

立法會
Legislative Council

LC Paper No. CB(1) 2527/11-12
(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 eighth meeting
held on Tuesday, 15 May 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 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
Hon LEE Wing-tat
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 Alan LEONG Kah-kit, SC
Hon Tanya CHAN
- Members absent** : Hon James TO Kun-sun
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public officers
attending**

: For item I

Transport and Housing Bureau

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

Ms Mandy NG

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

I. Meeting with the Administration

- (LC Paper No. CB(1) 1598/11-12(03) — Assistant Legal Adviser's letters dated 12 April 2012 to the Administration
- LC Paper No. CB(1) 1598/11-12(04) — Administration's response to CB(1) 1598/11-12(03)
- LC Paper No. CB(1) 1730/11-12(02) — List of follow-up actions arising from the discussion at the meeting on 24 April 2012
- LC Paper No. CB(1) 1730/11-12(03) — Assistant Legal Adviser's letter dated 25 April 2012 to the Administration
- LC Paper No. CB(1) 1779/11-12(01) — Administration's response to CB(1) 1730/11-12(03)
- LC Paper No. CB(1) 1779/11-12(02) — List of follow-up actions arising from the discussion at the meeting on 2 May 2012
- LC Paper No. CB(1) 1861/11-12(01) — Administration's response to CB(1) 1779/11-12(02)
- LC Paper No. CB(1) 1861/11-12(02) — List of follow-up actions arising from the discussion at the meeting on 9 May 2012
- LC Paper No. CB(1) 1861/11-12(03) — Letter from The Real Estate Developers Association of Hong Kong)

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 threshold for non-application of the Bill under clause 10(3) in consultation with the trade;

- (b) advise with illustrations the application of "owner" under clauses 48, 49 and 50 in the sale and purchase agreement for specified residential properties in different situations, including sale by the agent of an owner, sale under a power of attorney, sale by the liquidator of a developer company, and sale by the person/representative of the estate of a deceased owner. For the sake of clarity, consideration should be given to replacing the term "owner" with "vendor" under these clauses with proper adaptation;
- (c) advise the rationale for using different time limits for clauses 52(2) (within 24 hours) and 52(3) (within one working day), and the circumstances if the specified day fell on a Sunday, public holiday or a day when the black rainstorm signal/typhoon signal number 8 was hoisted;
- (d) consider requiring the provision of additional particulars (including unusual date of completion and cancellation clauses) in clause 52(2). To cater for the situation where no preliminary agreement for sale and purchase was entered into before the signing of an agreement for sale and purchase, consideration should be given to including the particulars required under clause 52(2)(a) to (e) in clause 52(3);
- (e) consider reviewing clause 56(2)(b) such that it applied to any sitting tenant so long as the specified residential property had been leased out for a continuous period of at least one year (regardless of the number of tenants involved);
- (f) consider providing a definition of "advertisement" in the Bill. To review clause 59 as the purpose of all advertisements was to promote the sale of the related specified residential properties;
- (g) advise the rationale for requiring a person under clause 61(1) to state in an advertisement that the information set out in that advertisement was provided by the vendor, and how to deal with the circumstances where part of the information in the advertisement was provided by the vendor and part of it was not;
- (h) consider applying all the provisions in the Securities and Futures Ordinance (Cap. 571) in relation to misrepresentation to clause 65, inter alia, full disclosure of material information and instigation of civil proceedings by the enforcement authority on behalf of consumers; and

- (i) consider including in the Bill a requirement for vendors to update the sales brochures (say in the form of corrigendum) in the event of changes in material facts (such as change in building plan).

3. Members agreed to cancel the meeting scheduled for 17 May 2012 to avoid clashing with the anticipated continuation of the Council meeting on the same day. The next meeting would be held on Tuesday, 22 May 2012, at 10:45 am.

II. Any other business

4. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
5 September 2012

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

**Proceedings of the eighth meeting
On Tuesday, 15 May 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>			
000553 - 000605	Chairman	Opening remarks	
000606 - 000945	Chairman Administration Assistant Legal Adviser 5 (ALA5) Ms Audrey EU	Discussion on ALA5's question on the application of "owner" under clauses 48, 49 and 50 in relation to the sale and purchase agreement (ASP) for specified residential properties in different situations, including sale by the agent of an owner, sale under a power of attorney, sale by the liquidator of a developer company, and sale by the person/representative of the estate of a deceased owner. Ms Audrey EU's request for using "vendor" in clauses 48, 49 and 50 as the term was more commonly used in ASP.	The Administration to advise with illustrations the application of "owner" under clauses 48, 49 and 50 in the sale and purchase agreement for specified residential properties in different situations, including sale by the agent of an owner, sale under a power of attorney, sale by the liquidator of a developer company, and sale by the person/representative of the estate of a deceased owner. For the sake of clarity, consideration should be given to replacing the term "owner" with "vendor" under these clauses with proper adaptation.
000946 - 001116	Administration	Continuation of clause-by-clause examination of the Bill Division 8 - Register of transactions Clause 51 - Register of Transactions to be kept by vendor	
001117 - 003333	Administration Ms Audrey EU Chairman	Clause 52 - Contents of, and entries in, Register of Transactions Ms Audrey EU's views/enquiries - (a) the rationale for using different time limits for clauses 52(2) (within 24 hours) and 52(3) (within one working day), as well as the	The Administration to - (a) advise the rationale for using different time limits for clauses 52(2) (within 24 hours) and 52(3) (within one working day),

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		<p>circumstances if the specified day fell on a Sunday, public holiday or a day when the black rainstorm signal/typhoon signal number 8 was hoisted;</p> <p>(b) whether consideration could be given to requiring the inclusion of additional particulars (such as unusual date of completion and cancellation clauses) in clause 52(2); and</p> <p>(c) to cater for the situation where no preliminary agreement for sale and purchase (PASP) was entered into before the signing of an ASP, consideration should be given to including the particulars required under clause 52(2)(a) to (e) in clause 52(3).</p> <p>Administration's explanation -</p> <p>(a) it was in the interest of the public to know as soon as possible the actual number of PASP signed and the relevant transacted prices. Therefore, a more stringent time requirement was proposed for disclosure of information on a PASP;</p> <p>(b) "working day" was defined under clause 2(1), meaning a day that was not – (a) a general holiday; or (b) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);</p> <p>(c) as vendors would be required to disclose transaction information within 24 hours for PASP and one working day for ASP and the cancellation of ASP etc, it might not be practical to require vendors to provide information other than the most basic information in the Register of Transactions; and</p>	<p>and the circumstances if the specified day fell on a Sunday, public holiday or a day when the black rainstorm signal/typhoon signal number 8 was hoisted; and</p> <p>(b) Consider requiring the provision of additional particulars (including unusual date of completion and cancellation clauses) in clause 52(2). To cater for the situation where no PASP was entered into before the signing of an ASP, consideration should be given to including the particulars required under clause 52(2) (a) to (e) in clause 52(3).</p>

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		(d) would consider proposing CSA to cater for the situation where no PASP was entered into before the signing of an ASP.	
003334 - 003522	Administration	Clause 53 - Register of Transactions to be made available to general public	
003523 - 003558	Administration	Clause 54 - Application of sections 52 and 53 in case of phased development	
003559 - 003921	Administration	Clause 55 - Exception: all residential properties in development or phase sold under single agreement etc.	
003922 - 005321	Administration Mr Abraham SHEK Chairman	<p>Clause 56 - Exception and additional requirement: property sold or offered to be sold to sitting tenant</p> <p>Chairman's suggestion of reviewing clause 56(2)(b) such that it applied to any sitting tenant so long as the specified residential property had been leased out for a continuous period of at least one year (regardless of the number of tenants involved).</p> <p>Administration's explanation on the rationale behind the exception, which took account of the fact that a sitting tenant, who had continuously lived in the residential property for a period of 12 months should be quite familiar with the property and hence some requirements on the sale of first-hand residential properties (in particular the provision of sales brochure and price list) might be waived.</p>	<p>The Administration to review -</p> <p>(a) the threshold for non-application of the Bill under clause 10(3) in consultation with the trade; and</p> <p>(b) clause 56(2)(b) such that it applied to any sitting tenant so long as the specified residential property had been leased out for a continuous period of at least one year (regardless of the number of tenants involved).</p>
005322 - 005403	Administration	Clause 57 - Exception: property sold or offered to be sold by way of auction or tender	
005404 - 005535	Administration	Clause 58 - Additional requirement: unsold property in completed development	
005536 - 005554	Administration Chairman	<p>Part 3 - Advertisement of Specified Residential Property</p> <p>Clause 59 - Application of Part 3</p>	<p>The Administration to -</p> <p>(a) consider providing a definition of "advertisement" in</p>

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		Discussion on the definition of "advertisement" in the Bill.	the Bill; and (b) review clause 59 as the purpose of all advertisements was to promote the sale of the related specified residential properties.
005555 - 005702	Administration	Clause 60 - Advertisement must not contain false or misleading information	
005703 - 005912	Administration Ms Audrey EU Chairman ALA5	Clause 61 - General requirements for advertisement Discussion on the rationale for requiring a person under clause 61(1) to state in an advertisement that the information set out in that advertisement was provided by the vendor. The Administration's explanation that clause 61(1) aimed to facilitate members of the public to know whether a piece of advertisement was published by the vendor, or published by another person with the consent of the vendor.	The Administration to - (a) advise the rationale for requiring a person under clause 61(1) to state in an advertisement that the information set out in that advertisement was provided by the vendor; and (b) how to deal with the circumstances where part of the information in the advertisement was provided by the vendor and part of it was not.
005913 - 011534	Administration	Clause 62 - Advertisement must contain statement about sales brochure	
011535 - 012040	Administration	Clause 63 - Additional requirements for printed advertisement	
012041 - 012130	Administration	Clause 64 - Provision supplementary to section 63(6)	
012131 - 013704	Administration Mr LEE Cheuk-yan Chairman Ms Audrey EU Ms Miriam LAU Mr LEE Wing-tat Mr Alan LEONG	Part 4 - Misrepresentation, and Dissemination of False or Misleading Information etc Clause 65 - Misrepresentation Mr LEE Cheuk-yan's request to apply all	The Administration to consider applying all the provisions in the Securities and Futures Ordinance (Cap. 571) in relation to misrepresentation to

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		<p>the provisions in the Securities and Futures Ordinance (Cap. 571) in relation to misrepresentation to clause 65, inter alia, full disclosure of material information and instigation of civil proceedings by the enforcement authority on behalf of consumers.</p> <p>Administration's explanation -</p> <p>(a) the securities market and the property market were not the same in every respect, and hence the requirements imposed on the securities market might not be applicable to the property market;</p> <p>(b) vendors were required to provide comprehensive information on the residential development in the sales brochure. Vendors who knowingly or recklessly omitted a material fact in the course of disseminating information on the sale of first-hand residential properties committed an offence;</p> <p>(c) it was not appropriate for the proposed enforcement authority to help purchasers to take civil action against the vendors. Sufficient resources were available under the Consumer Legal Action Fund to assist consumers with meritorious claims; and</p> <p>(d) the Home Affairs Bureau had also proposed expanding the scope of the Supplementary Legal Aid Scheme to cover claims by first-hand residential property purchasers against vendors in legal proceedings.</p>	<p>clause 65, inter alia, full disclosure of material information and instigation of civil proceedings by the enforcement authority on behalf of consumers.</p>
013705 - 020235	<p>Ms Audrey EU Ms Miriam LAU Mr LEE Wing-tat Mr Alan LEONG</p>	<p>Ms Audrey EU's views -</p> <p>(a) the scope of clauses 65 and 66 should be expanded to cover the sale of overseas residential properties conducted in Hong Kong; and</p>	<p>The Administration to consider including in the Bill a requirement for vendors to update the sales brochure (say in the form of corrigendum) in the event of changes in</p>

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		<p>(b) vendors should be required to update the sales brochure (say in the form of corrigendum) in the event of changes in material facts (such as change in building plan).</p> <p>The Chairman's agreement to the need for updating sales brochure in the event of changes in material facts.</p> <p>Ms Miriam LAU's concern that it might not be practical to require vendors to update the sales brochure whenever there were material changes as this would mean frequent and endless updating.</p>	material facts (such as change in building plan).
020236 - 020340	Chairman	Date of next meeting.	