

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

### **Administration's Response to Issues Raised by Members at the Bills Committee Meeting held on 2 May 2012**

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 2 May 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 phrase “without contravening the land grant and the occupation permit” in clause 6(1) to ensure that this will not be used by vendors as means to avoid regulation by the Bill.**

2. We noted Members' concern that clause 6(1) of the Bill might provide a loophole for vendors to circumvent the proposed legislation, such as when the first-hand residential properties being offered for sale involved unauthorized building works. We will propose Committee Stage Amendment (CSA) to clause 6(1) to improve its clarity.

**(2) To seriously re-consider the need for the proposed exemption for the Hong Kong Housing Authority under clause 10(6).**

3. We propose that developments constructed by the Hong Kong Housing Authority (HA) should be exempted, having regard to the fact that the Home Ownership Scheme (HOS) flats are subsidized flats and that HA has to follow set parameters to dispose of those flats (in terms of determining the target group, setting of sale price, and determining flat allocation quotas and selection priorities among different categories of eligible applicants etc.) which are completely different from normal private market practice.

4. For example, when selling HOS flats, HA makes public the total number of HOS flats to be offered for sale and the selling prices of all the flats one to two months before the commencement of flat selection (whereas private developers will normally release first-hand residential properties for sale in small batches and release a price list three days prior to the commencement of sale). The HA receives applications within a prescribed period and determines the flat selection priority of different

categories of eligible applicants by a balloting system (whereas private developers of first-hand residential developments will normally accept reservation of residential properties before commencement of sale and they do not have a balloting system to determine the order of priority). There is simply no financial or other reason for the HA not to provide accurate and comprehensive information in the process.

5. The Bill is targeted at the malpractices of vendors in the sale of first-hand residential properties in the private market. The requirements are formulated having taken into account the mode of sale of first-hand flats in the private residential property market. Many of the requirements cannot fit squarely into the mode of sale of HOS flats, which are completely different from normal private market practice. We remain of the view that developments constructed by HA should be exempted from the proposed legislation.

6. HA has observed the administrative regulatory measures applicable to the sale of uncompleted first-hand residential properties in the sale of HOS flats in the past. Even though HA will not be covered by the proposed legislation, it will sell HOS flats in accordance with the applicable requirements under the proposed legislation in future as far as practicable.

**(3) To review the presentation of clauses 18 and 19 to ensure that sales brochures will include all the essential information, particularly floor plan, cross-section plan and elevation plan. To also revise the use of the Chinese rendition of the term “then” in clause 18(2) and other relevant clauses in the Bill.**

7. The Bill as currently drafted requires that vendors must provide, among other things, the floor plan (clause 18(2)(j) of the Bill) and the cross-section plan (clause 18(3) of the Bill and section 18 of Schedule 1 to the Bill) in the sales brochure. However, it is optional for vendors to provide a plan showing all elevations of the development (clause 19(2) of the Bill and section 29 of Schedule 1 to the Bill) in the sales brochure. Taking into account Members' views, we will propose CSA to make it mandatory for vendors to provide a plan showing all elevations of the development in the sales brochure.

8. Also, we will take the opportunity to rationalise the grouping of the provisions between clauses 18 and 19 of the Bill.

9. We have reviewed the use of the Chinese rendition of the term “then” in clause 18(2) and other relevant clauses in the Bill. We will propose CSA to improve the Chinese rendition of this term.

**(4) To provide illustrations on the prescribed font sizes for English letters/Chinese characters and numbers under clauses 22(2) and (3). To also advise the reason for imposing relatively heavy penalty for minor offence of using wrong font sizes, and the applicability of the same provision to other existing ordinances, particularly those related to insurance.**

10. Some illustrations on the prescribed font sizes requirements under clauses 17(2), 17(3), 22(2) and 22(3) are at Annex.

11. Sales brochure is a very important source of property information in the sale of first-hand residential properties. In particular under the Bill, sales brochure will be the primary and the most comprehensive source of information on the sale of first-hand residential development to which prospective purchasers may make reference. There was concern from time to time in the past that information in the sales brochures was printed in font sizes which were not reasonably readable, and that prospective purchasers might miss out important information. The proposed font size requirements and the level of penalties for breaching those requirements were fully discussed at, and recommended by, the Steering Committee on Regulating the Sale of First-hand Residential Properties by Legislation. We consider it important to set out in the Bill the font size requirements and make it criminal offences for breaching those requirements.

12. We are aware that some existing ordinances have provisions which prescribe the font size requirements of mandatory information and carry criminal penalty for contravention. For example, section 4(1)(b) and 5(1)(b) (as read with Schedule 2 to that Ordinance) of the Energy Efficiency (Labeling of Products) Ordinance (Cap. 598) stipulates the font size and font type for the energy label. A manufacturer can only supply a prescribed product under Cap. 598 which bears an energy efficiency label prepared according to the prescribed requirements

(including font size requirement), otherwise it is an offence and is liable to a fine at level 6.

13. The proposed penalty levels for offences under the Bill are determined by reference to various general principles : (i) the penalty for minor offences that are regulatory in nature (e.g. a failure to provide building plans for free public inspection, and failure to deposit sales brochures with specified authorities within the required timeframe) should be subject to a maximum fine at level 6 (i.e. \$100,000); (ii) for offences that may directly affect and potentially bring financial loss to prospective purchasers (e.g. failure to disclose transaction information), the proposed maximum penalties are a fine of \$500,000 to \$1,000,000; and (iii) regarding serious offences (e.g. misrepresentation and dissemination of false or misleading information), proposed maximum penalties range from a fine of \$500,000 to \$5,000,000 plus imprisonment up to a maximum of 6 months to 7 years.

14. Along the above principles, the maximum penalties for breaching the font size requirements are set at level 6 (i.e. \$100,000). We consider the proposed level of penalty appropriate.

**(5) To advise whether offences under Part 2 and 3 are strict liabilities. To also review the propriety of the levels of penalties for these offences.**

15. The proposed penalty levels for offences under the Bill are determined by reference to the principles mentioned in paragraph 13 above. We consider the proposed level of penalty appropriate.

16. To give Members a full picture of the offences created under the Bill, we will submit to the Assistant Legal Advisor a table setting out individually all the offences created by the Bill, with detailed particulars on the relevant provision in the Bill, the level of penalty, the time point for counting the three year prosecution time limit, and the defense provisions that would be applicable to each offence. In general, the offences under Part 2 and 3 (except clause 60) of the Bill are regulatory in nature. The due diligence defence provided under clause 67 applies to these offences. In so far as such regulatory offences are concerned, our intent is that offences of strict liability are to be created.

**(6) To review clause 26(4) to better reflect the policy intent of requiring a vendor to make available a revised price list before changing the price of a specified residential properties. To provide with illustrations that application of clause 26(4) to circumstances (such as negotiation of prices after publication of price lists) and possible contraventions.**

17. We will propose CSA to improve the drafting of clause 26(4).

Transport and Housing Bureau  
May 2012

## Illustration of Font Size Requirements in Sales Brochure

Requirements	Illustration
<p><b>Clause 17(2)</b></p> <p>For the expression “Sales Brochure”, the size of the letters must not be smaller than the size of the same letters in 18 point Times New Roman typeface.</p>	<p><b>Sales Brochure</b></p> <p>(18 point Times New Roman)</p>
<p><b>Clause 17(3)</b></p> <p>For the expression “售樓說明書”, the size of the characters must not be smaller than the size of the same characters in 18 point “新細明體” typeface.</p>	<p><b>售樓說明書</b></p> <p>(18 point “新細明體”)</p>
<p><b>Clause 22(2)(a)</b></p> <p>For the English text, the size of a letter or number, must not be smaller than the size of the same letter or number in 10 point Times New Roman typeface</p>	<p>Sales Brochure</p> <p>(10 point Times New Roman)</p>
<p><b>Clause 22(3)(a)</b></p> <p>For the Chinese text, the size of a letter or number, must not be smaller than the size of the same character or number in 10 point “新細明體” typeface</p>	<p>售樓說明書</p> <p>(10 point “新細明體”)</p>
<p><b>Clause 22(2)(b)</b></p> <p>In the case of an explanatory note or remark for the main text of the sales brochure, must not be smaller than the size of the same letter or number in 8 point Times New Roman typeface</p>	<p>Sales Brochure</p> <p>(8 point Times New Roman)</p>
<p><b>Clause 22(3)(b)</b></p> <p>In the case of an explanatory note or remark for the main text of the sales brochure, must not be smaller than the size of the same character or number in 8 point “新細明體” typeface</p>	<p>售樓說明書</p> <p>(8 point “新細明體”)</p>