

21 May, 2012

The Honourable Chan Kam-lam, SBS, JP  
Chairman, Bills Committee on Residential Properties (First-hand Sales) Bill  
Legislative Council Secretariat  
1 Legislative Council Road  
Central, HK

Dear Mr. Chan,

With reference to our April 24 submission to the Bills Committee, we are writing to propose the following three specific amendments to the Bill:

(1) Add the following definition of “relevant information” into Part 1, Clause 2 of the Bill:

“*relevant information*”, in relation to the properties, means a specific information about the properties which is not generally known to the persons who are accustomed or would be likely to deal in the properties but which would if it were generally known to them be likely to materially affect the price of the properties.

(Note: this is similar to the Securities and Futures Ordinance.)

(2) Add Clause 56 (1) (b) (iii) (in blue italics below) as follows:

Clause 56 of the Bill: Dissemination of false or misleading information

(1) A person commits an offense---

- (a) If the person disseminates, or authorizes or is concerned in the dissemination of, information that is likely to induce another person to purchase a specified residential property; and
- (b) If---
  - (i) the information is false or misleading as to a material fact....
  - (ii) the information is false or misleading through the omission of a material fact.....
  - (iii) *there is a provision of incomplete relevant information (Note: see definition above).*

(3) Add a clause similar to Section 305 of the Securities and Futures Ordinance (see below) into Part 4 of the Bill with necessary wording adjustments in order to codify civil liability into the property law:

|          |     |  |                 |            |
|----------|-----|--|-----------------|------------|
| Section: | 305 | Civil liability for contravention of this Part | L.N. 12 of 2003 | 01/04/2003 |
|----------|-----|--|-----------------|------------|

(1) Subject to subsections (2) and (3), a person who contravenes any of the provisions of Divisions 2 to 4 shall, whether or not he also incurs any other liability (whether under section 303 or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) A defence under this Part to a charge for an offence in respect of a contravention of any of the provisions of Divisions 2 to 4 shall also be a defence in an action brought under subsection (1) in respect of the same contravention.

(4) A person may bring an action under subsection (1) in respect of a contravention of any of the provisions of Divisions 2 to 4 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

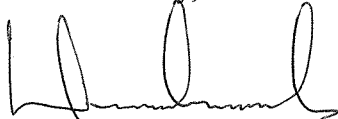
(5) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

The following points are relevant in supporting our proposed amendments:

- Our proposed amendments (1) and (2) above are wider than the original Clause 56 (1) (b) (ii), which only deals with omission related to false and misleading information. Our proposed amendment is a catch-all clause that deals with all incomplete information affecting price.
- Our proposed amendment (3) is more effective than the existing Consumer Council Fund and Legal Aid because the Consumer Council Fund mainly deals with mass actions, and many middle class property owners may not be qualified for Legal Aid. Since buying property is a life-time investment for many middle class people, the law must provide them with effective assistance in case of justified complaint.

Grateful if you would provide these suggestions to the Bill Committee members. Thank you for your attention.

Yours sincerely,



Victor Wai

Vice Chairman

The Professional Commons