

立法會
Legislative Council

LC Paper No. CB(1) 2529/11-12
(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 tenth meeting
held on Thursday, 24 May 2012, at 8:30 am
in Conference Room 3 of the Legislative Council Complex

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

Mrs Mary TANG
Senior Council Secretary (1)1

I. Meeting with the Administration

- (LC Paper No. CB(1) 1968/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 22 May 2012
- 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) 1936/11-12(02) — Administration's response to CB(1) 1730/11-12(02))

Relevant papers

- LC Paper No. CB(3) 570/11-12 — The Bill
The Legislative Council Brief
- LC Paper No. LS47/11-12 — Legal Service Division Report
- 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) 1936/11-12(01) — A table showing the offences in the Residential Properties (First-hand Sales) Bill provided by the Administration in response to CB(1) 1598/11-12(03)
- 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) 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) 1936/11-12(03) — List of follow-up actions arising from the discussion at the meeting on 15 May 2012

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

2. The Administration was requested to -

- (a) consider including a deeming provision in the Bill such that all the provisions required under Schedules 4 to 7 were deemed to apply regardless of whether these were set out in the Preliminary Agreement for Sale and Purchase (PASP)/Agreement for Sale and

Purchase (ASP) or not. An alternative would be for the Administration to set out in a pro forma all the prescribed provisions;

- (b) review the need for proposed section 10 of Schedule 4 lest this might allow a purchaser to rescind a PASP/ASP at any time (even just before the completion date) given the absence of a time limit for raising requisition or objection in respect of title under that section;
 - (c) review the definition of "vendor" to ensure that the person responsible would be held liable for an offence he/she committed. To also review clause 7(2) to prevent circumvention through engagement of two or more persons to carry out the prescribed work;
 - (d) advise the initial ideas on allowing the inclusion of additional information other than that required under the Bill in the sales brochures; and
 - (e) further elaborate the Administration's response to The Law Society of Hong Kong's concern on the need for mens rea/knowledge of the inaccuracy before imprisonment was imposed.
3. To allow more time for discussion of the Bill, members agreed to include the following additional meetings in the schedule of meetings of the Bills Committee -

<u>Date</u>	<u>Time</u>
Monday, 28 May 2012	4:30 pm
Tuesday, 5 June 2012	8:30 am

II. Any other business

4. There being no other business, the meeting ended at 10:40 am.

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

**Proceedings of the tenth meeting
on Thursday, 24 May 2012, at 8:30 am
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>			
001158 - 001354	Chairman	Opening remarks	
001355 - 001814	Administration Chairman Ms Audrey EU	<p>Discussion on the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting on 27 June 2012, and the relevant legislative timetable.</p> <p>Ms Audrey EU's views -</p> <p>(a) supported the objective of the Bill to regulate the sale of first-hand residential properties, but the belated introduction of the Bill had deprived members of the opportunity of sufficient time to scrutinize the Bill; and</p> <p>(b) members had a hard time in allocating time for scrutiny of the Bill given the many other meetings held in parallel with the meetings of the Bills Committee towards the end of the legislative session.</p>	
001815 - 010122	Administration Ms Audrey EU Chairman Mr Alan LEONG Mr IP Kwok-him	<p>Continuation of discussion on the Administration's response to submissions to the Bills Committee (Annex to LC Paper No. CB(1) 1936/11-12(02)).</p> <p>(I) Requirements on Conveyancing Arrangements and Related Matters</p> <p>Ms Audrey EU's views -</p> <p>(a) the "cooling-off period" (i.e., the period between the signing of Preliminary Agreement for Sale (PASP) and Purchase and the Agreement for Sale and Purchase (ASP) by the purchasers) should be extended from three days to five days;</p> <p>(b) a deeming provision should be included in the Bill so that all the provisions</p>	<p>The Administration to -</p> <p>(a) consider including a deeming provision in the Bill such that all the provisions required under Schedules 4 to 7 were deemed to apply regardless of whether these were set out in the PASP/ ASP or not. An alternative would be for the Administration to</p>

Time marker	Speaker	Subject(s)	Action required
		<p>required under Schedules 4 to 7 were deemed to apply regardless of whether these were set out in a PASP/ASP or not; and</p> <p>(c) proposed section 10 of Schedule 4 as drafted might allow a purchaser to rescind a PASP/ASP at any time (even just before the completion date).</p> <p>Mr Alan LEONG's suggestion of setting out all the prescribed provisions for PASP/ASP in a pro forma.</p> <p>Discussion on the need to introduce a time limit for raising requisition or objection in respect of title.</p>	<p>set out in a pro forma all the prescribed provisions; and</p> <p>(b) review the need for proposed section 10 of Schedule 4 lest this might allow a purchaser to rescind a PASP/ASP at any time (even just before the completion date) given the absence of a time limit for raising requisition or objection in respect of title under that section.</p>
010123 - 015010	<p>Administration Ms Audrey EU Mr Alan LEONG Mr Abraham SHEK Chairman Mr James TO</p>	<p>(J) Offence of Misrepresentation and Dissemination of False or Misleading Information</p> <p>Ms Audrey EU's view that as the definition of "vendor" under clause 7(2) would only apply if a person was engaged to carry out the prescribed work of designing, planning, constructing, fitting out, completing <u>and</u> marketing the development, there might be loophole for circumvention if the owner engaged two or more persons to carry out the work.</p> <p>Mr Alan LEONG's concern that the owner might make use of the defence provision under clause 67 to claim that he/she had exercised due diligence to prevent commission of offence.</p> <p>Mr Abraham SHEK's concern that developers might be held liable for offences committed by persons engaged to carry out the prescribed work.</p> <p>Administration's explanation -</p> <p>(a) the definition of "vendor" as drafted would ensure that both the owner and</p>	<p>The Administration to -</p> <p>(a) review the definition of "vendor" to ensure that the person responsible would be held liable for an offence he/she committed. To also review clause 7(2) to prevent circumvention through engagement of two or more persons to carry out the prescribed work;</p> <p>(b) advise the initial ideas on</p>

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		<p>the developer, which was described in the Bill as the "person engaged by the owners to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development", would be held criminally liable for the offences under the Bill; and</p> <p>(b) it was not the policy intention to cover a person who was engaged to co-ordinate and supervise only one or some of those aspects of the development process.</p> <p>Mr James TO's enquiry on whether vendors would be allowed to include additional information in the sales brochure other than that required under the Bill.</p> <p>Administration's explanation that under the Bill as currently drafted, vendors were not allowed to include in the sales brochures information other than those specified in the Bill. Notwithstanding, vendors who wished to provide information which was not allowed in the sales brochures might provide the information in publications other than the sales brochure.</p>	<p>allowing the inclusion of additional information other than that required under the Bill in the sales brochure.</p>
015011 - 015217	Administration Ms Audrey EU	(K) Prosecution Time Limit	
015218 - 020312	Administration Mr Abraham SHEK Ms Audrey EU	<p>(L) Penalty Proposals and Liability of Officers</p> <p>Mr Abraham SHEK's enquiry on whether the prosecution had to prove mens rea/knowledge of the inaccuracy before imprisonment was imposed.</p>	<p>The Administration to further elaborate its response to The Law Society of Hong Kong's concern on the need for mens rea/knowledge of the inaccuracy before imprisonment was imposed.</p>
020313 - 021020	Chairman	Inclusion of additional meetings in the schedule of meetings of the Bills Committee.	