

Residential Properties (First-hand Sales) Bill
Response to Questions from the Legal Service Division dated 29 May 2012

Questions	Administration's Response
<p>Whether the Administration would consider including express provisions for the protection of legal professional privilege so that a person shall not be compelled to disclose any information or produce any document -</p>	
<p>(a) that he would on grounds of legal professional privilege be entitled to refuse to disclose or produce; or</p>	<ul style="list-style-type: none"> ● Legal professional privilege is protected by Article 35 of the Basic Law which guarantees the right to confidential legal advice. The rule is therefore entrenched in the Basic Law and has a protected status. The Bill does not contain any express words that abrogate the right of a person to rely on legal professional privilege. ● That said, we note the suggestion from the Legal Service Division of the Legislative Council and will propose Committee Stage Amendment to make clear the protection of legal professional privilege under the Bill.
<p>(b) that tends to incriminate himself.</p>	<ul style="list-style-type: none"> ● On the right to silence, the protection afforded by the Hong Kong Bill of Rights to the privilege against self-incrimination is not absolute. A derogation from it can be justified if it is not a disproportionate response to a matter of major concern

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	<p>and does not undermine an accused's right to a fair trial viewed in the round. Clause 79 of the Bill, read with clause 80 of the Bill, abrogates the privilege against self-incrimination but clause 82 of the Bill provides that if the answer or response might tend to incriminate the person, the answer or response is not admissible in evidence against that person in other criminal proceedings. The solution adopted in Part 6 Division 2 of the Bill is consistent with the right to a fair trial. The Bill strikes a fair balance by allowing the Enforcement Authority to abrogate the privilege but subjecting the elicited evidence to a direct use prohibition.</p>

Transport and Housing Bureau
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