

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 1711/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/4/11/2

**Bills Committee on Residential Properties (First-hand Sales) Bill**

**Minutes of first meeting**  
**held on Friday, 30 March 2012, at 2:30 pm**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon LEE Cheuk-yan  
Hon James TO Kun-sun  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Paul CHAN Mo-po, MH, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Tanya CHAN

**Member absent** : Hon LEE Wing-tat

**Public officers attending** : **For item II**

Transport and Housing Bureau

Ms Eva CHENG, GBS, JP  
Secretary for Transport and Housing

Mr D W PESCOD, JP  
Permanent Secretary for Transport and Housing  
(Housing)

Mr Eugene FUNG  
Deputy Secretary for Transport and Housing (Special  
Duties)

Mrs Hedy CHU  
Principal Assistant Secretary for Transport and  
Housing (Special Duties)

Department of Justice

Mr Lawrence PENG  
Senior Assistant Law Draftsman

Miss Grace LAM  
Senior Government Counsel

Lands Department

Mr Armstrong CHU  
Chief Land Conveyancing Officer/Port and Railway  
Development (Legal Advisory and Conveyancing  
Office)

Mr Ronald MA  
Senior Solicitor/Special Duty(2) (Legal Advisory and  
Conveyancing Office)

**Clerk in attendance** : Miss Becky YU  
Chief Council Secretary (1)1

**Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5

Mrs Mary TANG  
Senior Council Secretary (1)1

Miss Jacqueline CHUNG  
Council Secretary (1)1

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## I. Election of Chairman

Ir Dr Raymond HO, the member who had the highest precedence among those present at the meeting, presided at the election of Chairman of the Bills Committee. Ir Dr Raymond HO invited nominations for the chairmanship of the Bills Committee.

2. Professor Patrick LAU nominated Mr CHAN Kam-lam and the nomination was seconded by Mr IP Kwok-him. Mr CHAN Kam-lam accepted the nomination.

3. Ir Dr Raymond HO enquired if there were other nominations. Mr James TO nominated Professor Patrick LAU who did not accept the nomination. Mr TO then nominated Miss Tanya CHAN and the nomination was seconded by Ms Audrey EU. Miss Tanya CHAN accepted the nomination.

4. Ir Dr Raymond HO announced a vote by secret ballot. Of the members present, five voted for Mr CHAN Kam-lam, four voted for Miss Tanya CHAN, and one submitted a blank ballot paper. Mr CHAN Kam-lam was declared Chairman of the Bills Committee.

5. The Chairman sought members' view on the need for a deputy chairman. It was agreed that no deputy chairman was required.

## II. Meeting with the Administration

(LC Paper No. CB(1) 1445/11-12(01) — Background brief on Residential Properties (First-hand Sales) Bill)

### Background information on the Bill

LC Paper No. CB(3) 570/11-12 — The Bill

The Legislative Council Brief  
(issued by the Transport and  
Housing Bureau on 13 March 2012)

LC Paper No. LS47/11-12 — Legal Service Division Report

6. The Bills Committee deliberated (Index of proceedings attached in **Annex**).

7. The Administration was requested to -

(a) set out (in tabular form) the differences between the provisions of the White Bill and the Blue Bill;

- (b) advise if vendors could include both saleable areas (SA) and gross floor areas (GFA) of flats in the sales brochures for reference of prospective buyers, particularly when management fees were calculated using GFA;
- (c) advise whether it was the policy intent to extend the use of SA in price quotation for flats in the secondary market and if so, relevant supporting infrastructure (such as a central database) should be put in place to facilitate compliance by estate agents;
- (d) consider including in the sales brochures, apart from a location plan, additional information on the design of a development such as the location of the podium floor;
- (e) clarify the interpretation on vendor as it might include a company and its subsidiary companies, executive arms or contractors, and whether the provisions of the Bill would apply to them. To also advise how to prevent circumvention of criminal liability through shifting of responsibilities among different parties;
- (f) advise how the Administration could ensure that estate agents/vendors would not be unnecessarily caught by the Bill in the absence of a specific definition on misrepresentation/dissemination of false or misleading information;
- (g) advise the application of the time limit for prosecution of three years to various offences under the Bill and when the time limit would start to run; and
- (h) advise whether consideration would be given to injecting additional funding into the Consumer Council to provide financial assistance to civil proceedings in relation to sales of first-hand residential properties.

8. Members agreed to the following schedule of meetings -

<u>Date</u>	<u>Time</u>
Wednesday, 11 April 2012	2:30 pm
Wednesday 18 April 2012	8:30 am
Tuesday, 24 April 2012	10:45 am
Thursday, 3 May 2012	2:30 pm
Thursday, 10 May 2012	8:30 am
Tuesday, 15 May 2012	2:30 pm
Tuesday, 22 May 2012	10:45 am
Tuesday, 29 May 2012	2:30 pm

<u>Date</u>	<u>Time</u>
Thursday, 31 May 2012	10:45 am
Tuesday, 5 June 2012	10:45 am
Thursday, 7 June 2012	2:30 pm
Tuesday, 12 June 2012	10:45 am
Thursday, 14 June 2012	2:30 pm
Tuesday, 19 June 2012	2:30 pm

9. Members agreed that deputations would be invited to express their views on the Bill at the meeting on 24 April 2012.

### **III. Any other business**

10. There being no other business, the meeting ended at 3:45 pm.

Council Business Division 1  
Legislative Council Secretariat  
26 April 2012

**Bills Committee on Residential Properties (First-hand Sales) Bill**

**Proceedings of the first meeting  
On Friday, 30 March 2012, at 2:30 pm  
In Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item I - Election of Chairman</i>			
000041 - 001001	Ir Dr Raymond HO Mr CHAN Kam-lam Mr IP Kwok-him Mr James TO Prof Patrick LAU Miss Tanya CHAN Ms Audrey EU	Mr CHAN Kam-lam was elected Chairman of the Bills Committee.	
<i>Agenda Item II - Meeting with the Administration</i>			
001002 - 001123	Chairman	Members' agreement to the schedule of meetings.	
001124 - 001708	Administration	Administration's introduction of the Bill.	
001709 - 001805	Chairman	It was agreed that deputations would be invited to express views on the Bill at the third meeting on 24 April 2012.	
001806 - 002755	Ms Miriam LAU Chairman Administration	Ms Miriam LAU's views/enquiries -  (a) while supporting the use of saleable area (SA) to quote unit price of first-hand residential properties, Members belonging to the Liberal Party were of the view that the use of gross floor areas (GFA) should also be allowed to facilitate reference by prospective buyers, particularly when management fees were calculated using GFA; and  (b) whether it was the policy intent to extend the use of SA in price quotation for flats in the secondary market and if so, a central database should be set up to facilitate compliance by estate agents.	The Administration to -  (a) advise if vendors could include both SA and GFA of flats in the sales brochures for reference of prospective buyers, particularly when management fees were calculated using GFA; and  (b) advise whether it was the policy intent to extend the use of SA in price quotation for flats in the secondary market and if so, relevant supporting

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>Administration's explanation -</p> <p>(a) the Steering Committee on Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) had discussed at length the means for presenting unit area and price per square foot/metre of a property, and had decided to adopt SA, which had a standardized definition, for presenting the information;</p> <p>(b) GFA, on the other hand, did not have a standardized definition. As such, it was at present not possible to prescribe GFA in precise terms in the Bill. Allowing the use of GFA for a property, which currently did not have a standardized definition, would cause confusion rather than enhancing the comprehensiveness of information to prospective purchasers;</p> <p>(c) area information on common facilities (e.g. resident's clubhouse) would have to be provided on an aggregate basis in the sales brochures. Also, information on the number of undivided shares assigned to each residential property in the development, and the basis on which the management expenses were shared among the owners of the residential properties in the development, would have to be set out in the sales brochures;</p> <p>(d) records on SA of all assessed properties in Hong Kong (except village houses) could be obtained from the Rating and Valuation Department (RVD), and estate agents were required under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C) to provide such information to prospective buyers as appropriate; and</p>	<p>infrastructure (such as a central database) should be put in place to facilitate compliance by estate agents.</p>

Time marker	Speaker	Subject(s)	Action required
		(e) a central database containing relevant property information and transaction details of the sale of first-hand residential properties would be set up.	
002756 - 003407	Ms Audrey EU Chairman Administration	<p>Ms Audrey EU's views/enquiries-</p> <p>(a) welcomed the long awaited Bill but the Administration should explain the reason behind the withdrawal of the White Bill on the same subject in 2000;</p> <p>(b) whether reference had been made to overseas countries in the regulation of sale of first-hand residential properties; and</p> <p>(c) it would be difficult to identify the party who should be held liable for disseminating false information given the many parties involved in property development.</p> <p>Administration's explanation -</p> <p>(a) various administrative measures, including the “nine new measures”, were introduced over the years to strengthen the regulation of the sale of first-hand residential properties;</p> <p>(b) the Steering Committee had made reference to overseas jurisdictions (including Shanghai, Taiwan, Singapore, Australia, and cities in the United States) and had taken into account the unique situation in Hong Kong in working out its recommendations;</p> <p>(c) the present Bill provided a more comprehensive regulatory regime on the sale of first-hand residential properties compared with the White Bill published in 2000;</p> <p>(d) it would be an offence for any person or any company to make "fraudulent misrepresentation" or "reckless misrepresentation" for the purpose of inducing others to purchase any</p>	

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		<p>first-hand residential property;</p> <p>(e) the Bill had drawn reference to the Trade Descriptions Ordinance (Cap. 362) and the Securities and Futures Ordinance (Cap. 571) (SFO) where a company director or senior staff member could be held liable if the company committed an offence and the offence was committed with his consent.</p>	
003408 - 003944	Mr WONG Kwok-kin Chairman Administration	<p>Mr WONG Kwok-kin's views/enquiries -</p> <p>(a) Members belonging to the Hong Kong Federation of Trade Unions supported the principles of the Bill;</p> <p>(b) the adoption of SA for price quotation in the sale of first-hand residential properties and GFA for flats in the secondary market might cause confusion; and</p> <p>(c) instead of going through civil proceedings which might incur additional costs, whether there were channels through which buyers could complain against misleading property information.</p> <p>Administration's explanation -</p> <p>(a) the Bill aimed to regulate the sale of first-hand residential properties because in most of the cases of the sale of first-hand residential properties, the vendors and individual purchasers were not on an equal footing;</p> <p>(b) estate agents were required under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation to provide information on SA of a residential property, including second-hand residential properties, to prospective buyers as appropriate; and</p>	

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		<p>(c) an enforcement authority would be set up under the Transport and Housing Bureau (THB) to administer the legislation and supervise compliance with the provisions therein. The actions to be taken by the enforcement authority would not preclude first-hand residential property buyers from taking civil proceedings against the vendors.</p>	
003945 - 004550	Mr IP Kwok-him Chairman Administration	<p>Mr IP Kwok-him's views/concerns -</p> <p>(a) Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong welcomed the introduction of the Bill; and</p> <p>(b) in the absence of a specific definition on misrepresentation/dissemination of false or misleading information, estate agents/vendors might be unnecessarily caught by the Bill.</p> <p>Administration's explanation -</p> <p>(a) reference was made to SFO and the Estate Agents Ordinance (Cap. 511). Where the concept of “misleading” appears in those ordinances in similar context, the word “misleading” was not defined; and</p> <p>(b) the enforcement authority would investigate and collect evidence before taking further actions. Besides, the prosecution would also look into the circumstances leading to the offence.</p>	<p>The Administration to advise how it could ensure that estate agents/vendors would not be unnecessarily caught by the Bill in the absence of a specific definition on misrepresentation /dissemination of false or misleading information.</p>
004551 - 005052	Prof Patrick LAU Chairman Administration	<p>Prof Patrick LAU's declaration as a member of the Steering Committee. He also expressed concerns about misleading information contained in sales brochures as in the case of the Oceanaire, a new residential development, which was not clear about the level of the podium floor. To this end, consideration should be given to requiring the provision of additional information on the design of a development such as the location of the podium floor.</p>	<p>The Administration to consider including in the sales brochures, apart from a location plan, additional information on the design of a development such as the location of the podium floor.</p>

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		<p>Administration's explanation -</p> <p>(a) a new provision was added to the Bill that the sales brochure must, in relation to every building in the development, set out a plan showing a cross-section of the building in relation to every street adjacent to the building, and the level of every such street in relation to a known datum and to the level of the lowest residential building. This would help the public to visualize the relationship between the lowest residential floor of a building and the street level, regardless of how that lowest residential floor was named;</p> <p>(b) the aforesaid measure had also been incorporated into the Lands Department's Consent Scheme; and</p> <p>(c) THB sounded out the Hong Kong Institute of Surveyors (HKIS) on the additional measure as set out in (a) above. HKIS considered the additional measure useful in enhancing the transparency of information on the difference in levels between the lowest residential floor of a building and the adjacent streets.</p>	
005053 - 005509	Mrs Regina IP Administration Chariman	<p>Mrs Regina IP's enquiry on the feasibility of injecting additional funding into the Consumer Council to provide financial assistance to civil proceedings in relation to sales of first-hand residential properties.</p> <p>Administration's response -</p> <p>(a) the enforcement authority would be tasked to supervise compliance with the provisions in the legislation and undertake investigations as appropriate; and</p>	<p>The Administration to advise whether consideration would be given to injecting additional funding into the Consumer Council to provide financial assistance to civil proceedings in relation to sales of first-hand residential properties.</p>

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		<p>(b) on the civil side, buyers could institute civil proceedings if they considered they had suffered damages in the course of the purchase of first-hand residential properties, regardless of whether the vendor had or had not been charged or convicted for a breach of the proposed legislation.</p>	
005510 - 010059	Mr Alan LEONG Administration Chariman	<p>Mr Alan LEONG's views/enquiries -</p> <p>(a) Members belonging to the Civic Party welcomed the long awaited Bill;</p> <p>(b) the broad interpretation of vendor under clause 7 (which might include the owner as well as the person engaged to coordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development or phase) when read across with the defence provisions, might enable offenders to evade the criminal liabilities under the Bill; and</p> <p>(c) the means through which circumvention of criminal liability through shifting of responsibilities among different parties could be prevented.</p> <p>Administration's explanation that the interpretation of vendor under clause 7 was meant to ensure that, where appropriate, both the owner of the residential property and the person so engaged could be held responsible for offences relating to sales practices under the Bill.</p>	The Administration to advise how to prevent circumvention of criminal liability through shifting of responsibilities among different parties.
010100 - 010416	Mr Alan LEONG Ms Audrey EU Administration Chairman	Mr Alan LEONG and Ms Audrey EU's enquiry on when the time limit for prosecution under clause 73 would start to run. In the case of prosecution against false or misleading information contained in sales brochures, whether the time limit would start from the date of publication of the sales brochures or the date when these were distributed or made available to buyers.	The Administration to advise the application of the time limit for prosecution of three years to various offences under the Bill and when the time limit would start to run.

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
010417 - 010629	Ms Audrey EU Administration Mr Vincent FANG	Ms Audrey EU and Mr Vincent FANG's request for clarification on the interpretation on vendor as it might include a company and its subsidiary companies, executive arms or contractors, and whether the provisions of the Bill would apply to them.	The Administration to clarify the interpretation on vendor as it might include a company and its subsidiary companies, executive arms or contractors, and whether the provisions of the Bill would apply to them.
010630 - 011323	Mr Alan LEONG Chariman Administration	Discussion on the differences between the provisions of the White Bill and the Blue Bill.	The Administration to set out (in tabular form) the differences between the provisions of the White Bill and the Blue Bill.
011324 - 011410	Chairman	Date of next meeting.	