

## **Residential Properties (First-hand Sales) Bill**

### **Administration's Response to Issues Raised by Members at the Bills Committee Meeting held on 11 April 2012**

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 11 April 2012, Members raised enquires on a number of issues relating to the Bill. The Administration's responses are set out below.

**(1) To review the Chinese rendition of the term "assignment" in the long title.**

2. The long title reflects clause 10 of the Bill which stipulates that the Bill applies to any residential property in a development situated in Hong Kong in respect of which property – (a) no agreement for sale and purchase has ever been entered into (“不曾有買賣合約為之訂立”); and (b) no assignment has ever been made (“不曾有轉讓為之作出”). We believe it is appropriate to render “assignment” as “轉讓”. The intention is to refer to an act of assignment, without specifically referring to any instrument by description. Examples of this rendition can be found in section 6(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), and section 25(4) of the Conveyancing and Property Ordinance (Cap. 219).

**(2) To advise how to deal with the circumstances where part of a residential development (to be sold after the enactment of the Bill) is governed by the Bill while part of the development (sold before the coming into effect of the Bill) is not covered by the Bill.**

3. The Bill will apply to “specified residential properties”, which means any residential property to which the Ordinance applies by virtue of clause 10. Clause 10 stipulates that the Bill will apply to any residential property in respect of which no agreement for sale and purchase has ever been entered into and no assignment has ever been made (please see paragraph 6 below that we will submit draft CSA that the Bill will also apply to any residential property in respect of which no

preliminary agreement for sale and purchase has ever been entered into), except the three situations as set out in clauses 10(3) (4) (5) and (6) of the Bill. For a residential development or a phase which has some of the residential properties sold prior to the coming into operation of the Ordinance, the Ordinance will apply to those remaining residential properties of the residential development or phase that fall under the definition of “specified residential property”.

4. We expect that the Ordinance will only come into operation in around 12 months after the enactment of the Bill. There will therefore be a reasonably long period of time for the vendors of first-hand residential properties to familiarize themselves with, and prepare themselves for meeting, the requirements under the Ordinance. We will work closely with the Lands Department and the Real Estate Developers Association of Hong Kong (REDA) to facilitate a smooth transition to the new requirements as stipulated under the Ordinance.

**(3) To 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.**

5. To address Members’ concern about possible changes to the appointment of “authorized person” (AP) and “building contractor” in relation to a specified New Territories development, the Administration will revise the relevant provisions in the Bill to the effect that when stating the names of AP and building contractor in the sales brochures (a requirement under clause 2(2) of Schedule 1 to the Bill) and printed advertisements (a requirement under clause 63(3) of the Bill), the vendor should also state the period of which the AP has been appointed to supervise the construction of the development and the period of which the building contractor has been appointed to construct the development. We will submit draft CSA on this to the Bills Committee for consideration.

**(4) To advise if the agreement for sale and purchase under clause 10(1)(a) includes a preliminary agreement for sale and purchase.**

6. It is our policy intention that the Bill should apply to residential properties in respect of which no preliminary agreement for sale and purchase, no agreement for sale and purchase and no assignment has ever been entered into and made. We note that Clauses 10(1) and 11 of the Bill as currently drafted does not reflect this intention clearly. We will submit draft CSA on this to the Bills Committee for consideration.

**(5) To clarify when the "three year" prosecution time limit under clause 73 starts to run for contravention under clauses 20(2) and (5) (whether at the date on which the sales brochures is 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 can be effectively carried in these provisions.**

7. To give Members a holistic picture of when the three year prosecution time limit will start to count for individual summary offences under the Bill, the Administration will prepare a table setting out individually all the summary offences created by the Bill, with detailed particulars on the relevant provision of the Bill, the level of penalty, and the time point for counting the three year prosecution time limit. We are preparing the table and will submit it to Members shortly.

**(6) 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.**

8. The objective of the Bill is to regulate the sale of first-hand residential properties situated in Hong Kong. The Bill has been drawn up after an extensive and detailed discussion over the past one and a half years and based on experience with many of the provisions under the Lands Department's Consent Scheme and administered under the guidelines issued by REDA. We are confident that the Bill will

effectively regulate the sale of first-hand properties situated in Hong Kong. Regulating the sale of overseas residential properties conducted in Hong Kong is a completely different subject, with different issues, that will requires careful consideration. In order not to delay passage of this Bill, we consider it inappropriate to expand the scope of Part 4 (clauses 65 and 66) of the Bill, which provides for criminal liability for misrepresentation and dissemination of false or misleading information respectively, to cover the sale of overseas residential properties conducted in Hong Kong.

9. Where a sale of overseas residential property conducted in Hong Kong involves misrepresentation or false or misleading information, such wrongful act may, depending on the circumstances of the case, attract criminal liability under existing legislation, in particular under the Theft Ordinance (Cap. 210).

**(7) To 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.**

10. As we have explained to Members at the Housing Panel meetings in December 2011 and January 2012 when the Consultation Paper on the Proposed Legislation to Regulate the Sale of First-hand Residential Properties was discussed, to facilitate early implementation of the legislation and to maximize the use of public resources, we propose that an enforcement authority be set up under the Transport and Housing Bureau (THB). The Government will however keep open the option of replacing the enforcement authority with an independent statutory body for performing similar functions at an appropriate time.

11. The current drafting of clause 74(1)(a) of the Bill is similar to the provision on appointment of an authority under various existing legislation, such as section 4(1) of the Insurance Companies Ordinance (Cap. 41), section 5 of the Gas Safety Ordinance (Cap. 51), and section 22(1) of the Aviation Security Ordinance (Cap. 494). Those provisions do not specify the rank of public officer eligible for appointment.

12. The enforcement authority will be tasked to supervise compliance with the proposed legislation, undertake investigations as appropriate, issue practice guidelines, maintain data and statistics, and carry out public education. It will engage an agency to set up an electronic database which provides information on the sales of first-hand residential developments.

13. It will not be possible for THB or the Housing Department to absorb the work of the enforcement authority with its existing manpower resources. The Special Duties Unit (SDU), which was set up in December 2011 to help taking forward this legislative exercise and to set up the enforcement authority, is time-limited. The SDU will be disbanded after completion of the tasks to be replaced by the enforcement authority to be created. Also, the two supernumerary directorate posts of Administrative Officer Staff Grade B (designated as Deputy Secretary (Special Duties)) and Administrative Officer Staff Grade C (designated as Principal Assistant Secretary (Special Duties)), which were created at the approval of the Finance Committee with effect from 16 December 2011 to take forward this legislative exercise and to set up the proposed enforcement authority, will lapse on 30 June 2013.

14. Our initial thinking is that the enforcement authority should be headed by a public officer at an appropriate directorate level. We are working out the resource requirements for the enforcement authority. We will seek additional resources as necessary in accordance with the established resource allocation procedures (including seeking support from the Housing Panel, the Establishment Subcommittee and the Finance Committee as appropriate) in due course after the passage of the Bill.

**(8) To 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.**

15. We wish to assure Members that, to ensure that sufficient resources are available under the Consumer Legal Action Fund (CLAF) to assist consumers with meritorious claims, the Government will

continue to closely liaise with its trustee, i.e. the Consumer Council, and monitor the financial position of CLAF.

Transport and Housing Bureau  
April 2012