



Submission related to the First-hand Residential Property Sale Bill

By The Professional Commons

This is our submission to the Legislative Council (LegCo) related to the First Hand Residential Property Sale Bill. This submission contains a premise and two suggested additions to the Bill.

We strongly support the proposal of the First-hand Property Sale Steering Committee (page 61 of the Steering Committee Report), and the adoption by the Government, the idea of borrowing some concepts from the Securities and Futures Ordinance in drafting the above property law. Among many of us, purchasing a residential flat is a great investment not less than our investments in the stock and future markets. We hope that LegCo can also appreciate the relevancy between the two markets. Based on this **premise**, we would like to make two suggestions in strengthening the Bill:

First, add an offence of withholding material information that would affect the price level of residential properties. This is what we called “insider information” in securities law. Prohibition of withholding material information and prohibition of the release of misleading information are in fact two sides of a coin. The Bill included the latter but not the former.

Experience of the securities law suggested that if there was only a prohibition of release of misleading information without the prohibition of withholding material information, the company would be inclined to withhold a lot of information in order to avoid violation of the former provision. This would make investors trading in the dark. Therefore, the property law should also make it an offence to withhold material information that would affect the price level of the properties. For example, the property is within a flooding area, etc. Adding this provision can help to create a fair market. There is no way we can list all these information in Schedule 1 of the Bill, a catch-all clause is required.

Second, the Bill should also borrow the concept in the securities law and add the provision that the Enforcement Authority should have the power to initiate civil proceedings, in addition to criminal proceedings, against offenders.

Collaboration for the manipulation of property price can be concluded during a golf game. In such situation, it may be difficult to find evidence beyond reasonable doubt

(i.e. criminal standard). Providing a civil tool, in addition to the criminal tool, to the Enforcement Authority can help to create successful enforcement cases in order to develop a compliance culture within the property market. This was also our experience in the security market. Successful enforcement case can also help affected buyer to sue the property developer for compensation.

We believe that these two provisions are critical to the success of the property law.

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