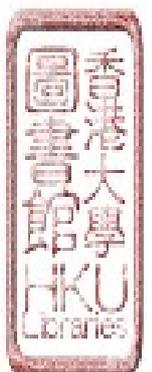
government plays a dominant role in the final decision on contents and regulatory arrangements.

*(b) Guideline of the Real Estate Developers Association of Hong Kong (REDA).*

The REDA is the key trade association in the real estate industry. Since 2001, the REDA has monitored its members on the sale of uncompleted residential properties through a self-regulatory mechanism with a set of guidelines for them to comply with. The guidelines, which covered requirements on sales brochures, price lists, show flats, marketing materials, transaction information disclosure and sales arrangement, were reviewed from time to time on a need basis.

The REDA has set up a Compliance Committee which comprises of members from its Executive Committee and independent members invited from solicitor firms to ensure the guidelines compliance. Cases of non-compliance with REDA guidelines will be referred to the Hearing Panel, which will deliberate and mete out disciplinary measures as appropriate. The disciplinary measures included issuing warning letter, private reprimand and public reprimand. Apart from handling the non-compliance case referral, random checks may also be conducted by Compliance Monitors (lawyers or CPAs) engaged by the REDA. As a monitoring measure, REDA members would also submit to the Compliance Committee a report prepared by an independent auditor certifying that the conduct of their sale was in compliance with the REDA's guidelines.

The self-regulatory mechanism of REDA is a type of private self-governance according to the theory of Knill and Tosun. The definition and implementation of



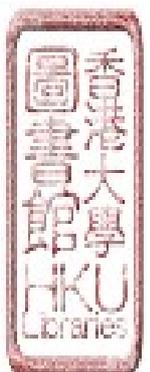
the policies are mostly in the hands of private actors. There are no legally binding instruments and the participation is on voluntary basis.

(c) *Estate Agents Authority (EAA)*. The EAA is a statutory body established under the Estate Agents Ordinance (EAO) in 1997. One of its major functions is to regulate the practice of estate agency in Hong Kong. Through issuing Practice Circular and the Code of Ethics, the EAA regulates the practice of estate agents and salespersons under EAO to protect the rights of the property purchasers. For the transactions related to first-hand properties, the EAA Practice Circular stipulates that the licensees are required to obtain necessary property information from the developers and then provide the prescribed information to the residential unit buyers. If it is established that licensees are in breach of the EAO, the Practice Circular or the Code of Ethics, the EAA may take disciplinary action against the licensees concerned.

The regulatory framework of EAA is a type of interventionist governance. However, this governance is actually an indirect intervention. The EAA could only monitor the conduct of estate agents but not the developers, which actually sell the premises. Therefore, the purchaser's right was protected by the regulations and duties imposed on the middlemen, instead of the vendors directly.

(d) *Consumer Council*. The Consumer Council is established under the Consumer Council Ordinance to enhance consumer protection and consumer education.

As to first-hand residential properties, the Consumer Council has jointly published with the EAA the “Notes to Purchasers of First-hand Residential Properties”

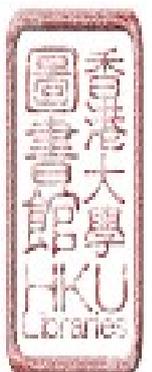


which would be included in the sales brochures of uncompleted first-hand residential properties under the Consent Scheme. The Consumer Council is also responsible for handling complaints from consumers, including first-hand property purchasers. The Council would examine the complaints and may take follow-up action in settling the disputes, including mediation. In case there are strong justifications supporting a complaint case, and the case may have far reaching implications on the public, the Consumer Council may advise the complainant to apply the Consumer Legal Action Fund, which provides financial support and legal assistance to applicants whose cases meet the eligibility criteria to take legal action.

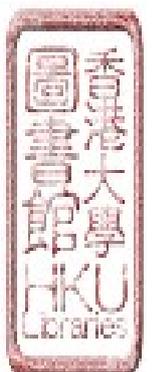
The Consumer Council is also a type of interventionist governance, although it is not specifically for regulating the sale of first-hand residential properties, but the transaction of all goods and services. This interventionist governance is also a mild one, since the Consumer Council did not have investigative and prosecution power, and the sanctions imposed was limited.

### **Concluding Remarks**

The government has taken multi-dimensional approaches in order to tackle the underlying residential problems. However, the introduction of the above policies and establishment of regulating bodies cannot fully suppress the first-hand property overheated situation. In order to further enhance the regulations of the sale of first-hand private residential properties, in 2010 the government announced that the Transport and Housing Bureau has set up the Steering Committee on the Regulations of the Sale of First-hand Residential Properties by Legislation to



discuss specific issues pertaining to the regulations of the sale of first-hand properties by legislation. In the following chapters, this project will analyze the policy dynamics leading to change of the government policies on monitoring first-hand residential properties.



# **CHAPTER 4 - DYNAMICS LEADING TO CHANGE IN THE**

## **POLICY GOVERNING THE SALE OF FIRST-HAND**

### **PROPERTIES**

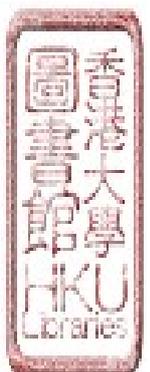
#### **Introduction**

The focus of this chapter is largely on the why there were elements of change in the policy governing the sale of first-hand properties. It appreciates the significance of the problem stream arising again concerning why the government sought to change the existing policy tools being used for governing the sale of first-hand properties. In essence, the ineffectiveness of the existing governance and policy tools and repeated failures to reform them lead to the government decision, as an aspect of the policy stream, to introduce a new ordinance to govern the sale of first-hand residential properties in 2012. The governance and policy tools adopted are evaluated, followed by a discussion of the significance of the political stream in terms of public mood, changes of administration and election.

**Re-emergence of the Problem Stream: Why did the government need to alter its responses to the sale of first-hand residential properties?**

#### *Overview*

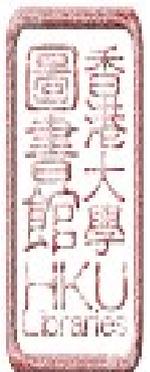
Buying a property in private market is likely to be the most significant investment of most people in Hong Kong. However, in the sale of first-hand residential properties, the vendors, i.e. real estate developers, and individual purchasers are usually not on an equal footing. Developers are always considered to be in a



stronger position and having greater bargaining power than the purchasers. Taking these advantages, the developers usually manipulate the sales procedures and selectively disclose property information in the sale process. Complaints against developers as to their problematic marketing strategies are common in 2000s. The complaints are mainly related to the unfair sales arrangements, inaccurate premises size and inaccurate property information. The natures of the problems revealed from these complaints are in fact similar to the fostering factors categorized by Freiberg, namely market failure, public interest, risk management and trust, which are helpful to understand the dynamics driving the government to change its policy towards the sale of first-hand residential properties in the community.

### *Unfair sales arrangements*

It is commonly criticized that the sales arrangements, which are mostly administered by the developers, are unfavorable to purchasers. In order to boost the sales volume and push the purchasers to confirm the buying decision within a short period of time, the developers usually arrange purchasers artificially to be engineered inside a packed sales office with the heat of a buying frenzy and only be given piecemeal information. The agents would urge them to make decision or they would lose out to other eager buyers. Worse, in some cases, the slots for the seller's signature on the sales and purchase agreements are deliberately left blank to give the developers the option of rescinding the sale (SCMP, 23 August 2006). In this connection, the purchasers' interests are greatly deprived under these unfavorable sales arrangements.

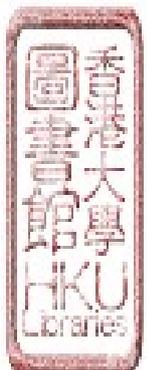


### ***Inaccurate size information***

Another common complaint is the inaccurate size information of the premises. In Hong Kong, traditionally the transaction parties like to use Gross Floor Area (GFA) to calculate the price of properties. However, GFA actually cannot reflect the real size of the property, since GFA is the sum of its saleable area and its apportioned share of common area, which may differ from one developer to another. In addition, due to concessionary policy, exemptions were granted to amenities and green features, such as balconies and clubhouse, from the calculation of GFA when developers construct the buildings. Since developers are not required to pay land premium for most of these facilities but on the other hand can charge the purchasers for payment. These features become so excessive, and in extreme cases the payment can sum up to more than 20 per cent of the GFA. As such, it has been suggested for long to use the saleable floor area as the only basis in listing the price per square foot, to avoid buyers from being misled and to eradicate the problem of "shrunk flats". However, the developers usually defend that using GFA is a traditional practice and will face practical difficulties in changing the calculation.

### ***Remarkable cases – disseminate inaccurate property information***

Apart from the unfair sales arrangements and inaccurate property size information, the developers are also criticized to disseminate misleading property information in marketing the first-hand residential properties. Four remarkable cases are chosen to illustrate the seriousness of the problem.

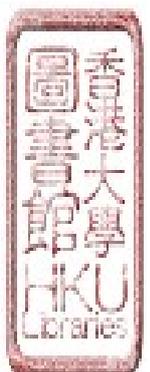


*(a) The Arch – misleading sales information regarding the completed transactions.*

In May 2005, a transaction of a penthouse unit in a luxury residential development, The Arch, attracted the public's attention as to the dissemination of misleading transaction data by the developers to influence the sale of the residential development project. The developer, Sun Hung Kai Properties, was suspected to selectively disclose that a penthouse unit of over 5,000 square feet had been sold at a price of over \$30,000 per square foot which was a price hitting levels not seen since 1997. However, the media later reported the transaction was actually associated with three four-bedroom apartments in the same development project at prices below the market price.

The incident revealed how the developers could play tricks in the marketing strategy. The then Secretary for Housing, Planning and Lands Michael Sun, mentioned that the internal sales system for unfinished flats was not transparent enough, and agreed that developers should provide a price list for all units and announce the accurate price for units sold. Actually, before Sun's suggestion, the REDA had already formulated guidelines requiring the developer members to issue price list to purchasers, but apparently not all developers complied with the guidelines since it was not a legally binding requirement.

Besides, the incident also uncovered the obsolete system of property transaction recording since lots of price-affecting information like cash rebate and other incentives offered by developers were not included in the records of Land Registry.



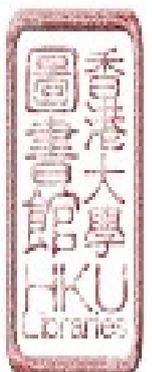
*(b) 39 Conduit Road – inaccurate transaction price, sales figures and floor levels.*

In October 2009, a special unit at 39 Conduit Road, was sold at an “astronomical price’ of over \$71,000 per square foot, breaking the world records. However, in December 2009, the public queried the transaction since the purchaser of that unit had also bought four lower floor flats at the same time. It was suspected that parts of the property cost of the lower floor units were transferred to the special unit, so as to deceive other prospective buyers.

In March 2010, the 39 Conduit Road tower again attracted the spotlights. According to the Land Registry’s record, there should be only one luxury flat being sold, however the developer claimed that contracts had been signed for 24 luxury flats. The legislators pressed the government to conduct investigation into the matter.

In June 2010, it was discovered that the sale of 24 flats, among which 20 of the deals eventually fell through, included a top-floor duplex, which created the world-record \$439 million. According to a survey conducted by the Middle Class Alliance, more than 85 per cent of the 526 middle-income interviewees believed that was an act of market manipulation by Henderson Land to boost property prices (SCMP, 12 July 2010).

The 39 Conduit Road tower was also famous on its "creative" presentation of floor levels. The developer had skipped floor levels of number four, 13, 14, 24, 34, 40 to 59, 62, 64, 65, 67 and 69 to 87. As a result, the 46-storey high tower became “88-storey” high, and the developer could market the top two floors of the luxury project as 68 and 88, which were recognized as lucky numbers in Chinese

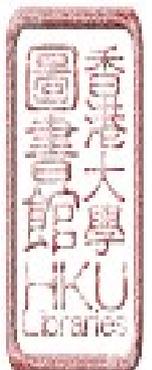


numerology. The unrealistic floor numbering system misled the buyer's perception on the value of the premises, because premises on higher floors could usually be sold at higher prices.

(c) *The Apex - misleading property location.* In 2006, the advertisements promoting the property "The Apex" showed the stunning Manhattan cityscape with a model of the property and highlighted the project's luxury clubhouse as well as proximity to the railway station. However, the promotion materials did not mention an important fact that the site was actually located in the busy industrial area in Kwai Chung (SCMP 11 September 2006).

The misleading information provided by the developer was also condemned by the Broadcasting Authority. The Broadcasting Authority considered the slogan, which appeared in all advertisements versions, claimed that the property was situated in Kowloon area was misleading. Since the actual property location is in Kwai Chung, New Territories, according to the official definition of the New Territories provided by the Lands Department (SCMP, 11 September 2006).

(d) *Lake Silver – skipping unfavorable details in the sales brochure.* In June 2009, a green group, Green Sense, together with Alan LEONG Kah-kit, a legislator from Civic Party, slammed the sales brochures of Lake Silver, which was developed by MTR Corporation and Sino Land in Wu Kai Sha, had covered some important facts which could affect the buyers' judgment. In the sales brochures, Lake Silver was depicted as a cluster of towers standing among green hills and sparkling shore. However, in reality the sea views would not last for long since most floors would be blocked by another property and will undergo development in future. The

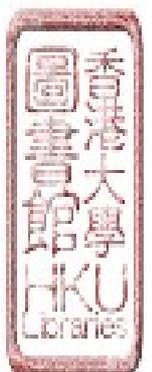


artists' impressions of skipping unfavorable details also misled purchasers in making their buying decision (SCMP, 8 June 2009).

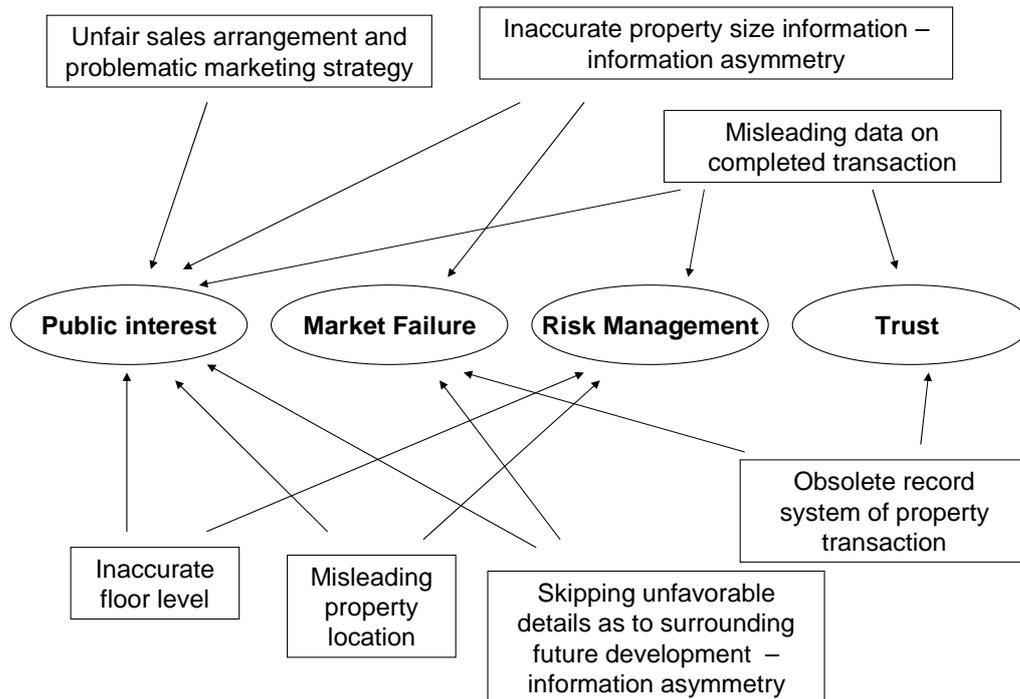
### *Overall significance of the problems*

The problems exposed in the above studies are numerous and diverse. While Kingdon's theory mentioned that a phenomenon would turn into a problem when people were convinced that something should be done to make a change, there is no categorization regarding the nature of the problem bringing about such perception. Supplementing Kingdon's theory, the fostering factors identified by Freiberg are used to further analyze how the problems mentioned above bring about the policy change action of the government.

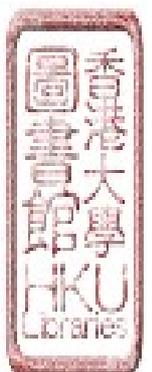
Freiberg divided the fostering factors, i.e. core and generic reasons, for the needs of government regulation into four categories, namely, public interest, market failure, risk management and trust. The problems reflected in the sales of first-hand residential properties could be connected with these four categories as shown in Figure 4.1.



**Figure 4.1 Problems in the first-hand residential property market**

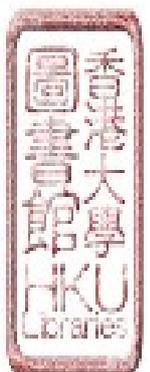


(a) *Public interest.* Almost all of the complaints are connected with public interest. Disseminating misleading sales information to influence public's buying decision definitely harmed the public interest. It must be noted that the complaints are not just lodged against one or two major developers, but most of the developers, ranged from small players to market leaders. This reflected that playing tricks in the property marketing is a common culture, which is a serious conduct issue in the overall real estate industry. The non-equal-footing bargaining power between purchasers and developers further manifests the need of government to protect interest of the general public in the first-hand property sales.



Freiberg (2010) pointed out that social and informal mechanisms are basic modes of regulating private behavior. People will expect government to act on their behalf to produce regulatory outcomes when their interests are impaired by inadequacy of protection, market failure in quality services and threatening of public confidence. In this case, the establishment of the Ordinance is to a certain extent caused by the long history of inefficiency and disappointment from the traditional self-discipline regulatory mechanism adopted by the government over the sales of first-hand property. Potential buyers were long suffering from the unfair and misleading information provided by developers with minimal protection from the government. The substandard quality of services was long arising grievances from the public whom aired their dissatisfaction and demand against the government to take regulatory actions on their behalf.

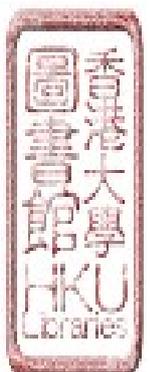
*(b) Market failure.* In the light of market failure, it can be seen that the market is inefficient to solve the problems. Information asymmetry between purchasers and developers always failed in the market. First of all, developers refused to provide saleable area information, but only provided GFA, were already an example of market failure resulting from information imbalance. Secondly, the developers usually retain information, especially in some uncompleted first-hand property sale, e.g. the quality, actual view and scene from the property, future development plan in surrounding areas. This information could affect the purchasing decision and price. However, the general public usually does not have sufficient knowledge to obtain that important information easily.



(c) *Risk management.* For the aspect of risk management, government realizes that if the problematic marketing practice continues, the property price will become sky-high and the public discontent will accumulate. By giving partial sales figures which are only favorable to vendors, skipping floor levels to create breaking new high unit price, or hiding the rebate or discount which cannot be reflected in the obsolete Land Registry database, the developers could easily boost up the property price. However, this is against the government's objective in maintaining the property price at a public affordable level. After assessing the risk of high property price, the government is forced to change its regulating tools.

(d) *Trust.* In regard to the aspect of trust, Freiberg focuses on the government's great concern in maintaining public trust towards government administration. This is because high level of trust is conducive to regulatory system and lowering the transaction costs. Actually, trust is connected with the effectiveness of the existing policy tools. Effective the existing policy tools, results high public trust. Yet, the existing policy tools/mechanism are proven to be ineffective in monitoring the developers. This project will further discuss in the later parts on how the ineffectiveness of the existing institutional structures led to distrust from the public, thereby fostering government to revise its policy.

Apart from the aspect of trust suggested by Freiberg, studies also reflected that government's trust towards the self-regulators is an important factor in causing policy change. Under the self-regulatory regime of REDA, the developers had actually formulated guidelines requiring its members to issue price list to purchasers before sale. However, it was found that not all developers fully

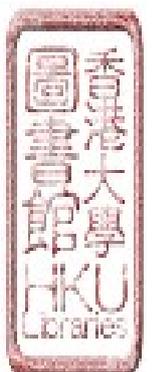


compiled the guideline. During the years before the set up of Ordinance, the government actually had continuously advised and discussed with the REDA in order to fine-tune the self-regulatory mechanism. However, improvements were limited. Finally, the government lost trust on the REDA self-regulatory regime and decided to revolutionize the regulatory framework.

### **A New Policy Stream: How has the government chosen the policy tools?**

#### *Overview*

The policy stream is about how the government regulates and formulates the policy tools to solve the problem. The feasibility of a proposal relies on its technical viability, costs, supports from the public and politicians, as well as the indigenous value choices in the community (Kingdon, 1995; Cairney, 2012). The policy stream creates a short list of solutions, which is an agreement that some particular proposals are prominent (Kingdon, 1995). Prior to the Residential Properties (First-hand Sales) Ordinance, the government used multi-pronged approach with four major policy tools to regulate the first-hand residential property sale activities, namely the Consent Scheme, guideline issued by REDA, regulatory frameworks by the EAA and the Consumer Council. The consideration process in choosing these tools, which would affect the outcome and effectiveness of the tools, are worth examining in order to understand the policy-making process as well as policy change dynamics. It is found that with tilting focus on cost and resources, the existing policy framework is ineffective in accordance with the assessment criteria developed by Baldwin, Cave and Lodge and the factors identified by Freiberg. In addition to the repeated failures in the



optimization process, the government finally came up with the decision to introduce a new legislation to deal with the issue.

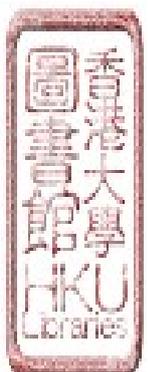
***Governance and policy tools***

The classifications of policy tools defined by Elmore (Elmore, 1987) are used to explain the choice of these tools. Applying Elmore’s framework, these four tools are mainly mandates, which are the authoritative rules or prescriptions governing the behavior of individuals and agencies. Details are illustrated in Figure 4.2.

**Figure 4.2 Types of policy tools according to Elmore's classification**

<b><u>Policy Tools</u></b>	<b><u>Elmore’s classification</u></b>
<b>Lands Department’s Consent Scheme</b>	Mandates
<b>Real Estate Developers Association of Hong Kong (REDA)</b>	Mandates
<b>Estate Agents Authority (EAA)</b>	Mandates and Capacity Building
<b>Consumer Council</b>	Mandates

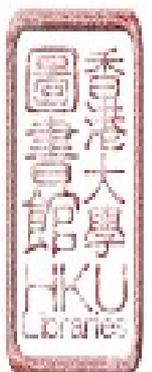
(a) *Consent Scheme*. For the Consent Scheme, its original purpose is to monitor the behavior of the developers during the construction process, but later the government imposed additional requirements on the land lease during lease modification for consumer protection and promoted fair practices in the sale of uncompleted properties. Though the requirements are the contractual terms in the



land lease, this can be considered to be a kind of mandates, which involve rules of authoritative nature governing the behavior of the developers with an effect of producing compliance.

According to Kingdon, the feasibility of a proposal relies on its technical viability, costs, supports from the public and politicians, as well as the indigenous value choices in the community (Kingdon, 1995). It is believed the choice of this policy is due to the consideration of technical viability and costs. When the community in 1990s requested for additional controls on the sales behavior of the developers, imposing more conditions on the land lease between the government and the developers was considered to be a fast and cost-effective solution. There is no legislation requirement for this administrative measure since adding conditions in the land lease is only the contractual issue between government and the developer. Without detailed legislative debates, the drawback of this solution is that the buyers of those first-hand uncompleted projects which have not undergone lease modification are not protected by the Consent Scheme.

(b) *Guideline of the REDA*. The guideline of the REDA is also considered to be a policy tool of mandates. The REDA, through this self-regulatory regime, stipulates the rules to monitor its members in selling first-hand residential properties. The government welcomes this private self-governance from the consideration of cost. The government does not need to change the legislation. The policy making process is quick and simple, and the monitoring cost is relatively low since it is managed by the REDA itself. However, again, the

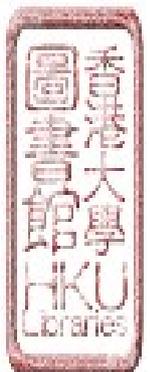


drawback of this fast-track solution is some of the first-hand property sites which are developed by non-REDA members are not regulated under the guideline.

(c) *Estate Agents Authority*. In regard to the framework under the EAA, it is also a mandate to regulate, but targeted on different groups of real estate practitioners, i.e. estate agents. The estate agents are required to obtain a wide range of information regarding the properties before performing marketing works. The purpose of the requirement is to avoid developers from disseminating inaccurate property information with the scrutiny of estate agents. Therefore, this policy of mandate is indirect in nature and it ultimately regulates the real developers, rather than the estate agents.

The choice of this policy tools is believed to be expediency before the specific legislation is set up for property developers. The government may consider the legislation under the EAA can be employed to regulate the first-hand residential property market without much additional resources. Yet, this framework under the EAA is full of loopholes since it neglects an important fact that the developers and estate agents are actually principal-agent relationship. Expecting an agent to monitor the work of its principal is ironic in nature.

In another sense, the work of the EAA can also be categorized as a kind of capacity building measures since the EAA will from time to time require estate agents to attend seminars or programmes to enhance their knowledge and ethics in the property sale. This is a kind of investment intending to create long-term effect for better consumer protection to the property buyers.

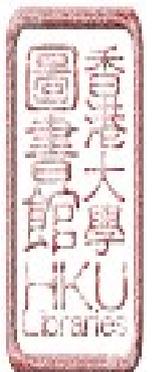


*(d) Consumer Council.* The work of Consumer Council is another tool of mandates. Consumer Council Ordinance is the authoritative rule governing the behavior of all sellers in all kinds of transactions, including from first-hand residential property developers.

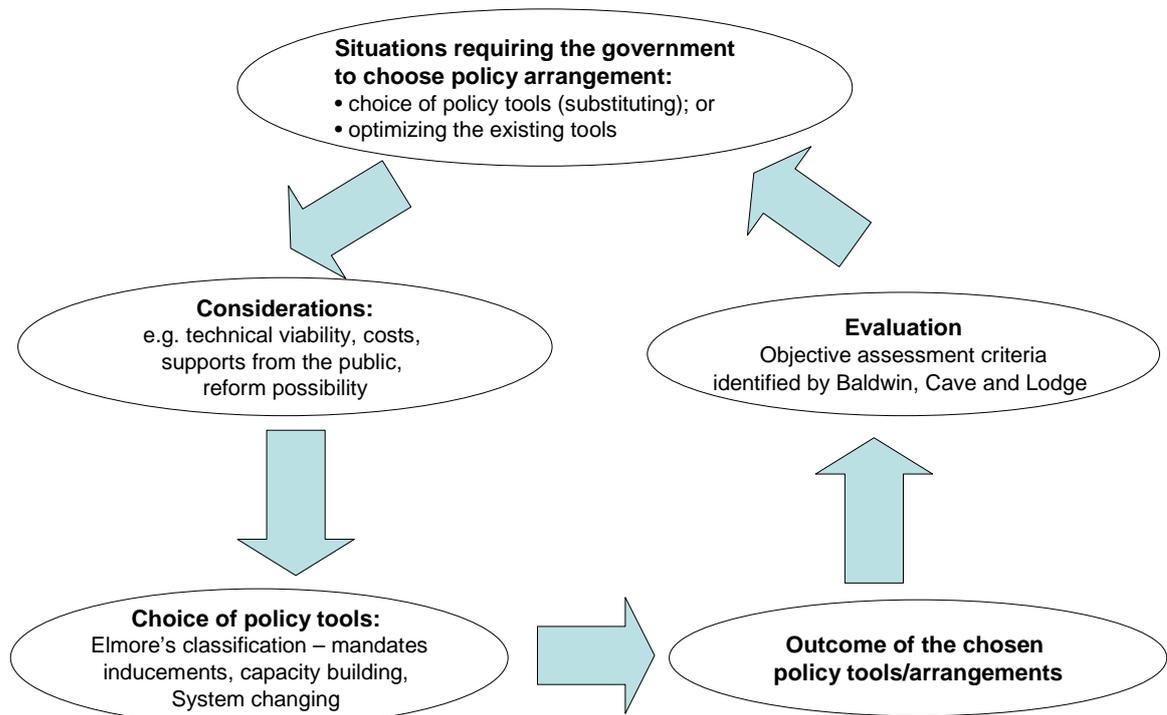
Considering no additional resource is required, the government makes use of the framework of Consumer Council as one of the tools to regulate the developers. The vendors, i.e. the developers, should comply with the broad-spectrum rules of consumer protection. However, the conveyance procedure is very complicated, the general rules only advocate consumer interests are weak in general to monitor the sales process of first-hand properties which is full of rooms for playing tricks.

*(e) Overall significance.* It could be found that these four policy tools are chosen to a large extent due to the considerations on cost and resources involved. For the sake of expediency, legislative debates are not thorough in the formulation process of these tools.

Due to excessive attention put on the cost and resources in the policy-making process, the outcomes of these chosen tools are not effective and complementary as expected. With the evaluation and review on the deficiency on the existing policy tools via objective assessment criteria identified by Baldwin, Cave and Lodge (Baldwin, Cave and Lodge, 2012 p.26-31) and factors suggested by Freiberg (2010), the government may again need to make a choice to reform/optimize the existing policy tools or adopt a big bang of system changing. Figure 4.3 illustrates the above cycle.

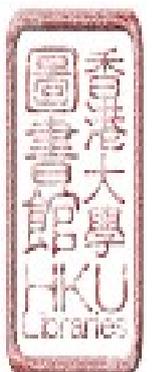


**Figure 4.3 Cycle on policy-making process**



***Evaluation of the existing policy tools***

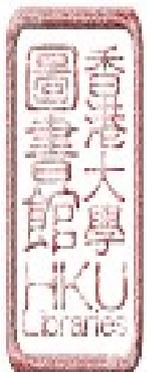
Adopting the five assessment criteria developed by Baldwin, Cave and Lodge and two factors identified by Freiberg, these four existing policy tools can be objectively and systematically evaluated. The five assessment criteria and two important factors, including (i) Legitimacy; (ii) Effectiveness; (iii) Accountability; (iv) Due Process; (v) Expertise; (Baldwin, Cave and Lodge, 2012) (vi) Efficiency; and (vii) Autonomy (Freiberg, 2010). It is found that each policy tool has its own inadequacy, leaving some loopholes for market practitioners to play tricks and circumvent the regulations.



*Consent Scheme: problems in legitimacy and effectiveness.* Though the Consent Scheme administered by Lands D is led by a group of real estate professionals, it is found that the Scheme is inadequate in terms of Legitimacy and Effectiveness.

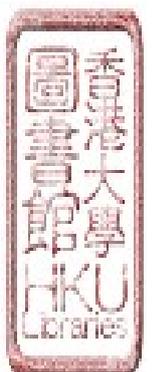
For the criteria of Legitimacy, Consent Scheme is not a legislation or regulation created via a legislative process with thorough debates by lawmakers. Strictly speaking, it is only a clause inserted by the government in the land lease, a legally binding contract between the government and developer during lease modification. In this connection, the legislative mandate is not strong enough. Lacking comprehensive legislative debates also resulted in the flaws in the Consent Scheme and affected its effectiveness. The original purpose of the Scheme is to ensure developers have adequate technical and financial resources to complete uncompleted projects but not for consumer protection in the sales of all first-hand properties. Without detailed planning, some of the primary projects are found unprotected by the Scheme.

As for the redevelopment projects on the sites where the leases are ‘unrestricted leases’, i.e. lands sold or granted in the early colonial period (so-called Non-Consent Scheme Sites), there are no restriction on the development of potential or land use stipulated in the lease terms. In this regard, the developers are not required to submit any lease modification in the redevelopment process and thus the Lands D has no opportunity to add the clauses related to the Scheme to the leases concerned. As a result, the purchasers of the first-hand properties built on such sites were unprotected by the Scheme.



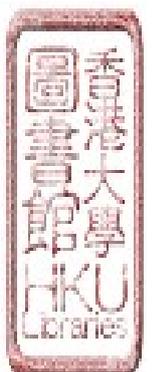
Developers sometimes would make use of this loophole to formulate the sales arrangement, which were favorable to them. For example, in September 2006, Henderson Land requested the prospective buyers to pay \$100,000 to enter ballot for flats in the Grand Waterfront project in To Kwa Wan, in order to ensure only serious buyers joined the ballot. This arrangement was inconsistent with the rules under the Consent Scheme properties which the developers could only accept a deposit of about five per cent of the purchase price when the buyer signed a provisional agreement for sale and purchase. Yet, the site in To Kwa Wan was not a site under the Consent Scheme. Hence, Henderson's arrangement did not violate any rules.

The ineffectiveness of the Lands D was also criticized by Mr. LEE Wing-tat, Legislative Council Member, during the legislative debate of the bill. He pinpointed his dissatisfaction about the performance of the Lands D and the Buildings Department for their buck-passing attitude. He said “while there are many different enforcement bodies, I am particular dissatisfied with the Lands D and the Buildings Department for the supervision of uncompleted developments in respect of the implementation of the Consent Scheme”. He pointed out that even the two departments were working under the same cabinet; surprisingly they were not prepared to communicate with each other. This reflected that individual departments have its own agenda and when difficult situation arise which requires full cooperation and devotion the effectiveness may not be as good as the public expected. This is particularly noteworthy when there is no external driven force urging them to take timely actions.



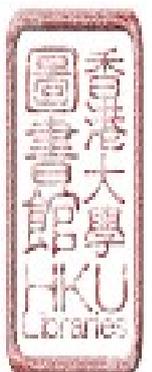
*Estate Agents Authority (EAA): problems in legitimacy and effectiveness.* The EAA is a statutory body established to regulate the practice of estate agency in Hong Kong, but not the practice of real estate developers. Its legitimacy to regulate the conduct of the developers is actually in doubt. Without a legislation specifically to regulate the developers directly, the government could only impose duties on the estate agents in the transaction process to minimize the dissemination of misleading information. The estate agents are required to get a wide range of information regarding the properties before performing their marketing works. However, in the first-hand property transaction, the estate agents are mostly the agent solely representing the developer, instead of purchasers. Imposing duties on the estate agents to monitor the conducts of their principal is sarcastic in fact. The estate agents tend to put the interest of their principal in a higher priority and the effectiveness of the regulatory mechanism is greatly weakened due to the conflict-of-interest situation.

*Consumer Council: problems in expertise, efficiency and effectiveness.* Although the Consumer Council is set up to enhance consumer protection, it lacks expertise to monitor the sale of real estate properties and involves a wide range of knowledge on land policy and conveyancing. As commented by Dr. Margaret NG, Legislative Council Member, in the Legislative Council Debate on the Residential Properties (First-hand Sales) Ordinance, she pointed out that transaction of properties involves very specialized legal services and the government focused merely on the protection of consumers' rights, fraud prevention and penalties but neglected that the inclusion of the relevant provisions into the legislation without adequate conveyance expertise may give rise to many problems.



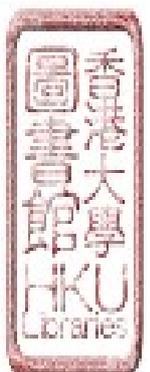
In addition, the Consumer Council itself is not tailor-made for regulating the sale of first-hand residential properties, but the transactions of all goods and services. It is rather difficult for the Council to deploy lots of resources to enhance efficiency in monitoring the conduct of various real estate developers. Moreover, facing the sales malpractice on properties, what the Consumer Council can do is to disclose the name of concerned vendors to the public or offer legal assistance to the consumers through Consumer Legal Action Fund. The Consumer Council has no authority to instruct or direct the vendors to comply anything, or even proceed in taking legal actions against the vendors direct. Without any investigative and prosecution power, the regulatory framework under the Consumer Council is ineffective.

*Guideline of the REDA: problems in legitimacy and due process.* One of the major problems of the REDA self-regulatory mechanism is its inadequacy on legitimacy, i.e. insufficient legislative mandate to impose legitimate power for regulation. The REDA is only an industry body, instead of a regulator. Its major function was not to regulate the real estate developers or impose any sanctions to them in case of misconduct. In this regard, violating the non-legally-binding guidelines set up by the REDA will not cause serious consequences. In addition, developers are not required to be members of REDA in order to start their real estate business in Hong Kong. If they disagree with the directions or visions of the REDA, they could quit freely. The legitimacy of the REDA self-regulatory regime is only established on a voluntary-based compliance of its member developers, which is rather weak in nature.



Due to the membership requirement in enforcing the guidelines, the REDA self-regulatory mechanism is also found to be ineffective in some cases. The deficiency is manifested in the case of Icon, a first-hand residential project developed by Winfoong International in 2011. In January 2011, several buyers of Icon found the new premises they purchased were rubbish-dump flats with unacceptable conditions, which included exposed flooring, unfurnished walls and unfinished kitchens. Contrary to the guideline of REDA and the Consent Scheme, they were only given promotional leaflets rather than official sales brochures prior purchasing the uncompleted flats. However, the site was not under the rules of Consent. The REDA guideline also could not govern Winfoong International since Wingfoong is not a member of REDA. That is to say, if a developer who is not a member of the REDA carries out a redevelopment project on a non-Consent Scheme site in Hong Kong, there is no law or regulation in monitoring the project or supervising the sale of the uncompleted buildings (China Daily, 27 January 2011).

Lack of due process is also found in the REDA regulatory framework. According to Baldwin and Cave (1999, p.79), due process is important since public support is merited because the regulator adopts fair, accessible and open procedure. Proper democratic influence over regulatory framework is then protected by due process, thereby reinforcing the legitimacy of the regulation. From the guideline of REDA, the due process is hardly observed. Although there is a Compliance Committee in the REDA handling non-compliance complaints, it does not disclose the disciplinary cases to public. Those random checking mechanism and other monitoring measures are also far from transparent. Mr. LEE Wing-tat, Legislative



Council Member, during the legislative debate also provided similar comments as to lack of due process under REDA framework. He mentioned, “The outcome of self-discipline is that often after receiving complaints, they will accept views, but it will happen all over again next time. Although the relevant committee of REDA has conducted meetings, no developer has ever been punished or even warned. I really find it ridiculous if the government still considers self-discipline a success after these incidents”.

*Overall significance.* In accordance with the criteria by Baldwin, Cave and Lodge and Freiberg, apparent flaws in the existing institutional structures are identified. Without a centralized legislation, these policy tools are not mutually reinforcing and leaving grey areas not being covered. Figure 4.4 shows how these four policy tools are not complimentary in terms of different kinds of land leases, first-hand residential properties and REDA memberships of the developers.

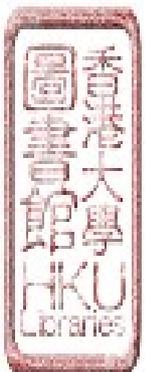
**Figure 4.4 Deficiency of the policy tools in terms of different kinds of land leases, first-hand properties and REDA memberships**

		Types of first-hand residential properties			
		<i>Completed</i>		<i>Uncompleted</i>	
		Policy Tools	Coverage	Policy Tools	Coverage
Types of land lease	<i>Restricted</i>	Consent Scheme	✗	Consent Scheme	✓
		REDA Guideline	✓	REDA Guideline	✓
		EAA	✓ but indirect	EAA	✓ but indirect
		Consumer Council	✓ but weak	Consumer Council	✓ but weak
<i>Unrestricted</i>	Consent Scheme	✗	Consent Scheme	✗	
	REDA Guideline	✓	REDA Guideline	✓	
	EAA	✓ but indirect	EAA	✓ but indirect	
	Consumer Council	✓ but weak	Consumer Council	✓ but weak	
<i>Restricted</i>	Consent Scheme	✗	Consent Scheme	✓	
	REDA Guideline	✗	REDA Guideline	✗	
	EAA	✓ but indirect	EAA	✓ but indirect	
	Consumer Council	✓ but weak	Consumer Council	✓ but weak	
<i>Unrestricted</i>	Consent Scheme	✗	Consent Scheme	✗	
	REDA Guideline	✗	REDA Guideline	✗	
	EAA	✓ but indirect	EAA	✓ but indirect	
	Consumer Council	✓ but weak	Consumer Council	✓ but weak	

Developer is REDA Member

Me

Developer non-REDA Member



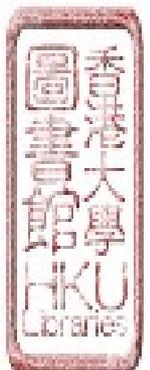
### ***Recognizing the ineffectiveness: reform or big bang of system changing?***

Recognizing the flaws of the existing tools, the government actually has an option to reform them, instead of replace the regulatory framework by setting up a new ordinance. In fact, the government had taken a number of actions to optimize and reform the tools. However, due to the limitation of the existing institutional structure, it was difficult to greatly improve the effectiveness of those tools. In this section, the measures taken by the government tried to optimize the tools are discussed, and it is concluded that repeated failures to reform will lead to a big bang system changing finally.

#### *a) Measures after the misleading sales information of The Arch*

After the incident of the Arch in 2005, the government, legislators and the public highly criticized the dishonest marketing strategy of the developers. The government urged the REDA to improve its guidelines on sales of primary residential projects. The REDA pledged to set up a special committee to review the guidelines that governed the sale of uncompleted properties. Subsequently, the REDA announced three measures to improve transparency of apartment sales figures, including issuing price list whenever new batch of flats is released for sale and sales figure publicized would only cover those legitimate sales with the preliminary agreement of sale and purchase signed.

However, in August 2006, television footage showed estate agents apparently selling the flats of Park Island, a new property project of Sun Hung Kai Properties, and demanding buyers to pay \$50,000 before they can read the price list of flats.

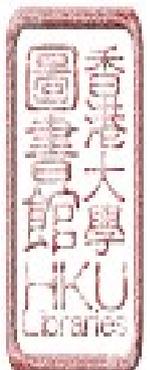


This reflected the developer actually did not follow the new guideline issued by the REDA.

*b) Measures after warning given by the government in 2006*

In August 2006, the government forewarned the developers that tough measures, including legislation, would be considered to regulate sales of uncompleted flats if developers were repeatedly reported that they did not comply with the guideline laid down by the REDA (24 August 2006 SCMP). The rules of the REDA were also considered to be inadequate to prevent dubious sales techniques of the developers. The common sales techniques of the developers were to put a small number of flats on the market and priced them at slightly below the market price. The units would then be quickly absorbed. Subsequent batches would then be put on sale to the large number of purchasers who have missed out, or thought they have missed out, in the first round. Yet the sales method of these additional batches to the initial lot was not governed by the guideline by the REDA. Crucially, meaning the developers were not even obliged to distribute price lists for all the flats available for sale (SCMP, 23 August 2006).

After meetings with the government, the Consumer Council, EAA and REDA agreed to revise the guideline as to the sale of first-hand residential properties. The developers were bound to put at least 20 units or 20 percent of the total number of flats, whichever is greater, for sale as the first batch. The price list must be provided 24 hours before the sale and for subsequent batches the price lists should be made readily available once the sales were announced. The government



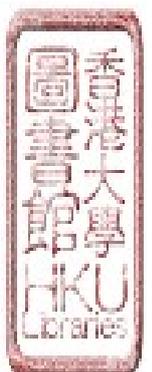
agreed to give time to test new guideline before it considered regulating by legislation.

*c) Measures after criticism on skipping unfavorable details in the sales brochure in June 2009*

In October 2009, in response to the criticism of misleading pictures and details in sales brochures, e.g. Laker Silver, the REDA again revised its guideline to require the developers to put nearby residential developments and unpopular facilities, such as landfill sites and cargo working areas, on location maps in sales brochures. Besides, the brochure should also include the Consumer Council's notes to buyers and a Chinese translation of the Deed of Mutual Covenant. Sales brochures must not include any artists' impressions or graphics. For other promotional materials, disclaimer should be added in those artists' impressions. However, it ruled out penalizing those who violated the guideline. The guideline was still not legally bind and the REDA insisted that self-regulation is still the best way in regulating the sale of first-hand properties (SCMP 8 October 2009).

*d) Government attitude after the unusual skipping floor levels of 39 Conduit Road in 2009*

Soon after the release of revised guideline by the REDA in early October 2009, the media reported the unusual skipping floor levels and inaccurate transaction figures regarding the project of 39 Conduit Road. The Henderson Land Development was condemned for its skipping 48 floor numbers in its 39 Conduit Road apartment tower and misleading released sales figures to create



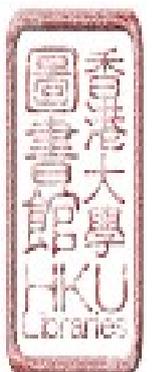
“astronomical price’ of over \$71,000 per square foot. The action of Henderson again raised the public concern about misleading information disseminated by the developers. The self-regulation mechanism had nothing to do in this case, since the REDA guideline did not included regulations on floor numbering systems.

In response to this incident, the legislators, including those in the pro-establishment camp, suggested to regulate the sale of primary residential projects by setting up a designated statutory body (SCMP 20 October 2009). At this juncture, despite of the advocacy for policy change, government still inclined to maintain the status quo. The then Secretary for Transport and Housing Ms. Eva CHENG responded that the government had no plan to establish a watchdog to regulate the primary property market since the sales of uncompleted properties were governed by the Lands D, Consumer Council, REDA and other relevant legislations, including the Misrepresentation Ordinance and Theft Ordinance (SCMP 3 December 2009).

*e) Measures after media reported the collapsed deals of 39 Conduit Road in 2010*

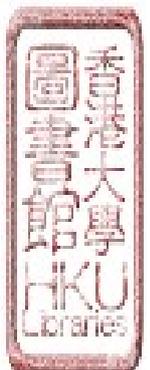
In March 2010, it was revealed the 23 deals, out of 24 claimed transactions, in 39 Conduit Road were registered in the record of Land Registry. The developer was suspected of manipulating the market to boost property prices, though Henderson Land claimed to the Lands D that the sale transactions of those flats would be completed by July 2010.

In this connection, the government decided to tighten the control on the sale of first-hand residential properties, though it was still within the existing institutional



structure of the REDA guideline. In April 2010, Financial Secretary Mr. John TSANG requested the REDA to issue new guideline on nine proposals as follows:

- (1) Developers should duly observe REDA's guideline in selling all uncompleted and completed first-hand private residential properties;
- (2) Developers should provide on-site unit(s) at the development for the public to visit when selling completed first-hand residential properties;
- (3) Developers should indicate, at the same time when making public the transaction information under the existing "five-day disclosure rule" on transactions, those transactions which involve members of the Board, and their immediate family members;
- (4) Show flats have to comply with a list of requirements, including the requirement that there should be at least one show flat showing the same conditions of the actual flat to be handed over to buyers upon completion in respect of internal partitions, fittings and finishes, and complimentary appliances;
- (5) More units should be included in the first price list. For small-scale development, the minimum number of units to be included will be 30 units or 30 per cent of the total number of units available for sale, whichever is the higher. For large-scale development, the minimum



number of units to be included will be 50 units or 50 per cent of the total number of units available for sale, whichever is the higher;

- (6) The requirement for making public the sales brochures should be advanced from the existing 24 hours prior to the commencement of sale to seven days prior to the commencement of sale;
- (7) Developers should make public the price list at least three days in advance of the commencement of sale when selling any number of units to whichever parties;
- (8) Promotional materials of the development should clearly provide the name of the district where the development is located and the address of the development; and
- (9) Developers should concurrently upload the sales brochures and all the price lists onto their websites.

In July 2010, it was reported that out of the 24 claimed transactions in the 39 Conduit Road, 20 of the deals were cancelled, including the one which was sold at an “astronomical price’ of over \$71,000 per square foot.

Facing the repeated serious problematic transactions, the government eventually changed its attitude on the necessity of policy change. The then Chief Executive Mr. Donald TSANG mentioned that the government would study the possibility of introducing legislation to step up regulation of sales of uncompleted flats and the scope for the legislation if nine measures announced in April 2010 to increase

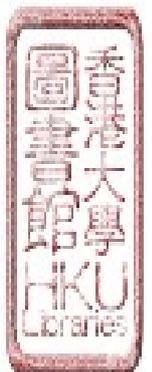


transparency in flat sales proved ineffective. As said by TSANG, he “**will use the opportunity [arising from the 39 Conduit Road saga]** to resolve the problem of unfairness and lack of transparency in property transactions. There have been growing calls for laws to tighten regulation of sales of uncompleted residential flats after the high-priced sales of 20 luxury flats at 39 Conduit Road trumpeted by the developer, Henderson Land, fell through (SCMP 14 July 2010).

*f) Developer’s non-compliance situations after nine measures on the REDA guideline*

After nine measures on the REDA guideline announced in April 2010, there were still non-compliance situations discovered in various primary projects, including The Hermitage in Olympics by Sino Land, Lavotto in Ap Lei Chau and Lime Stardom in Tai Kok Tsui by Sun Hung Kai Properties.

In response to the unsatisfactory improvements, the government requested two more measures to be added in the REDA’s guideline. One of them required developers to announce the buyer’s identity and exact date of completion within five days of signing a provisional agreement for sale and purchase. The other measure required developers to disclose the cancellation of any transaction on their company website as soon as possible. Green Sense and Democratic Party also called for a mandatory requirement to make an unmodified flat by the developers in primary residential sale to raise transparency. The Consumer Council also suggested establishing an online property information platform for first-hand residential property transactions.



*g) Measures announced in 2010-11 Policy Address*

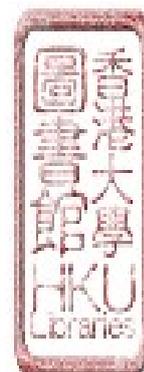
Paving the way for setting up legislation, in October 2010 the then Chief Executive TSANG announced in his Policy Address that a steering committee would be set up to discuss specific issues on regulating the sale of first-hand flats by legislation and put forward practicable recommendation within one year.

*h) The incident of the rubbish-dump flats in the Icon*

In January 2011, the incident of the rubbish-dump flats in the Icon fortified the public demand for legislation to regulate the sale of first-hand properties. One incident following another exposed that there was a lack of self-discipline in the sector and that it was difficult to ensure fair trade and protect the basic rights of the consumers giving the government no alternative but to plan to legislate for regulation (Singtao Daily, 28 June 2011).

*i) Recommendations of the Steering Committee on Regulation of Sale of First-hand Residential Properties by Legislation*

After the set up of the Steering Committee, it has completed its work and submitted a detail report to the Secretary for Transport and Housing in October 2011. In the report, the Steering Committee recommended that legislation should be introduced in order to effectively regulate the sale of first-hand residential properties. This included the projects developed under previous lease conditions, Consent Scheme projects, projects outside the Consent Scheme, etc. The report also came up with detailed recommendations on the requirements on sales



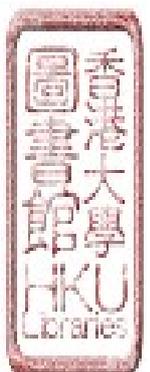
brochures, price lists, show flats, transaction information, advertisement, sales arrangements, prohibition on misrepresentation and dissemination of false and misleading information, penalties, enforcement authority, exemption arrangements, etc.

*j) Incident of Oceanaire Garden Residence and Providence Peak*

Based on the Steering Committee's recommendations, THB prepared a draft legislation attached to the Consultation Paper on the Proposed Legislation in order to regulate the sale of first-hand residential properties. This Consultation Paper was eventually released in November 2011 with a two-month public consultation period. According to the government, the Consultation Paper has received widespread support in regulating the sales of first-hand residential properties by legislation, and that the proposals set out in the draft legislation were generally welcomed and accepted by the public and relevant stakeholders. The only exception was that from REDA as their benefit is affected by the proposed requirements and changes.

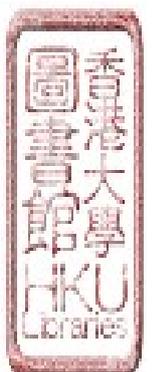
The developers at this juncture still insisted self-regulatory regime from the REDA could solve the problem. However, the disputes as to the ground level of flat sales in Oceanaire Garden Residence and Providence Peak were like the straw that broke the camel's back.

In March 2012, a purchaser of the newly completed Oceanaire Garden Residence in Ma On Shan complained that the flat was actually situated on the ground level while the floor level stated in the sales brochure was on podium level just below



“the fifth floor”. In June 2012, the Providence Bay of Sino Land was also complained by purchasers that its ground floor level was lower than the level of cycle way outside the property. The flats on the ground floor level were actually built on the basement level. These incidents just reminded the public again the need of legislation to protect first-hand property consumers could not be delayed. As a result, the bill was then finally passed on 29 June 2012 in Legislative Council.

*Overall significance.* According to Elmore, system changing relates to the institutional change of relationship among policy actors. The key interest groups, stakeholders, their corresponding motivation and beliefs as well as the resources should be identified. The effectiveness of the strategies that the government adopted in dealing with the politics should be studied and evaluated in terms of coalition-building, reducing resistance, mobilization of appropriate actors, matching policy environments with appropriate policy design and choose of appropriate arenas, as appropriate (May, 2005, p.142-146). Setting up a new legislation to monitor the sale of first-hand residential property sale is no doubt a system changing. It could be seen that the strategies that the government adopted, i.e. repeated reforms on the former policy tools, are ineffective. However, such repeated failures actually helped in coalition-building and reducing resistance in setting up a new legislation. The public consensus for the institutional change is gradually formed. In addition that the matching political environment, in terms of the Political Stream to be discussed in following part, helped mobilizing the appropriate policy actors, a big bang system changing thus takes place.



## **The Political Stream: Agendas priority influenced by public mood, changes of administration and elections**

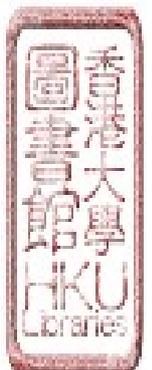
### *Overview*

Knill and Tosun mentioned that the affecting factors towards the choice of governance model included the political context, resources and power of different actors (Knill and Tosun 2012, 212). The view is actually echoed by Kingdon's political stream, which is made up of public mood, pressure group campaigns, election and changes of administration. These components greatly influenced the agendas and the priority of policy issues.

### *Public mood*

In the context of legislation on first-hand residential property sale, it could be seen that the public mood was all favorable to the policy change during the years prior to the establishment of the legislation. The improper marketing strategies of the developers had become fiercer in the years before the enactment of the Ordinance. In addition to the rocket-up property price, the public condemned the government's inability in the housing policy and demanded stepping up the regulations on real estate developers.

With repeated problematic cases on first-hand property sale, monitoring the conduct of real estate developers become the common consensus in the society. As commented by Ms. Audrey EU, LegCo Member, in the debate of the bill, the cheated cases in property transactions aroused serious public concerns. She said



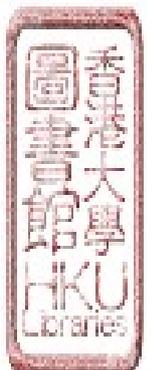
“among these cases which properties were sold at sky-high prices, only subsequently proven be fabricated and the relevant transactions were cancelled in the aftermath. There were also cases of developers skipping the floor numbers, such that a building of only 30 to 40 storeys high turned out to have some 60 storeys. Apart from the cases of skipping the floor numbers, there were cases of diminishing storeys. A buyer thought that the flat he bought was on the fifth floor, but it turned out that it was actually at the ground level. These cases have spurred even greater public outcry for legislation to regulate the transaction of first-hand residential properties.”

### ***Change of Administration***

2012 is the year when the legislation on first-hand residential property sale put to vote in Legislative Council. Coincidentally, this year is also the final year of the then Chief Executive Donald TSANG at his post. To lay some important merits and achievements in housing area before his leaving, he was eager to set up this legislation. This could be reflected from his last two Policy Addresses that he put housing policy as the first topic with over 40 pages to illustrate the mid and long term strategies.

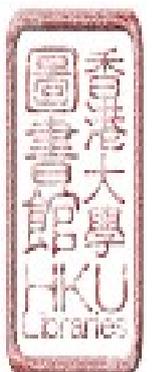
### ***Double-election year***

The problems regarding the sale of first-hand property has been existed for many years but actions taken by political stakeholders to tackle them were limited. Ms. EU during the LegCo debate in June 2002 expressed her opinions on this phenomenon. She said “when I became a member of the Consumer Council in the



1980s, I came across many cases related to the buying and selling of properties and learnt, in particular, how unfair the consumers were treated. Despite that the Consumer Council often voiced out on the problems related to the buying and selling of properties, the government had all along refused to legislate. Then in the 1990s, I participated in several studies of the Law Reform Commission (LRC) related to the regulation to be imposed on the buying and selling of properties. We published many reports, one after the other, on overseas sales of properties, local uncompleted developments and transactions of local flats for resale after conversion. However, all these published reports were shelved by the government.” Ms. EU in 2000 queried the government the reason of withdrawing the white bill concerning buying and selling of properties. Ms. EU mentioned, “the official replied that the white bill had met with opposition from the developers and this was the only reason. He said that certain provisions of the legislation concerned might involve criminal liability. And, as commercial developers are often companies, which naturally had directors, those provisions might hold the directors criminally liable in some cases. Therefore, the developers opposed and the government had to withdraw the white bill”.

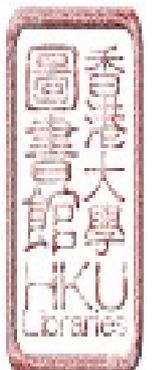
Mr. LEE Wing-tat’s comment in the debate also pointed out the great influential power of developers in the past. He said “government in the past used to have faith in the developers, as well as the REDA. REDA suggested a decade or two ago to let the industry resolve the problems by self-discipline. All attempts to regulate the behavior of businessmen by relying on their self-discipline rather than introducing legislation have failed according to my experience”.



Kingdon (1995) pointed out that consensus building is influenced by bargaining. Governmental official would assess the extent of consensus among organized political. Stakeholders would take part in the bargaining process to protect their interests or gain some benefits. It is clear that in the past the strong influential power of the private developers had deterred the government from putting the issue on its policy agenda.

The political force to the policy change became stronger when elections came. Year 2012 was a double-election year. Both the election of Chief Executive and election of Legislative Council Members were held in 2012. This created an opportunity for the government to put the issue on its policy agenda. In addition to the increasing public discontent towards the developers arising from their problematic marketing strategies, the attitude of the government and the legislative members also adjusted. To win voters' support, the candidates of the Chief Executive and the Legislative Council Members, regardless of pro-establishment or pan-democratic, all demanded for setting up a new legislation to monitor the primary residential property sale.

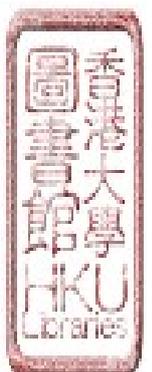
The comment of Mr. LEUNG Kwok Hung, the legislator, in the third reading debate of the legislation on monitoring first-hand property sale is best illustrating this fact. He commented “had this year not been the election year, there would not have been so many people supporting this Bill” (Legislative Council Hansard, 29 June 2012, 16999).



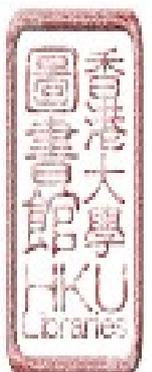
## Concluding Remarks

Kingdon's three-stream theory is adopted to analyze why the government seeks to change the previous policy tools being used for governing the sale of first-hand properties. Integrating with the categorization identified by Freiberg, it is found that a number of problems in relation to public interest, market failure, risk management and trust driving the change. From the perspective of policy stream, it is suggested that excessive attention was put on cost and resources implication when choosing the policy tools, causing the outcomes of the chosen tools are not comprehensive and effective as expected. With reference to the assessment criteria suggested by Baldwin, Cave and Lodge as well as the factors by Freiberg in assessing the institutional framework, it is found that the existing governance frameworks are far behind satisfactory. Noting the problems, the government has attempted to reform the tools. Yet, the repeated reforms are ended in failure, causing the government had no choice but to introduce a new ordinance to govern the sale of first-hand residential properties in 2012. For the political stream, the political context in 2012 and timing of change of administration in Legislative Council and Chief Executive Office created a mood for different actors to support changing the policy. All the three streams under Kingdon worked closely and knotted together leading to the open of "Policy Window" which brought the Ordinance to the top of Government policy agenda for a smooth and quick legislation.

In the next chapter, the policy dynamics of the Residential Properties (First-hand Sales) Ordinance after its enactment will be discussed through the three-stream



model, and its effectiveness will also be evaluated to see whether the situation requiring choice of policy tools arises again after this big bang system changing.



## **CHAPTER 5 - POLICY AND ADMINISTRATIVE DYNAMICS OF THE ORDINANCE**

### **Introduction**

In this chapter, the policy and administrative dynamics of the Ordinance are discussed with reference to the Kingdom's three-stream model. It recognizes that the new Ordinance has addressed various historical problems in the first-hand residential property market. However, in the aspect of the problem stream, the problems arising from the abuse of given freedoms in the Ordinance create dynamics to optimize or substitute this new policy tool. Under the policy stream, the significance of the rush legislative process prior to the enactment of the Ordinance, which is considered to have negative effect on the outcome and effectiveness of the Ordinance, is discussed. With the relatively smooth implementation progress of the Ordinance and no strong public desire from the political stream for substituting the Ordinance, maintaining the status quo of the existing regulatory framework under the Ordinance is concluded, although there are rooms for improvement in various aspects with reference to the assessment criteria identified by Baldwin, Cave and Lodge (2012) as well as Freiberg (2010).

### **Overview of the Ordinance**

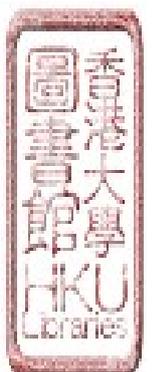
The Residential Properties (First-hand Sales) Ordinance come into effect on 29 April 2013. Its relevant provisions had set out very detailed requirements targeting the provide of sales brochures, price lists, show flats, disclosure of transaction information, advertisements, sales arrangements, and the mandatory provisions for



the Preliminary Agreement for Sale and Purchase, and Agreement for Sale and Purchase against the sales of first-hand residential properties. It also provides prohibitions requirement to prevent property developers from mis-representation and the delivering false or misleading information on the properties. In this Ordinance the relevant offences and legal liability are also created so as to target the possible contravention of the provisions

In response to the problems connected with the four categories, namely public interest, market failure, risk management and trust, identified by Freiberg as shown in Figure 4.1 in Chapter 4, the Ordinance incorporated clauses with the requirements that the developers should comply within the sale process.

To protect public interest, the Ordinance requires the developers must make available the sales brochure for at least a period of seven days before the date of sale and on a date of sale. The developers also have to provide price lists and the documents containing the sales arrangements for at least a period of three days before the date of sale. In order to reduce the information asymmetry, which could cause market failure, the sales brochures should also provide a wide range of information, including aerial photos of the developments and various statutory plans, which indicated the possible future surrounding developments. To increase public trust and manage the risk of rising property price due to misleading transaction data, the Sales of First-hand Residential Properties Authority (SPRA) does not rely on the obsolete record system of property transactions in Land Registry, but established a central electronic database which contain the sales brochures, price lists, and registers of transactions of individual first-hand



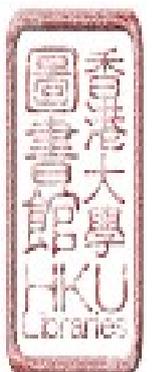
residential developments the sale of which is subject to the Ordinance for the public inspections.

## **Re-emergence of the Problem Stream: Voices to Review the Ordinance**

### ***Abuse of the given freedom in the Ordinance: special sales tactics***

One year after the enactment of the Ordinance, the Director of SRPA, Mr. Eugene FUNG said that the Ordinance had been implemented under good progress in past year. According to the findings of Eugene FUNG, the Ordinance was found running smoothly and effective in enhancing the transparency, fairness and order of the sales of first-hand residential properties (HKSAR Government Press Release, 29 April 2014). However, it was found that some developers had made use of the existing freedoms on sales arrangement under the Ordinance, which were originally designed to facilitate flexible business decisions of the developers, to manipulate the sale procedures to boost up the sales advantage of the developers. This eventually leading to public grievances as their interest was impaired.

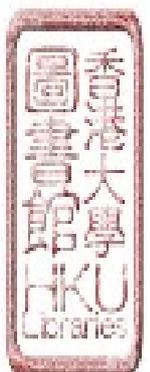
For instance, some developers would schedule the "internal sale/sale to bulk purchasers" session and the sale sessions for all other prospective purchasers on the same day when the residential properties is being put on sale. In fact, the premises offered for sale and the sales procedures in all sessions are the same. This arrangement would confuse prospective purchasers in having a clear picture about the actual number of residential properties available for sale beforehand. The purchasers could only acquire limited information in drawing their buying



decisions. Secondly, some developers disclose a lower price for the residential properties solely for promotional purposes. Eventually, the developers are found not offering to sell those properties at such a lower price but a marked-up price in the official launch afterwards.

Mr. Eugene FUNG commented that in order to strike a balance between the aim of enhancing transparency and fairness of sales of first-hand residential properties, and the right of the developers to legally dispose of their assets, the Ordinance does not prescribe categorically the types of sales arrangement which vendors must deploy (HKSAR Government Press Release, 29 April 2014). Accordingly, this is actually a freedom leaving for developers to facilitate their business decisions. Yet, from the above two examples, it is revealed that such freedom is sometimes abused.

Another example relates to a primary residential project, Mont Vert, in Tai Po developed by Cheung Kong Properties in 2014. It was criticized for barring prospective buyers from viewing flats in the new development area. The developer claimed the practice did not contravene the law, since those potential buyers have signed “no-viewing agreement” and the arrangement did not break the law. Besides, the developer also claimed that the project was yet suitable for public viewing as the phase-two project was still under construction (SCMP, 19 July 2014). According to Section 44 of the Ordinance, developers of a newly completed project are required to make every flat, or a comparable flat, available for viewing by potential buyers. Nevertheless, if a developer is unable to do this, it needs to seek written consent from prospective buyers. It was criticized that the



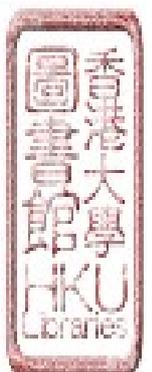
developer in this project actually made use of this exemption clause bar prospective buyers from viewing the flats on site.

From the aforementioned examples, it was revealed that even with a smooth implementation of the Ordinance, the developers have as far as practicable, been trying to make use of the given freedom in the Ordinance and use different tactics to optimize their advantages over the property buyers.

***Consumer Council's findings: fair public satisfaction level towards the Ordinance***

After the Ordinance has come into effect, the Consumer Council has in November 2014 issued a thorough study on the effectiveness of the Ordinance. The study was comprised of two parts. One part was related to consumer research including conducting a survey of total 602 respondents over the territory between April 2014 and May 2014, and holding three focus group meetings in late May 2014. The second part of the study including field visits which carried out by the Council, which involving 17 residential development projects of different scales of developments under different property developers in Hong Kong.

The first part of survey was conducted one year after the promulgation of the legislation and aimed to regulate the sales brochures, price list, and relevant information to the public. Eventually, the survey result reflected only 43.6% of the respondents indicated that the sales brochures which providing property information was “average” in the adequacy consideration. 44.5% of the respondents considered that insufficient time (i.e. only three days) are given to

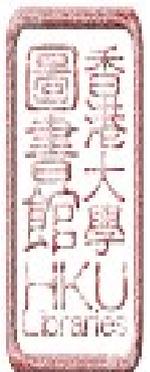


make price lists available to the public prior to the commencement of sale. The aforementioned finding has revealed that public satisfaction level towards the Ordinance is fair in general with the expectation of a heightened regulatory scrutiny.

***Consumer Council's findings: contravention of the Ordinance but no prosecution***

Though the legislation had put into effect for a year, the study of field visits from Consumer Council reviewed that some developers still maintained bad selling practices and did not fully comply with the legal requirements. The Council checked 17 developments and found that seven of them did not sell all flats listed in the price lists issued before the sale. This contravened the provision that requiring the lists should include the minimum number of units. This loophole results in misleading the potential buyers about the actual supply and leaving room for speculation activities. Unofficial promotional materials, which defeat the legislative requirement purpose, were still being made available by the developers to the prospective purchasers as their alternative sales tactics to boost up their comparative sales advantages.

Besides, some developers also tended to inflate the demand by encouraging prospective purchaser to submit multiple registrations of interest. As such, the number of registrations might be over several times the actual number of units sold, creating a heat atmosphere. The Council found the subscription rates of the eight properties checked were from 1.2 times to 22 times of the actual number of flats offered for sale in the first batch. In the most extreme case, the developer

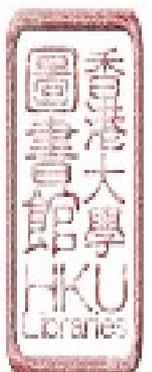


reported 10,000 applications but in fact only 428 flats were available and sold. The Council also discovered some of the developers designed a rush sales procedure, requiring the buyers to choose a flat within a very short period time, say three minutes in some extreme cases.

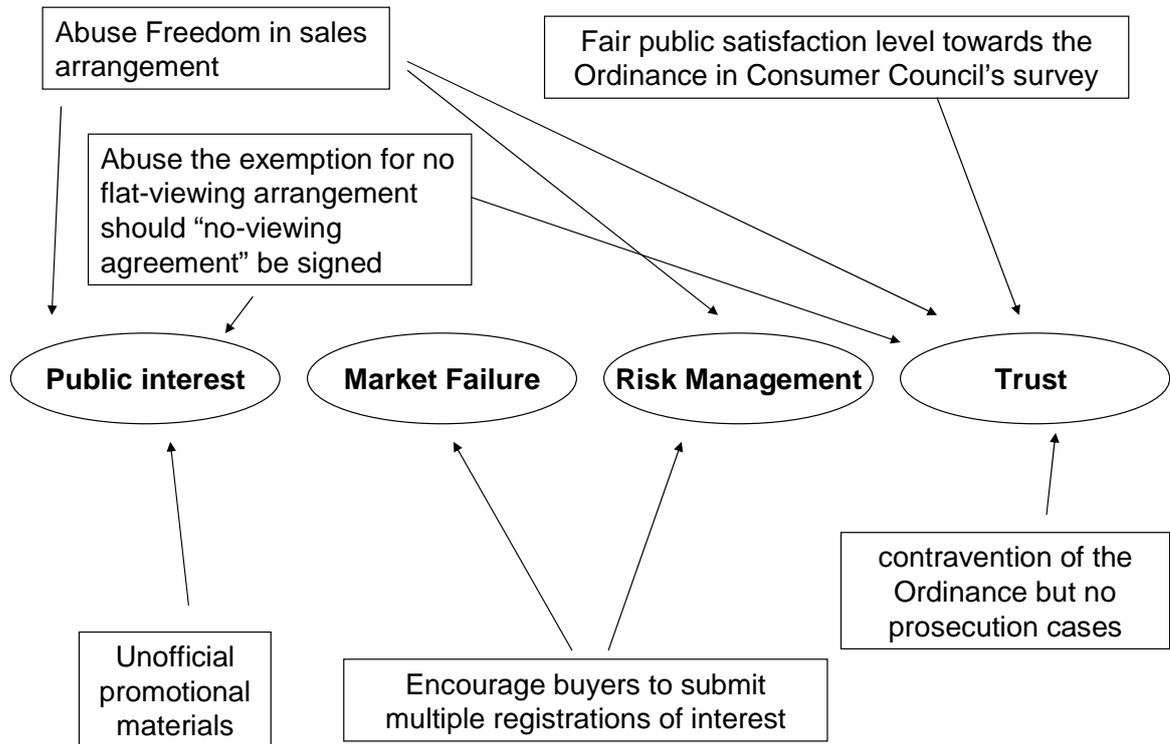
Despite these problematic selling practices after the introduction of the Ordinance, no agent or developers have been prosecuted for their non-compliance and malpractice. The Council thus called for heightened regulatory scrutiny and amended the Ordinance.

### ***Overall significance of the problems***

Judging from the above observation regarding special tactics used by the developers and the findings from the Consumer Council in post-Ordinance period, it revealed that, though some of the “Problems” identified prior to the enactment of the Ordinance had been addressed, there were still problems or immoral behaviors of the developers connected with the categories identified by Freiberg. Figure 5.1 illustrates the problems according to the four categories mentioned by Freiberg.



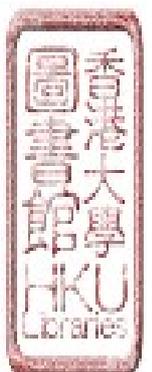
**Figure 5.1 Problems in post-Ordinance period**



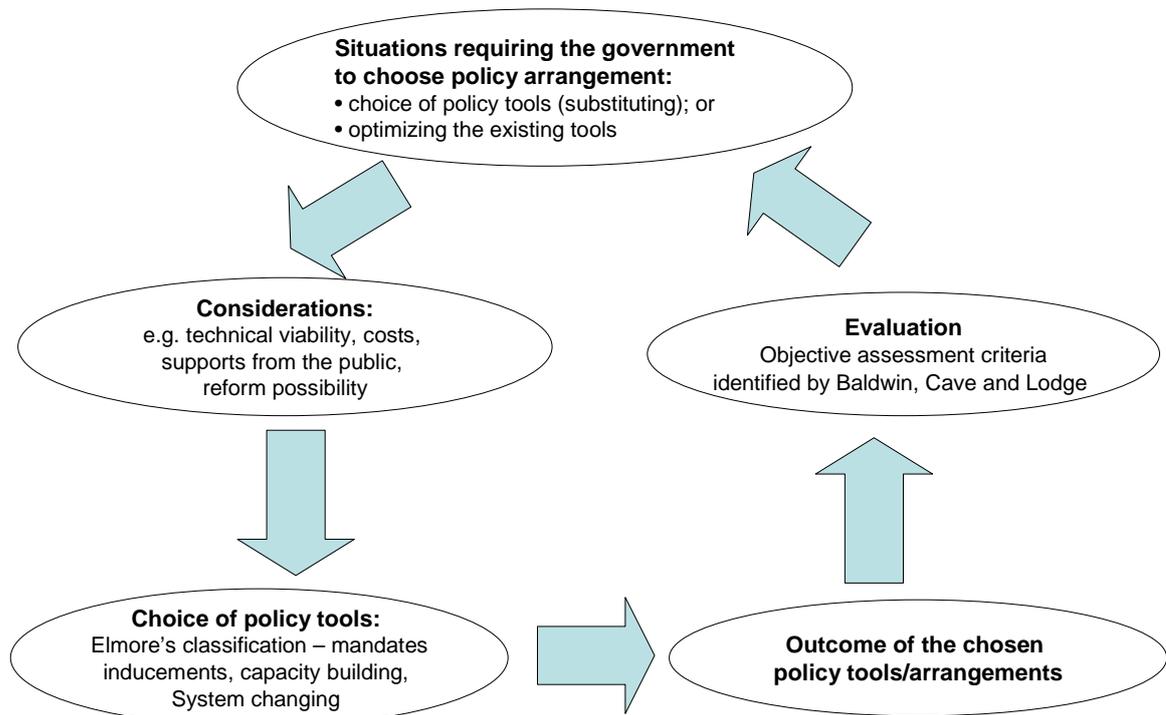
**Extending the Policy Stream: The Government’s Subsequent Policies on the Ordinance – Optimizing or Substituting?**

*Overview*

In Chapter 4, a cycle is used to describe the process on how the government chooses policy tools through analyzing the relationship between considerations, outcome evaluation of tools and situation requiring choice of policy tools (Figure 4.3).

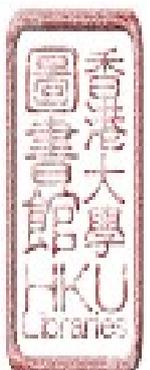


**Figure 4.3 Cycle on policy-making process**



The four policy tools, namely the Consent Scheme, guideline issued by REDA, regulatory frameworks by EAA and Consumer Council, which were used prior to the Ordinance are evaluated in previous chapter, and it is concluded that the government had noted the ineffectiveness of the former policy tools and made repeated effort to reform them but in vain. Thus, the government and the various political actors considered the reform possibility is minimal and a big bang of system changing, i.e. introducing a new legislation and setting up a centralized regulatory body, should take place in a very short period of time.

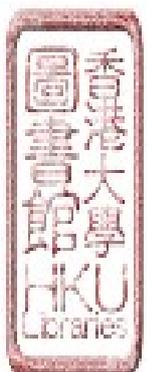
As an aspect of the policy stream, the legislative process of the Ordinance is analyzed to see how a rush and inadequate process affects the outcome and the subsequent government decision as to optimizing the policy tool or substituting the existing one.



***Problem of LegCo debate prior to the enactment of the Ordinance: rush and inadequate legislative process***

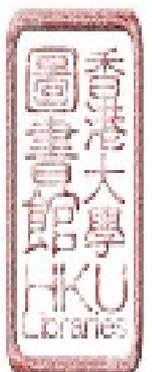
During the legislative process of the Ordinance, the consultation and debate were criticized to be inadequate since most of the political stakeholders were rush to pass the bill in order to obtain voters and public support within the election year of 2012. While this Ordinance is related to sales of first-hand property and there are thousands of related legislative requirements to be considered, whether the government had taken into consideration of all valuable comments and advices from the legal experts? Did the government allocate sufficient period to consult the public? Even when the relevant experts were involved, did the government have sufficient time and resources to scrutinize the comments and advices from the experts and provide timely feedback to further modify the content of the Ordinance? Did the government allocate reasonable period to digest and provide timely feedback against the received comment irrespective of the tight timeline?

During the Second Reading debate in LegCo, various LegCo members have aired their respective views and concerns as to the unsatisfactory handling process and unprofessional of the government. There are different key elements, which have been raised up by the LegCo members to point out the deficiency of the government during the legislation process. The exact quotes of LegCo Members, Ms. Audrey EU and Dr. Margaret NG, during the LegCo debate are highlighted as below showing how the rush and tight timeframe during the debate affect the outcome of the Ordinance, and the salient point might give some cues against the different phenomena observed during the post-Ordinance period:-



Ms. Audrey EU pointed out that it is the usual practice of the Government to table a bill at the Legislative Council when it is approaching recess, leaving no time for interested parties to express their views and digest the voluminous blue bill. She mentioned, “we have held 20 meetings in three months and very often, only Mr. CHAN Kam-lam (the chairman of the Bills Committee on the Residential Properties (First-hand Sales) Bill) and I attended the meetings. I do not meant to accuse other members of being lazy, but merely want to illustrate that many Legislative Council committees have to rush through their deliberation. After moving into this new LegCo Complex, we have more conference rooms and hence several meetings can be held at the same time. Any yet, no members can attend two meetings at the same time and sometimes even a division of work cannot be achieved. Despite that the clause-by-clause examination of bills requires a quorum, a quorum was not present for most of our meetings”. From the above quote, it was obvious that the bill is not pass through under thorough consideration and discussion by interested parties and LegCo members, it was passed through in a rush without the attendance of interested parties and in some occasions even the minimum quorum cannot be achieved for most of the important meetings.

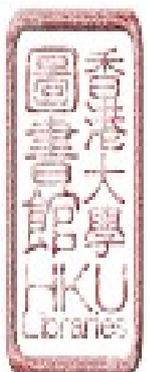
Ms. Audrey EU also pointed out that even when the interested parties from public were given opportunity to air their views, the government simply gave minimal time, or attention to their views. Ms. EU said, “Many members of public have been in the LegCo to express views, this including the Law Society of Hong Kong. It has provided a submission of 20-odd pages in April, but like any others, its speaking time was only three minutes. After submitting the views to the



government, it did not respond to the views of the attendants of the hearings until it was urged time and again. We had been waiting for so long but the government only responded after the clause-by clause examination of the Bill started for some time. Having addressed the government's response, the Law Society noted that some of their views were adopted but a lot were not. The Law Society therefore conscientiously submitted another submission to the Bills Committee in June, stating that the Bill still had many other problems despite that some of its views were adopted." Even after studying the amendments provided by the government from the feedback provided by The Law Society, The Law Society finds that there are still many essential problems yet to be resolved.

Even during the course of second reading debate, Ms. EU still received views from Law Society, asking Legislative Council Members from the Civic Party to pay attention to certain issues. Ms. EU said, "it was too late and no more amendments could be proposed as the process was completed. The Law Society had no choice but to give letter to the LegCo Secretariat requesting them to pass the letter to all members of the Bill Committee." Ms. EU highlighted that the Bill does have deficiencies or omissions but it takes time for the deficiencies or omissions to be rectified.

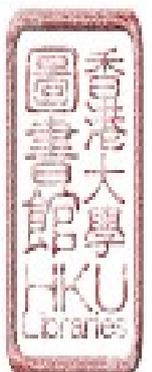
Dr. Margaret NG pointed out that the government does not have a good understanding on the matters about transaction of properties and there is no adequate communication and co-operation with the conveyancing personnel of the Law Society. She added that "this is evident in its handling of different legislation. The reason is probably because the government has focused merely on the



protection of consumers' rights, fraud prevention and penalties, but neglected that the inclusion of the relevant provisions into the legislation without adequate conveyance expertise may give rise to many problems. As a result of the limited time available to consult Law Society, the government had failed to take prompt corresponding action after Law Society submitted its various views". "Today, there is neither means nor time for us to add any relevant provisions to the Bill".

Dr. NG pointed out that the time for gathering experts comment is very limited. Especially for such a complicated Bill which involved high level of legal issues which the government have little expertise knowledge on this but spent minimal time to address the comment and recommendation from the real experts. Even when the government has received comment from the experts, it only responded to part of the advice but no time has been given to the experts to further clarify the issues.

During the second reading debate, Dr. NG said, "there are numerous problems relating to the arbitrary proper nouns and the imbalance of power between the vendors and buyers. This will have serious implication on the solicitors' work. Solicitors usually work with great attention to detail, and this is in great contrast to people who are even unaware of the existence of unauthorized structures in their house. It is precisely because they are so meticulous in their work that they are worried any mistakes in the provisions will lead to litigation. This explains why Law Society has written more than 100 paragraphs to set out all the deficiencies, and why Ms. EU has said she was unable to elaborate all the deficiencies as the submission is really very comprehensive and detailed. I guess

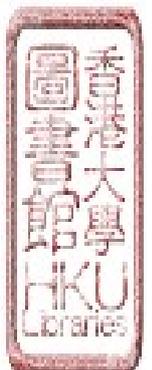


LegCo members may not fully understand against the submission while it requires a very good understanding of the background and professional knowledge. In fact, raising these points at the Committee stage can only achieve very limited effect”.

From the comments of individual LegCo members above, it is observed that the government had, during the legislative process, not given sufficient time to meticulously study all received comments and highly complicated legal issues. This definitely would affect the outcome of the legislation and its effectiveness, which could be objectively assessed through the criteria identified by Baldwin, Cave and Lodge and factors suggested by Freiberg. Yet, the evaluation in the case also involved how the public and pressure groups perceived and valued the Ordinance after it came into effect, which is under the array of political stream. Therefore, the political stream as to the administrative dynamics of the Ordinance should be first analyzed before a combined evaluation is conducted under these two streams.

### **The Political Stream: Time to Conduct a Review of the Ordinance?**

According to Kingdon (1995), political stream is made up of public mood, pressure group campaigns, election and changes of administration, and these components would affect the government in deciding the agendas and the priority of policy issues. After the Ordinance comes into effect for two years in 2015, there is no significant election or changes of administration, and the dynamics under political stream is not strong. Yet, from time to time, different pressure groups concerned about the property issues requiring the government to optimize the Ordinance.

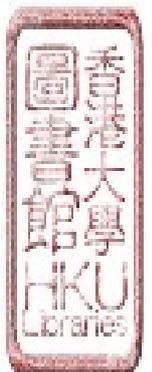


After the enactment of the Ordinance, much had been said and written about the effectiveness and actions taken by the SRPA from the political groups/interested parties. The Consumer Council conducted a study as to the implementation situation of the Ordinance since 2013. Some LegCo members also put follow-up enquiries to the government which demonstrated their interest in the effectiveness of the Ordinance, ensuring timely actions have been conducting by the governance authority during the post-Ordinance period to address the malpractices and non-compliances of the developers.

#### ***Consumer Council's study in November 2014***

Consumer Council is one of the stakeholders, which concerns about the consumer protection in the sale of first-hand properties. In November 2014, the Consumer Council released a report regarding the first-hand residential properties sales situation after the Ordinance has been introduced for 18 months. It was found that the situation was disappointing since the poor selling practices including withholding units from sales and inflating market response were still discovered.

In addition to the fair public satisfaction level towards the Ordinance revealed from the survey, the Consumer Council called for heightened regulatory scrutiny and amended the Ordinance, including the proposal to extend the time period between signing the provisional sales and purchase agreement and the formal sales and purchase agreement, from 5-7 days to 14 days, and trimmed the forfeit amount from 5% to 1-3% of the price, referencing to overseas practices.



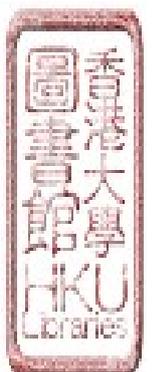
### *Follow-up enquiries by LegCo Members*

During the post-Ordinance period, between May 2013 and December 2014, LegCo members Mr. Frederick FUNG and Mr. James TO had put up different follow-up enquiries for the progress, efficiency, and effectiveness to the STH in the Legislative Council meetings respectively. The below are the summary of their enquiries.

Soon after the enactment of the Ordinance, Mr. Frederick FUNG had in May 2013, during the LegCo meeting enquiring about the numbers of sales brochures, price lists and documents on sales arrangements received by the SRPA. He also enquired the number of inspections of the sales offices and show flats of first-hand residential properties conducted by the SRPA officers; and if SRPA has unfold any contraventions of the Ordinance during the different inspections and checks.

He also put up questions in the LegCo meetings that if SRPA has received any complaints and enquiries about the sales of first-hand residential properties regulated under the Ordinance and if any properties agents were being suspected of contravening the Ordinance in conveying information on residential developments to potential buyers and if SRPA has initiate any investigation into the suspicious cases.

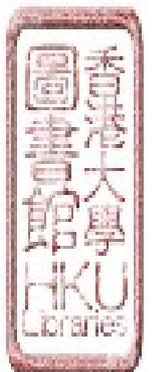
Frederick FUNG also questioned the total quantity of first-hand residential developments put up for sale in the market and requested for a comparison between the property supply and transaction volume before and after the enactment of the Ordinance. During the LegCo meeting Frederick FUNG has



been pursuing in how SRPA monitor the progress after the enactment of Ordinance.

After the Ordinance being implemented for 1.5 years, Mr. James TO highlighted in the LegCo meeting in December 2014 the study from Consumer Council against the Sales of First-hand Residential Properties. The study revealed that even after the Ordinance has been enforced for one and a half years, the sales process of first-hand residential properties is still bearing various problems especially the multiple "registrations of intent" by the same person is allowed hence inflating the demand, etc.

Other than enquiring the different case figures from the SPRA similar to that from Mr. Frederick FUNG, Mr. James TO also questioned if the provisions in the Ordinance regarding the prohibition of false or misleading information were modeled on the relevant provisions in Ordinances such as the Securities and Futures Ordinance (Cap. 571). He asked whether SRPA has made reference to the experience of prosecutions successfully instituted under the relevant Ordinances, with a view to boosting the success rate of the prosecutions concerned. Mr. James TO also put up some suggestions including empowering SRPA to seek orders from the court to restore the original position, so that for those buyers who have suffered losses from the purchase of residential units due to false or misleading information may either restore their original positions or receive compensations for the better protection of buyers' benefit.



### ***Responses of the Government***

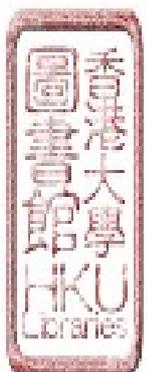
Facing the criticism and requests to amend the Ordinance, the regulatory body SPRA reiterated the enforcement works it has done, including examination of sales brochures, price lists and other relevant document, complaint investigation, inspection, issuing practice notes to the trade and warning letters to violators. For the suggestions of review and amendment to the Ordinance, the SPRA opined that more experience would be required before conducting a review and should not rush in proposing legislative amendment. At the current stage, it would be quicker to yield results through discussion between the SPRA and the industry, and the issue of guidelines than through legislative amendments (HKSAR Government Press Release, 3 December 2014).

### **Evaluation of the Ordinance: Policy and Political Streams Combined**

With reference to the issues discussed under Policy and Political Stream, the effectiveness of the Ordinance is evaluated by adopting the five criteria identified by Baldwin, Cave and Lodge (2012) and two important factors suggested by Freiberg (2010) set out in Chapter 2, namely legitimacy, efficiency, accountability, due process, expertise, effectiveness, and autonomy.

### ***“Legislative” mandate for imposing legitimate power for regulation***

Under the "Legitimacy" mandate, the regulatory action will gain support when it is authorized by Parliament or elected legislature. Following the establishment of the Steering Committee, a Bill is drafted and the Ordinance is subsequently

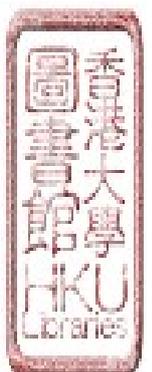


enacted via legislative process from LegCo. During the policy making process, the Bill was widely supported by the public, property buyers and the political stakeholders, except the developers. In the third reading of the Bill, of the 45 present members, 43 members, including those from pan-democratic camp and pro-establishment camp, were in favor of the motion to pass the Bill. While the Ordinance was established through legitimate power with the support of a majority of the LegCo members, its legitimacy is highly recognized in the society.

***Effectiveness in regulating property developers is in doubt***

To determine whether an activity has met its intended objectives, the “Effectiveness” of tools of regulation should be evaluated. However, the effectiveness of public actions is always difficult to measure as the achievement of individual tool against the designated purpose are always hardly quantify. The purposes and objectives of policy could be just an ambiguous goal, making it very difficult in setting quantifiable performance indicators.

In this case, after implementing the Ordinance, different reviews and monitoring mechanisms were in place to see if the Ordinance operates smoothly and effectively. The Director of SPRA opined that upon the 12 months implementation period, the Ordinance was found effective in safeguarding the interest of property buyers and the developers have smoothly adapted to the new requirements under the Ordinance. Some people saying that the Ordinance is effective in governing the developers to provide accurate information to property buyers after the Ordinance was in force. Yet, warnings were still been given by SPRA from time to time to those developers who have probably contravened the



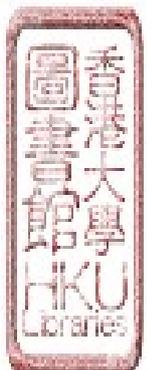
Ordinance during the onset of the implementation period. Consumer Council's study issued in November 2014 also revealed the Ordinance was not effective as expected since some bad selling practices were still discovered, and thus a tighten regulatory scrutiny was demanded.

***Limited accountability of the regulator***

When considering “Accountability”, the regulator should be held accountable and properly controlled by democratic institutions to seek support from the public. The regulatory agency might also claim that it is accountable for its interpretation of its mandate to a representative body and that this oversight renders its exercise of power acceptable.

In this case, the SPRA under THB should be held accountable if developers were found contravening the Ordinance deliberately without proper and strict control. After the implementation of the Ordinance, the SPRA has examined hundreds of sales brochures, price lists, documents and advertisement. SPRA then concluded that most of the vendors have made good efforts to comply with the requirements under the Ordinance. For those developers who have possibly contravened the Ordinance, remedial actions have been taken by the SPRA in order to alert them immediately for rectification.

The society has yet to see if any sanction system will be effectively enforced when any developer committed an offence. Since the implementation of the Ordinance, no developer has been prosecuted for their non-compliance. So at this stage, the Ordinance is deemed effective but it has yet to fully ascertain whether



the SPRA would be held accountable if it failed to pursue the developers under legal liability and timely prosecution when opportunities arisen.

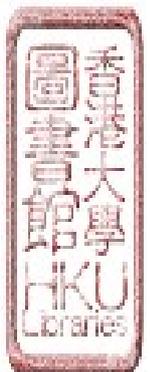
***Due process: high involvement of stakeholders in the policy process***

Regarding to “Due Process”, the focus is whether the procedures in the Ordinance are sufficiently fair, accessible, and open, and allows the public (e.g. property buyers in this case) and particularly the affected parties (i.e. the developers) to participate in the regulatory decision and policy process (Baldwin, Cave and Lodge, 2012, p. 29).

Based on the Steering Committee’s recommendation, THB has prepared a draft legislation attached to the Consultation Paper on the Proposed Legislation to Regulate the Sale of First-hand Properties, which was released in November 2011 for a two-month consultation. Looking at the membership of the Steering Committee, it is chaired by the Permanent Secretary for Transport and Housing (Housing) and comprised the representatives from various affected parties, including representatives of the Consumer Council, EAA, REDA, Law Society of Hong Kong and Hong Kong Institute of Surveyors. The policy making process are highly accessible and transparent, and the level of participation of different stakeholders can be regarded as high.

***Insufficiency of legal expertise***

Under the perspective of ”Expertise”, it stipulated that the specific rules and regulations require the exercise of expert judgment as the regulators have to

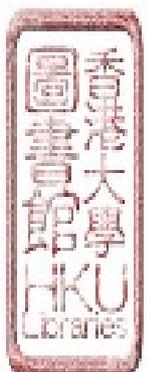


consider a number of factors and variables, which specialized knowledge and expertise, are required.

In this case, the comments from the Law Society, accordingly to the content of LegCo debate raised by Dr. Margaret NG and Ms. Audrey EU, was found not being fully considered and timely addressed. The very limited time given in the consideration of experts' comment might be subject to the lack of expertise and understanding of the complicated legal issues in the Ordinance which resulting in the very late and over simplified response to the legal expert. On the other hand, it cannot rule out the possibility that the lack of professional response to the legal expert might be simply because the government rushing to pass the Ordinance so is hesitated to go back into detail study whenever new problems were identified by the Law Society.

Seeing the above finding, this could on certain extent to explain why after the implementation the developers could still identify different loopholes to further develop their corresponding sale tactics to find gap pursuing the sales advantages over the potential buyers. As mentioned by Dr. Margaret NG, over 100 paragraphs of essential comment from the Law Society is ignored and the Ordinance simply passing through in a rush leaving no time to seriously address those essential areas highlighted by the legal experts on different separate occasions.

For the management of the SPRA, it is headed and managed by a senior Administrative Officer Grade staff with the assistance of a group of professional surveyors from various government departments involving in lands and building matters. Yet, as mentioned above, the issues under the Ordinance is highly



complicated. Employing external legal experts or establishing independent committees with independent members, which is similar to the practice of other regulatory bodies like the EAA, may be considered to enhance the expertise aspect of the SPRA.

### ***Efficiency for the cost of regulation***

As regards “Efficiency”, the level of input could measure whether the legislative mandate is being implemented efficiently, or the costs compared to the outputs achieved. In this case, the SPRA has been overseeing the developers’ behavior and been determining whether the developers’ tactics are complied with the Ordinance. When the developers’ tactics are found possibly to be contravened the Ordinance via the loopholes they identified, warnings will be given to take remedial actions for rectification.

The SPRA is small in size and is attached under the THB. Currently the staff of SPRA are mostly civil servants. This arrangement can reduce the cost involved in setting up a new public organization at the beginning. The cost seemed to be maintained at a reasonable level. Yet, whether a productive efficiency could be resulted?

Developers’ acts were being monitored by the SPRA from time to time, the sanction system was found somewhat too loose with no deterrent effect. During the implementation stage, lots of warnings had been given but it seldom finds any developers bearing the legal consequences and subject to prosecution for their

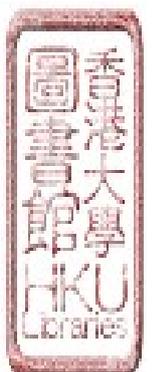


post implementation sale tactics which are being considered not desirable by the SPRA.

During the implementation stage of the Ordinance, some developers might still take the chance to identify special sale tactics to maximize their sales advantage without fully complying with the Ordinance. The Ordinance could be implemented under a more efficiency way should the SPRA adopts a more stringent control and a zero-tolerant enforcement strategy through active monitoring the developers' behavior.

### ***High autonomy of the SPRA***

“Autonomy” is specific in some industries especially when the independency of tools of regulation is important to the application of tools. Some regulatory tools are required to be autonomous so that it will not be easily affected by external force or environment, no matter how much pressure are given by the public or relevant stakeholders. In this case, the SPRA possesses high autonomy as it is generated by legislative process with unanimously supports from the stakeholder with high independency, when compared with the previous self-regulatory regime of the REDA. The governance, execution and enforcement of the SPRA would not be affected easily by the external force or environment. It is further suggested that the SPRA could be separated from the governmental structure, so as to further enhance its independency and autonomy.



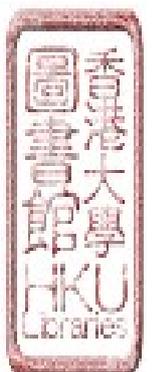
### ***Overall significance***

In accordance with the criteria by Baldwin, Cave and Lodge, it can be concluded that the Ordinance is still an effective tool to monitor the sale of first-hand residential properties, though the assessment results in some areas are not as satisfactory as it expected. It is good to see that the Ordinance could meet the standard under legitimacy, due process and autonomy.

For the aspects of effectiveness, accountability, expertise and efficiency, although the Ordinance has made good progress, there are rooms for improvement. Enhancement on these aspects could be made for better monitoring the sale of first-hand residential properties. In view of the above evaluation result, the government at this stage could opt to optimize this policy tool and there is no need to choose other alternative tools to deal with this issue.

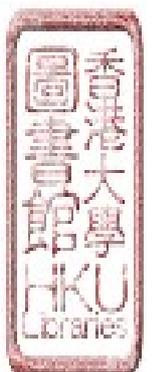
### **Concluding Remarks**

Kingdon's three-stream theory is adopted to find out if there are dynamics for policy change after the implementation of the Ordinance. It is true that the problems appeared prior to the Ordinance are dealt with through the requirements stipulated in the legislation. Yet, from the perspective of problem stream, there are a number of problems still existed due to the abuse of the freedoms given for business flexibility under the Ordinance. As for policy stream, though the Ordinance is implementing under good progress and found running smoothly and effectively enhancing the transparency and fairness of the sale of first-hand property, the initial rush legislative process has led to the Ordinance formulated



with ambiguous areas which affects its effectiveness. There are rooms for improvement in various aspects in accordance with the criteria set out by Baldwin, Cave and Lodge as well as Freiberg. For political stream, the public mood towards the Ordinance is still positive though there are some pressure groups requesting to review the Ordinance and heighten regulatory scrutiny. Overall speaking, the policy dynamic in the post-Ordinance period is not making a new choice on the policy tools, but optimizing the regulatory framework under the SPRA.

In the next chapter, improvement measures to the Ordinance and the SPRA, with reference to the overseas experience, will be discussed and recommended.



## **CHAPTER 6 - SELECTED OVERSEAS EXPERIENCE,**

### **RECOMMENDATIONS & CONCLUSIONS**

#### **Introduction**

This project analyzes the policy making and administration processes in the regulatory framework on the sale of first-hand residential properties in Hong Kong. Kingdon's three-stream model (1995) is used to analyze the situation in different timeline in Hong Kong. The decision to buy a residential property in Hong Kong is very prominent to the people in Hong Kong as it involves the investment of most people's life long earnings. However, due to the unequal bargaining power between the property developers and the purchasers and the inadequacy of the policy tools in force, some noticeable problems in relation to the sale of first-hand residential properties in Hong Kong emerged. As analyzed through Freiberg (2010)'s theory, the harm on public interest, failure of market, management of risk and distrust triggered the call for a change of the condition.

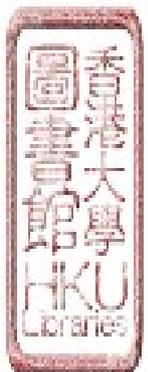
With reference to Chapter 4, a mix of policy tools under different types of governance (Knill & Tosun, 2012) has been in place in Hong Kong, including the Consent Scheme, guidelines issued by REDA, regulatory frameworks by the EAA and the Consumer Council in the pre-Ordinance period. They are largely mandate and capacity building (Elmore, 1987) in nature. Assessed with the seven evaluation criteria set by Baldwin, Cave and Lodge (2012) and Freiberg (2010), the policy tools in the pre-Ordinance period are found to be in deficiency. Though the government intended to alleviate the situation by putting in force different



policy tools, the governance mode during the pre-Ordinance period was largely relied on the self-discipline of the developers in providing accurate information to the potential buyers in the sales market. The government had yet to demonstrate the determination and effectively adopt corresponding measures to mitigate the problem of providing inaccurate property information, misleading property location, skipping unfavorable details in the sales brochure, misleading sales information regarding the completed transactions, unfair sales arrangement, etc. by the private developers.

Coupling with the political atmosphere, the Residential Properties (First-hand Sales) Ordinance was promulgated in 2012 to break the predicament. This latest policy was analysed with the three-stream model and evaluated with the abovementioned seven criteria. Still, problems on the sales of first-hand residential property were reported. The Hong Kong Consumer Council has published a study on the sales of first-hand residential property in November 2014 in which some observations on the inadequacies of Ordinance, namely confusing voluminous information and dubious sales practices, leading to prospective purchasers, aggressive on-site selling are recognized. Nevertheless, the political context at the moment does not warrant a policy change. Improvement on the aspects of effectiveness, accountability, expertise and efficiency is expected.

Other than looking into the situation in Hong Kong, selected overseas experience in regulating the sales of first-hand property is studied. As the demographic profile, social and economic backgrounds of Hong Kong, Singapore and Taiwan are considered to be in similar characteristics, the regulatory framework of



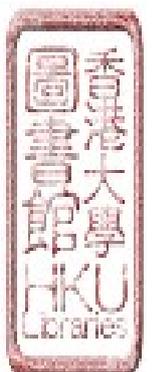
Singapore and Taiwan are selected for reference to see if any more effective measures worth being considered under Hong Kong context. It is perceived that policy tools exercised by Singapore and Taiwan could serve as reflection and inspire Hong Kong Government on possible alternative solutions.

## **Singapore and Taiwan: Stringent Regulatory Requirements and Wider Protection for Prospective Purchasers**

### *Policy tools employed*

Both in Singapore and Taiwan, there are statutory regulations governing the sale of first-hand residential properties. Some of the regulations are explicitly for the sale of first-hand residential properties while some are general regulations on consumer protection. Applying Elmore's theory, both Singapore and Taiwan adopt mandate as authoritative rules or prescriptions governing the behavior of individuals and agencies. The regulations in place are briefly described below.

The Urban Redevelopment Authority (URA) is the land use planning and conservation authority in Singapore. Among its multiples duties, it aims at improving transparency in property market by providing comprehensive and timely real estate information to assist home-buyers, developers and investors to make informed decisions. It also protects home-buyers by ensuring fair contract terms, and ensuring that developers provide adequate information to home-buyers so that they can make informed decisions before committing to a property purchase. As the regulator of private housing development in the country, it enacts its responsibilities mainly through the Housing Developers (Control and



Licensing) Act (HDCLA), Housing Developers Rules (HDR), Residential Property Act (PRA) and the Development Control Parameters Handbook on Gross Floor Area (2011) (DCPH-GFA).

In Taiwan, Fair Trade Commission (FTC) and Consumer Protection Commission (CPC) are two main authorities responsible for regulations relating to the sale of first-hand residential properties. FTC is the central competent authority in charge of competition policy and Fair Trade Act in Taiwan. It is charged with drafting fair trade policy, laws, regulations, and investigating and handling various activities impeding competition, such as monopolies, mergers, concerted actions, and other restraints on competition or unfair trade practices on the part of enterprises. FTC regulates the sales of properties via two main directions, namely Disposal Directions (Guidelines) on Cases of Real Estate in Advertising (DDG) and Disposal Directions (Policy Statements) on Selling Presale Houses (DDPS). On the other hand, CPC is responsible for consultation, discussion, and review of important consumer protection policies, laws and regulations, mechanism, and enforcement outcomes, as well as cross-agency coordination. CPC issued standard contract templates and circulars to protect consumer interests in purchasing properties. In addition, the Real Estate Transaction Information Reporting and Pricing Enquiry Regulation (RETIRPER) is also relevant to sales of properties. The standard contract templates and circulars for real estate transactions published by CPC include the followings:

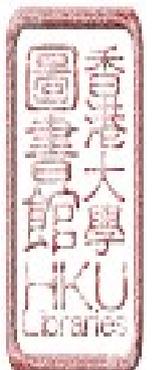
1. Standardized Contract Template Regarding Pre-sale Housing (SCPSH)
2. Circular Regarding Information be Included and Not Be Included in The



Standardized Contract of Pre-sale Housing (Circular – SCP SH)

3. Standardized Contract Template Regarding Existing Housing (SCEH)
4. Circular Regarding Information be Included and Not Be Included in The Standardized Contract of Existing Housing (Circular – SCEH)

In addition, the URA educates the developers and public through its homepage and publications. They provide useful information both to the developers and prospective purchasers by publishing Guidelines in the homepage, e.g. the Home Buyer's Guide, which aims at providing basic information on the process of buying residential properties, and key considerations the purchasers have to be aware before completing the purchase. It also regularly releases publications on real estate reporting latest statistics on prices and rentals, available and vacant units, and development projects in the pipeline in the private residential sector. Similarly, the homepage of FTC and CPC provide the developers and the prospective purchasers the information in relation to the sales of residential property and educate the public through its report, e.g. the Empirical Analysis of Fair Trade Commission Actions Regarding Real Estate Transactions: case studies from January 1, 2001 to March 31, 2014 which analyze the property transaction punishment cases and the type of violation by the developers or brokerage firms. According to Elmore (1987), capacity building is the investment of various kinds for strengthening endowments, which may include material, intellectual, and human resources. Under this classification, both Singapore and Taiwan has adopted policy tools in term of mandate and capacity building.



In the context of Hong Kong, Figure 4.2 has identified the policy tools utilized in the pre-Ordinance period. In the post-Ordinance, the SRPA was set up to ensure the Ordinance is implemented effectively. Other than the duties of administering and supervising compliance with the provisions of the Ordinance, it is responsible for educating the public on matters relating to the sales of first-hand residential properties and organizing publicity programmes. The policy tools in force of the three jurisdictions are summarized in Figure 6.1.

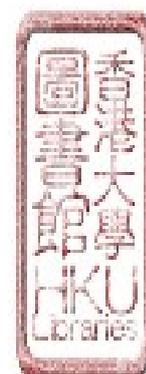
**Figure 6.1 Policy Tools use in Hong Kong, Singapore and Taiwan**

<b>Jurisdiction</b>	<b>Policy Tools</b>	<b>Elmore's classification</b>
Hong Kong	Lands Department's Consent Scheme	Mandate
	Real Estate Developers Association of Hong Kong (REDA)	Mandate
	Estate Agents Authority (EAA)	Mandate and Capacity Building
	Consumer Council	Mandate
	Sales of First-hand Residential Properties Authority (SRPA)	Mandate and Capacity Building
Singapore	Urban Redevelopment Authority (URA)	Mandate and Capacity Building
Taiwan	Fair Trade Commission (FTC)	Mandate and Capacity Building
	Consumer Protection Commission (CPC)	Mandate and Capacity Building

In the ensuing paragraphs, the situations in Singapore and Taiwan will be examined in terms of property information, sales information, sales arrangements, and after sales protection.

***Property information***

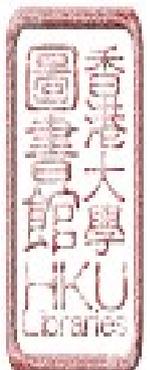
(a) *Singapore.* As stipulated in Form 3 of the HDR, the developers in Singapore have the obligation to provide the purchasers the particulars, documents and



information of the property before issue of option to purchase. It covers the address of the property, the estimated land area of the property, the location plan of the property showing nearby buildings, facilities and other features in the vicinity within a radius of 500 meters. If the property is going to be comprised a lot in a strata title plan, the estimated total floor area of the property and the description of all floors space for different uses and other spaces have to be listed one in a standardized format.

In respect of the floor area measurements, Singapore uses square meter as the measuring unit. According to “The Development Control Parameters Handbook on Gross Floor Area”, “All covered floor areas of a building, except otherwise exempted, and uncovered areas for commercial use are deemed the gross floor area of the building for purposes of plot ratio control and development charge. The gross floor area is the total area of the covered floor space measured between the centre line of party walls, including the thickness of external walls but excluding voids. Accessibility and usability are not criteria for exclusion from gross floor area”. In addition, gross floor area covers balconies, bay windows, bicycle, car parks, household shelters, lift motor room, outdoor refreshment areas, etc., but excludes lift shafts, main entrance, etc.

With reference to section 14 of the Agreement of Sale and Purchase under the HDR, in case there is any substitution or use of cheaper materials or an omission of any works or a reduction in the scale of work, the purchasers are entitled to have a reduction in the purchase price. Though the purchasers do not have the right to invalidate the Agreement of Sale and Purchase if there is any error,



omission or misdescription on the area of the property, the purchasers can claim for reduction under section 18 at the rate of the Unit Purchase Price for every square meter when the deficiency is in excess of 3% of the area stated in the Agreement.

Singapore has also exercised its control on property advertisement of any housing project on what particulars should be included and what is prohibited through Rule 3 & 6 of HDR.

Mandatory particulars include:

- name and license number of the developer;
- tenure of the land and encumbrances;
- expected date when the purchasers can take possession of the units;
- expected date of legal title of the units to be conveyed to the purchasers; and
- location of the property, containing lot number and Mukim/Town Subdivision.

Prohibited particulars include anything, which suggests or is calculated to suggest:

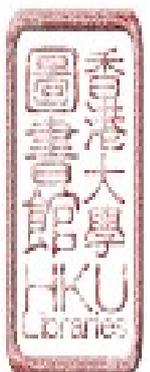
- the patronage of the President or of any of the members of his family;
- any connection with any Government department, statutory body or public building or place; or
- any attribute to which the housing developer cannot genuinely make a claim.

Rule 7 also sets out the prohibition from advertising false or misleading statement or information in relation to a housing project or any failure to comply with Rule 3 & 6 on particulars to be included and prohibited.



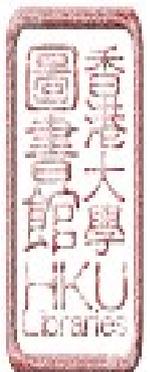
(b) *Taiwan*. As stated in the preamble of the DDPS on Selling Presale Houses, owing to the very limited information available to the purchasers on the presale house at the time of signing the purchase contract, the purchasers can only rely on advertisement or the purchase contract for information of the environment, lay-out, facilities, building materials, etc for concluding the decision to purchase. In this connection, the DDPS is promulgated to enhance the transparency of real estate trade. Under the DDPS, the developer has to disclose important information to the purchasers, including a copy of construction license, cadastral map of proposed site, overview of proportionate share distribution per unit (sufficient to indicate main structure, auxiliary structures, area of common space, and proportionate ratio of common space); detailed listing of commonly held items, area, and calculation of proportionate share distribution, expenses on legally mandatory land readjustment or restrictive information concerning land readjustment. Before requesting deposit or signing the sales contract, all this information has to be read, and acknowledged by the prospective purchasers with sufficient time provided, at least five days are required.

The developers are required to state the total property area in the contract for both pre-sale and existing houses. With regard to the pre-sale houses, the developers are required to provide additional information, including the details on the area of common-use portions, ancillary building area, etc. “Privately Owned Area” is a legislative requirement for all residential properties. It refers to the sum of Interior Usable Area, Public Facility Area and Subsidiary Area.



For pre-sale houses, purchasers could claim for compensation if there is deficiency of floor area between the offer and the contract as protected under SCPSH. The deficiency would be compensated in monetary value. In case the deficiency is more than 3%, termination of contract is allowed. On the other hand, if the area of the completed house is larger than the contract, the developers could claim for a maximum 2% of the purchase price from purchasers.

Regarding regulations on advertisements, FTC sets out DDG to maintain trading order and protect the purchaser's rights and interests by preventing the real estate developers from using improper advertisement to mislead the purchasers in executing unfair property transactions. A real estate advertisement should not contain the any descriptions of untrue, false or misleading representations about building location, real estate area, the appearance, design, and layout (commonly owned or common-use portions) of a building, building materials and equipment, commonly-owned public facilities, building surroundings, view and landscape, parking space, etc. For a number of items above, the standards of violation is determined by the discrepancy at the degree unacceptable to the general public. In addition, there is restriction on the use of words, statutory language should be used as the representation of building area, such as "building area," "base area," "main building area," "ancillary building area," or "area of common-use portions" with area size represented different from the rightful area under such statutory language or with the registered area, and violation of the discrepancy is also at the degree unacceptable to the general public. The developers will be prosecuted under the Fair Trade Act for any violations of these guidelines.



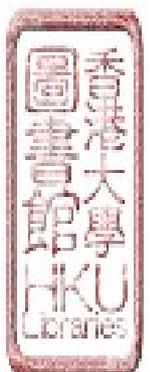
### ***Sales information***

(a) *Singapore.* For prospective purchasers in Singapore, they will be informed of the detailed information of the property before paying booking fee. Developers are also required to maintain a Register of Bookings for the inspection of URA upon request. The standard format of the register is depicted in Form 1 in the Schedule of HDR, which covers details of purchasers and properties, purchasing prices and option fees (i.e. deposit) etc. To provide prospective purchasers with latest market information, the Singapore Government has set up a web-based platform for the upload of transaction price within the period of the recent 36 months. Only purchase with caveat lodged will be uploaded on this platform.

(b) *Taiwan.* Ministry of Interior has set out the RETIRPER to enhance the transparency of property transaction information. Under the arrangement, transaction information, such as price, size, location and transaction date of the property has to be reported within 30 days of the transaction. Such information will be open for public access at the designated webpage.

### ***Sales arrangements***

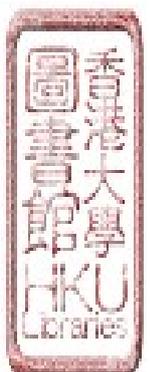
(a) *Singapore.* According to the Guidelines and procedures set by URA, the intending purchaser in Singapore has an option to purchase the property, which is a right or option given by the developer of a property to buy the property. All licensed developers have to use standard option to purchase form to sell a property. The said form states the price and other details of the property. To be entitled of the option, the purchaser has to pay a booking fee, which is ranged 5% to 10% of



purchase price of the residential property. The option is non-assignable. Therefore, all persons intended to purchase have to be named in the option to purchase in order to be eligible to exercise the option and sign the Sales and Purchase Agreement for the property as purchasers.

The developer is then required to send the Sale & Purchase Agreement and the original or copies of the title deeds no later than 14 days from the date of the option. The purchaser has to make the decision on whether to exercise the option within three weeks from the date of delivery. If the purchaser chooses not to exercise the option, 25% of the booking fee will be forfeited by the developer. Under the HDR, the Sale & Purchase Agreement is a standardized form, which specifies the purchase price, payment schedule and all other terms and conditions of property sales in Singapore.

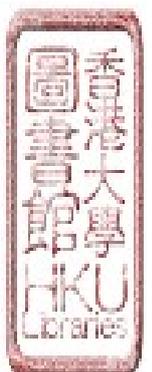
(b) *Taiwan*. Two standard contract templates, SCPSH and SCEH are published by CPC for property transaction. For pre-sale houses, the former contract is used. It states the conditions, which the purchasers are entitled to terminate the contract if insufficient mortgage is granted. Depending on cause of the insufficiency and the extent of difference between mortgage and purchase price, different rules apply. If it is not caused by the developer or the purchaser, the developer may choose to lend the shortfall to the purchaser or terminate the contract. If it is attributed to either party, the developer has to lend the deficiency to the purchaser or the purchaser to settle the difference within 30 days. For existing houses, similar clauses are stated in the SCEH.



As mentioned in earlier paragraphs, detailed property information has to be read, acknowledged by the prospective purchasers prior at least five days before acceptance of any deposit or signing of any contract. This requirement has been stipulated in both Circular – SCPSH and Circular – SCEH. There is no other cooling-off period set in the regulation or circulars.

***After sales protection***

(a) *Singapore.* After completion of sales, the developer is required under clause 13 of the HDR to deliver the property to the purchaser no later than the vacant possession date stated in the Sale & Purchase Agreement and no later than 21 days starting from the date of receipt of payment of 25% of the purchase price from the purchaser. The purchaser is entitled to claim liquidated damages if the developer fails to deliver vacant possession of the property within the two dates mentioned above. The damages are to be calculated on a daily basis at the rate of 10% per annum on the total sum of all the installments paid by the purchaser towards the purchase price, and are payable commencing on the start date until vacant possession of the property is given to the purchaser. However, the developer is not liable to the damages if (i) the purchaser requests for or agrees to the delivery of vacant possession of the property to him at a later date; or (ii) for any reason for which the developer is not responsible, the purchaser does not take delivery of vacant possession of the property until a later date.



Under clause 17 of the HDR, the developer is liable for any defect in the property for 12 months from the date the vacant possession of the property is delivered to the purchaser or the 15th day after the purchaser receives the notice that Temporary Occupation Permit is issued or the roads, drainage and sewerage works serving the housing project have been completed.

(b) *Taiwan*. For pre-sale houses, the developer shall complete the sale and transfer the property to the purchaser within six months of obtaining “Building Use Permit” (BUP). If not, the purchaser will be fined 0.05% of purchase price daily. If the building works do not start according to the date set out in the contract, the purchaser is subject to a daily penalty of 0.05% of purchase price. If the works is not started after three months of the pre-set date, the purchaser could terminate the contract. For existing houses, the date of transaction is agreed between the developer and purchasers, and included as contractual term in SCEG. Similarly, if there is any delay caused by the developer, the purchaser is entitled for a daily compensation of 0.05% of purchase price.

For pre-sale house, as required by SCPSH, developer has to list out the warranty information in details, including the warranty period and types of defects covered in a House Warranty Card. Under the law, structural defects are warranted for 15 years while other building materials and facilities are entitled for warrant for only one year. For existing house, the defects liability period is not specified. Any defect should be reported to the developers immediately for rectification. Nevertheless, a maximum of five years warranty period is provided after vacant possession.

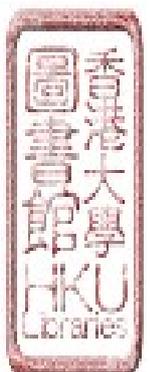


## **Recommendations**

### *Inspirations from the overseas experience*

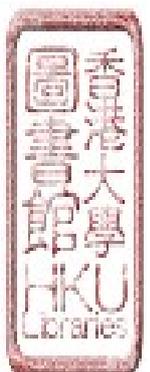
From the study above, it is observed that Singapore has implemented the most stringent regulatory framework in regulating the sales of first-hand residential property. The HDR has stipulated the regulation in respect of the property and sales information in details. Unlike Hong Kong, which requires name of street, building and other facility within 250 meters of the boundary of the development to be listed out in the sales brochures, HDR in Singapore requires any such information to be provided within a radius of 500 meters which allows the purchaser to have a better understanding on the environment nearby and aware of any misrepresentation by real estate agents. In order to protect the purchasers from being misled by improper advertisement to execute unfair property transaction, the HDR states clearly what kind of information is allowed and prohibited in the advertisements. With regards to the area of the property, Taiwan allows the purchasers to invalidate the contract of purchase if the deficiency is greater than 3%.

In respect of consumer protection, Singapore and Taiwan are considered to provide a broader coverage to the prospective purchasers. In the area of sales arrangement, booking fee of 5% to 10% of the purchase price is required to entitle the option to purchase in Singapore, which is similar to the 5% deposit requirement in Hong Kong. However, upon forgoing the option, only 25% of the booking fee will be forfeited. In other words, the penalty is only one-fourth of that in Hong Kong. Not only the forfeitable amount is much lower than Hong Kong,



the prospective purchasers enjoy three weeks period to consider exercising the option to purchase or not which is more than three-fold of the five working days arrangement in Hong Kong. In Taiwan, the purchaser is protected against the possibility of insufficient mortgage granted. In such case, the purchaser is entitled to terminate the contract. If there is late delivery of vacant possession, the purchaser in Singapore is entitled to claim damages based on the total sum of all the instalments paid while that in Taiwan is 0.05% of purchaser price per day. Regarding the general defect liability, it is only valid for six months after the completion of sale and purchase in Hong Kong while that in Singapore and Taiwan is at least 12 months. For structural defects, the warranty even lasts for 15 years in Taiwan.

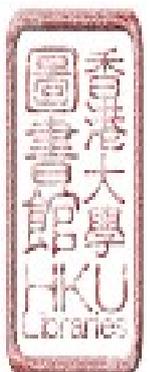
The Residential Properties (First-hand Sales) Ordinance is promulgated to regulate different aspects on the sales of first-hand residential property. However, too many freedoms are given to the developers to exercise their rights in making business decisions that they have made use of the exemption clauses, grey areas or even potential loopholes to heighten their bargaining power/position during the sales of the residential properties so as to achieve maximum benefits. The existence of information asymmetry, the ineffectiveness of the Ordinance and insufficient trust established lead to the persistence of the problems. Coupling with the analysis in previous chapters and taking the experience from Singapore and Taiwan, the inadequacies identified in respect of the Ordinance and the role of SRPA as assessed by the evaluation criteria set by Baldwin, Cave and Lodge (2012) and Friedberg (2010) may be improved. It is recommended the following



measures can be taken to strengthen the existing Ordinance, enhance the monitoring role of EAA and SPRA, and educate the stakeholders.

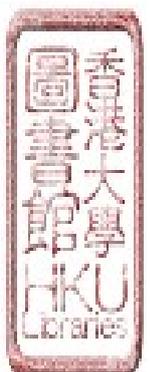
### ***Strengthen the existing Ordinance***

The Ordinance could be strengthened to supplement the shortfall in the area of property information, sales information, sales arrangement and after sales protection. It is understood that SRPA tries to strike a balance between enhancing the transparency and fairness in the sales of first-hand residential properties, and providing vendors with the flexibility in making business decisions and disposing of their properties lawfully. However, some "tricky" sales information or sales arrangement should be avoided. As aware by SRPA (Press release issued on 29 April 2014), developers have made use of different sales sessions to "freeze" the sales information available to the prospective purchasers that they have to make decision based on limited information or by offering a lower price for a property as promotional strategy but then offer an increased price afterwards. Besides, according to the survey conducted by the Consumer Council in 2014, about 43.6% of the survey respondents said the extent of adequacy of sales brochures in providing property information is only "average" and 44.5% of the respondents considered the availability of the price list three days in advance the commencement of sale is insufficient. The field visit conducted by the Consumer Council found that the price lists were frequently revised and the information on register for transactions was not readily available by the time of sale. The purchasers were also observed to be pressurized by the sales representatives to make cursory decisions when purchase.



It is recommended requiring the developers to adopt sales practice modelling on the current sales arrangement of HOS Flats by the Hong Kong Housing Authority. First of all, the balloting sessions and the flat selection sessions should be fixed on separate dates so that the purchasers do not need to make rush decisions within the same day. In addition, the details of the flats available for sale should be made known to the prospective purchasers at the spot with immediate updated information. Having selected a HOS flat, the prospective purchaser is allowed to make appointment to view the selected flat prior to the signing of the Agreement for Sale and Purchase on the next working day at the latest. By doing so, the prospective purchaser would have enough time to consider and to make the right choice. With the assistance of information technology, the developers should also prepare a list of flats available for sale with instant update at the sales office on a digital panel as well as in the SPRA designated website, so that most of the prospective purchasers will not be confused by the "tricky" sales arrangement.

Though Singapore has the most stringent regulations in force on the sale of first-hand residential property, it is not necessary for Hong Kong to copy the relevant regulation in full. Hong Kong has been at the top of the economic freedom ranking, too much intervention on the trade market is not viable. Nevertheless, balance has to be achieved between free market and consumer protection. Crucial areas which can have substantial impact on prospective purchasers could be adopted. Considering the substantial value involved in property transaction and referencing on overseas experience, SPRA may consider extending the cooling period from five working days to a longer period, say 14 to 21 days and lowering the amount of forfeiture from 5% of the purchase price to a more acceptable range.



To provide a wider coverage of protection to the prospective purchasers, it is recommended to extend the defects liability period to at least 12 months to fit with the standard in Singapore and Taiwan.

***Enhance the monitoring role of the EAA and SPRA***

The type of policy tools employed in regulating the sales of first-hand properties is mainly mandate which is authoritative rules in governing the behaviour of individuals and agencies. However, the property information required to be included in the sales brochures is found incomplete in some occasions. Nevertheless, as identified in many news reports and the field visits conducted by the Consumer Council, some estate agents supplied unofficial publicity materials or offered loans to prospective purchasers while promoting a first-hand residential property, the practice is in fact violates the EAA's guidelines. To combat these commonly observed misbehaviours, the EAA and SRPA should consider conducting more frequent on-site inspections at sales offices and show flats.

Furthermore, measures should also be taken to remove the doubt on the accountability of SPRA arising from the query on why there are suspected contraventions of the Ordinance by the developers but no prosecution has been taken. The investigation should be made transparent with periodic progress report publicized so as to rebuild trust from the public. Full investigations on the suspected contraventions should be conducted as early as possible. For suspected cases failing to proceed subsequent prosecution, the SPRA should consider publishing case summary or highlights for the public, as far as practicable.

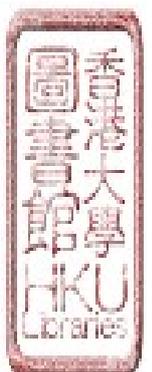


Monitoring role could be further enhanced if the management of SPRA can be strengthened with more legal expert. Employing contractual legal experts to assist in complicated case is one of the options. Another option is to establish standing committees with independent members of legal background, which are appointed by the government. Such practice is similar to those in other regulatory bodies like the EAA. The external impartial members could provide their valuable legal expertise, thereby helping to monitor the first-hand residential property market effectively.

Currently the SPRA is operated as statutory body with all civil servants staff. It is suggested that, in order to further enhance its autonomy, the SPRA should be separated from the governmental structure and has independent autonomy in staff employment and independent financial source like other regulatory bodies, such as EAA, Securities and Futures Commission of Hong Kong, Independent Commission Against Corruption and Independent Police Complaints Council, so as to further enhance its independency and autonomy.

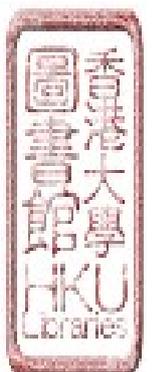
### ***Educate the stakeholders***

According to the Consumer Council Report, it showed the public only have fair level of awareness of the existence of the SRPA. Further, for those who were actually aware of the SRPA existence had little idea about its functions. Other than solving the problem through mandate or authoritative rules, building the knowledge base of the public is another effective way, though it takes a longer period of time to evaluate the effectiveness. As SRPA is the sole body tasked to implement the Ordinance, its existence and functions should be promoted in wider



context to enhance the overall awareness of the general public so that the information relating to the first-hand property sales, e.g. the Ordinance and other relevant important information could be directed to the prospective purchasers reminder their right throughout the whole process of the sales transaction. Similar to the URA in Singapore, the webpage of SRPA provides crucial information to the prospective purchasers in a user-friendly format. Through enhancing the publicity of the SRPA in different occasions, like advertisements in mass media and sales office, the prospective purchasers could be safeguarded from making rush and premature decision in property sales. The SRPA and EAA should consider jointly organize ethical and practical seminars to the frontline sales agents of residential property under mandatory basis to ensure their thorough understand of the Ordinance and possible legal consequence in adopting improper sales practice.

The abovementioned recommendations are assessed by the seven evaluation criteria on policy tools and summarized in figure 6.2.

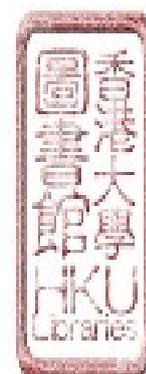


**Figure 6.2 Impact of the suggested enhancement measures**

<b>Criteria</b>	<b>Changes caused by the enhancement</b>	<b>Impact</b>
Legislative	<ul style="list-style-type: none"> <li>● Administrative measures without involvement of amendment of the Ordinance</li> </ul>	No change
Effectiveness	<ul style="list-style-type: none"> <li>● Stringent compliance check</li> <li>● Improve sales arrangement</li> <li>● Up-to-date sales information available at the spot</li> </ul>	Enhanced
Accountability	<ul style="list-style-type: none"> <li>● Full investigation on the suspected cases as early as possible</li> <li>● Investigation progress report and case report highlight periodically publicize</li> </ul>	Enhanced
Due process	<ul style="list-style-type: none"> <li>● Opinions from the prospective purchasers collected through the survey conducted by Consumer Council</li> <li>● Participation of another stakeholder - Consumer Council</li> <li>● Enhance transparency on disclosure of information</li> </ul>	Enhanced
Legal Expertise	<ul style="list-style-type: none"> <li>● Employ contractual legal experts in complicated cases</li> <li>● Establish standing committees with independent members of legal background appointed by the government.</li> </ul>	Enhanced
Efficiency	<ul style="list-style-type: none"> <li>● Setting up of new sales arrangement system which allow efficient dissemination of information</li> <li>● Enhance the knowledge of the stakeholders in the first-hand residential property market through education</li> </ul>	Enhanced
Flexibility/Autonomy	<ul style="list-style-type: none"> <li>● SRPA to operate as an the independent statutory body with its own staff but not civil servants</li> </ul>	Enhanced

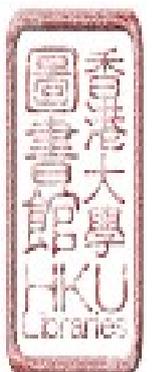
## Conclusions

The project began with a review of the housing history of Hong Kong. Housing demand has increased since the 1970s when massive population rushed into Hong Kong. Due to land scarcity, housing-related issues become the major, if not the first and foremost, concern in the government policy agenda. Through studying the development of Hong Kong housing policy with the governance models by



Knill & Tosun, it is found that the government played a more and more active role in housing-related issues, from private self-governance to interventionist governance, as Hong Kong developed in recent decades.

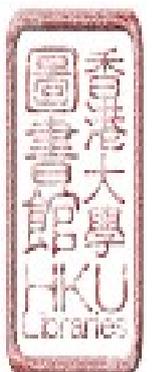
The objectives of this project are to understand the policy making and administrative processes as well as the dynamics to change the tools in monitoring the sale of first-hand residential properties, which is one of the important scopes in Hong Kong housing-related policy. For many years, public has criticized that the first-hand residential property market was rife with developers' malpractices. The government, in response to the public concern, had applied multi-pronged approach with four major policy tools, namely the Consent Scheme, guideline issued by REDA, regulatory frameworks by the EAA and the Consumer Council, to tackle the situation. This project examined these tools according to analytical framework set out in Chapter 2. Integrating Kingdon's problem stream with Freiberg's classification of fostering factors, a clearer picture on the "why" elements that drive the policy change appeared. The project matched the policy stream prior to the set up of Ordinance with a policy-making cycle model (Figure 4.3). developed in this project. Apart from analyzing the consideration process in choosing the tools with Elmore's classification, the cycle also associated with the evaluation criteria identified by Baldwin, Cave and Lodge as well as Freiberg to illustrate how the outcome of the chosen policy tools will affect the government decision on policy arrangement and create the situation requiring the government to make choice on policy tools. It is concluded that, together with the political stream influenced by those factors like public mood and administration change, a big bang system changing in policy tools would be resulted.



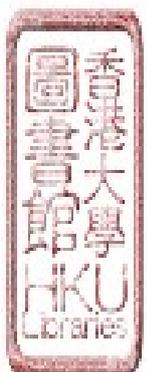
To further apply the policy and administrative dynamics theory in reality, this project also analyzed the situation after the enactment of the Ordinance by Kingdon's three-stream model. It recognized that, as a big bang system changing, the Ordinance has really tackled a number of past problems in the first-hand residential property market. However, when having a closer look, it is discovered there are a number of freedoms in the Ordinance being perverted by the developers to continue their malpractices. Using the same policy making cycle model, it is found that the flaws are stemmed from the rush consideration process during the tools being formulated. Without thorough discussion during the legislative process, the Ordinance is found to be having lots of rooms to improve in accordance with the assessment criteria by Baldwin, Cave and Lodge and the factors by Freiberg. Yet, unlike the situation prior to the Ordinance, the political stream was not strong and the Ordinance as a monitoring mechanism is still running smoothly in some aspects. Therefore, the government does not have strong dynamic to substitute the Ordinance, but optimize it.

Inspiring from the relevant mechanism and experience of Taiwan and Singapore, the project identified a number of measures which can be taken for Hong Kong's reference. Using the criteria as identified by Baldwin, Cave and Lodge as well as Freiberg, various enhancement measures in which the Hong Kong Government can adopt to optimize the regulatory framework have been proposed.

This project has tried to integrate various theories on policy making, policy dynamic, policy evaluation and governance models to analyze the regulatory framework for the sale of first-hand residential properties under different



circumstances. Through the systematic analysis across various scholars' theories, the project identified an integrated policy-making cycle to examine the relationship between considerations, outcome evaluation of tools and situation requiring the government to choose policy arrangement. It is believed such an analytical framework could assist the government in formulating appropriate, effective and timely policies which are beneficial to the society. The government is recommended to use the above framework to choose, review and optimize, not only the policy tools adopted in monitoring the sale of first-hand residential properties, but also other measures in different policy areas.



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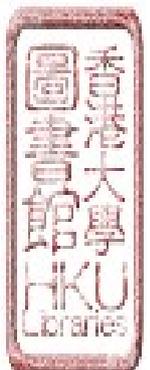
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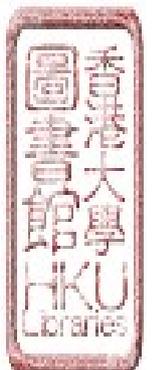
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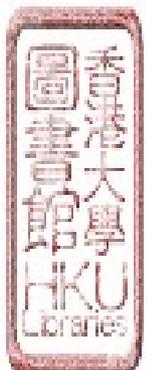
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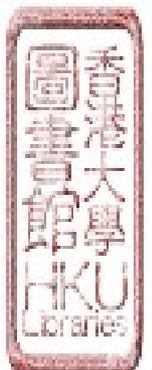
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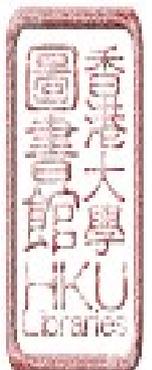
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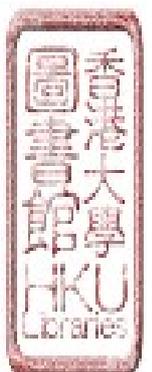
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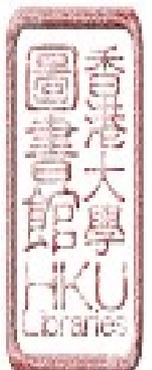
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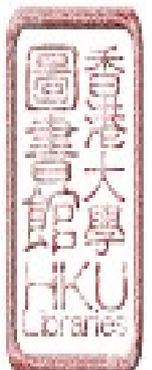
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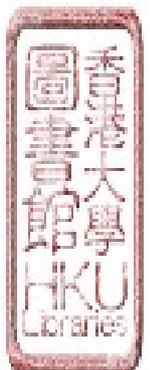
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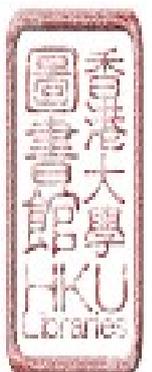
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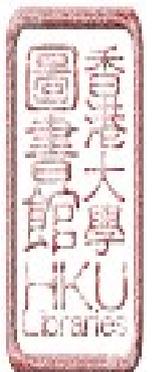
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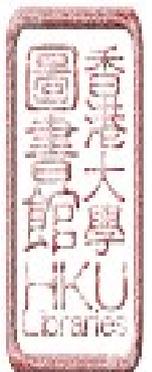
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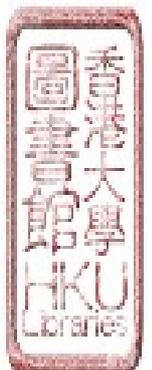
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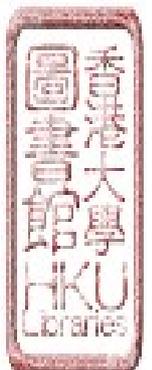
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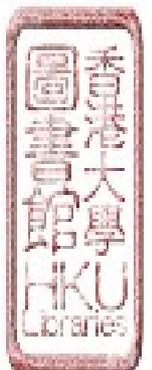
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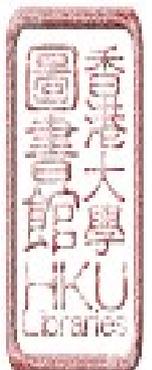
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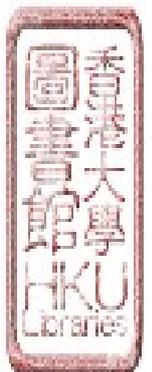
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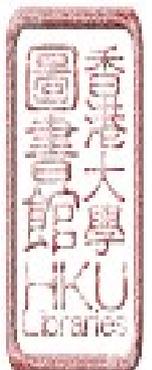
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