

立法會
Legislative Council

LC Paper No. LS47/11-12

**Paper for the House Committee Meeting
on 23 March 2012**

**Legal Service Division Report on
Residential Properties (First-hand Sales) Bill**

I. SUMMARY

1. Object of the Bill

To provide a legal framework for the regulation of the sale of first-hand residential properties.

2. Comments

- (a) The Bill seeks to regulate the sale of first-hand residential properties in respect of the provision of sales brochures and price lists, the use of show flats in connection with the sale, the viewing of such properties before sale, the publication of sale arrangements and the execution of agreements for sale and purchase and the advertisements promoting sale, and to impose the requirement for the establishment of registers of transactions by vendors in connection with such properties.
- (b) The Bill also creates various offences including offences for misrepresentations and dissemination of false or misleading information in connection with the sale of first-hand residential properties.

3. Public Consultation

From 29 November 2011 to 28 January 2012, the Transport and Housing Bureau consulted the public on the legislative proposals in the form of draft legislation attached to the Consultation Paper on the Proposed Legislation to Regulate the Sale of First-Hand Residential Properties (the Consultation Paper). According to the Administration, the Administration attended meetings with various stakeholders and received 959 submissions during the public consultation period.

4. Consultation with LegCo Panel

The Consultation Paper was discussed by the Panel on Housing on 5 December 2011 and 5 January 2012. Deputations expressed views on the proposed legislation at the Panel meeting on 5 January 2012. While the Panel generally supported the proposed legislation, some members noted that deputations had different views and concerns on it.

5. Conclusion

In view of the important policy issues involved and the concerns raised by members of the Panel and deputations at the above Panel meetings, members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

Object of the Bill

To provide a legal framework to regulate the sale of first-hand residential properties.

LegCo Brief Reference

2. The LegCo Brief (no file reference provided) issued by the Transport and Housing Bureau dated 13 March 2012.

Date of First Reading

3. 21 March 2012.

Comments

Background

4. The sale and purchase of uncompleted first-hand residential properties have since 1961 been governed and regulated by the administrative requirements under the Lands Department's Consent Scheme (the Consent Scheme) and the guidelines issued by the Real Estate Developers Association of Hong Kong (REDA) for compliance by its member developers. The primary objective of the Consent Scheme is to protect the interests of purchasers of uncompleted properties by ensuring that the developer has the technical and financial resources to complete the development. Over the years, the Consent Scheme has taken on additional functions in respect of consumer protection and promoting fair practices in the sale of uncompleted properties.

5. In the 2010-11 Policy Address, the Chief Executive announced that a Steering Committee would be set up to discuss specific issues on regulating the sale of first-hand residential properties by legislation. In October 2010, the Steering Committee on Regulation of Sale of First-hand Residential Properties by Legislation (the Steering Committee) was set up to discuss specific issues on regulating the sale of first-hand residential properties by legislation. The Steering Committee submitted its recommendations on the regulation of sales of first-hand residential properties in a report to the Secretary for Transport and Housing in

October 2011. Based on the report, the Transport and Housing Bureau prepared a draft legislation attached to the Consultation Paper on the Proposed Legislation to Regulate the Sale of First-Hand Residential Properties (the Consultation Paper) issued in November 2011 and consulted the public on the legislative proposals from 29 November 2011 to 28 January 2012. The Bill was introduced following the public consultation exercise.

The Bill

6. The Bill seeks to provide a statutory framework to regulate the sale of first-hand residential properties. It consists of six Parts and eight Schedules. The key features of the proposed framework are summarized in the following paragraphs.

Application of the Bill

7. The Bill applies to any residential property in a development situated in Hong Kong in respect of which no agreement for sale and purchase has ever been entered into and no assignment has ever been made (specified residential property) (clause 10). The Bill does not apply if -

- (a) the development is a completed development and at least 95% of the residential properties in the development have been leased out for at least 36 months;
- (b) the development is situated in the New Territories comprising only one building and the building works of which are exempted from the Buildings Ordinance (Cap. 123); or
- (c) the development is constructed by the Hong Kong Housing Authority.

Saleable area

8. Under the Bill, property size and property price per square foot/metre may only be quoted on the basis of saleable area (SA) in sales brochures, price lists and advertisements. The term "saleable area", in relation to residential property, is defined in clause 8 to mean the floor area of the residential property including the floor area of every one of a balcony, a utility platform and a verandah to the extent that it forms part of the residential property, but excluding the area of every one of an air-conditioning plant room, a bay window, a cockloft, a flat roof, a garden, a parking space, a roof, a stairhood and a terrace or a yard that forms part of the residential property. For the purposes of the Bill, the floor area of a residential property is to be measured from the exterior of the enclosing walls

of the residential property including the area of the internal partitions and columns within the residential property, but excluding the area of any common part outside the enclosing walls of the residential property (clause 8 and Schedule 2).

Provision of sales brochures and price lists

9. The Bill seeks to impose certain obligations on a vendor of a specified residential property (the vendor) in relation to sales brochures and price lists. Under the Bill, the vendor is required to make hard copies of the sales brochure for the development available for collection by the general public free of charge during a period of at least seven days before a date of the sale of a specified residential property (clause 23). The vendor must also make hard copies of the relevant price list available for collection by the general public free of charge at least three days before the date of sale (clause 29).

Show flats

10. Under the Bill, the vendor is not required to set up any show flat. However, if the vendor has set up a show flat, the show flat must not be made available for viewing by prospective purchasers or by the general public before the vendor has made copies of the sales brochure for the development available for collection by the general public. If the vendor is to set up a show flat, he must first set up an "unmodified show flat" of the residential property, but he may also set up a "modified show flat" of the residential property (clause 34). The different requirements for "unmodified" and "modified" show flats are provided in the Bill (clauses 32 and 33). The vendor must not restrict any person who views the show flat from taking measurements, taking photographs or making video recordings of the show flat (clause 38).

Disclosure of transactions and register of transactions

11. The Bill requires the vendor to keep one register of transactions for the development containing specified information such as the date of any preliminary agreement or agreement for sale and purchase, the price of any transaction, the terms of payment, and whether the purchaser is or is not a related party to the vendor (clauses 51 and 52). The vendor is also required to make the register of transactions for the development available for inspection by the general public free of charge at the place where the sale is to take place (clause 53).

Offences

12. The various offences and penalties provided in the Bill may be broadly divided into three categories -

Nature of offence	Penalty	Examples
(a) Regulatory in nature	Fine at level 6 (\$100,000)	(i) Failure to make copy of sales brochure for the development available on website (clause 23(7)); (ii) Failure to provide building plans of the development for free public inspection (clause 44(4)).
(b) Directly affecting and potentially bringing financial loss to prospective purchasers	Fine of \$500,000 to \$1,000,000	(i) Failure to provide requisite information in the sales brochure - fine of \$500,000 (clause 19(6)); (ii) Failure to make hard copies of sales brochure for public collection - \$1,000,000 (clause 23(6)).
(c) Serious nature	Fine of \$1,000,000 plus imprisonment of three years on summary conviction; fine of \$5,000,000 plus imprisonment of seven years on conviction on indictment	Fraudulent or reckless misrepresentation (clause 65(2)) or dissemination of false or misleading information (clause 66(2)).

13. If a company or a body corporate commits an offence under the Bill, and if the commission of the offence is aided, abetted, counselled, procured or induced by an officer of the company or a body corporate or of its holding company, or the offence is committed with the consent or connivance of, or is attributable to any recklessness on the part of, an officer (director, secretary or manager) of the company or of a holding company of the company or a body corporate, such officer also commits the offence and is liable to be prosecuted and punished accordingly (clause 72).

Defences

14. Defences in relation to the different offences are provided in Part 5 of

the Bill. For example, if a person is charged with an offence under Part 2 (sale practices in relation to specified residential property) or Part 3 (advertisement of specified residential property), it is a defence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by him (clause 67).

Enforcement Authority

15. The Secretary for Transport and Housing will be empowered to appoint a public officer to be the Authority with the functions of administering the provisions of the Bill, supervising compliance, educating the public on any matter relating to the provisions of the Bill and performing other functions provided by the Bill or any other enactment (clause 75). The Authority may issue guidelines indicating the manner in which it proposes to perform any function or exercise any power; or providing guidance on the operation of any provision of the Bill (clause 76). The Authority is also given investigation powers for suspected contravention of the provisions of the Bill (clause 79).

Commencement

16. The Bill, if enacted, will come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

Public Consultation

17. Prior to the introduction of the Bill, from 29 November 2011 to 28 January 2012, the Transport and Housing Bureau consulted the public on the legislative proposals in the form of draft legislation attached to the Consultation Paper. According to the Administration, the Administration attended meetings with various stakeholders including the Consumer Council, the Hong Kong Housing Society, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors, the Law Society of Hong Kong, REDA and various agency associations. The Administration received 959 submissions during the public consultation period (paragraph 27 of the LegCo Brief).

Consultation with LegCo Panel

18. The Consultation Paper was discussed by the Panel on Housing at its meetings on 5 December 2011 and 5 January 2012. Deputations were invited to express views on the proposed legislation at the meeting on 5 January 2012.

19. The Panel generally supported the proposed legislation as a step forward in the right direction. Panel members, however, noted that deputations had different views and concerns on the provisions of the proposed legislation, for example -

- (a) whether the scope of the proposed legislation should be confined to uncompleted flats;
- (b) a clear definition of first-hand properties should be provided to prevent circumvention by developers;
- (c) developments constructed by the Hong Kong Housing Authority should not be exempted from the proposed legislation;
- (d) the adoption of SA should not be the only basis to quote unit prices of flats;
- (e) the difficulties of purchasers in making comparison between first-hand flats and flats in the secondary market as the latter used gross floor area (GFA) in price quotation and the permission of concurrent use of SA and GFA; and
- (f) the difficulty in enforcing the proposed legislation in the absence of a standardized definition of GFA as different developers might include different items in the calculation of GFA.

Conclusion

20. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the important policy issues involved and the concerns raised by members of the Panel and deputations at the above Panel meetings, members may wish to form a Bills Committee to study the Bill in detail.

Prepared by

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