

For information on
20 February 2001

Legislative Council Panel on Administration of Justice and Legal Services

Proposal to provide for

- (1) a standard provisional sales and purchase agreement (PA); and**
- (2) a cooling-off period in property transactions**

The suggestions

At the June 2000 AJLS Panel meeting, the Administration was invited to consider –

- (a) whether there should be a “cooling-off” period after the execution of PAs; and
- (b) whether there should be a standardized PA.

2. It was suggested that a cooling-off period would allow parties to withdraw from the PAs within a specified period should they change their minds about the subject transaction. The proposal did not elaborate on the consequences attendant on such withdrawal.

3. The proposal relating to standardized PA was triggered by the perception of a member of the Panel that the PAs presently used often contain terms that may be adverse to potential purchasers. It was suggested that use of standardized PAs, with the terms settled after consultation of interested parties, would ensure that the terms are fair for both parties to the transaction.

4. The parties consulted by the Administration on the two questions and their respective responses are specified in **Annex A**.

Standardized PA

5. There is no consensus regarding the proposed adoption of a standardized PA. From a practical point of view, the PAs used by the larger real estate agents are already fairly standardized. Some samples of PAs are attached at **Annex B**.

6. From a general legal policy point of view, to enact laws to compel the public in general to adopt a particular form of contract is not recommended unless there are strong justifications. It is arguably a strong interference with the principle of freedom to contract. It is however acknowledged that there are agreements with prescribed content (but with no standard language). The sale and purchase agreements and deeds of mutual covenant for properties under the Consent Scheme are one such class. Building Contracts also often incorporate standard sub-contractual terms by reference and constitute another class, but this is regulated by trade practice and not by law.

Cooling-off period

7. The parties consulted were generally of the view that a cooling-off period may not be useful or practical. The lack of certainty that may come with the arrangement may render conveyancing practice in Hong Kong even more problematic.

Law Reform Commission consultation paper on “Local Completed Residential Properties : Sales Description and Pre-contractual Matters”

8. These two questions were touched upon in the Law Reform Commission consultation paper issued in January 2001. Attached at **Annex C** are bilingual copies of Chapter 5, the pertinent chapter, of the consultation paper. Paragraphs 5.2 – 5.6 suggested that in order to enhance protection to purchasers, certain standard clauses should be included in a preliminary (that is the provisional sales and purchase) agreement. Proposed standard clauses for consideration include clauses that make the contract “subject-to-finance”, subject to survey report, subject to inspection of property prior to completion, respectively.

9. Paragraphs 5.7 – 5.14 pertain to cooling-off periods. It was recommended that the PA should provide for a cooling-off period of three working days. The purchaser would be entitled to rescind the preliminary agreement during the cooling-off period and be liable to forfeit to the other party an amount equal to five percent of the purchase price or the preliminary deposit whichever is the lower. The purchaser should not have the right to sub-sell during the cooling-off period.

10. Responses to the consultation paper by the end of March 2001 have been called for.

Conclusion

11. The proposal regarding standardized PAs and a cooling-off period involve substantial changes to conveyancing trade practices. In view of the fact that the Law Reform Commission has commenced a consultation exercise that pertains to the issues, the Administration does not propose to undertake any separate review of them.

Department of Justice
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