

Residential Properties (First-hand Sales) Bill

Administration's Response to Issues Raised by Members at the Bills Committee Meeting held on 5 June 2012

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 5 June 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 creative ideas presented in television commercial on a specified first-hand residential property which deviate from the material facts constitute a dissemination of false/misleading information or misrepresentation.

2. To ensure that potential purchasers are not misled by advertisements, there is a need to enhance control over the information presented in advertisements. "Creativity" and "misleading information" are two different things. There is no intention to stifle creativity. The provisions that regulate false or misleading advertisements in the Bill are in line with other relevant legislation, such as the Estate Agents Ordinance (Cap. 511) and the relevant regulation. We consider that the provisions on "advertisements" in the Bill have struck a balance between protecting creativity and ensuring the provision of accurate information.

3. Whether the contents of an advertisement on a first-hand residential development constitute a dissemination of false/misleading information or misrepresentation depends on the facts of the case. The Authority to be set up by the proposed legislation will look into any complaint/suspected case in accordance with the law.

(2) To consult the trades on the practicality of requiring vendors to disclose transaction information within the time limit specified in the Bill, given that vendors might have to process a substantial number of property transactions within a day.

4. As explained in our previous written response to the Bills Committee, the proposed requirements on the disclosure of transaction information as set out in the Bill strikes a balance between ensuring timely dissemination of updated and accurate transaction information in a user-

friendly manner, and the practical need to give vendors reasonable lead time to make ready the transaction information accurately. The proposed requirements have been discussed in the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation where all relevant stakeholders were represented.

(3) To review the definitions of "working day" and "business day" with a view to working out a single definition to cater for all circumstances, and ensuring consistency in the Bill.

5. As far as the main body of the Bill is concerned, the term “working day” has appeared in the main body of the Bill all along. In the draft Committee Stage Amendment (CSA) tabled in the Bills Committee meeting on 31 May 2012, we introduced the concept of “business day” which appeared in clauses 16A (examination and revision of sales brochures) and 52 (contents of, and entries in, Register of Transactions). The difference between the term “working day” and “business day” in the Bill is that the former does not include Saturday whereas the latter includes Saturday. For simplicity sake, we will replace “business day” with “working day” in those clauses. We will propose revised CSA for the Bills Committee’s consideration.

6. As regards the mandatory provisions for the Agreement for Sales and Purchase (i.e. Schedules 5 to 7), the term “business day” means a day which is not a Saturday, Sunday or public holiday and on which banks are open for business. We need to retain that term to ensure that if a date for payment is stipulated in the agreement or the day on which a completion of the sale and purchase is to take place falls on a day which banks do not open for business, such date for payment or completion of the sale and purchase is automatically postponed to the immediately following day that is a bank business day.

(4) To review the different Chinese renditions of the term "description of property" to ensure consistency.

7. We note Members’ suggestion regarding the Chinese renditions of the term “description of property” and will propose revised CSAs on this for the Bills Committee’s consideration.

- (5) **To update the table showing the offences in the Bill and the time point for counting the three-year prosecution time limit (LC Paper No. CB(1) 1936/11-12(01)) taking into account the proposed Committee Stage amendments (CSAs).**
- (6) **To advise if the time limit for prosecution under clause 17 starts to run from the act of making available the sales brochures to the public. To review clause 17 and consider setting out clearly and expressly the specific act(s) prohibited under the clause. To also review other clauses in the Bill along the line.**

8. We note Members' suggestion that if the contravention of a clause in the Bill would be an offence, the clause should be clear as to when the offence is committed for the purpose of counting the three-year prosecution time limit. We will propose revised CSAs to further clarify our policy intention.

9. We are updating the table showing the offences in the Bill and the time point for counting the three-year prosecution time limit. The table will be finalized after we have gone through all the proposed CSAs with Members.

- (7) **To advise the officer who will be held liable in the event of non-compliance with Division 1 of the Bill by the Hong Kong Housing Authority. To also provide a paper setting out the officers of the specified bodies, including the Urban Renewal Authority, Hong Kong Housing Society and MTR Corporation Limited, in the event of non-compliance with the provisions under the Bill.**

10. According to clause 72 of the Bill, officer, in relation to a specified body, means a director, secretary or manager¹ of the specified body; and includes any person who occupies the position of director, secretary or manager (by whatever name called) in the specified body. For the second limb of the definition, different specified bodies have different organization structures, and the post titles of their "officers" may not be exactly the same as those mentioned in the Bill. That said, it is the nature of the post

¹ "Manager" is defined in the Companies Ordinance as follows – "in relation to a company, means a person who, under the immediate authority of the board of directors, exercises managerial functions but does not include- (a) a receiver or manager of the property of the company; or (b) a special manager of the estate or business of the company appointed under section 216".

and not the title of the post-holder that matters. Generally speaking, the specified bodies mentioned by Members have clear organization structures and delineations of responsibilities including “boards”, and management which reports to the “boards”.

11. We wish to point out that the officers of a company or specified body will not be held liable automatically under the proposed legislation when the company or the specified body has committed an offence. According to clause 72 of the Bill, an “officer” will only be held liable if it is proved that the commission of the offence was aided, abetted, counselled, procured or induced by, or the offence was committed with the consent or connivance of or was attributable to any recklessness on the part of that “officer”.

(8) To review the Chinese rendition of the term "qualifies" in the proposed CSA in relation to clause 22(7).

12. We note Members’ suggestion regarding the Chinese renditions of the term “qualifies” and will propose revised CSAs on this for the Bills Committee’s consideration.

(9) To review the proposed CSA in relation to 26(4) to require the vendor to reflect any change to the price of a specified residential property in a new price list to which the property is to be covered.

13. As explained at the Bills Committee meeting on 5 June 2012, to facilitate members of the public to know clearly and easily as to whether the price of a residential property has been changed, we have proposed under clause 26(4) of the Bill that if the price of a specified residential property is set out in a price list, any change to that price must be reflected in the price list by a revision to the price list. We have reviewed the clause and consider that if the Bill does not specify this method of making changes to prices, vendors may use different methods to disclose the changes in prices and it will not be easy for prospective purchasers to notice and keep track of the changes. We suggest status quo to the proposed CSA to clause 26(4) of the Bill.

Transport and Housing Bureau
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