

Residential Properties (First-hand Sales) Bill

**Administration's Response to Issues Raised by Members at
the Bills Committee Meeting held on 7 June 2012**

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 7 June 2012, Members raised enquires on a number of issues relating to the Bill. The Administration's responses are set out below.

(1) To justify the need for the creation of the post of Authority when the Bill has express provisions governing the sale of first-hand residential properties. To advise how the Authority will supervise the compliance with Parts 2, 3 and 4 of the Bill. To also advise if the manpower requirement to assist the Authority will be absorbed within the existing resources of the Transport and Housing Bureau and if not, the number of new posts to be created.

2. The Bill sets out detailed requirements in relation to sales brochures, price lists, show flats, disclosure of transaction information, advertisements, sales arrangements, and the mandatory provisions for the Preliminary Agreement for Sale and Purchase and Agreement for Sale and Purchase for the sale of specified residential properties. Also, it contains prohibitions against misrepresentation and the dissemination of false or misleading information. Offences are created for the contravention of the various requirements in the Bill. It is necessary that an Authority be appointed to, among other things, administer the provisions in the Ordinance and supervise compliance with Parts 2, 3 and 4 of the Ordinance.

3. As explained in our previous written response to the Bills Committee (LC Paper No. CB(1)1598/11-12(02)), to facilitate early implementation of the legislation and to maximize the use of public resources, we propose that an enforcement unit be set up under the Transport and Housing Bureau (THB). As such, clause 74(1)(a) and (b) of the Bill empowers the Secretary for Transport and Housing to appoint a public officer to be the Authority for the purposes of the proposed legislation and to appoint other public officers to assist the Authority in

the performance of the Authority's functions. The Authority and such other public officers will comprise the enforcement unit.

4. To ensure the effectiveness of the Ordinance in regulating the sales of first-hand residential properties, the Authority will be tasked to supervise compliance with the Ordinance, which will include examining the sales brochures, price lists and the Register of Transactions of specified residential properties which vendors will have to provide to the Authority on the first day when they are made available to the public, conducting inspections on show flats when the show flats are available for viewing, handling complaints, and undertaking investigations as appropriate. Also, the Authority will issue practice guidelines, carry out public education, and maintain data and statistics. The Authority will also engage an agency to set up an electronic database which provides information on the sales of first-hand residential properties. In performing these functions, the Authority will be assisted by public officers appointed under clause 74(1)(b).

5. As mentioned in LC Paper No. CB(1)1598/11-12(02), it will not be possible for THB or the Housing Department to absorb the work of the enforcement unit with its existing manpower resources. We are working out the resource requirements for the enforcement unit. We will seek additional resources as necessary in accordance with the established resource allocation procedures (including seeking support from the Housing Panel, the Establishment Subcommittee and the Finance Committee as appropriate) in due course after the passage of the Bill.

(2) To provide the outline/framework of the guidelines to be issued by the Authority.

6. Subject to the passage of the Bill by LegCo, we will, based on the final provisions of the Ordinance, work out the list of guidelines to be issued by the Authority. Our preliminary view is that guidelines will be issued to provide guidance on the operation of Part 2 of the Bill. We will engage the relevant stakeholders in preparing the guidelines. The Administration will provide a set of the published guidelines to the Legislative Council for information.

(3) To advise whether it would be a contravention to the existing laws (including the Basic Law and Hong Kong Bill of Rights) to require vendors to offer for sale all the residential properties covered in a price list. To also advise whether there are channels (other than websites of vendors) through which prospective purchasers can be informed of the number of residential properties in a price list which will be offered for sale.

7. Requiring vendors to offer to sell all residential properties on the price lists may, in certain circumstances, impose an excessive burden on the vendors and may give rise to concerns in relation to Articles 6 and 105 of the Basic Law. That requirement does not form part of the existing proposals under the Bill. Nor is it the Administration's policy intent at this stage to incorporate that requirement into the Bill.

8. We consider the existing proposals, which require a vendor to provide the prices of a minimum number of residential properties in each of the price lists of a development or phase but does not go further to require that a vendor to offer to sell all the residential properties in the price lists, strike a balance between enhancing consumer protection and allowing developers to continue to take business decisions in the light of changing market situations.

9. We note Members' suggestion that, apart from the websites of vendors, there should be other channels where prospective purchasers can have access to the information on sales arrangements. We have proposed Committee Stage Amendment (CSA) to clause 43 of the Bill to require vendors to also make hard copies of a document containing information on the sales arrangements available for collection by the general public free of charge during a period of at least three days immediately before the date of sale.

(4) To advise how the draft CSAs to clause 30 can cater for negotiation of prices by purchasers, and the policy intention behind the different time frames in the draft CSAs to clauses 30(1) and (2). To also advise whether it is a contravention for vendors to disclose information on rejection of expression of intent.

10. As mentioned in our previous response to the Bills Committee (LC Paper No. CB(1) 1998/11-12(02)), 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. The effect of clause 30(1) is that the vendor must not seek general expression of intent, and must reject such expression of intent, any time before the first day on which copies of any price list setting out the prices of those specified residential properties have been made available. The effect of clause 30(2) is that the vendor must not seek and accept specific expression of intent before the first day on which the specified residential property is offered to be sold. On and after the first day on which the specified residential property is offered to be sold, the vendor may seek and accept specific as well as general expression of intent.

11. 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.

12. The policy intention behind the different time frames for allowing/disallowing vendors to seek and accept various types of expression of intent is to prevent a possible loophole that a vendor will make use of “reservation” as a disguise to start any sale before the first day of sale as announced.

13. According to the current drafting of the Bill, it is not a contravention for vendors to disclose information on rejection of expression of intent at any time.

(5) To advise the rationale for re-arranging the presentation of the draft CSAs to clauses 64 and 65.

14. In the light of Members' comments, we have proposed a new clause 65A to provide for the civil liability for making misrepresentation. Since the definitions of "fraudulent misrepresentation" and "reckless misrepresentation" for clause 65 (misrepresentation: criminal liability) and clause 65A (misrepresentation: civil liability) are the same, we propose setting out the definitions in 64A to avoid repeating them in both clauses 65 and 65A.

(6) To advise whether the term "individual" in the draft CSAs to proposed section 3 of Schedule 1 covers "partnership", and whether revised CSAs will be introduced if needed.

15. The term "individual" in the draft CSAs to section 3 of Schedule 1 of the Bill does not cover "partnership". We have proposed CSAs to revise those provisions.

(7) To advise whether there is a time limit for application of clause 4(1)(a) such that buildings constructed after a certain period of time will not be regarded as a part of a development with buildings constructed some time ago even if they have similar engineering, structural or architectural connection.

16. In the current drafting of the Bill, there is no time limit for the application for clause 3(1)(a). As to whether a building constructed after a certain period of time will be regarded as a part of a development with buildings constructed some time ago, it depends on the facts of the case concerned, i.e. whether there is sufficient evidence to prove that the buildings in question can be regarded as one single real estate development project by reason of the engineering, structural or architectural connection between them.