

立法會
Legislative Council

LC Paper No. CB(1) 2530/11-12
(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 eleventh meeting
held on Monday, 28 May 2012, at 4:30 pm
in Conference Room 1 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 Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Starry LEE Wai-king, JP
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Alan LEONG Kah-kit, SC
- Members absent** : Hon Miriam LAU Kin-ye, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon WONG Kwok-kin, BBS
Hon Tanya CHAN
- 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) 1998/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 24 May 2012

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
(issued for the meeting on 15 May 2012)

LC Paper No. CB(1) 1998/11-12(02) — Administration's response to CB(1) 1861/11-12(02)
(issued on 25 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
(issued for the meeting on 2 May 2012)

LC Paper No. CB(1) 1936/11-12(02) — Administration's response to CB(1) 1730/11-12(02)
(issued for the meeting on 22 May 2012)

LC Paper No. CB(1) 1730/11-12(03) — Assistant Legal Adviser's letter dated 25 April 2012 to the Administration
(issued for the meeting on 2 May 2012)

LC Paper No. CB(1) 1779/11-12(01) — Administration's response to CB(1) 1730/11-12(03)
(issued for the meeting on 9 May 2012)

LC Paper No. CB(1) 2011/11-12(01) — Administration's response to CB(1) 1730/11-12(03)

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
(issued for the meeting on 22 May 2012)

LC Paper No. CB(1) 2014/11-12(01) — Administration's response to CB(1) 1936/11-12(03)

Relevant papers

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
(issued on 21 March 2012)
- LC Paper No. CB(1) 1598/11-12(03) — Assistant Legal Adviser's
(issued for the meeting on letters dated 12 April 2012 to
18 April 2012) the Administration
- LC Paper No. CB(1) 1598/11-12(04) — Administration's response to
(issued for the meeting on CB(1) 1598/11-12(03)
18 April 2012)
- LC Paper No. CB(1) 1936/11-12(01) — A table showing the offences
(issued for the meeting on in the Residential Properties
22 May 2012) (First-hand Sales) Bill
provided by the
Administration in response to
CB(1) 1598/11-12(03)
- LC Paper No. CB(1) 1968/11-12(01) — List of follow-up actions
(issued for the meeting on arising from the discussion at
24 May 2012) the meeting on 22 May 2012

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

2. The Administration was requested to -

- (a) provide written response to the letter from Mr Abraham SHEK tabled at the meeting;
- (b) keep in view the financial position of the Consumer Legal Action Fund (CLAF), particularly after the enactment of the Bill, to ensure timely injection of fund as and when necessary. To also review the level of contribution to CLAF from complainants;
- (c) consider providing a definition of "furniture" in clause 46 to differentiate between "furniture" and "fittings, finishes and appliances
- (d) provide for members' reference the papers for discussion by the Steering Committee on Regulation of the Sale of First-hand Residential Properties by Legislation in relation to clause 67;

- (e) review the drafting of clause 69(1)(d) and similar provisions in clauses 70 and 71 as the clauses as drafted might have the effect of requiring the person being charged to prove his innocence. Besides, a person who had exercised due diligence in providing the explanation or evidence might still be subject to prosecution;
- (f) consider the feasibility of appointing a committee rather than a public officer as the Authority under clause 74 to enhance transparency and impartiality;
- (g) advise the scope of "other functions" of the Authority under clause 75;
- (h) provide an undertaking that the Legislative Council would be consulted on the guidelines before these were issued by the Authority under clause 76;
- (i) endeavour to put in place a central database covering both first-hand and second-hand residential properties to provide free-of-charge access to information by the general public;
- (j) advise whether the performance of the Authority was subject to scrutiny and if so, the party responsible for the scrutiny. To also advise whether there was an appeal mechanism against the decisions of the Authority; and
- (k) provide a comparison between the Authority and the Buildings Authority in respect of investigation under Division 2 of Part 6 of the Bill.

3. Members agreed to continue discussion at the next meeting on Tuesday, 29 May 2012, at 2:30 pm

II. Any other business

4. There being no other business, the meeting ended at 6:38 pm.

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

**Proceedings of the eleventh meeting
on Monday, 28 May 2012, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000645 - 000750	Chairman	Opening remarks	
000751 - 001433	Administration Chairman	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)).	
001434 - 001714	Mrs Regina IP Administration Chairman	(M) Enforcement Authority Mrs Regina IP's views - (a) need to keep in view the financial position of the Consumer Legal Action Fund (CLAF) to ensure the availability of sufficient funding to assist consumers to pursue their claims; and (b) need to review the level of contribution to CLAF from complainants. Administration's explanation - (a) sufficient funds had been injected into CLAF, the balance of which was about \$19.83 million as at February 2012; and (b) close liaison would be maintained with the Consumer Council on the adequacy of funding under CLAF.	The Administration to keep in view the financial position of CLAF, particularly after the enactment of the Bill, to ensure timely injection of fund as and when necessary. To also review the level of contribution to CLAF from complainants.
001715 - 001824	Ms Audrey EU Chairman Assistant Legal Adviser 5 (ALA5)	Ms Audrey EU's enquiry on whether the investigative powers for alleged contravention under clause 79 was in order. ALA5's view that clause 79 as drafted would unlikely undermine the rights of the accused.	
001825 - 002150	Chairman Administration	(N) Electronic Database	

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002151 - 003701	Prof Patrick LAU Administration Chairman	<p>(O) Other comments</p> <p>Prof Patrick LAU's views -</p> <p>(a) the practicality of requiring vendors to set out the dimensions of furniture in the floor plans; and</p> <p>(b) need to define "furniture" in clause 46 to differentiate between "furniture" and "fittings, finishes and appliances".</p> <p>Administration's explanation -</p> <p>(a) it was not a mandatory requirement for vendor to show furniture on the floor plan. Clause 46 required that if any furniture was shown on the floor plan, the furniture must be drawn to scale and the dimensions of such furniture must be shown on the floor plan; and</p> <p>(b) under the Bill, "furniture" was to be construed according to the natural meaning of the word, which generally referred to "movable" articles that were used to make a room or building suitable for living or working in, such as tables, chairs, or desks. For "fittings, finishes and appliances", section 21 of Schedule 1 to the Bill provided the specific information to be set out in a sales brochure, e.g. the type of wall used for kitchen, connection points for telephone, shower or bath tub, kitchen cabinet and built-in wardrobe. It was considered clear that "furniture" was different from "fittings, finishes and appliances" and there was no need to define "furniture" under the Bill.</p>	<p>The Administration to consider providing a definition of "furniture" in clause 46 to differentiate between "furniture" and "fittings, finishes and appliances".</p>
003702 - 004100	Mr Abraham SHEK Chairman	<p>Mr Abraham SHEK's request for the Administration to provide written response to his letter dated 28 May 2012 which was tabled at the meeting (subsequently circulated to members vide LC Paper No. CB(1) 2013/11-12(01)).</p>	<p>The Administration to provide written response to the letter from Mr Abraham SHEK tabled at the meeting.</p>
004101 - 004213	Chairman Administration	<p>Continuation of clause-by-clause examination of the Bill</p>	

Time marker	Speaker	Subject(s)	Action required
004214 - 005325	Ms Audrey EU Chairman Administration	<p>Clause 67 - Defence</p> <p>Ms Audrey EU's concern that a vendor might circumvent the Bill by engaging two or more persons to carry out the prescribed work under clause 7(2), and claim to have exercised due diligence as defence under clause 67 such that no one would be held liable in the end.</p> <p>Prof Patrick LAU's remarks that the liability of professionals engaged by a vendor to carry out the prescribed work under clause 7(2) had been deliberated at length by the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee), and the decision was that the vendor/property developer should be held liable for contraventions under the Bill.</p> <p>Mr Abraham SHEK's disagreement that vendors/property developers should be held liable for offences committed by professionals engaged to carry out the prescribed work.</p> <p>Administration's explanation -</p> <p>(a) the definition of "vendor" in the Bill reflected the policy intention that both the owner and the property developer (if one was engaged by the owner to co-ordinate and supervise the development process) should be responsible for contravention of those requirements under Part 2 of 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>	The Administration to provide for members' reference the papers for discussion by the Steering Committee in relation to clause 67.
005326 - 005648	Administration Chairman	Clause 68 - Application and Interpretation of Division 2	
005649 - 012618	Administration Chairman Prof Patrick LAU Mr Abraham SHEK	<p>Clause 69 - Defence: issue or reproduction of information or advertisement</p> <p>Clause 70 - Defence: re-transmission of</p>	The Administration to review the drafting of clause 69(1)(d) and similar

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	Ms Audrey EU ALA5	information or advertisement Clause 71 - Defence: live broadcast of information or advertisement Members' concern that clause 69(1)(d) and other similar provisions in clauses 70 and 71 as drafted might have the effect of requiring the person being charged to prove his innocence.	provisions in clauses 70 and 71 as the clauses as drafted might have the effect of requiring the person being charged to prove his innocence. Besides, a person who had exercised due diligence in providing the explanation or evidence might still be subject to prosecution.
012619 - 012829	Administration Chairman	Clause 72 - Liability of company officers etc. for offence committed by company	
012830 - 013045	Administration Chairman Mr Abraham SHEK	Clause 73 - Time limitation for prosecution	
013046 - 013140	Administration Chairman	Part 6 Administrative and Miscellaneous Provisions Clause 74 - Appointment of Authority	
013141 - 013624	Administration Chairman Mr Abraham SHEK Prof Patrick LAU	Clause 75 - Functions of Authority Mr Abraham SHEK's request for elaboration on the scope of "other functions" of the Authority under clause 75. The Administration response that under clause 75 of the Bill, "other functions" referred to "the functions conferred on the Authority by or under the proposed legislation or any other enactment". Clause 75(d) was a cover-all provision which made clear that such other functions were also functions of the Authority.	The Administration to advise the scope of "other functions" of the Authority under clause 75.
013625 - 014024	Administration Chairman Mr Abraham SHEK Prof Patrick LAU	Clause 76 - Authority may issue guidelines Mr Abraham SHEK's concerns - (a) guidelines and best practices had often become codes of practice requiring strict	The Administration to provide an undertaking that the Legislative Council would be consulted on the guidelines

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		<p>compliance; and (b) need for consultation before the guidelines were issued by the Authority.</p> <p>Prof Patrick LAU's concern about the lack of transparency in the formulation of guidelines.</p> <p>The Administration's response that, as set out in clause 76(3) of the Bill, guidelines issued by the Authority were not subsidiary legislation. The Administration would engage the relevant stakeholders in preparing the guidelines, and would provide a set of the published guidelines to the Legislative Council for information.</p>	<p>before these were issued by the Authority under clause 76.</p>
014025 - 014808	<p>Administration Chairman Mr LEE Wing-tat Mr Abraham SHEK Prof Patrick LAU</p>	<p>Clause 77 - Electronic database for information about residential properties</p> <p>Members' request for establishing a central database covering both first-hand and second-hand residential properties to provide free-of-charge access to information by the general public.</p> <p>Administration's response -</p> <p>(a) the electronic database to be set up under the Bill would only provide information on first-hand residential properties; and</p> <p>(b) the Authority would review the operation of the database from time to time.</p>	<p>The Administration to endeavour to put in place a central database covering both first-hand and second-hand residential properties to provide free-of-charge access to information by the general public.</p>
014809 - 014936	<p>Administration Chairman Mr Abraham SHEK</p>	<p>Clause 78 - Directions by Secretary for Transport and Housing</p>	
014937 -015448	<p>Administration Chairman Mr Abraham SHEK</p>	<p>Clause 79 - Investigation powers for suspected contravention</p> <p>Mr Abraham SHEK's enquiries -</p> <p>(a) whether the performance of the Authority was subject to scrutiny and if so, the party responsible for the scrutiny; and</p> <p>(b) whether there was an appeal mechanism</p>	<p>The Administration to advise whether the performance of the Authority was subject to scrutiny and if so, the party responsible for the scrutiny. To also whether there was an appeal mechanism against</p>

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		<p>against the decisions of the Authority. Administration's explanations -</p> <p>(a) the Authority would be subject to the established checks and balance mechanism within the Government and would come under public scrutiny, including the Legislative Council and the Ombudsman; and</p> <p>(b) while the Authority would carry out investigation, it would not make any decision on whether or not to take prosecution. As such, there was no need for an appeal mechanism against the Authority decisions.</p>	<p>the decisions of the Authority.</p>
015449 - 015630	Administration Chairman	Clause 80 - Offences relating to section 79	
015631 -015937	Administration Chairman Mr Abraham SHEK	<p>Clause 81 - Confidentiality of matter or information obtained in investigation</p> <p>Mr Abraham SHEK's request for a comparison between the Authority and the Buildings Authority in respect investigation under Division 2 of Part 6 of the Bill.</p>	<p>The Administration to provide a comparison between the Authority and the Buildings Authority in respect investigation under Division 2 of Part 6 of the Bill.</p>
015938 - 020106	Administration Chairman	Clause 82 - Use of incriminating evidence in proceedings	
020107 - 020649	Mr Abraham SHEK Chairman Administration Prof Patrick LAU	<p>Mr Abraham SHEK's suggestion of appointing a committee rather than a public officer as the Authority under clause 74 to enhance transparency and impartiality.</p> <p>Prof Patrick LAU's view that reference to the operation of the Independent Commission Against Corruption should be made when setting up the enforcement authority.</p> <p>Administration's explanation -</p> <p>(a) to facilitate early implementation of the legislation and to maximize the use of public resources, it was proposed that an enforcement unit should be set up under the Transport and Housing Bureau; and</p>	<p>The Administration to consider the feasibility of appointing a committee rather than a public officer as the Authority under clause 74 to enhance transparency and impartiality.</p>

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		(b) it would keep open the option of replacing the enforcement unit with an independent statutory body for performing similar functions at an appropriate time.	
020650 - 020718	Chairman Mr Abraham SHEK Administration	Date of next meeting.	

Council Business Division 1
Legislative Council Secretariat
5 September 2012