

Written Submission

By

**THE HONG KONG CONVEYANCING &
PROPERTY LAW ASSOCIATION LIMITED**

on

**Residential Properties (First-hand Sales) Bill
("the Bill")**

16 April 2012

C O N T E N T

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The Submission

Part 1

Introduction

In general we welcome and support the Government policy to regulate sale of first-hand residential properties and enhance the transparency and fairness of their sales arrangements for better protection of the prospective purchasers.

Having perused and considered the Report on Public Consultation of March 2012 leading to the Bill, we generally support the views and conclusion of the Report and the provisions in the Bill. We also have had the benefit of perusing and considering the Submission made by the Law Society of Hong Kong earlier in the consultation. We do share its views, observations and comments. However, we would like to bring out some further points which have not been specifically canvassed in the Bill for the consideration of the Bills Committee.

Application of the Bill

1. Clause 10 of the Bill is intended to cover all first-hand sale of units in residential developments with three situations as set out in Clauses 10(3), (4), (5) and (6) which are taken out from its application. We have some reservation in the rationale behind them.
2. The general policy is to enhance the transparency and fairness of first-hand residential properties transactions and to protect the general prospective buyers from unfair deals. We do not see how **the 1st situation** (under Clause 10(3) and (4)) where 95% or more of the units of a completed residential development (or a phase thereof) that have been leased out for at least 36 months would help those potential buyers other than sitting tenants to know what they are buying.
3. The fact that a percentage of the units in the development have been leased out for any period of time does not help the public to know the exact areas of the units, designs etc. because they do not live there and do not have direct knowledge of the flats they are buying.
4. Further, it is difficult for the public to ascertain whether or not a particular completed development, first launched for

public sale, has fully complied with the requirements justifying exemption from the Bill.

5. We feel that it would be very confusing to the consumers when some completed developments are required to comply with the Bill when some others are not.
6. We **recommend** that sale of units to sitting tenants who have lived in units for at least one year be exempted as in Clause 56 of the Bill. The exemption under Clause 10(3) and (4) be scrapped.
7. **The 2nd situation** as stated in Paragraph 8 of the Report and provided by Clause 10(5) of the Bill is the exemption granted to single buildings of New Territories Exempted Houses (which do not contain more than three storeys nor exceed a certain height and roofed-over area). We are thinking why such preferential treatment should not be extended to urban developments.
8. We believe that there are quite a number of lots in Kowloon Tong and Hong Kong Island which allow only single house development. They are in all respects identical to New Territories single buildings except in value. The prospective buyers of those houses are more likely to be able to look after their own interests.

9. We **recommend** that consideration be given to granting exemption to single buildings situated in other parts of Hong Kong SAR similar to those of the New Territories Exempted Houses.
10. As to **the 3rd situation** under Clause 10(6) i.e. development constructed by the Hong Kong Housing Authority it is more likely than not that its customers are from low income group who are first time buyers using their hard earned savings to purchase those flats. We are not certain why they should not be protected by the law and be left in the hands of administration.
11. The reason given as set out in Paragraph 23 of the Report is that “HOS flats are subsidized flats and HA has to follow set parameters to dispose of these flats (in terms.....) which are completely different from normal market practice.” Those parameters and terms, we submit, should meet the general principle of transparency and fairness as required by the Bill. We **recommend** that HOS flats be brought into the legislation without exemption.

Part 2

Sales Brochure

12. Sales Brochure is intended to provide all relevant information material and necessary for the potential purchasers to make the right decision. Paragraph 37 of the Report and Clause 18 of the Bill set out various key property information. The information must be clear, accurate and comprehensive.
13. We are of the view that it is difficult, if not impossible, to set out an exhaustive list of items applicable universally and for all the time. Apart from those items as set out in Clause 18 of the Bill, there are matters that are not easily found out by visual inspection of the property or by a visit to the site. It has to be volunteered by the vendor.
14. We have the following examples and incidents in mind that merit our attention:
 - (i) the rights reserved to the vendor or developer (e.g., the right to further develop a portion of the land on which the development was erected as in the case of Mei Foo Sun Chuen), and any right of way (like the dispute in Fairview Park);

- (ii) the burden running with the land (e.g., obligation for the maintenance of dangerous slopes); and
 - (iii) any deadline for completion of the development (under the Government Grant, Exclusion Order, Order for sale, the Land (Compulsory Sale for Redevelopment) Ordinance etc).
15. We **recommend** that the legislation should place the burden of disclosure of any unusual feature on the developer vendor.

Part 3

Expression of intent to purchase units

16. Reference is made to Clause 30 of the Bill under Price List (Part 2 Division 3). The term “expression of intent to purchase units” in that clause, we believe, has the same meaning of “reservation” which term was found in the original drafting. We are critical about allowing reservation or expression of intent to purchase units before the signing of the PASP on commencement of the sale, as it may boost speculation and push up the purchase prices of the units in

a pre-sale market, which may in turn create a false market.

17. Expression of intent, whether general or specific as defined in Clause 30 of the Bill, and whether with or without payment of money, may further facilitate such speculation and creation of a false market. It will be difficult to pinpoint on who should be responsible since such expressions, as defined, do not bind the maker. We are aware that at present there is no clear guidelines regulating the time as to payment/collection of money at the time of making such expression of intent or reservation of units.
18. In that regard, if the practice of general expression of intent to purchase any of those units specified on issuance of the price list is allowed, without being specific about any particular residential property as Clause 30(2) allows or do not prohibit, we take the view that the speculation and false market effect may extend to the whole development. It is not difficult to envisage a situation where 'huge demand' by way of some or a large number of general expressions of intent received before the date of open sale may well facilitate sales of the residential properties in the whole development. Whether or not the price list published 3 days before open sale reflects the true

market situation is to anyone's guess. Upon open sale, those who made the large number of general expressions of intent are not bound to take up any of the properties and it will be the public who take them up in an uncertain market.

19. In such case, we **recommend** that as the legislation is to enhance the transparency and fairness of the vendor's sales arrangements, the practice of reservation or general expression of intent (over specified properties without being specific about any particular residential property as Clause 30(2) allows) be prohibited as well; but if the legislation allows general expression of intent, whether before or after open sale, how the system works should be well thought out and governed by legislation as well to avoid certain parties taking advantage of the possible loophole of the legislation allowing such non-binding general expressions of intent over the general public, including without limitation, whether or not it is for the public good that the vendor should make full disclosure of, or to leave it to sales agents the freedom to say whatever they like about, such non-binding general expressions of intent.

20. On the assumption that the system of expression of intent to purchase units by insiders and related parties is to be maintained we find that changes in the following Divisions of the Bill have to be made to include such expression of intent so as to uphold the principle of transparency and fairness: Price List (Part 2 Division 3), and Preliminary Agreement and Agreement (Part 2 Division 7).
21. When expressions of intent are made whether at the issuance of price list (as set out in Clause 30(1) for general expression of interest) or on the commencement of sale (as set out in Clause 30(2) for specific expression of interest), the number of units available to the public to buy could be reduced by the number of units covered by such expressions of intent, unless the units reserved do not form part of the number of properties offered for sale to the public covered by the price list mentioned in Clause 27 in Division 3 (which is unlikely since prohibited by Clause 30). We **recommend** that, if the legislation allows general and specific expressions of intent despite their non-binding nature, the price list as published should be updated by the vendor as and when it receives the same to indicate the flats under that list that have been covered by the general

and specific expressions of intent.

22. Further, we **recommend** that the parties who wish to reserve or make specific expression of intent over specific units after open sale should immediately sign the Preliminary Agreements at the first available moment when the specified units are offered for sale to the public and also the Formal Agreements within the time stipulated by Clause 49 in Division 7, and no preferential treatment should be allowed in terms of sales arrangement to those who make specific expression of intent over the public.

Part 4

Preliminary deposit, PASP and Mandatory provisions

23. The current practice in first-hand sale transaction in Consent Scheme is that the purchaser pays his 10% of purchase price as deposit and signs the preliminary agreement for sale and purchase (PASP) while the vendor's agent on behalf of the Vendor also signs the PASP at the site and transfers the deposit to the vendor's solicitors as stakeholders.

24. The position, as we understand, is that if the purchaser fails to sign the formal agreement for sale and purchase (ASP) within the time specified, the following consequences will follow:
- a. The PASP will be terminated;
 - b. The deposit of 10% will be forfeited to the vendor;
 - c. The vendor has the right to claim for further damages and loss as the forfeiture of deposit is not regarded as payment of liquidated damages.
25. Clause 48 of the Bill changes the current practice and the common law. It provides that a preliminary deposit of 5% of the purchase price is payable by a person to the vendor on entering into PSAP (the Secretary may by notice published in the Gazette substitute another percentage for the said 5%). Clause 49 of the Bill provides, “(2) If a person does not execute an agreement for sale and purchase in respect of the specified residential property within 3 working days after the date on which the person enters into the preliminary agreement for sale and purchase – (a) the preliminary agreement is terminated; (b) the preliminary deposit is forfeited; and (c) the owner does not have any further claim against the person for the

failure.” Clause 49(3) further states that any right of the owner under common law rules or equitable principles to make further claims are abrogated.

26. We accept that it is an improvement on purchaser’s common law position as set out in the judgment of **Polyset Limited vs Panhandat Limited** [2002] 3 HKLRD 319.
27. However we have reservation on legislating the forfeiture of such large amount of money equivalent to 5% of the purchase price in a short period of 3 working days. It is extremely arguable whether a purchaser should pay such high price for a quick decision and whether the vendor could have suffered such level of damages in such short period if the purchaser should fail to sign formal agreement. The 10% or 5% of the purchase is arbitrarily fixed: it is a matter of convention and does not have a reasonable basis.
28. We do acknowledge the need to prevent abuse by speculators and to discourage purchasers to make hasty decisions. We are of the view that special stamp duty now in place has eradicated speculation and that a forfeiture of several hundred thousand dollars because of a decision made on the spur of the moment is too high a

price to pay.

29. **We recommend** the preliminary deposit be fixed at 1% of the purchase price.
30. We further submit that the 3 working days to sign ASP is too rush a time and discourage the purchaser to seek separate legal representation. Let us recount what the purchaser has to do within the 3 working days after PASP if the purchaser has to instruct his own lawyer:
 - a. He has to get in touch with his solicitor and send him a copy of PASP;
 - b. The purchaser solicitor has to write to the vendor solicitor requesting for documents;
 - c. The latter has to prepare the same to be sent by post or courier service to the purchaser solicitor.
 - d. Upon receipt of the documents the purchaser solicitor has to peruse and check the terms are in order and consistent with PASP. He has to arrange the purchaser to come to his office.
 - e. He has to explain the documents to the purchaser, if necessary to negotiate with the vendor solicitor, and amend the terms, and sign the ASP and other documents, if any.

- f. The documents have to be returned to the vendor solicitors within the 3 days' limit.
31. Considering the numerous steps need to be taken we are of the view that it will not give sufficient time to the purchaser to make arrangement and for his solicitor to give adequate advice.
32. We **recommend** that the said 3 working days' period be extended to 5 working days to allow more time for prospective purchasers to consider their interests and for the vendor's solicitors to prepare the ASP and for the purchaser's solicitors to fully advise the purchasers of their rights and liabilities before signing the first binding agreement.
33. To be fair and equitable we also **recommend** that if the purchaser does not enter into an ASP in the stipulated period, the vendor, before exercising its right of forfeiture, should give a written notice to the purchaser informing him that the vendor will terminate the preliminary agreement with the effects in Clause 49(2) so that the purchaser has time to seek redress in certain exceptional circumstances. We make such suggestion for the circumstances described in the following paragraphs.

34. We **recommend** that in appropriate exceptional circumstances, where the purchaser fails to sign the ASP within the stipulated period, there should be automatic extension of time, or at least, the court should be allowed to give relief against the undesirable consequences of Clause 49(2). Exceptional circumstances are those situations beyond the purchaser's control, e.g. Typhoon Signal No.8 or above; Black Rainstorm Warning Signal, personal accident or death etc.

Part 5

Mandatory Provisions

35. We note that –
- a. under Clauses 50(1) and (2), the owner must not enter into a preliminary agreement or agreement for sale and purchase unless such agreement contains the provisions set out in Schedule 4, 5, 6 or 7 (as applicable); and
 - b. under Clause 50(4), a preliminary agreement or agreement for sale and purchase is to be regarded as having contained the provisions set out in the relevant

Schedule if such preliminary agreement or agreement (in English and/or Chinese) contains the provisions set out in Part 1 and/or Part 2 of the relevant Schedule; and

c. under Clause 50(8), where a preliminary agreement or agreement contains a provision set out in the relevant Schedule, the provision prevails over any other provision of the preliminary agreement or agreement that is inconsistent with it.

36. Clause 50 of the Bill is at variance with the previous Clause 40 of the proposed legislation annexed to the Consultation Paper which provides that the provisions set out in the applicable Schedule are to be regarded as impliedly incorporated into the relevant preliminary agreement or agreement for sale and purchase, and such incorporated provisions prevail over any other provision of the preliminary agreement or agreement that is inconsistent with them.

37. Pursuant to new Clause 50(8), if a preliminary agreement or agreement for sale and purchase does not contain a provision set out in the relevant Schedule, such provision cannot prevail over any term inconsistent with it as contained in the preliminary agreement or agreement.

Although the owner shall be liable for a fine for breach of new Clause 50 (1) or (2), it appears that the inconsistent term will still be enforceable pursuant to new Clause 50 (7) and the purchaser will lose the protection of the relevant provision set out in the applicable Schedule.

38. We **recommend** that the relevant mandatory provisions in Schedule 4, 5, 6 or 7 be by law implied in preliminary agreements and agreements for sale and purchase covered by this legislation.

Part 6

Sale to sitting tenant

39. Clause 56 of the Bill provides that Divisions 3, 4, 5 and 6 relating to Price List, Show Flats, Viewing of Property and Sales Arrangement and Other Information do not apply in situation where the property is sold to the tenant of that property for a continuous period of at least one year. We **recommend** that the proposal legislation should clarify if the term “tenant” also includes “sub-tenant”. Further, we **recommend** that, like Division 2 (Sales Brochure),

Division 3 (Price List) should also not apply only if the tenant agrees in writing that the Division does not apply. In other words, both the Sales Brochure and Price List should normally be made available to the sitting tenant so that, despite having stayed there for at least one year, he has all relevant materials to make an informed decision as to how good or bad his deal is before committing to purchase the property. He can only compare his own offer against the Price List for other properties in the building, whether or not the offer is before or after commencement of sale of other parts of the building.

Part 7

Solicitors' liabilities

40. To ensure compliance with the requirements in the Bill, penalties at different levels are stipulated for the commission of offences under different clauses of the Bill. Specific defences are provided for persons charged under the corresponding clauses.
41. Regarding Sales Brochure, Price List, Show Flats, Viewing

of Property, Sales Arrangement and Other Information, Preliminary Agreement and Agreement, Register of Transactions, and Exceptions and Additional Requirements in Divisions 2 to 9 of Part 2 of the Bill, the responsibility to comply with the provisions set out therein mainly rests on the Vendor who commits an offence and is liable to a fine if he contravenes the relevant provisions in Part 2.

42. However, regarding Advertisement, Misrepresentation and Dissemination of False or Misleading Information in Parts 3 and 4 of the Bill, a “person” commits an offence if he falls within the definitions set out in Clauses 60(1), 65(1) and 66(1) and is liable to a fine and /or imprisonment if he contravenes the relevant provisions in Parts 3 and 4.

43. Under Clause 60(1), “**A person** commits an offence if the person –

(a) publishes an advertisement containing information that is false or misleading in a material particular or causes such an advertisement to be published ; and

(b) the person knows that, or is reckless as to whether, the information is false or misleading as to the material particular.”

44. Under Clause 65(1), “**A person** commits an offence if the

person makes a fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person to purchase any specified residential property.”

45. Under Clause 66(1), “**A person** commits an offence-
- (a) if the person disseminates, or authorizes or is concerned in the dissemination of, information that is likely to induce another person to purchase any specified residential property; and
 - (b) if-
 - (i) the information is false or misleading as to a material fact, and the person knows that, or is reckless as to whether, the information is false or misleading as to the material fact; or
 - (ii) the information is false or misleading through the omission of a material fact, and the person knows that, or is reckless as to whether, the information is false or misleading through the omission of the material fact.”
46. We are concerned that solicitors acting for the vendor may be caught by one or more of the above provisions and held to be liable in circumstances such as the following:-
- (a) a solicitor asked by the developer to approve or

advise on draft sales brochure prepared by the developer, and the solicitor relies on the developer and its Authorised Person or other professionals for the accuracy of the information therein provided which may turn out to be false or misleading. The solicitor explains the terms of the ASP to the purchasers who attend his office for signing such agreements which, unknown to the solicitor, contain some false or misleading information provided by the developer.

(b) In many such instances, the solicitor may not be able to obtain express written confirmation or verification from the developer as to the truth of all information which the developer provides and may be held reckless under the present proposal legislation.

47. Solicitors acting for the purchaser could also be in a more helpless position of having to repeat what he or she receives from the solicitors acting for the vendor. We consider that solicitors in the honest discharge of their duties in legal services should not be a general subject of the said provisions and we would **recommend** a general exemption of solicitors, whether acting for the vendor or

for the purchaser, from such criminal liability.

Part 8

Legal Professional Privilege and the Right to Remain Silent

48. Clause 79 of the Bill provides for investigation powers for suspected contravention, Clause 80 provides for offences relating to Clauses 79. Clause 82 deals with the use of incriminatory evidence in proceedings.
49. In the absence of any express overriding provisions in the Bill, it appears that legal professional privilege which is a common law right to protect confidential communications between lawyers and their clients from being disclosed without the permission of the clients will be subrogated.
50. The right to remain silent is also a common law right, the preservation of which is guaranteed by the Basic Law.
51. We have in mind Article 35 of the Basic Law which states that Hong Kong residents shall have the right to confidential legal advice; and Article 87 of the Basic Law which provides that in criminal or civil proceedings in the Hong Kong Special Administrative Region, the principles

previously applied in Hong Kong and the rights previously enjoyed by parties to proceedings shall be maintained.

52. However, Clauses 79(6) and 80(6) appear to take away such right, and the limitation in Clause 82(2) is of little assurance to preserve such basic rights. We wonder if there is sufficient justification to deprive the defendant of such rights when there is a need to invoke those investigation power under Clauses 79 and 82.
53. We **recommend** the legislature to balance the extent of investigatory power with the basic human rights under the various constitutional instruments.

Part 9

Problems relating to Mandatory Provisions in PSAP and ASP

54. Schedules 4 to 7 set out the mandatory terms of PSAP and ASP. They intend to cover all kinds of projects. Under the current practice projects are classified into two types of schemes: the consent scheme and non-consent scheme.
55. Under the consent scheme sale of flat units before

compliance of all conditions imposed by the Conditions of Sale or appropriate authority requires the consent of the Lands Department.

56. Projects under the non-consent scheme generally do not require the consent of any authority but as it is a common practice the vendor and the purchasers appoint the same solicitor firm to act for them. Under the Solicitors' Practice Rules (Cap 159H), joint legal representation is not allowed unless the ASP is in the mandatory forms approved by the Chief Justice.
57. We **recommend** that since the forms have been legislated in the relevant Schedules and there will be many protective measures in the new legislation, the need for the Lands Department's approval of the forms of agreements under the consent scheme and the requirement of solicitors to use specified agreement forms under Rule 5C(3) and (4) of the Solicitors Practice Rules under the non-consent scheme be dispensed with.
58. Some mandatory provisions are not practicable, for example, Clause 10 of Schedule 4 (similar provision can be found in Schedules 5, 6 and 7) which states:
"10. The Vendor shall not restrict the Purchaser's right to

raise requisition or objection in respect of titles.'

59. This provision raises to two practical problems. First, there are many lots in New Territories, the Conditions of Grant or even the Block Crown Lease of which have been lost in the Second World War. With such strict mandatory provision the developer vendor could hardly sell its flats because it could not produce the root of title for examination.
60. We **recommend** that the Government should rectify the situation of loss of Crown Lease or Grant in New Territories as soon as possible. This problem has been looked into by the Administration for over 15 years.
61. The second problem is defective title situation. Such situation rarely happens in projects under the consent scheme. It is not unknown in non-consent scheme. Under such circumstances the parties cannot have joint representation as the mandatory clause will be modified and qualified to meet the individual situation of the case. The defects sometimes are due to very innocent reasons like the loss of power of attorney due to long lapse of time under which a title was executed. The title risk is minimal. Some purchasers are prepared to take such risk.

But, without the right to modify or qualify the mandatory provision in PASP or ASP the developer vendor can hardly put the units in the market for sale.

62. We **recommend** that the Land Titles Ordinance (Cap 585) which has been passed by the Legco in 2004 for close to a decade be put in operation as soon as possible. This will help to cure the long outstanding defect.
63. Another problem is found in Schedule 5 Clause 1 [(h) “Exclusion Order” and (i) “expiry date of Building Covenant Period”]. It seems to suggest that the Exclusion Order is the only other situation with Building Covenant Period apart from Government Grant. A scurry review of the Ordinance index we find at least two: the Demolished Buildings (Redevelopment of Sites) Ordinance (Cap 337) and the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545) which also have Building Covenant Period. We **recommend** that further researches be made whether there are other ordinances with Building Covenant Period and if there are such ordinances Schedule 5 Clause 1(h) and (i) be amended accordingly.
64. In Schedules 5 and 6 the words “rescind” and “rescission”

have been used. We note a textbook reference raises the propriety of using such words: page 1433 of *A Students's Guide to Hong Kong Conveyancing* by Sihombing & Wilkinson (5th Edition) and we **recommend** further research be made to ascertain whether 'terminate' and 'termination' would be more appropriate instead.

65. We note that the PASP and ASP have not made any reference to the Deed of Mutual Covenant or the draft DMC in case of uncompleted projects, which the sales brochure would have made. We **recommend** that the PASP and ASP should contain a declaration and warranty by the vendor that the summary of DMC or draft DMC, or preferably all information, as set out in the sales brochure are and will be true and accurate before and after completion of the sale and purchase, unless beyond the control of the vendor or, for changes to draft DMC under the consent scheme, with the Lands Department's approval and consent.
66. We **recommend** that in Schedules 4, 5, 6 and 7, provisions should be made that the vendor make a declaration and warranty in the PASP and ASP that all unusual features of the project, or preferably all information, as set out in the

sales brochure are and will be true and accurate before and after completion of the sale and purchase, unless beyond the control of the vendor or, for changes to draft DMC under the consent scheme, with the Lands Department's approval and consent.

Part 10

Civil Redress

67. The Bill seems to concentrate on punishing the developer-vendors for committing offences. It leaves the poor purchasers with no redress except to launch time-consuming, expensive civil proceedings which they can hardly afford against the giant conglomerate vendors who have offered misleading information or in some other way offended /contravened the law as in the provisions of the Bill, which offences have successfully induced them to purchase the units.
68. We **recommend** that the Bill should provide a method of summary quick relief to those purchasers against the relevant offending developer vendor for the loss and

damages they suffered.

Part 11

Conclusion

69. On the whole we are of the firm view that the Bill is a step towards the right direction in achieving more transparent and fair transactions. We expect and **recommend** that such protection will soon be extended to cover non-residential developments as well as second-hand sales.

Part 12

Recommendations

1. We **recommend** that sale of units to sitting tenants who have lived in units for at least one year be exempted as in Clause 56 of the Bill. The exemption under Clause 10(3) and (4) be scrapped. (Paragraph 6)
2. We **recommend** that consideration be given to granting exemption to single buildings situated in other parts of

Hong Kong SAR similar to those of the New Territories Exempted Houses. (Paragraph 9)

3. We **recommend** that HOS flats be brought into the legislation without exemption. (Paragraph 11)
4. We **recommend** that the legislation should place the burden of disclosure of any unusual feature on the developer vendor. (Paragraph 15)
5. We **recommend** that as the legislation is to enhance the transparency and fairness of the vendor's sales arrangements, the practice of reservation or general expression of intent (over specified properties without being specific about any particular residential property as Clause 30(2) allows) be prohibited as well; but if the legislation allows general expression of intent, whether before or after open sale, how the system works should be well thought out and governed by legislation as well to avoid certain parties taking advantage of the possible loophole of the legislation allowing such non-binding general expressions of intent over the general public, including without limitation, whether or not it is for the public good that the vendor should make full disclosure of, or to leave it to sales agents the freedom to say whatever

they like about, such non-binding general expressions of intent. (Paragraph 19)

6. We **recommend** that, if the legislation allows general and specific expressions of intent despite their non-binding nature, the price list as published should be updated by the vendor as and when it receives the same to indicate the flats under that list that have been covered by the general and specific expressions of intent. (Paragraph 21)
7. We **recommend** that the parties who wish to reserve or make specific expression of intent over specific units after open sale should immediately sign the Preliminary Agreements at the first available moment when the specified units are offered for sale to the public and also the Formal Agreements within the time stipulated by Clause 49 in Division 7, and no preferential treatment should be allowed in terms of sales arrangement to those who make specific expression of intent over the public. (Paragraph 22)
8. We **recommend** the preliminary deposit be fixed at 1% of the purchase price. (Paragraph 29)
9. We **recommend** that the said 3 working days' period be extended to 5 working days to allow more time for

prospective purchasers to consider their interests and for the vendor's solicitors to prepare the ASP and for the purchaser's solicitors to fully advise the purchasers of their rights and liabilities before signing the first binding agreement. (Paragraph 32)

10. We **recommend** that if the purchaser does not enter into an ASP in the stipulated period, the vendor, before exercising its right of forfeiture, should give a written notice to the purchaser informing him that the vendor will terminate the preliminary agreement with the effects in Clause 49(2) so that the purchaser has time to seek redress in certain exceptional circumstances. (Paragraph 33)
11. We **recommend** that in appropriate exceptional circumstances, where the purchaser fails to sign the ASP within the stipulated period, there should be automatic extension of time, or at least, the court should be allowed to give relief against the undesirable consequences of Clause 49(2). Exceptional circumstances are those situations beyond the purchaser's control, e.g. Typhoon Signal No.8 or above; Black Rainstorm Warning Signal, personal accident or death etc. (Paragraph 34)
12. We **recommend** that the relevant mandatory provisions in

Schedule 4, 5, 6 or 7 be by law implied in preliminary agreements and agreements for sale and purchase covered by this legislation. (Paragraph 38)

13. We **recommend** that the proposal legislation should clarify if the term “tenant” also includes “sub-tenant” for exemption of sale to sitting tenant. (Paragraph 39)
14. We **recommend** that, like Division 2 (Sales Brochure), Division 3 (Price List) should also not apply only if the tenant agrees in writing that the Division does not apply. In other words, both the Sales Brochure and Price List should normally be made available to the sitting tenant so that, despite having stayed there for at least one year, he has all relevant materials to make an informed decision as to how good or bad his deal is before committing to purchase the property. (Paragraph 39)
15. We **recommend** a general exemption of solicitors, whether acting for the vendor or for the purchaser, from such criminal liability. (Paragraph 47)
16. We **recommend** the legislature to balance the extent of investigatory power with the basic human rights under the various constitutional instruments. (Paragraph 53)
17. We **recommend** that since the forms have been legislated

in the relevant Schedules and there will be many protective measures in the new legislation, the need for the Lands Department's approval of the forms of agreements under the consent scheme and the requirement of solicitors to use specified agreement forms under Rule 5C(3) and (4) of the Solicitors Practice Rules under the non-consent scheme be dispensed with. (Paragraph 57)

18. We **recommend** that the Government should rectify the situation of loss of Crown Lease or Grant in New Territories as soon as possible. (Paragraph 60)
19. We **recommend** that the Land Titles Ordinance (Cap 585) which have been passed by the Legco in 2004 for close to a decade be put in operation as soon as possible. (Paragraph 62)
20. We **recommend** that further researches be made whether there are other ordinances with Building Covenant Period and if there are such ordinances Schedule 5 Clause 1(h) and (i) be amended accordingly. (Paragraph 63)
21. We **recommend** that for the words "rescind" and "rescission" in Schedules 5 and 6, further research be made to ascertain whether 'terminate' and 'termination' would be more appropriate instead. (Paragraph 64)

22. We **recommend** that the PASP and ASP should contain a declaration and warranty by the vendor that the summary of DMC or draft DMC, or preferably all information, as set out in the sales brochure are and will be true and accurate before and after completion of the sale and purchase, unless beyond the control of the vendor or, for changes to draft DMC under the consent scheme, with the Lands Department's approval and consent. (Paragraph 65)
23. We **recommend** that in Schedules 4, 5, 6 and 7, provisions should be made that the vendor make a declaration and warranty in the PASP and ASP that all unusual features of the project, or preferably all information, as set out in the sales brochure are and will be true and accurate before and after completion of the sale and purchase, unless beyond the control of the vendor or, for changes to draft DMC under the consent scheme, with the Lands Department's approval and consent. (Paragraph 66)
24. We **recommend** that the Bill should provide a method of summary quick relief to those purchasers against the relevant offending developer vendor for the loss and damages they suffered. (Paragraph 68)
25. We expect and **recommend** that protection in the Bill will

soon be extended to cover non-residential developments as well as second-hand sales. (Paragraph 69)

**The Hong Kong Conveyancing &
Property Law Association Limited**

16 April 2012