

立法會
Legislative Council

LC Paper No. CB(1) 2532/11-12
(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 thirteenth meeting
held on Thursday, 31 May 2012, at 10:45 am
in Conference Room 2A 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-yee, 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 Alan LEONG Kah-kit, SC
Hon Tanya CHAN
- Members absent** : Hon James TO Kun-sun
Hon WONG Kwok-kin, BBS
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

Mrs Mary TANG
Senior Council Secretary (1)1

I. Meeting with the Administration

- 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) 2066/11-12(01) — Administration's response to items (7) and (14) of CB(1) 1936/11-12(03)
- 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
(issued for the meeting on 24 May 2012)
- LC Paper No. CB(1) 2048/11-12(02) — Administration's response to item (1) of CB(1) 1968/11-12(01)
(issued on 30 May 2012)
- LC Paper No. CB(1) 2066/11-12(02) — Administration's response to item (2) to (5) of CB(1) 1968/11-12(01)
- 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
(issued for the meeting on 28 May 2012)
- LC Paper No. CB(1) 2066/11-12(03) — Administration's response to CB(1) 1998/11-12(01)
- LC Paper No. CB(1) 2066/11-12(04) — Assistant Legal Adviser's letters dated 29 May 2012 to the Administration)

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 letters dated 12 April 2012 to the Administration
(issued for the meeting on 18 April 2012)
- LC Paper No. CB(1) 1598/11-12(04) — Administration's response to CB(1) 1598/11-12(03)
(issued for the meeting on 18 April 2012)
- 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
(issued for the meeting on 22 May 2012)

response to
CB(1) 1598/11-12(03)

LC Paper No. CB(1) 2031/11-12(01) — Letter from Hon Abraham
(*issued for the meeting on* SHEK dated 28 May 2012
28 May 2012) (English version only)

LC Paper No. CB(1) 2048/11-12(01) — List of follow-up actions arising
(*issued on 30 May 2012*) from the discussion at the
meeting on 28 May 2012

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

2. The Administration was requested to -

- (a) consider re-instating clauses 16(2) to (4) in the proposed Committee Stage amendments (CSAs) with suitable amendments to the definition of "specified information" by replacing "section 18(2)(b) or (c)" with "clause 18(2)", and the phrase "any change" in clause 16(2) by "any material change" to narrow down the scope to major changes;
- (b) review the need for the phrase "from time to time" in the proposed CSA to clause 16A;
- (c) advise the basis upon which the six-month period for examination and revision of sales brochures in the proposed CSA to clause 23(9) was arrived at, and the feasibility of shortening such period to say two to three months in consultation with the trade and the Consumer Council. To also advise how to prevent circulation of outdated sales brochures by parties other than the vendor, and possible exploitation by vendors who were not required to update the sales brochures within the six-month period even if there were major changes during the interim;
- (d) advise the liability of an "owner" in the sale of a specified residential property where he did not actually conduct the sale himself, a liquidator in the sale of properties of a company being wound-up, and a personal representative of the estate of a deceased owner in the sale of the property of the estate in the event of contravention to clauses 50(1) and (2) committed by the owner;
- (e) advise whether it was a contravention under proposed section 10 of Schedule 4 for codifying the provisions on raising requisition or objection in respect of title under the Consent Scheme in the

Preliminary Agreement for Sale and Purchase/Agreement for Sale and Purchase; and

- (f) consider replacing the word "and" in the third line of clause 7(2) with "or" with a view to preventing circumvention of liability by vendors by engaging two or more persons to carry out the prescribed work, while ensuring that the right person would be held liable for the contravention he/she had committed.

3. Members agreed to continue discussion at the next meeting scheduled for Tuesday, 5 June 2012, at 8:30 am. They also noted that the meeting scheduled for the same day at 10:45 am had been rescheduled to 2:30 pm to avoid clashing with the special House Committee meeting to be held at 11:00 am.

II. Any other business

4. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 1
Legislative Council Secretariat
5 September 2012

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

**Proceedings of the thirteenth meeting
on Thursday, 31 May 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000320 - 000457	Chairman	Opening remarks	
000458 - 001008	Administration	Administration's explanation on its response to issues raised by members at the meeting on 15 May 2012 (Part II) (LC Paper No. CB(1) 2066/11-12(01)).	
001009 - 011039	Ms Audrey EU Chairman Administration Mr Abraham SHEK Mr Alan LEONG	<p>Discussion on the requirement for vendors to update the sales brochures in the event of changes in material facts, and the proposed Committee Stage amendments (CSAs) to clauses 16, 20 and 23 on the provision of sales brochures printed or examined within the previous six months.</p> <p>Ms Audrey EU's requests for the Administration to -</p> <p>(a) review the need for the phrase "from time to time" in the proposed CSA to clause 16A regarding the examination and revision of sales brochures;</p> <p>(b) advise the basis upon which the six-month period for examination and revision of sales brochures in the proposed CSA to clause 23(9) was arrived at, and the feasibility of shortening such period to say two to three months in consultation with the trade and the Consumer Council; and</p> <p>(c) consider re-instating clauses 16(2) to (4) in the proposed CSAs with suitable amendments to the definition of "specified information" by replacing "section 18(2)(b) or (c)" with "clause 18(2)", and the phrase "any change" in clause 16(2) by "any material change" to narrow down the scope to major changes.</p>	<p>The Administration to -</p> <p>(a) consider re-instating clauses 16(2) to (4) in the proposed CSAs with suitable amendments to the definition of "specified information" by replacing "section 18(2)(b) or (c)" with "clause 18(2)", and the phrase "any change" in clause 16(2) by "any material change" to narrow down the scope to major changes;</p> <p>(b) review the need for the phrase "from time to time" in the proposed CSA to clause 16A; and</p> <p>(c) advise the basis upon which the six-month period for examination</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Administration's explanation –</p> <p>(a) consideration would be given to deleting the phrase "from time to time" from clause 16A; and</p> <p>(b) the proposed CSA to require sales brochure being made public in relation to a sale had to be the one which was updated/examined within the past six months aimed to strike a balance between practicality and the provision of updated information to prospective purchasers.</p> <p>Mr Abraham SHEK's concerns -</p> <p>(a) the impracticality to require vendors to update sales brochures whenever there were material changes to the information in the sales brochures, and the need to consult the trade and the Consumer Council in working out the practical arrangements; and</p> <p>(b) the consequences of circulating outdated sales brochures by parties other than the vendor.</p> <p>Mr Alan LEONG's views -</p> <p>(a) possible exploitation by vendors who were not required to update the sales brochures within the six-month period even if there were major changes during the interim; and</p> <p>(b) need to ensure accuracy of sale brochures at the time of distribution.</p> <p>Administration's explanation -</p> <p>(a) the information set out in the sales brochures must be accurate in every material respect as at the date on which it was printed or at the date of the last examination;</p> <p>(b) it was impractical to require vendors to update the sales brochure whenever there were material changes to the information in the sales brochure; and</p>	<p>and revision of sales brochures in the proposed CSA to clause 23(9) was arrived at, and the feasibility of shortening such period to say two to three months in consultation with the trade and the Consumer Council. To also advise how to prevent circulation of outdated sales brochures by parties other than the vendor, and possible exploitation by vendors who were not required to update the sales brochures within the six-month period even if there were major changes during the interim.</p>

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		(c) the Authority would commission the setting up of an electronic database on first-hand residential properties. All versions of the sales brochure of a specified residential development would be uploaded onto the database. This would facilitate prospective purchasers to ascertain whether a sales brochure was the most updated version.	
011040 - 011629	Chairman Administration Assistant Legal Adviser 5	Discussion on the liability of an "owner" in the sale of a specified residential property where he did not actually conduct the sale himself, a liquidator in the sale of properties of a company being wound-up, and a personal representative of the estate of a deceased owner in the sale of the property of the estate in the event of contravention to clauses 50(1) and (2) committed by the owner.	The Administration to advise the liability of an "owner" in the sale of a specified residential property where he did not actually conduct the sale himself, a liquidator in the sale of properties of a company being wound-up, and a personal representative of the estate of a deceased owner in the sale of the property of the estate in the event of contravention to clauses 50(1) and (2) committed by the owner.
011630 - 015942	Chairman Administration Mr Abraham SHEK Ms Audrey EU	Administration's explanation on its response to issues raised by members at the meeting on 24 May 2012 (Part II) (LC Paper No. CB(1) 2066/11-12(03)) Discussion on the liability of vendors for offences committed by professionals engaged to carry out the prescribed work under clause 7(2). Ms Audrey EU's views - (a) need to ensure that the right person would be held liable for the contravention he/she had committed, as vendors/property developers should not be held liable for offences committed by professionals engaged to carry out the	The Administration to consider replacing the word "and" in the third line of clause 7(2) with "or" with a view to preventing circumvention of liability by vendors by engaging two or more persons to carry out the prescribed work, while ensuring that the right person would be held liable for the contravention he/she had

Time marker	Speaker	Subject(s)	Action required
		<p>prescribed work; and</p> <p>(b) consideration should be given to replacing the word "and" in the third line of clause 7(2) with "or" with a view to preventing circumvention of liability by vendors by engaging two or more persons to carry out the prescribed work.</p> <p>Mr Abraham SHEK's view that vendors/developers were investors who had no intention to contravene the requirements under the Bill, and that they should not be held liable for offences committed by authorized persons/professionals engaged to carry out the prescribed work.</p> <p>Administration's explanation that the definition of "vendor" in the Bill reflected the policy intention that both the owner and the property developer should be held responsible for contravention of the requirements under Part 2 of the Bill, as they should be the one who oversaw and made the final decision on the development, notwithstanding that they might commission various professional practitioners and relevant parties in the process. It was not the Administration's intention to catch a person who was engaged to co-ordinate and supervise only one or some of those aspects of the development process under the proposed legislation.</p>	<p>committed.</p>
015943 - 020057	Chairman Mr Abraham SHEK	Date of next meeting.	
020058 - 020212	Mr Alan LEONG Chairman	Mr Alan LEONG's enquiry on whether it was a contravention under proposed section 10 of Schedule 4 for codifying the provisions on raising requisition or objection in respect of title under the Consent Scheme in the Preliminary Agreement for Sale and Purchase/Agreement for Sale and Purchase.	The Administration to advise whether it was a contravention under proposed section 10 of Schedule 4 for codifying the provisions on raising requisition or objection in respect of title under the Consent Scheme in the Preliminary Agreement for Sale and Purchase.

Time marker	Speaker	Subject(s)	Action required
			Purchase/Agreement for Sale and Purchase.

Council Business Division 1
Legislative Council Secretariat
5 September 2012