

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2387/11-12  
(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 second meeting**  
**held on Wednesday, 11 April 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 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

**Members absent** : Hon Abraham SHEK Lai-him, SBS, JP  
Hon LEE Wing-tat

**Public officers attending** : **For item I**

Transport and Housing Bureau

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)

Miss Sharon KO  
Senior Administrative Officer (Special Duties) 1

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

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**I. Meeting with the Administration**

- (LC Paper No. CB(1) 1517/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 30 March 2012
- LC Paper No. CB(1) 1517/11-12(02) — Administration's response to CB(1) 1517/11-12(01))

Background information on the Bill

- LC Paper No. CB(3) 570/11-12 — The Bill
- (issued by the Transport and Housing Bureau on 13 March 2012)* — The Legislative Council Brief
- LC Paper No. LS47/11-12 — Legal Service Division Report

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

2. The Administration was requested to -

- (a) review the Chinese rendition of the term "assignment" in the long title;
- (b) advise how to deal with the circumstances where part of a residential development (to be sold after the enactment of the Bill) was governed by the Bill while part of the development (sold before the coming into effect of the Bill) was not covered by the Bill;
- (c) review the drafting of part (a) of the interpretations on "authorized person" and "building contractors" to cater for any changes in the appointment of such persons during the interim;
- (d) advise if the agreement for sale and purchase under clause 10(1)(a) included a preliminary agreement for sale and purchase;
- (e) clarify when the "three year" prosecution time limit under clause 73 would start to run for contravention under clauses 20(2) and (5) (whether at the date on which the sales brochures was printed or the date when the sales brochures was made available to the proposed enforcement authority). To also review the provisions in the Bill for summary offence to ensure that the legislative intention of clause 73 could be effectively carried in these provisions;

- (f) consider expanding the scope of Part 4 (clauses 65 and 66) to misrepresentation and dissemination of false or misleading information in relation to the sale of overseas properties in Hong Kong;
- (g) consider specifying in clause 74(1)(a) the rank of public officer eligible for appointment as the Authority. To also provide a paper setting out the establishment of the proposed enforcement authority; and
- (h) regularly review the adequacy of the Consumer Legal Action Fund following the enactment of the Bill to ensure that sufficient financial support would be provided to assist consumers to lodge legal proceedings against unscrupulous developers.

3. The next meeting would be held on Wednesday, 18 April 2012, at 8:30 am.

## **II. Any other business**

4. There being no other business, the meeting ended at 4:37 pm.

Council Business Division 1  
Legislative Council Secretariat  
18 July 2012

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

**Proceedings of the second meeting  
on Wednesday, 11 April 2012, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000247 - 000427	Chairman	Opening remarks	
000428 - 001629	Administration	Administration's explanation on its response to issues raised by members at the meeting on 30 March 2012 (LC Paper No. CB(1) 1517/11-12(02)).	
001630 - 002802	Ms Audrey EU Administration Chairman	<p>Ms Audrey EU's enquiry/concern -</p> <p>(a) information in a sales brochure might be accurate at the time when it was printed but circumstances might have changed when it was made available for public consumption; and</p> <p>(b) when the "three year" prosecution time limit under clause 73 would start to run for contravention under clauses 20(2) and (5) (whether at the date on which the sales brochures was printed or the date when the sales brochures was made available to the proposed enforcement authority).</p> <p>Administration's response -</p> <p>(a) while vendors were not required to submit sales brochures to the enforcement authority for prior approval before making them available to the public, they had to state in the sales brochures the date on which sales brochures were printed. The information contained therein must be accurate in every material respect as at the date on which the sales brochures were printed; and</p> <p>(b) the "three year" prosecution time limit for contravention under clauses 20(2) and (5) would be counted from the date when the sales brochure was made available for public consumption.</p>	<p>The Administration to clarify when the "three year" prosecution time limit under clause 73 would start to run for contravention under clauses 20(2) and (5) (whether at the date on which the sales brochures was printed or the date when the sales brochures was made available to the proposed enforcement authority). To also review the provisions in the Bill for summary offence to ensure that the legislative intention of clause 73 could be effectively carried in these provisions.</p>

Time marker	Speaker	Subject(s)	Action required
		Assistant Legal Adviser 5's request for review of the provisions in the Bill for summary offence to ensure that the legislative intention of clause 73 could be effectively carried in these provisions.	
002803 - 004139	Ms Miriam LAU Chairman Administration	<p>Ms Miriam LAU's views -</p> <p>(a) Members belonging to the Liberal Party supported the use of saleable area (SA) to quote the area and price of a residential unit. However, consideration should be given to allowing the use of gross floor area (GFA) in sales brochures to facilitate reference by prospective buyers, particularly on the share of common areas. Besides, management fees were calculated on the basis of GFA; and</p> <p>(b) the Administration should endeavour to work out a standardized definition on GFA.</p> <p>Administration's explanation -</p> <p>(a) the measurement methodology to be prescribed in legislation had to be clearly defined. There was at present a standardized definition of SA per property, but not a commonly-adopted definition of GFA per property. Without such a commonly-adopted definition of GFA for a property, it was at present not possible to prescribe GFA in precise term in the proposed legislation;</p> <p>(b) vendors were required under proposed section 14 of Schedule 1 to the Bill to provide information on the number of undivided shares assigned to each residential property in a development, and the basis on which the management expenses were shared. They were also required to include in the sales brochures information in respect of area of common facilities on an aggregate basis in accordance with proposed section 19 of Schedule 1 to the Bill; and</p>	

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		<p>(c) the experience in working out a standardized definition of SA indicated that it would take a considerable time for all relevant stakeholders to agree on a standardized definition on GFA for a property.</p>	
004140 - 004549	Ms Audrey EU Administration Chairman	<p>Ms Audrey EU's enquiry on how the Bill would regulate the dissemination of false information on sales of properties.</p> <p>Administration's response -</p> <p>(a) Part 4 of the Bill dealt with misrepresentation and dissemination of false or misleading information; and</p> <p>(b) vendors were required to disclose transaction information, including particulars on Preliminary Agreement for Sale and Purchase (PASP) within 24 hours after it was signed, Agreement for Sale and Purchase (ASP) one working day after it was signed, termination of PASPs and ASPs, and transactions involving person who was a related party to the vendor.</p>	
004550 - 004929	Ms Audrey EU Administration Chairman	<p>Ms Audrey EU's request for a regular review of the adequacy of the Consumer Legal Action Fund (CLAF) following the enactment of the Bill to ensure that sufficient financial support would be provided to assist consumers to lodge legal proceedings against unscrupulous developers.</p> <p>Administration's response -</p> <p>(a) the Transport and Housing Bureau had relayed members' concern about the need for sufficient funding under CLAF to the Commerce and Economic Development Bureau, which would continue to closely liaise with the Consumer Council and monitor the financial position of CLAF to ensure that sufficient resources were available under the CLAF to assist consumers with meritorious claims; and</p> <p>(b) the Home Affairs Bureau had proposed expanding the scope of the</p>	<p>The Administration to regularly review the adequacy of CLAF following the enactment of the Bill to ensure that sufficient financial support would be provided to assist consumers to lodge legal proceedings against unscrupulous developers.</p>

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		<p>Supplementary Legal Aid Scheme to cover claims by first-hand residential property purchasers against vendors in legal proceedings.</p>	
004930 - 010127	Mr LEE Cheuk-yan Administration Chairman	<p>Mr LEE Cheuk-yan's views/enquiries -</p> <p>(a) whether sales brochures would contain information on obnoxious facilities under consultation/planning;</p> <p>(b) need to regulate advertisements on residential developments as well to prevent dissemination of misleading information to consumers, particularly on the surrounding environment; and</p> <p>(c) the proposed regulatory regime might not be applicable to first-hand residential properties which were sold out quickly.</p> <p>Administration's explanation -</p> <p>(a) it was a requirement under the Bill that sales brochure should contain comprehensive information on the residential development, including the relevant Outline Zoning Plan (OZP) at the time of printing. Also, it was required under the Bill that the location plan of the development had to show the name of every street situated within 250 metres from the boundary of the development and every building, facility or structure the principal use of which was covered under a prescribed list. However, it would be practically difficult to require vendors to provide in sales brochures information on the planning and development of the surrounding areas of a development which were still under public consultation;</p> <p>(b) advertisements were governed under Part 3 of the Bill which provided that information contained in advertisements should be accurate and not misleading; and</p> <p>(c) the enforcement authority would set up a central database providing</p>	



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		information on first-hand residential properties in Hong Kong.	
010128 - 010805	Mr Alan LEONG Administration Chairman	<p>Mr Alan LEONG's enquiry on whether it was a requirement under the Bill for vendors to disclose information in relation to town planning applications within the vicinity of residential developments.</p> <p>Administration's explanation -</p> <p>(a) proposed section 6(2)(b)(iii) of Schedule 1 Part 1 provided that the location plan must show every building, facility or structure that was situated within 250 metres from the boundary of the development the principal use of which was covered under the list in section 6(4); and</p> <p>(b) proposed section 8 of Schedule 1 Part 1 provided that the relevant town plan, whether in draft or approved form, must show the existing and proposed uses of all land situated within 500 metres from the boundary of the development.</p>	
010806 - 012238	Ms Audrey EU Administration Chairman	<p>Ms Audrey EU's enquiries -</p> <p>(a) whether the Bill would apply to first-hand residential property under confirmor sales, internal sales or property transfers between friends/relatives; and</p> <p>(b) whether consideration could be given to expanding the scope of Part 4 (clauses 65 and 66) to misrepresentation and dissemination of false or misleading information in relation to the sale of overseas properties conducted in Hong Kong.</p> <p>Administration's explanation -</p> <p>(a) the Bill would only apply to first-hand residential properties situated in Hong Kong;</p> <p>(b) the Bill would not apply to residential properties in respect of which an ASP or an assignment had been entered into</p>	The Administration to consider expanding the scope of Part 4 (clauses 65 and 66) to misrepresentation and dissemination of false or misleading information in relation to the sale of overseas properties in Hong Kong.

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		<p>or made, or those situations stipulated under clauses 10(3) to (6);</p> <p>(c) there were also situations under clauses 11(2), (3) and (4) where an ASP would not be regarded as having been entered into, including an ASP entered into between a company and its associate corporation or holding company;</p> <p>(d) an ASP entered into between friends/relatives would not be disregarded;</p> <p>(e) there would be no difference in treatment between "internal sale" and "public sale" under the Bill. All sale, unless it fell within those situations as prescribed or exempted, would be subject to the same set of requirements; and</p> <p>(f) at present, confirmor sales were prohibited in the sale of first-hand uncompleted residential property under the Lands Department (Lands D) Consent Scheme.</p>	
012239 - 013253	Mrs Regina IP Ms Audrey EU Administration Chairman	<p>Discussion on the need to regulate the sale of overseas properties conducted in Hong Kong.</p> <p>Mrs Regina IP's view that there should not be any jurisdictional problems in regulating dissemination of false information in the sale of overseas properties conducted in Hong Kong, given that offenders in cases like bribery and child pornography committed outside Hong Kong could still be prosecuted in Hong Kong.</p> <p>Ms Audrey EU's opinion that dissemination of false information in relation to the sale of overseas properties conducted in Hong Kong was not an extra-territorial offence and could therefore be dealt with in Hong Kong.</p> <p>Administration's explanation -</p> <p>(a) the Bill was intended to target at the sale of first-hand residential properties situated in Hong Kong. It was drawn</p>	

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		<p>up after an extensive and detailed discussion over the past one and a half years and based on the provisions under the Lands D Consent Scheme and the guidelines issued by REDA. Regulating the sale of overseas residential properties conducted in Hong Kong was a completely different subject, with different issues, that would require careful consideration;</p> <p>(b) there would be practical difficulties in collecting evidence for cases involving the sale of residential properties outside Hong Kong, notwithstanding that the sales activities might have been taken place in Hong Kong; and</p> <p>(c) Where a sale of overseas property conducted in Hong Kong involved misrepresentation or false or misleading information, such case might be dealt with by existing legislation.</p>	
013254 - 014004	Administration Ms Audrey EU Chairman Ms Miriam LAU	<p>Clause-by-clause examination of the Bill</p> <p>Discussion on the long title of the Bill</p>	<p>The Administration to -</p> <p>(a) review the Chinese rendition of the term "assignment" in the long title; and</p> <p>(b) advise if the agreement for sale and purchase under clause 10(1)(a) included a preliminary agreement for sale and purchase.</p>
014005 - 014215	Administration Ms Audrey EU Chairman	<p>Clause 1-Short title and commencement</p> <p>Ms Audrey EU's enquiry on how to deal with the circumstances where part of a residential development (to be sold after the enactment of the Bill) was governed by the Bill while part of the development (sold before the coming into effect of the Bill) was not covered by the Bill.</p>	<p>The Administration to advise how to deal with the circumstances where part of a residential development (to be sold after the enactment of the Bill) was governed by the Bill while part of the</p>

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			development (sold before the coming into effect of the Bill) was not covered by the Bill.
014216 - 020646	Administration Ms Audrey EU Chairman Mr James TO Ms Miriam LAU Prof Patrick LAU	<p>Clause 2 - Interpretation</p> <p>"Authority"</p> <p>Ms Audrey EU's requests -</p> <p>(a) to specify in clause 74(1)(a) the rank of public officer eligible for appointment as the Authority; and</p> <p>(b) to provide a paper setting out the establishment of the proposed enforcement authority.</p> <p>"authorized person"</p> <p>"building contractors"</p> <p>Mr James TO's concern about possible changes to the appointment of "authorized person" and "building contractors" in relation to a specified New Territories development, and the need to set out the period of appointment in the advertisement/sales brochures.</p>	<p>The Administration to -</p> <p>(a) consider specifying in clause 74(1)(a) the rank of public officer eligible for appointment as the Authority. To also provide a paper setting out the establishment of the proposed enforcement authority; and</p> <p>(b) review the drafting of part (a) of the interpretations on "authorized person" and "building contractors" to cater for any changes in the appointment of such persons during the interim.</p>
020647 - 020727	Chairman	Date of next meeting.	