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BY EMAIL AND BY POST

URGENT

27 June 2012

Miss Becky Yu,
Clerk to Bills Committee,
Legislative Council Secretariat,
Legislative Council Complex,
11 Legislative Council Road,
Central, Hong Kong.

Dear Miss Yu,

Residential Properties (First-hand Sales) Bill

The Law Society's Property Committee has made 2 submissions on the above Bill on 23 April and 6 June 2012. We have raised, inter alia, 2 major concerns on the Bill:

1. the imposition of criminal liability on solicitors; and
2. the rigidity of the proposed legislation and the absence of a mechanism to grant exemption to the statutory requirements in appropriate circumstances.

We understand the second and third readings of the Bill are scheduled for today and shall appreciate if you can please bring this letter to the attention of the LegCo members.

The Law Society supports the spirit of the Bill. However, we have grave concern that this complex piece of Bill should be rushed through within a short period of 3 months after its gazettal on 16 March without sufficient time being given to thoroughly discuss the implications of the Bill and for stakeholders to be consulted on the legislative provisions and the CSAs.

The Law Society made its first 20 odd pages submissions to the Bills Committee on 23 April and reiterated our concerns in writing on 6 June. We were only provided by the Administration with the response to our second submissions and the CSAs from the

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家庭友善僱主
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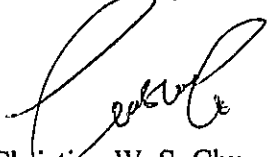
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Administration after the Bills Committee has completed its deliberations on 13 June. From a quick run through the CSAs, our Property Committee members could see there are still deficiencies in the amended Bill which deficiencies would cause practical difficulties to parties to conveyancing transactions.

We attach a table showing some of the outstanding concerns we have on the Bill with the lastly proposed CSAs.

We have no intention to delay the passage of the Bill into law. We understand that there will be a one-year leading period after the enactment of the Bill to enable the Enforcement Authority to be established before the implementation of the Legislation. Accordingly, if the Bill were to be so passed within the current LegCo term, we would urge that it be placed on LegCo record that the Administration should continue to engage in discussion with the Law Society and the LegCo to improve on the provisions of the new legislation during the leading period before its implementation.

Yours sincerely,



Christine W. S. Chu
Deputy Secretary General

Encl.

c.c. Mr. Eugene Fung – Deputy Secretary for Transport and Housing (Special Duties)

Clause No.(CSA version)	Issues	Suggested solution	Reference to the Law Society's Submission
The Bill	Rigidity of the Bill. It includes all detailed requirements regarding sales brochures, pricelist, show flats, advertisements, form of PASP and formal ASP, etc into the legislation but lacks a mechanism to grant waivers/exemptions. Any amendment in fact would call for amendment of the legislation.	(1) Amendment to include a mechanism allowing the Enforceable Authority to approve deviations in justifiable circumstances. (2) Exceptions should be included to provide for appropriate circumstances (3) The Administration should issue detailed guidelines for the profession.	See paras.78-80 of the Law Society Submission dated 23 April 2012 ("LSS") and paras.1 - 2 of the Law Society's 2 nd Submission dated 6 June 2012 ("2 nd LSS")
65-67	Imposition of Criminal Liability on professional	Add further defences for professionals such as "defence of honest but mistaken belief" which would be available at common law for offences of strict liability. Alternatively, it should be expressly stated that the statutory defence would not prejudice any existing common law defence.	(i) Paras 89-94 of LSS; and (ii) Para. 2 of 2 nd LSS
4(2)(b)(iii)	References to "Certificate of Compliance" requires amendment as the Government would no longer issue Certificate of Compliance in respect of a Phase but only in respect of the whole lot. Clause 4(2)(b)(iii) refers to a "Certificate of	Amendment.	Para 114 of LSS

	Compliance ... in respect of the phase.” This is incorrect if no <i>Phased Certificate of Compliance</i> is issued by the Government.		
11(3) & 55A	Under clause 13 of Pt.2 in Division 1, the Bill appears to target at “sale” only. In a situation where the vendor is a trustee (who may be a professional trustee (appointed by the head of a family) with no blood relationship to the family members) holding on trust for the members of the family, any disposal by the trustee of a family trust to the family members should not fall within the ambit of the Bill. However, what about if equality monies are paid during such distribution? As the intention of the Bill is to target at “sale” only, there should be clarification as to what constitutes a “sale”?	Amendment to clarify the position and issue guidelines with examples on what constitutes a sale.	Para 39(b) of LSS
11(3)(a)	Under clause 13 of Pt.2 in Division 1, the Bill appears to target at “sale” only. In a situation where a liquidator transfers the properties upon its liquidation or dissolution of a vendor, a limited company, to its shareholders by way of distribution in species,	Amendment to clarify the position and issue guidelines with examples on what constitutes a sale.	

	the Bill should not apply. As the intention of the Bill is to target at “sale” only, there should be clarification on what constitutes a “sale”.		
21	Despite clause 18A(1) provides a mechanism for including any other information in the sales brochure which may affect a purchaser’s interest, it is uncertain as to what constitutes “...but is not known to the general public” under 18A(1)(b)?	Amendment to clarify the position and issue guidelines with examples.	Paras. 46-50 of LSS
31	Change of Price or Variation of payment terms only in limited circumstances. But in practice, after signing ASP by a purchaser, there may be circumstances justifying a price/payment term change for that purchaser. The Administration’s suggestion that the parties may cancel the existing agreement and sign a new one at the adjusted price is not satisfactory e.g. there will be the stamp duty implication.	Amendment by expanding the exceptional categories to allow alteration of prices that will apply to the whole development and not just any particular purchasers, e.g. availability of 2nd mortgage after price list has been issued but which will be made applicable to <u>all</u> units sold and units put on sale.	Paras. 51-52 of LSS
Para 27 of Pt.2 in Sch 1	The term “ <i>modification</i> ” of land grant is insufficient to cover “ <i>licences, waivers, no-objection letter, approval letters, etc.</i> ” pending being granted by the Government.	Amendment to cover “ <i>licences, waivers, no-objection letter, approval letters, etc.</i> ” pending being granted by the Government as well.	
Para. 16	The vendor shall not	Amendment	Para III of LSS

<p>of Part 1 in Sch. 5</p>	<p>restrict the purchaser's right to raise requisitions. However, such restriction may be necessary in view of the special features of the title of the development. Examples: (i) For completed properties, they are sold on as-is basis and purchaser shall not object the physical conditions; (ii) it is the practice to allow requisitions to be raised within 7 working days after receipt of title deeds, otherwise, requisitions may be raised in the last minute which is undesirable; (iii) Government grant 999 years but the developer only gives 99 years to purchasers and (iv) in case of pending application for modification of land grant, LACO Circular Memorandum No.66 requires a clause in the ASP for reservation of vendor's rights to enter into such modification and the purchaser has no right to object (see clause 29 of the Government's prescribed form of Agreement for Sale and Purchase under LACO CM No.66).</p>		
<p>Para. 1(l) of Sch. 5 of Schedule 5 of Sch. 5</p>	<p>Definition of "<i>land</i>"</p>	<p>Amendment. Should be replaced by "Land" (which refers to a specific lot) to and to distinguish it from</p>	

		“land” used in generic sense, e.g. “interest in land”.	
Para 1(i)(ii) under Part 1 of Sch. 5	In clause 1(i)(ii), expiry date of Building Covenant Period should be expanded to cover any period extended by the <u>Lands Tribunal or Courts of Hong Kong</u> so as to cover extension granted by Lands Tribunal or Courts under a compulsory sale order.	Amendment	Para. 116 of LSS
Para 4 of Pt. 2 in Sch. 2	measurement of the area of air-conditioning plant room should include internal partitions and columns. It has been mentioned by Housing Bureau to the Law Society that <u>air-conditioning plant room</u> under para. 4 should be moved to para. 2 under Part 2 of Schedule 2.	Amendment	Par 29 of LSS
Sch. 4 to Sch. 7	Applicability in case of tender/auction sale	Further research/discussion is needed and future amendment may be necessary. If certain mandatory provisions are not applicable to auction/tender, amendments are desirable to make clear which provision is not applicable to auction/tender.	