

Residential Properties (First-hand Sales) Bill

Administration's Response to Issues Raised by Members at the Bills Committee Meeting held on 9 May 2012

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 9 May 2012, Members raised enquires on a number of issues relating to the Bill. The Administration's responses are set out below.

(1) To advise whether the Bill should apply to the sale of car parking spaces in first-hand residential properties

2. The objective of the Bill is to regulate the sale of first-hand residential properties situated in Hong Kong. The Bill will not regulate the sale of parking spaces.

3. That said, under clause 18(2)(1) and section 12 of Schedule 1 to the Bill, vendors are required to provide in the sales brochure a floor plan of the parking spaces in that development showing the location of the parking spaces; the number of parking spaces; and the dimensions and area of each of the parking spaces. Division 8 of Part 2 of the Bill as currently drafted however does not explicitly specify that the register of transactions should include information on parking spaces if the sale of the parking space forms part of a PASP or ASP. We will propose Committee Stage Amendment (CSA) to reflect that requirement.

(2) To review the drafting of the Chinese rendition of clauses 27(3), (5) and (6) to ensure that these tally with the English rendition.

4. We have reviewed the Chinese rendition of clauses 27(3), (5) and (6) of the Bill. The order of the wording in the Chinese rendition differs from that in the English rendition due to grammatical necessity and clarity. We think the current rendition is the most ideal as it conveys the same meaning as the English rendition without compromising the integrity of the language.

(3) To consider providing in clause 28(2)(a) the specific information to be included in the “description of” a residential property for the sake of clarity.

5. Clause 28(2)(a) of the Bill requires that a price list of a specified residential property must set out “a description of the residential property”. In this context, “description” refers to a description by means of which the property can be identified. Therefore, we consider it is appropriate to keep this expression in the Bill. We understand that developers and conveyancing solicitors are familiar with the use of this term, and know the types of information to be provided. For example, in the case of an apartment block, “description of the residential property” refers to the room number of the unit (if any), the floor of which the unit is located (if any), and the name of the block where the unit is located (if any).

6. The current Chinese rendition of the term may not fully reflect the meaning of “description” in that context. We will submit CSA for the Bills Committee’s consideration.

(4) To consider replacing the Chinese rendition of "prospective buyer (潛在買方)" under clause 28(4)(b) and other relevant provisions with the more common term of "準買家".

7. We have reviewed the Chinese rendition of “prospective buyer (潛在買方)” under clause 28(4)(b) of the Bill. We have taken into account Members’ suggestion to use a more user-friendly term. To tally with the term “buyer (買方)”, currently in the text, we will replace “潛在買方” with “準買方” to achieve consistency and readability. We will submit CSAs on this to the Bills Committee for consideration.

(5) To advise the rationale behind clause 30 as the clause as drafted may preclude any negotiation or expression of interest which is a common practice nowadays. To consider reviewing the drafting of the clause to strike a balance between prevention of manipulation of market and facilitating commercial activities.

8. At present, there are no clear guidelines regarding the reservation of residential properties. The objective of clause 30 of the Bill is to set out clearly at what time point vendors may seek and accept various types

of expression of intent.

9. Clause 30(1) of the Bill provides that a vendor must not seek and must reject any general or specific expression of intent from any other person on any specified residential properties before copies of the price list setting out their prices are made available under clause 29(3). Clause 30(2) provides that, after copies of price list are made available under clause 29(3) but before a date of the sale, a vendor must not seek and must reject any specific expression of intent from any other person on any specified residential properties the price of which are set out in the price list.

10. We note that clause 30 as currently drafted does not make clear that the vendor may seek and accept specific expression of intent on and after the first day on which the specified residential property is offered to be sold. We will submit CSA to reflect this for the Bills Committee's consideration.

11. Clause 30 of the Bill which will be further clarified with CSAs, together with clauses 26(4), 29, 31 and 43 of the Bill, will help strike a balance between prevention of manipulation of market and facilitating commercial activities. Clause 30 enables a prospective buyer to make a specific expression of intent on a specific residential property after the first day on which that residential property is offered to be sold. There is no provision in the Bill which prohibits a purchaser from negotiating price on a specific residential property with the vendor after the first day on which that residential property is offered to be sold. Clause 26(4) enables the vendor to change the price of a specified residential property, but that the vendor must revise the price list that sets out the price to reflect the change. The vendor may sell the specified residential property at the price as last revised (clause 31(2)(b)) three days after the issue of the revised price list in accordance with clause 29. Clause 43 does not dictate how the vendor should dispose of specified residential property. It only requires the vendor to make known at least three days prior to the commencement of sale the method to be used to determine the order of priority in which persons who are interested in purchasing a particular property may proceed with the purchase.

12. An example is set out at **Annex** for illustration purpose.

(6) To review the need for clause 32(1)(e) taking into account the provisions under clause 32(2)

13. Under clause 32(1)(e) of the Bill, it is one of the conditions for “unmodified show flat” that the fittings, finishes and appliances in the show flat are the same as those depicted in the sales brochure. The effect of clause 32(2) is that even though they are not the same, the condition in clause 32(1)(e) is to be regarded as being satisfied under certain circumstances. In other circumstances, the condition in clause 32(1)(e) must still be satisfied.

(7) To advise whether clause 34(4) applies to show flats appeared in advertisements. To also consider allowing greater flexibility for vendors to provide show flats before release of relevant sales brochures since it remains the vendors' responsibility to ensure compliance of the show flats with the Bill.

14. Clause 34(4) of the Bill only applies to show flats which are defined under clause 12 of the Bill. A show flat as defined under clause 12 of the Bill means a property unit, or a structure resembling a property unit, that depicts the residential property for viewing by prospective purchasers or by the general public. Requirements on advertisements are set out under Part 3 of the Bill.

15. Since sales brochure is the most important source of property information to prospective purchasers of first-hand residential properties, we remain of the view that the purchasers should have access to the information contained in sales brochure before viewing the show flats. Hence, clause 34(4). Vendors who wish to allow a longer time span for prospective purchasers to visit the show flats before the commencement of sale may do so once they have made available the sales brochure.

(8) To consider providing in the Bill a level of tolerance for deviations between show flats (which are provided in accordance with the sales brochures) and the actual flats to be sold (which are built according to approved plans) to ensure that such deviations would not be used as an excuse for recession of Agreement for Sale and Purchase.

16. According to clauses 32 and 33 of the Bill, the dimensions of the unmodified show flats and modified show flats should be the same as those specified in relation to the residential property in the sales brochure. We note Members' comments that the actual dimensions of the show flats may not be exactly the same as shown in the sales brochure which is prepared on the basis of the latest approved building plans, since show flats will likely include wall finishes (e.g. plaster) but building plans will not take such features into account. We will submit CSA to address Members' concern in this respect for the Bills Committee's consideration.

17. As regards the possible difference in measurement of residential properties as set out in the ASP and the actual property, we have proposed under clause 23 of Schedule 5 to the Bill a mandatory provision to be included in the ASP for the sale of uncompleted property that, if there is a difference in measurement exceeding 5% as a result of an alteration of building plans, the purchaser is at liberty to rescind the ASP. In other words, the purchasers may rescind the ASP on the grounds of difference in measurement of a residential property as set out in the ASP and the actual property only when the difference in measurement of the property exceeds 5%. This proposed arrangement is the same as the requirement under the Lands Department Consent Scheme.

(9) To consider stipulating in clause 40(1) that viewing of a specified residential property should be made available at the request of a prospective buyer, or the maximum number of viewing to be allowed.

18. We note that, in the case of a completed residential development, vendors may have practical difficulties in making available the specified residential property for viewing by a prospective purchaser. Taking this into account, clause 40(2) of the Bill supplements clause 40(1) that if it is not reasonably practicable for the specified residential property to be viewed by the prospective purchaser and if the vendor has made a comparable residential property in the development available for viewing by that prospective purchaser or the prospective purchaser has agreed in writing not to require the vendor to make a comparable residential property available for viewing, the vendor does not have to make the

specified residential property available to that prospective purchaser for viewing. We consider that vendors will have difficulties if they are required under the Bill that they should make available a specified residential property in a completed development for viewing by a prospective buyer whenever the prospective purchaser makes a request and as long as that request does not exceed a viewing quota for each prospective buyer to be prescribed in the Bill.

(10) To make it clear in clause 41 and other relevant provisions that the comparable property for viewing should be situated at the same residential development.

19. Under clause 40(2)(b)(i) of the Bill, the vendor is to make “a comparable residential property in the completed development or completed phase” available for viewing. Clause 41 of the Bill refers to a comparable residential property that is made available for viewing for the purpose of clause 40(2)(b)(i). Therefore, the “comparable residential property” in clause 41 of the Bill must mean a property situated at the same development or phase. We consider the current drafting is clear and there is no need to amend clause 41 of the Bill.

(11) To advise whether there is question of privacy if photo taking under clause 42 is allowed during viewing of flats which have already been occupied.

20. Taking into account Members’ views that there may be privacy issue if the vendor is required to allow the prospective purchasers to take measurement, take photos or make video recordings in a property which has a sitting tenant, we will submit CSAs to provide an exemption for such a situation for the Bills Committee’s consideration.

Transport and Housing Bureau
May 2012

An Illustration of a Possible Scenario under Clause 30

Date	Events
1 Jan	Assuming the vendor issues a price list, which covers the prices of Units A, B & C of Development X on 1 Jan . On the same date, the vendor makes public that the three units will be offered for sale on 4 Jan. The vendor also makes public the method to determine the order of priority for purchasing Units A, B and C.



1 Jan (after the issuance of price list) to 4 Jan	From 1 Jan (after the issuance of price list) to 4 Jan , the vendor may seek or accept “general expression of intent” on the three units, but not “specific expression of intent”.
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5 Jan	From 5 Jan onwards (i.e. the first day when Units A, B & C are offered to be sold), there is no longer restriction on seeking or accepting expression on intent on any of the three units, whether general or specific.
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6 Jan	Assuming that on 6 Jan , prospective buyer A negotiates with the vendor on lowering the price of Unit A. The vendor agrees to lower the price and issues on 6 Jan a revised price list with a lowered price on Unit A. Also, the vendor on 6 Jan (i) makes public that Unit A will be offered to be sold on 10 Jan at the lowered price, and (ii) revises, and makes public, the method to determine the order of priority for purchasing Unit A.
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10 Jan	The vendor may sell Unit A on 10 Jan according to the price and method to determine priority that has been made public on 6 Jan.
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