

# 立法會

## *Legislative Council*

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### **Paper for the House Committee**

#### **Bills Committee on Residential Properties (First-hand Sales) Bill**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on Residential Properties (First-hand Sales) Bill (the Bills Committee).

#### **Background**

2. Inadequate and misleading sales information on uncompleted residential properties is of concern to prospective buyers as they have no opportunity to view the properties before purchase. Problems such as inaccurate size of the property, misleading descriptions of fittings and finishes, sketchy layout and location plans were rampant in Hong Kong in the 80s and early 90s. In recent years, concerns have been raised about the provision and dissemination of misleading information on the prices of property transactions and sales figures. As the number of such complaints grows, there are increasing calls for measures to address the problems.

3. At present, the Government regulates the sales of first-hand uncompleted residential properties through the Lands Department (LandsD)'s Consent Scheme (the Consent Scheme) and the guidelines issued by the Real Estate Developers Association of Hong Kong (REDA). To strengthen the regulation of the sales of first-hand private residential properties, a Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) was set up under the Transport and Housing Bureau (THB) to discuss specific issues on regulating the sale of first-hand residential properties by legislation. The Steering Committee completed its work and submitted its report to the Secretary for Transport and Housing (STH) in October 2011. The Steering Committee recommended that legislation should be introduced to regulate the sale of first-hand residential properties, including projects developed under old lease conditions, Consent Scheme projects, and projects outside the Consent Scheme. It also came up with detailed recommendations on the requirements on sales brochures, price lists, show flats, transaction information, advertisement, sales arrangements, prohibition on

misrepresentation and dissemination of false and misleading information, penalties, enforcement authority, and exemption arrangements.

4. Based on the Steering Committee's recommendations, THB prepared a draft legislation attached to the Consultation Paper on the Proposed Legislation to Regulate the Sale of First-hand Residential Properties which was released in November 2011 for a two-month public consultation. According to the Administration, there was widespread support for regulating the sales of first-hand residential properties by legislation, and that the proposals set out in the draft legislation were generally acceptable to the public and relevant stakeholders, with the exception of REDA.

### **The Bill**

5. The Bill seeks to –

- (a) regulate the provision of sales brochures and price lists as well as the requirements on show flats (if any) in connection with the sale of residential properties in respect of which neither an agreement for sale and purchase (ASP) nor an assignment has ever been entered into and made;
- (b) regulate the viewing of properties in completed development or phase before sale;
- (c) regulate the publication of sale arrangements and execution of preliminary agreements for sale and purchase (if any) and agreements for sale and purchase in connection with such properties;
- (d) provide for registers of transactions in connection with such properties;
- (e) regulate the advertisements promoting the sale of such properties;
- (f) provide for offences in connection with misrepresentations and dissemination of false or misleading information; and
- (g) provide for the appointment of a public officer to be the authority for the purpose of the Ordinance, and the appointment of any other public officers to assist the Authority in the performance of the Authority's functions as set out in the Ordinance.

### **The Bills Committee**

6. At the House Committee meeting held on 23 March 2012, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of

Hon CHAN Kam-lam, the Bills Committee has held 20 meetings. The membership list of the Bills Committee is in **Appendix I**. Apart from discussion with the Administration, the Bills Committee has also invited views from interested parties, including the relevant trade sectors and professions. 21 organizations/individuals have made written and/or oral representations to the Bills Committee. A list of these organizations/individuals is given in **Appendix II** while the summary of Administration's response to their views is in Annex to LC Paper No. CB(1) 1936/11-12(02).

## **Deliberations of the Bills Committee**

7. The Bills Committee generally supports the policy intent of the Bill to regulate the sale of all first-hand uncompleted and completed residential properties, irrespective of whether these are projects developed under the old lease condition, Consent Scheme projects or projects outside the Consent Scheme, with a view to enhancing transparency of information, fairness of transactions and consumer protection. Nevertheless, members of the Bills Committee have raised concerns and sought clarification on a number of policy and legal/drafting issues which are summarized in the ensuing paragraphs.

### Phased enactment of the Bill

8. Given the limited time remaining in the current legislative term for scrutinizing the Bill, members have explored with the Administration the feasibility of enacting the Bill by phases with a view to ensuring the passage of major provisions within the current legislative term.

9. According to the Administration, the Bill provides a holistic and effective framework to regulate all major aspects relating to the sale of first-hand residential properties situated in Hong Kong. Each and every part of the Bill work together to form an integral part of the regulatory framework. The effectiveness and the deterrent effect of the Bill in ensuring the transparency and fairness in the sale of first-hand residential properties will be adversely affected if some parts are missing or are not being brought into operation concurrently. The Administration therefore considers it undesirable and not practical to enact the Bill by phases.

### Interpretation (Clauses 2 to 9)

#### *Authorized person and building contractor*

10. An authorized person (AP) in relation to a specified New Territories (NT) development means a person who supervises the construction of the development, whereas a "building contractor" in relation to a NT development means a person who is appointed by the owner of the land to construct the development.

11. Noting that the Bill requires the names of AP and building contractor to be stated in the sales brochure and printed advertisements, some members have expressed concern that the interpretations as drafted may not be able to cater for possible changes to the appointment of AP and building contractor during the course of construction of the development. In the light of members' concern, the Administration has agreed to introduce Committee Stage amendments (CSAs) to the effect that apart from the names of AP and building contractor, the periods for which the AP is appointed by the owner of the land to supervise the construction of the development and the period for which the building contractor is appointed by the owner of the land to construct the development should also be stated in the sales brochures and printed advertisements.

### *Company*

12. Company has the meaning given by section 2(1) of the Companies Ordinance (Cap. 32).

13. The Bills Committee has enquired if the interpretation of "company" includes companies incorporated or registered outside Hong Kong with subsidiaries in Hong Kong, and whether the Bill applies to these companies. The Administration has advised that most of the requirements under the Bill in relation to sales practices<sup>1</sup> and advertisement are imposed on the vendor, regardless of whether the vendor is a registered company in Hong Kong or not. Taking into account members' view, the Administration has reviewed all the references to "company" in the Bill and will introduce CSA to replace the term "company" with "corporation" to include a company as defined by section 2(1) of the Companies Ordinance (Cap. 32) and a company incorporated outside Hong Kong.

### *Development*

14. Development means a collection of two or more buildings where the construction of those buildings can be regarded as one single real estate development project by reason of the engineering, structural or architectural connection between the buildings, or in any other case, a building.

15. On members' enquiry on whether or not buildings constructed after a certain period of time will be regarded as a part of a development with buildings constructed some time ago even if they have similar engineering, structural or architectural connection, the Administration has advised that this will depend on the facts of the case concerned, i.e. whether there is sufficient evidence to prove that the buildings in

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<sup>1</sup> Sales practices in relation to specified residential property refer to requirements on sales brochures, price list, show flats for uncompleted residential properties, view of property in completed development or phase, sales arrangements, preliminary agreement for sale and purchase/agreement for sale and purchase, and register of transactions.

question can be regarded as one single real estate development by reason of the engineering, structural or architectural connection between them.

### *Residential property*

16. Residential property in relation to a development or a phase of a development means any real property in the development or phase constituting a separate unit used or intended to be used solely or principally for human habitation without contravening the land grant and the occupation permit (OP), if any.

17. Some members (including Mr James TO and Mr Ronny TONG) have expressed concern the phrase "without contravening the land grant and OP" might provide a loophole for vendors to circumvent the Bill, such as when the first-hand residential properties being offered for sale involved unauthorized building works, or illegal conversion of commercial/industrial units to residential units. According to the Administration, the phrase referred to aims to qualify that only first-hand properties that are lawfully used for residential purpose will be subject to the Bill. Properties which use is in contravention of the land grant or OP will be dealt with by LandsD or the Buildings Department in accordance with the Buildings Ordinance (cap 123) (BO) as appropriate. Taking into account members' view, the Administration will introduce CSAs to make clear that the definition of "residential property" will exclude real property used or intended to be used for human habitation if the use contravenes the land grant or OP (if any). Any other contravention of the land grant or OP is not relevant for this purpose.

### *Vendor*

18. The owner of specified residential property is the "vendor". However, if the owner engages a person to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development or phase, the term "vendor" also applies to the person so engaged.

19. Some members (including Ms Audrey EU) have pointed out that the clause as drafted will only apply if a person is engaged to carry out all the prescribed work. There may be loophole for circumvention if the owner engages two or more persons to carry out the work. These members are concerned that the persons involved in the work will not fall within the definition of "vendor" and will not be held liable for contravening the statutory requirements, whereas the owner may make use of the defence provision under the Bill by claiming that he has taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence. To plug the loophole, consideration should be given to applying the term "vendor" to a person engaged by the owner to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and/or marketing the development or phase.

20. The Administration has advised that in the proposed legislation that was put up for public consultation, "vendor" was defined as the "owner" on the understanding that the "owner" would also be the person who co-ordinates and supervises the development process. While this would cater for most situations where a development would be undertaken by the owner who is also in the business of real estate development (i.e. property developer), views received during the public consultation have revealed the need to expand the definition of "vendor" to cover situations where the owner (who is not a property developer) would engage a property developer to co-ordinate and supervise the development process. An example is that a non-governmental organization owns a piece of land and collaborates with a property developer to undertake a residential development on that piece of land. To ensure that both the owner and the property developer under such circumstances will be held criminally liable for the offences under the Bill, the definition has been revised with a view to including the "property developer" as well. Instead of using a label "property developer" in the Bill, the phrase "a person to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development" is used to describe a "property developer". The characteristics of a property developer is that it will co-ordinate and supervise each and every major aspect in the process of undertaking a first-hand residential development for the purpose of offering the residential properties for sale. It is not the policy intention to cover a person who is engaged to co-ordinate and supervise only one or some of those aspects of the development process. The proposal put forward by members would cover a person who is engaged by the owner to co-ordinate and supervise individual aspect(s) of the development process, which effect is not the policy intention.

21. The Administration has further advised that under the Bill, a defendant would have to establish that he has taken such "precautions" and "diligence" as an ordinary prudent and diligent person would take and exercise under the circumstances of the case. The defence would not be available to a defendant owner who merely establishes that he has engaged another person(s) to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development or phase (e.g. the property developer in a joint venture). Other circumstances of the case would also be relevant in deciding whether the owner has taken "reasonable precautions" and has exercised "due diligence" to avoid the commission of the offence. These circumstances may include whether the owner has taken steps to engage a responsible property developer to co-ordinate and supervise the whole development process, whether the owner has given clear and correct instructions to the property developer, whether the owner has put in place any checking and reporting mechanism with the property developer to ensure compliance with those instructions, and whether the owner has any reason otherwise to believe that the instructions would not be complied with.

22. Therefore, the Administration remains of the view that the definition of "vendor" in the Bill reflects the policy intention that both the owner and the property

developer (if one is engaged by the owner to co-ordinate and supervise the development process) should be responsible for contravention of the relevant requirements under the Bill, as they should be the one who oversee and make final decision on the development (including the sale of the development) notwithstanding that they may engage various professional practitioners and relevant parties (e.g. designers, architects, surveyors, solicitors, and building contractors) in the process.

### *Saleable area*

23. Saleable area (SA) in relation to a residential property means 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. The floor area 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. The Bill provides that property size and property price per square foot/metre may only be quoted on the basis of (SA) in sales brochures, price lists, and advertisements.

24. The Bills Committee notes that while many deputations have expressed support for adopting SA as the only basis for quoting property size and price, some other deputations (including the real estate sector) have suggested using both SA and gross floor area (GFA) as the latter is commonly adopted to quote property size and price of second-hand residential flats, since the use of both measurements in parallel will facilitate prospective purchasers to make comparison between first-hand residential flats and second-hand residential flats. Mr Abraham SHEK also draws members' attention to REDA's view that disallowing GFA-related information may constitute a restriction on the right to the freedom of expression guaranteed under the Basic Law and the Bill of Rights (Mr SHEK's correspondences with the Administration on the subject are set out in LC Paper Nos. CB(1) 2031/11-12(01), 2086/11-12(04), Annex to 2109/11-12(02), 2120/11-12(03), 2150/11-12(01), 2166/11-12(01)). The Administration has advised that the measurement methodology to be prescribed in the legislation has to be clearly defined. There is at present a standardized definition of SA for a property, but not a commonly-adopted definition of GFA for a property. Without such a commonly-adopted definition, it is not possible to prescribe GFA in precise term in the legislation. Allowing the use of GFA for a property, which currently does not have a standardized definition, for quoting property size and property price per square foot/metre will cause confusion rather than enhancing comprehensiveness of information to purchasers.

25. To resolve the problem, members consider it necessary for the Administration to work out a standardized definition of GFA for a property. According to the Administration, the challenge of coming up with a standardized GFA for a property is

to get all the key stakeholders (such as the Hong Kong Institute of Surveyors, the Hong Kong Institute of Architects, the Law Society of Hong Kong, the Consumer Council (CC) and REDA) to agree upon the types of common areas in a residential development which should be counted towards the GFA for a property, and the measurement method for each and every type of those common areas as agreed to be counted towards GFA per property. It has taken a few years for the key stakeholders to work out a standardized definition of SA for a property. A far longer time is expected for key stakeholders to agree upon a standardized definition of GFA per property in view of the many parameters need to be considered. Given that early enactment of the Bill is in public interest, and that it is highly unlikely that a definition of GFA can be worked out within the current legislative term, the Administration holds the view that SA should be the only basis to present property size and property price per square foot/metre in sales brochure, price list and advertisements under the Bill.

26. The Administration has further advised that it is not proposing to disallow the disclosure of information beyond SA in the sale of specified first-hand residential properties, nor depriving the public or prospective purchasers of area information on common facilities. While property size and property price per square foot/metre will not be allowed to be quoted on the basis of GFA under the Bill, vendors will be required to provide area information on common facilities (e.g. residents' clubhouse) on an aggregate basis in the sales brochures. Vendors will also be required under the Bill to provide in the sales brochures and price list the area of those features which owners of a residential property will have exclusive use (viz. an air-conditioning plant room, a bay window, a cockloft, a flat roof, a garden, a parking space, a roof, a stairhood, a terrace and a yard). This will enable purchasers to know exactly the SA of a residential property, the area of those features which owners will have exclusive use, and holistically the types and sizes of common facilities in the development. Therefore, the Administration does not agree that there is a total and absolute ban on the disclosure of GFA-related information, or that the proposed measure is inconsistent with the right to freedom of expression under Article 16 of the Hong Kong Bill of Rights.

27. The Bills Committee remains of the view that the Administration should work out a standardized definition of GFA for a property. In this connection, the Administration is requested to include in the speech to be delivered by STH at the resumption of Second Reading debate on the Bill an undertaking that it will endeavour to work out a standardized definition of GFA for a property. According to the Administration, the lack of a standardized definition of GFA for a property is one of the reasons, but not the only reason, why the Administration considers that SA should be adopted as the only basis in the Bill for presenting the floor area and price per foot/metre in the sale of a first-hand residential property. GFA for a property is not the most suitable way of showing the public and purchasers the floor area of a residential property. Given the many views received during the public consultation period which supported for using SA only to present the floor area and price per



square foot/metre for a property, and that the proposed approach of requiring vendors to provide (i) SA of a residential property, (ii) the area of those features which the owners of a residential property will have exclusive use, and (iii) holistically the types and sizes of common facilities in the development, is a viable and more direct means to let prospective buyers know what are they buying for, it is considered not appropriate for the Administration to undertake to work out a standardized definition of GFA for a property.

28. Noting that there may be a difference between the definition of SA in the Bill and the one used under the Consent Scheme, members consider it necessary for the Administration to synchronise the definitions in the Bill and the Consent Scheme to ensure consistency. The Administration has advised that the definition of SA in the Bill is in substance the same as the one used under the Consent Scheme, except that the latter is silent on whether "stairhood" should be included or excluded from the calculation of SA while the former has made it clear that "stairhood" is excluded from the definition of SA taking into account the general consensus among the relevant stakeholders at the Steering Committee. The other differences between the Consent Scheme and the Bill regarding the definition of SA are mainly textual (e.g. breaking up a long sentence as it so appears in the Consent Scheme into a few shorter sentences in the Bill). Upon the enactment of the Bill, LandsD will make appropriate revisions to the wordings of the definition of SA in the Consent Scheme to tally with the definition of SA in the Bill.

29. Some members have enquired if it is the policy intent to extend the use of SA to quote property size and price for residential properties sold in the second-hand residential market and if so, relevant supporting infrastructure (such as a central database) should be put in place to facilitate compliance by stakeholders (including estate agents). According to the Administration, the objective of the Bill is to regulate the sale of first-hand residential properties where the vendors and individual purchasers are not on an equal footing. Vendors are always in a much stronger position vis-à-vis purchasers in terms of resources and bargaining power. Vendors not only hold first-hand residential properties in bulk, but also possess and control the release of information relating to those properties and their sales arrangements. Hence, there is a need for enhanced protection for first-hand residential property buyers. However, this is not the case in the sale of second-hand residential properties where vendors are usually ordinary individuals.

30. The Administration has further advised that information on SA of all assessed second-hand residential properties in Hong Kong (except village houses) is readily available from the Rating and Valuation Department (RVD), and that it is a statutory requirement under the Estate Agent Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C) for estate agents to, where applicable, provide information on SA of a property (including a second-hand property) to a prospective purchaser. It is expected that the proposed change to the use of only SA in the first-hand residential properties is likely to bring about changes along this

direction in the second-hand residential market. In fact, the Estate Agents Authority has in May 2012 promulgated guidelines on the provision of SA for the sale or lease of second-hand residential properties.

Application of the Bill (Clause 10)

31. The Bill applies to any residential property in a development situated in Hong Kong in respect of which no ASP has ever been entered into and no assignment has ever been made (specified residential property). The Bill does not apply if the development is –

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

32. Some members have sought clarification on whether an ASP referred to in the preceding paragraph includes a preliminary agreement for sale and purchase (PASP), and the date on which the Ordinance, if enacted, becomes applicable to a residential property where an ASP has been subsequently terminated or declared void by the court. According to the Administration, it is the policy intention that the Bill should apply to residential properties in respect of which no PASP/ASP has ever been entered into and assignment has ever been made. In the case of termination of agreement, the policy intention is that the date on which the agreement is terminated will be the date on which the Ordinance, if enacted, becomes applicable to the relevant residential property, whether it is terminated in accordance with a provision in the agreement or by the election of an innocent party to avoid the agreement after a breach by the defaulting party. In the case where an agreement is declared void and of no legal effect by the court, the Ordinance (if enacted) will become applicable to the relevant residential property on the date of the court order. The Administration agrees that the Bill as drafted may not be able to clearly reflect the policy intention, and will introduce CSAs to improve the drafting of the Bill in this respect. The Administration has also taken the opportunity to review the Chinese rendition of the term "assignment" and the phrases "no PASP/ASP has ever been entered into" and "no assignment has ever been made", and will introduce CSAs as appropriate.

33. Some other members are concerned about the applicability of the Bill to a development or phase where some of the residential properties are sold after the coming into effect of the Ordinance, if enacted, while some were sold before enactment of the Bill. According to the Administration, the Bill will apply to any residential property in respect of which no PASP/ASP has ever been entered into and no assignment has ever been made except the three situations referred to in

paragraph 31 above. For a residential development or a phase which has some of the residential properties sold prior to the coming into operation of the Ordinance, if enacted, the Ordinance will apply to those remaining residential development or phase that fall under the definition of "specified residential property". As the Ordinance is expected to only come into operation in around 12 months after enactment of the Bill, there will be a reasonably long period of time for vendors of first-hand residential properties to familiarize with and prepare for meeting the requirements under the Ordinance, if enacted. The Administration will work closely with LandsD and REDA to facilitate a smooth transition to the new requirements as stipulated in the Ordinance, if enacted.

34. On the proposed exemption for completed development with at least 95% of the residential properties in the development being leased out for at least 36 months, some members (including Mr Abraham SHEK) consider the threshold too high and ask if the real estate sector has been consulted in this regard. According to the Administration, the proposed exemption has taken into account the views of the real estate sector that first-hand residential properties which a vendor leases out for a reasonably long period rather than sells upon completion are akin to second-hand properties, and that their sales should not come under the same regulatory regime as first-hand properties. The Administration holds the view that a higher threshold should be set to ensure that a vendor will not simply withhold the sale of a development for a relatively short period of time in order to circumvent legislative control.

35. In general, the Bills Committee does not agree that developments constructed by HA should be fully exempted from the Bill, as the Bill should apply across the board to all first-hand residential properties to ensure fairness and consistency. The Administration has advised that the exemption is proposed having regard to the fact that the Home Ownership Scheme (HOS) flats are subsidized flats, and that HA has to follow set parameters to dispose of these flats which are completely different from normal private market practice. By way of illustration, when selling HOS flats, HA makes public the total number of HOS flats to be offered for sale and the selling prices of all the flats one to two months before the commencement of flat selection (whereas private developers will normally release first-hand residential properties for sale in small batches and release a price list three days prior to the commencement of sale). HA receives applications within a prescribed period and determines the priority for flat selection of different categories of eligible applicants by a balloting system (whereas private developers will normally accept reservation of residential properties before commencement of sale and they do not have a balloting system to determine the order of priority).

36. The Administration has further advised that the Bill is targeted at the malpractices of vendors in the sale of first-hand residential properties in the private market. The requirements are formulated having taken into account the mode of sale of first-hand flats in the private residential property market. Many of the

requirements cannot fit squarely into the mode of sale of HOS flats. Besides, there are simply no financial or other reasons for HA not to provide accurate and comprehensive information in the process. While HA will not be covered by the Bill, it will sell HOS flats in accordance with the applicable requirements under the Bill in future as far as practicable. In fact, HA has observed the administrative regulatory measures applicable to the sale of uncompleted first-hand residential properties in the sale of HOS flats in the past.

37. The Bills Committee has sought elaboration on the requirements under the Bill which cannot fit squarely into the mode of sale of HOS flats. According to the Administration, some of the prescribed information to be provided in the sales brochures under the Bill has to be based on building plans approved by the Building Authority (BA) for the purposes of section 14(1) of BO, while some of the prescribed information to be provided in the mandatory provisions in ASP has to be certified by an AP. The Bill has also adopted the issuance of OP as the cut-off point for vendors to fulfill various requirements under the Bill. Pursuant to section 41(1)(aa) of BO, buildings upon any land vested in HA or over which HA has control and management are exempted from the provisions of BO. Buildings constructed by HA do not require prior approval and consent from BA and hence do not have approved building plans as such. Also, HA does not have to appoint AP for the design and construction of HA developments and these developments do not have OP. As a result, there are technical difficulties in applying various requirements under the Bill to HA.

38. At members' repeated requests, the Administration eventually agrees to introduce CSAs to the effect that developments constructed by HA will be exempted from requirements under Part 2 of the Bill in relation to sales brochures, price list, show flats for uncompleted development or phase, viewing of property in completed development or phase, sales arrangements, preliminary agreement and agreement, and dissemination of transaction information. HA will still be required to comply with the requirements on advertisements and be held criminally liable for breaching the other provisions in the Bill, including misrepresentation or dissemination of false or misleading information. If it is proved that the commission of an offence was aided, abetted, counselled, procured or induced by, or an offence was committed the consent or connivance of, or was attributed to any recklessness on the part, of an "officer" (meaning the director, secretary or manager of HA and including any person who occupies the position of director, secretary or manager (by whatever name called)) of HA, the officer commits the offence. Notwithstanding that developments constructed by HA will not be subject to Part 2 of the Bill, STH will make it clear at the resumption of Second Reading debate on the Bill that HA will sell HOS flats in accordance with the principle of transparency as reflected in Part 2 of the Bill.

39. The Administration has further advised that the proposed exemption will only cover developments constructed by HA (including new and residual HOS flats), and not Private Sector Participation Scheme (PSPS) flats which were previously constructed by private developers (rather than HA). It is also worth noting that

PSPS has been discontinued.

Sales brochure (Clauses 15 to 25)

40. The Bill provides that a vendor of a specified first-hand residential property must make public the bilingual sales brochure at least seven days immediately before the date of sale except under specified circumstances<sup>2</sup>. Sales brochures must set out prescribed information in a prescribed sequence, must not contain any information other than the prescribed information, and must have the expressions of "Sales Brochure" and "售樓說明書" printed not smaller than the prescribed minimum font size as its title on the cover. Sales brochure must also state the date on which it is printed.

41. The Bills Committee notes that in the light of increased public concern about insufficient information in the sales brochure on the difference in levels between the lowest residential floor of the building blocks and the adjacent streets (as revealed in a recent sale of first-hand residential development in Ma On Shan), a new provision has been included when refining the Bill such that the sales brochure must, in relation to every building in the development, set out a plan showing a cross-section of the building in relation to every street adjacent to the building, and the level of every such street in relation to a known datum and to the level of the lowest residential floor of the building. This will help the public to visualize the relationship between the lowest residential floor of a building and the street level, regardless of how that lowest residential floor is named. Some members hold the view that vendor should also be required to provide (in addition to outline zoning plan, layout plan, floor plan and cross-section plan) a plan showing all elevations of the development. Taking into account members' view, the Administration will introduce CSAs to make it mandatory (rather than optional under the Bill as currently drafted) for vendors to provide a plan showing all elevations of the development in the sales brochures.

42. On the requirement that sales brochure must not set out any information other than the information required or authorized by the Bill, the Bills Committee notes that some deputations (including The Law Society of Hong Kong) have suggested allowing vendors to provide information that is specific to a development in the sales brochure. The Administration agrees to introduce CSAs to require vendors to disclose in the sales brochure specific information about a residential property in the development which is known to the vendor but not to the general public, and is likely to materially affect the enjoyment of the residential property. Also, the

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<sup>2</sup> These circumstances include –

- (a) if the property are sold on an "en bloc" basis (such properties will be regarded as first-hand properties to which the requirements on sales brochure will apply if they are subsequently put on sale to individual purchasers); and
- (b) if a residential property is sold to the existing tenants who agree that the requirements on sales brochure do not apply.

Administration will introduce CSA to enable vendors to provide in the sales brochure any information that is required by the Director of Lands for Consent Scheme projects.

43. Given that certain prescribed information in sales brochures must be set out in a prescribed sequence and printed in a prescribed font size, failing which will be liable to a fine of \$500,000 and level 6 (i.e. \$100,000), some members (including Ms Miriam LAU) have questioned the rationale for imposing relatively heavy penalty for minor offence of breaching the font size requirements. These members have also enquired if other existing ordinances have similar requirements. According to the Administration, sales brochure is a very important source of information on the sale of first-hand properties (particularly under the Bill which will be the primary and the most comprehensive source of information to which prospective purchasers may make reference). There was concern from time to time in the past that information in the sales brochures was printed in font sizes which were not reasonably readable, and that prospective purchasers might miss out important information. It is therefore important to set out in the Bill the font size requirements and make it a criminal offence for breaching these requirements. Besides, the font size requirements and the level of penalty for breaching these requirements were fully discussed at and recommended by the Steering Committee. There are also existing ordinances which have provisions to prescribe the font size of mandatory information and criminal penalty for contravention. By way of illustration, sections 4(1)(b) and 5(1)(b) of the Energy (Labelling of Products) Ordinance (Cap. 598) prescribe the font size and typeface for the energy label. A manufacturer can only supply a prescribed product under Cap. 598 which bears an energy efficiency label prepared according to the prescribed requirements, failing which is an offence and liable to a fine at level 6.

44. The Administration has further advised that the proposed penalty levels for offences under the Bill are determined by reference to various general principles. For minor offences that are regulatory in nature (e.g. failure to provide a copy of sales brochures to specified authorities within the required timeframe) should be subject to a maximum fine at level 6. For offences that may directly affect and potentially bring financial loss to prospective purchasers (e.g. failure to disclose transaction information), the maximum penalties are a fine of \$500,000 to \$1,000,000. For serious offences (e.g. misrepresentation and dissemination of false/misleading information), the maximum penalties range from a fine of \$500,000 to \$5,000,000 and imprisonment up to a maximum of six months to seven years.

45. Some other members (including Ms Audrey EU) consider that there should be express provision under the Bill to prohibit the inclusion of important information (such as rider or proviso) which can qualify or restrict the main text in the explanatory note or remark, the prescribed font size of which is much smaller than that of the main text of the sales brochure. Taking on board members' view, the Administration will introduce CSA to make it clear that a reference to an explanatory

note or remark for the main text of the sales brochure excludes a note or remark that qualifies the contents of the main text. Separately, to facilitate members to visualize the prescribed font sizes, the Administration has provided an illustration of font size requirements in sales brochure (Annex A to LC Paper No. CB(1) 1861/11-12(01)).

46. The Bills Committee notes that the information set out in the sales brochure for the development must be accurate in every material respect as at the date on which it is printed. Given that the Bill does not require vendors to update the sales brochure even if certain key information in the sales brochure becomes outdated, some members (including Ms Audrey EU) are concerned that this may deprive purchasers' right to access to accurate information. Some other members (including Ms Miriam LAU) however consider it impractical to require vendors to do so as it will mean frequent and endless updating. On balance, the Administration proposes to introduce CSAs to require that the sales brochure being made public in relation to a sale has to be the one which is printed/updated (if necessary)/examined within the past six months. Under the proposal, vendors are required to examine/update the sale brochure every six months in the course of the sale. With this new requirement in place, the Administration considers that the vendor's information form<sup>3</sup> (VIF) can be simplified because there is no need to repeat the information again in VIF if this is already provided in the sales brochures. Also, the Administration considers that vendors should be required to provide a VIF in the sale of first-hand completed residential properties for reference of prospective purchasers, regardless of whether the developments have been offered for sale as an uncompleted development.

47. Some members have enquired about the basis for the proposed CSA that sales brochure should be updated at least once within a period of six month period, and whether there is room for shortening the period for updating/examination to say two to three months. These members are concerned that, if the requirement is set at six months, vendors will only examine the information in the sales brochure not more than once during that six month period, and will do so only towards the end of each of the six months to avoid more frequent updating in the interim. The Administration has advised that in proposing the relevant CSA to require the sales brochure being made public in relation to a sale has to be the one which is updated/examined within the past six months, it has taken into account the need to strike a balance between practicality and the provision of updated information to prospective purchasers. As vendors are required under the Bill to provide a lot of information in the sales brochure, it may not be practical to require them to update the sales brochure whenever there are material changes to the information. Also, too frequent updating of the sales brochure will cause confusion to prospective purchasers as there will be too many editions of sales brochure over a period of time. Taking into account members' view, the Administration proposes to introduce revised

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<sup>3</sup> VIF is used to provide updated information to prospective purchasers when the residential property is sold to the sitting tenant, and when a completed property (which has been offered for sale when the development or the phase was an uncompleted development of phase) is offered for sale.

CSA to the effect that sales brochure being made public in relation to a sale has to be the one which is updated/examined within the past three months instead of the past six months. This will also minimize the possibility of vendors from deliberately delaying the updating of information in the sales brochure.

48. Given that it is an offence under the Bill if information in sales brochure is not accurate in every material respect (the penalty of which is a fine of \$500,000 and imprisonment for 12 months), some members are concerned that vendors may be unnecessarily caught for circulation of outdated sales brochures by parties other than the vendor. These members therefore agree with The Law Society of Hong Kong on the need for mens rea/knowledge of the inaccuracy before imprisonment is imposed. The Administration has reiterated that sales brochure is the most important source of property information to prospective purchasers, any contravention (whether it is intentional or not) may directly affect and potentially bring financial loss to purchasers. The proposed penalty of a fine and/or imprisonment aims at achieving an effective deterrent effect regardless of the vendor's intention to commit the offence. Notwithstanding, a due diligence defence is provided under the Bill.

#### Price list (Clauses 26 to 31)

49. The Bill provides that a vendor must make public the price list at least three days immediately before the date of sale except under various circumstances<sup>4</sup>. To ensure sufficient transparency and to enable prospective purchasers to obtain comprehensive information before making purchase decisions, vendors are required to make public the price list with a minimum number of residential properties to be covered in the first and subsequent price lists at least three days before the sale commences. The minimum number of residential properties to be included in the price lists depends on the size of the development or a phase of development. While vendors are not obliged to offer to sell all the residential properties covered in a price list, when they sell, or offer to sell, such a residential property, this has to be sold or offered at the price set out in the price list. Once a price list is issued, adjustments to the prices can only be made through a revision to the price list, and the residential property concerned cannot be sold unless the revised price list has been made public at least three days ahead. Vendors are also required to include essential information (such as special payment terms, including all kinds of gifts, financial advantages and benefits in connection with the sale of the unit affecting the actual price of the unit) in the price list.

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<sup>4</sup> The requirement will not apply under the following circumstances:

- (a) the sale of all specified residential properties in a development or phase on an "en bloc" basis;
- (b) sale of a specified residential property by a corporation or a specified body to an associate corporation or a holding company, and sale of a specified residential property by an individual to an immediate family member of the individual;
- (c) sale of a specified residential property to a sitting tenant;
- (d) sale of a specified residential property by way of auction or tender; and
- (e) sale of a specified residential property in a development constructed by HA.



50. Mr Abraham SHEK notes REDA's view that requiring vendors to publish price list covering a minimum number of residential properties may constitute an unjustifiable restriction on the vendor's right to use or dispose of his property in breach of Articles 6 and 105 of the Basic Law. In this connection, he has exchanged further correspondences with the Administration on the subject. Mr SHEK's letters and the Administration's responses are set out in LC Paper Nos. CB(1) 2031/11-12(01), 2086/11-12(04), Annex to 2109/11-12(02), 2120/11-12(03), 2150/11-12(01), and 2166/11-12(01). In gist, the Administration does not agree that the requirement that a price list must cover a minimum number of residential properties is inconsistent with the protection of property rights under Articles 6 and 105 of the Basic Law, because the Bill does not require vendors to sell all the residential properties covered in the price list. The Administration also considers that the requirement to cover a minimum number of properties in the price list is likely to be seen by the courts as rationally connected to its stated aim of enabling prospective purchasers to get a fuller picture of the prices of the properties in a development.

51. Some members (including Ms Audrey EU) however are concerned that vendors may deploy the tactics of selling residential properties in small batches if they are not required to offer for sale all the residential properties covered in a price list. These members have enquired whether it will be a contravention to the existing laws (including the Basic Law and Hong Kong Bill of Rights) for requiring every residential property covered in a price list must be offered for sale. The Administration has advised that the requirements under the Bill are already more stringent than the existing practice under the Consent Scheme and REDA's guidelines which set the minimum number of residential properties to be included in the first price list of each batch of sale only and not the subsequent price lists. Under the current administrative measures, developers are free to determine the number of residential properties to be included in a batch of sale. Requiring vendors to offer for sale their properties at specified quantities prescribed by the Administration will impose an excessive burden and restrictions on the vendors, and may give rise to concerns in relation to Articles 6 and 105 of the Basic Law. The Administration considers that the existing requirement for vendor to provide the prices of a minimum number of residential properties in each of the price lists of a development or phase, without going further to require the vendor to offer for sale all the residential properties in the price lists, strike a balance between enhancing consumer protection and allowing developers to continue to make business decisions in the light of changing market situations.

52. Noting that reservation of properties (i.e. an expression of intent to purchase a property on a "subject-to-contract" basis) will be allowed on or after the issuance of price lists only if it does not involve the reservation of a particular residential property, some members are concerned that the prohibition on expression on intent before a price list is made available may preclude a purchaser from negotiating price on a specific residential property with the vendor which is a common practice

nowadays. These members stress the need to strike a balance between prevention of manipulation of market and facilitating commercial activities.

53. According to the Administration, there are at present no clear guidelines regarding the reservation of residential properties under the Consent Scheme. The Bill aims to set out clearly the time point at which vendors may seek and accept various types of expression of intent. In gist, a vendor must not seek and must reject any general or specific expression of intent from any other person on any specified residential properties before copies of the price list are made available. After copies of the price list are made available but before a date of the sale, a vendor must not seek and must reject any specific expression of intent from any person on any specified residential properties covered in the price list. The policy behind the different time frames for allowing/disallowing vendors to seek and accept various types of expression of interest is to prevent vendors from using "reservation" as a disguise to start any sale before the first day of sale as announced. An illustration of a possible scenario is given in the Annex to LC Paper No. CB(1) 1998/11-12(02). To make it clear the vendor may seek and accept expression of intent on and after the first day on which the specified residential property is offered for sale, the Administration will introduce CSAs to this effect.

54. The Administration has further advised that 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 for sale. The vendor may change the price of a specified residential property but he must revise the price list which sets out the price of the specified residential property to reflect the change. The vendor may sell, or offer to sell, the specified residential property at the price as revised three days after the issue of the revised price list. To facilitate the public to know clearly and easily as to whether the price of a residential property has been changed, the Administration will introduce CSA to the effect 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.

55. Some other members are however concerned that the purchaser who negotiates with the vendor on the price of a specific residential property may not be able to buy the property as the revised price list has to be made available to the public. The Administration has advised that the Bill does not dictate how the vendor should dispose of a specified residential property. It only requires the vendor to make known at least three days prior to the commencement of sale the method to be used to determine the order of priority in which persons who are interested in purchasing a particular property may proceed with the purchase.

56. In response to members' further enquiry on why any change to the price of a specified residential property must have to be reflected in that price list by a revision to that same price list, the Administration has advised that there are various possible methods of making changes to prices. However, 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. The Administration considers that the proposed method has the merit of enabling prospective buyers and the public to know in totality the number and details of residential properties which have appeared in a price list have prices adjusted by making reference to the just one and the same price list rather than having to make cross-reference to various different price lists.

57. Noting that a price list of a specified residential property must set out "a description of the residential property", some members hold the view that the Administration should make it clear the specific information to be included in the "description of the residential property". According to the Administration, "description" under the Bill refers to a description by means of which the property can be identified. Developers and conveyancing solicitors are familiar with the use of this term and know the types of information to be provided. For instance, "description of the residential property" in the case of an apartment block refers to the room number of the unit (if any), the floor at which the unit is located (if any), and the name of the block where the unit is located (if any). Therefore, the Administration considers it appropriate to keep this expression in the Bill.

#### Show flats for uncompleted development or phase (Clauses 32 to 39)

58. Under the Bill, it is not a mandatory requirement for a vendor to provide show flat for public viewing. However, if a show flat is provided for public viewing, its set-up must comply with the prescribed requirements in the Bill. In particular, there must first be an unmodified show flat before a modified show flat of the same property can be provided. Visitors will be allowed to take measurements in all show flats, as well as take photos and videos in unmodified show flats.

59. The Bills Committee notes that under the Bill, the dimensions of unmodified and modified show flats should be the same as those specified in relation to the residential property in the sales brochure. Some members (including Professor Patrick LAU) have pointed out that the actual dimensions of the show flats may not be exactly the same as shown in the sales brochure which is prepared on the basis of the latest approved building plans as at the date of printing. It is because show flats will likely include wall finishes (e.g. plaster) but building plans will not take into account such features. There may be a need to include in the Bill a level of tolerance for possible difference in measurement of residential properties to ensure that such difference will not be used as an excuse to rescind an ASP.

60. According to the Administration, the Bill has already required for the inclusion of a mandatory provision in the ASP for sale of uncompleted property that a purchaser is at liberty to rescind an ASP if there is a difference in measurement exceeding 5% as a result of an alteration of building plans. In other words, a purchaser may rescind an ASP on the grounds of difference in measurement between

the residential property as set out in the ASP concerned and the actual property only if difference in measurement exceeds 5%. The arrangement is the same as the requirement under the Consent Scheme.

61. Some members note that under the Bill, the show flat must not be made available for viewing by prospective purchasers or the general public before the vendor has made copies of the sales brochure for the development of the phase available. Given that it remains the vendors' responsibility to ensure compliance with the requirements on show flats under the Bill, these members have enquired if greater flexibility can be allowed for vendors to provide show flats before the sales brochures are made available to the public. The Administration has reiterated that sales brochure is the most important source of information on first-hand residential properties. Therefore, purchasers should have access to the information contained in the sales brochure before viewing the show flats. Vendors who wish to allow a longer time span for prospective purchasers to visit the show flats before the commencement of sale may do so once they have made available the sales brochure.

#### Viewing of property in completed development or phase (Clauses 40 to 42)

62. The Bill provides that a residential property in a completed development or a completed phase of development may not be sold unless arrangements have been made for the prospective purchaser to view the particular property he/she wishes to buy. If it is not reasonably practicable to view that particular property, the vendor must arrange a comparable property for viewing before the residential property in question may be sold. If it is also not reasonably practicable to arrange a comparable property for viewing, the vendor is required to obtain a written agreement from the prospective purchaser agreeing not to view a comparable property before the residential property in question may be sold.

63. Some members stress the need to make it clear in the Bill that the comparable property for viewing should be situated at the same residential development. According to the Administration, a vendor is required to make "a comparable residential property in the completed development of completed phase" available for viewing. It follows that the "comparable residential property" so made available for viewing must mean a property situated at the same development or phase. On members' suggestion of stipulating in the Bill that viewing of a specified residential property should be made available at the request of a prospective purchaser subject to a viewing quota, the Administration has advised that vendors may have difficulties if they are required to make available a specified residential property for viewing by a prospective purchaser whenever the latter makes a request and so long as that request does not exceed a viewing quota for each purchaser to be prescribed in the Bill.

64. The Administration has also taken on board members' view that there may be privacy issue if a vendor is required to allow prospective purchasers to take measurement/photo or make video recordings in a property which has a sitting tenant,

and will introduce CSAs to provide an exemption for such a situation.

Sales arrangements and related matters (Clauses 43 to 47)

65. Under the Bill, a vendor must make public various kinds of key information relating to logistics arrangements (such as the date and time when the residential properties are offered for sale, the sales venue(s), the number and details of residential properties to be offered for sale, as well as the method to be used to determine the order of priority of prospective purchasers) at least three days immediately before the date of sale commences. Such information should be provided on the vendor's website.

66. Noting that specified residential properties must not be sold or offered to be sold before the date and time published in the vendor's designated website three days before the commencement of sale of these residential properties, some members are concerned that such requirement may unduly affect the actual operation of the real estate trade. In this connection, the Administration may need to further consult REDA and CC. According to the Administration, vendors are allowed to make changes to the sales arrangements, but they have to make public the revised arrangements in its designated website and wait for three days before the commencement of sale of those specified residential properties which the revised arrangements will apply. CC has also reconfirmed its support for the requirement to enhance the transparency of sales arrangements. To clearly spell out the policy intent in the Bill, the Administration will introduce CSAs in this respect.

67. Apart from websites of vendors, the Bills Committee considers that there should be other channels through which purchasers can have access to information on sales arrangements. The Administration has taken on board members' view, and will introduce CSAs to require vendors to also make available hard copies of a document containing information on the sales arrangements for collection by the general public free of charge during a period of at least three days immediately before the sale.

Conveyancing procedures and related matters (Clauses 48 to 50)

68. The Bill requires the inclusion in PASP and ASP various mandatory provisions which will prevail over any inconsistent provision therein. To further enhance consumer protection, the Bill also requires, if a PASP is entered into, the signing of ASP by the purchaser within three working days after the signing of a PASP, and by the "owner" within six working days after the signing of a PASP ("cooling-off" arrangement). If a purchaser decides not to proceed with the signing of an ASP within three working days after the signing of PASP, he may do so unilaterally and the cost of such a decision is to be capped at 5% of the purchase price. However, the "owner" must proceed to sign the ASP, except where the purchaser who has signed the PASP chooses not to sign the ASP.

69. Some members have questioned the rationale for using the term "owner" rather than "vendor" in this part of the Bill. The Administration has advised that as the interpretation of "vendor" under the Bill has been extended to cover other specified persons engaged by the owner, it would not be appropriate to use "vendor" in this part of the Bill where obligations should be imposed on "owner" only. These members however point out that "owner" may include other persons in relation to the sale of residential properties, such as sale by an agent of owner, sale under a power of attorney, sale by a liquidator of a winding-up developer company, and sale by a personal representative of the estate of a deceased owner. According to the Administration, a PASP/ASP on a property entered into through an agent or under a power of attorney is still regarded as entered into by owner. If a company is in the process of winding up, the liquidator may sell the company's property in the name of the company by exercising the power to sell under section 199 of the Companies Ordinance (Cap. 32). In that case, the company in liquidation will be regarded as "owner". However, the case of personal representatives is not the same as liquidators. A personal representative, who represents the deceased in regard to his estate, may dispose of the deceased's property and hence is to be regarded as "owner". In response to members' question on whether the owner is to be held liable for non-compliance with the Bill, the Administration has advised that this will depend on the facts of the particular case. Besides, the owner may raise the due diligence defence under the Bill.

70. Some other members have enquired about overseas experience on the "cooling-off" arrangement and forfeiture policy, and whether consideration can be given to extending the "cooling-off" period, and reducing the forfeiture amount. According to the Administration, different economies have formulated different "cooling-off" arrangement (if any) and forfeiture policy to suit their needs having regard to the unique characteristics of their residential property markets. For instance, in Singapore, if a purchaser who has been granted an "Option to Purchase" chooses not to proceed with the transaction within three weeks upon receipt of the relevant document, a booking fee equivalent to 1.25% to 2.5% of the purchase price will be forfeited. It's worth noting that what is suitable for other economies may not be suitable for Hong Kong.

71. The Administration has further advised that at present, the forfeiture amount is set at 10% of the purchase price of a first-hand residential property in the case of projects under the Consent Scheme. The Bill has already lowered the forfeiture amount from the existing 10% to 5% of the purchase price taking into account the particular characteristics of the residential property market in Hong Kong, including the volatility of the market and the exuberance of speculative activities, as well as the need to deter abuse by speculators or hasty purchase decisions by prospective purchasers. It is therefore considered not desirable to further lower the forfeiture amount. Nevertheless, the Administration will provide a longer period of time for a purchaser to sign an ASP after the signing of PASP, having regard to the practical difficulties envisaged by The Law Society of Hong Kong as well as the Hong Kong

Conveyancing and Property Law Association Limited for conveyancing solicitors to complete advising their clients on and arranging them to sign an ASP within three working days counting from the date on which the client has signed a PASP. The Administration will introduce CSAs to the effect that a purchaser should sign an ASP within five working days after the signing of PASP.

72. Not convinced of the Administration's response, Mr LEE Wing-tat has indicated his intention to introduce CSA to lower the forfeiture amount to 3%.

#### Disclosure of transactions (Clauses 51 to 54)

73. Under the Bill, a vendor must use a standardized "Register" to disclose key transaction information. In order to provide timely information to prospective purchasers, the Bill stipulates that transaction information must be disclosed within 24 hours after a PASP is entered into, and within one working day after an ASP is entered into. If the purchaser does not proceed to sign the ASP within three working days, such fact must be stated in the Register on the fourth working day after the date on which the PASP is entered into. If the ASP is terminated, the date of termination must be stated in the Register within one working day after that date. Apart from the particulars of the residential property, a vendor must also disclose in the Register whether the purchaser is a related party of the vendor.

74. Noting that different time requirements are used for disclosure of information in respect of a PASP (within 24 hours) and an ASP (within one working day), members have sought clarification on the rationale behind the difference, and the circumstances if the specified day falls on a Sunday, public holiday, or a day when the black rainstorm signal/typhoon signal number 8 is hoisted. According to the Administration, a working day means a day that is NOT a general holiday, or a black rainstorm warning day, or gale warning day as defined under section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1). If a specified day falls on a Sunday, a public holiday, or a day when the black rainstorm signal/typhoon signal number 8 is hoisted, such a day will not be counted as a working day. The Administration has further explained that the time requirement for vendors to disclose information on a PASP is more stringent than that for the disclosure of other transaction information because vendors are allowed to seek and accept general expression of intent on the residential properties after the issue of the price list covering those residential properties and may publicize general expression of intent to boost sale. It is in the interest of the public to know as soon as possible the actual number of PASP signed.

75. Given the large number of property transactions within a day, some members (including Mr Abraham SHEK) have questioned the practicality of requiring vendors to disclose transaction information within the specified time limits, and enquired if consideration can be given to extending the time limits in consultation with the real estate trade. The Administration has advised that different opinions on the time

limits within which transaction information should be disclosed have been received during the public consultation exercise. For instance, REDA considered that longer time should be given for vendors to disclose transaction information whereas CC called for real-time on-line disclosure of transaction information. The requirements on 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 for reasonable lead time for vendors to make ready the transaction information.

76. Some members consider that vendors should also be required to enter into the Register additional particulars, including unusual date of completion and cancellation clauses. Given that members of the public who wish to know the date of assignment of a specified residential property may have access to such information by conducting land search at the Land Registry and to find out the cancellation clauses of an agreement by obtaining a copy of the agreement from the Land Registry, and that it is reasonable to expect the vendors can only provide the most basic information within the prescribed time requirements, the Administration does not consider it necessary to include those additional requirements in the Bill. Besides, it will be very difficult to define the meaning of "unusual" date of completion or cancellation clauses.

77. The Administration has also taken on board members' views that the Bill should cater for the situation where no PASP is entered into before the signing of an ASP, and explicitly specify for the inclusion of information on parking spaces in the Register if the parking space is sold together with the residential property, and will introduce CSAs to such effects.

#### Exceptions and additional requirements (Clauses 55 to 58)

78. The Bill provides, among others, that for the sale of residential property to an existing tenant who has continuously lived in the residential property for a period of at least one year, the vendor can be exempted from the requirement relating to the provision of the sales brochure upon the written agreement of the existing tenants concerned. The vendor however will be required to provide a VIF with essential and up-to-date information to the existing tenant who wishes to purchase the residential property. However, such transactions are still required to be disclosed.

79. Some members have enquired if the exemption arrangement could apply to any sitting tenant so long as the property has been leased out for a continuous period of at least 12 months regardless of the number of tenants involved. According to the Administration, the rationale behind the exemption arrangement is that the sitting tenant should be quite familiar with the property and hence some requirements on the sale of first-hand residential properties (particularly the provision of sales brochure and price list) may be waived. However, the scenario put forward by members does not serve such purpose.



Advertisements (Clauses 59 to 64)

80. Under the Bill, advertisements that purport to promote the sale of any first-hand residential property must contain a statement reminding prospective purchasers to refer to the sales brochure. It is an offence to publish or cause to be published an advertisement containing information that is false or misleading in a material particular. Specific defences are available where a contravention took place by an issue or a reproduction, re-transmission or live broadcast or the advertisement.

81. Some members consider that a definition of "advertisement" should be provided under the Bill for the sake of clarity. The Administration has advised that "advertisement" is to be construed according to the natural meaning of the word. The part of the Bill in relation to advertisements is drafted with reference to section 9 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C) and section 86B of the Education Ordinance (Cap. 279), both of which do not contain a definition of "advertisement". The Securities and Futures Ordinance (Cap. 571) (SFO) as well as the Banking Ordinance (Cap. 155) also contain provisions on "advertisement" but do not give a definition on "advertisement".

82. Noting that a person is required to state in an advertisement that the information set out in that advertisement is provided by the vendor, members have enquired about the rationale behind such requirement, and the circumstances where part of the information in the advertisement is provided by the vendor and part of it is not. According to the Administration, people other than the vendor may place advertisements on the sale of a first-hand residential development. The reliability and trustworthiness of an advertisement which is published by or published with the consent of the vendor may differ from the one which is not. The rationale for requiring a person to state in an advertisement that the information set out in that advertisement is provided by the vendor aims to facilitate prospective purchasers to ascertain whether an advertisement is published by the vendor, or published by another person with the consent of the vendor. The Administration agrees that the Bill as drafted may not bring out the intention clearly, and will introduce CSA to improve the drafting.

Misrepresentation and dissemination of false or misleading information (Clauses 65 to 66)

83. Under the Bill, it is an offence for a person to make "fraudulent misrepresentation" or "reckless misrepresentation" for the purpose of inducing others to purchase any first-hand residential property. It is also an offence for a person to disclose, circulate or disseminate information that is likely to induce another person to purchase any first-hand residential property if the information is false or misleading as to a material fact. Specific defence provisions are available where a

contravention takes place by an issue or a reproduction, re-transmission or live broadcast of the information.

84. In the absence of specific definitions of "misrepresentation" and "false or misleading" information, members are concerned that vendors or estate agents will be unnecessarily caught by the Bill. The Administration has advised that in drafting the provisions concerning the prohibition of "misrepresentation" and "false or misleading information", reference has been made to various existing ordinances, including the Estate Agents Ordinance (Cap. 511) and SFO. Where the concept of "misleading" appears in these ordinances in similar context, the word "misleading" is not defined. The question of whether a piece of information is "misleading" should depend on the actual context. It will also be impossible to give an exhaustive list of information which might be construed as "misleading" and trying to do so will only create loopholes. Under the Bill, the prosecution will need to prove that the person knows that, or is reckless as to whether the information is false or misleading as to a material fact.

85. In response to members' enquiry on whether creative ideas contained in advertisements on first-hand residential properties (particularly those for live broadcast, which deviate from the material facts) will be construed as dissemination of false or misleading information, the Administration has advised that "creativity" and "misleading information" are two different things. The Bill has no intention to stifle creativity. The provisions on "advertisements" in the Bill (which are in line with other legislation such as the Estate Agents Ordinance (Cap. 511)) aim to strike a balance between protecting creativity and ensuring the provision of accurate information. The question of whether the contents of an advertisement on a first-hand development constitute a dissemination of false or misleading information depends on the facts of the case. Besides, the Authority to be set up under the Bill will look into any complaint/suspected case in accordance with the law.

86. To enhance consumer protection, some members (including Ms Audrey EU) have explored the feasibility of expanding the scope of this part of the Bill to misrepresentation and dissemination of false or misleading information in relation to the sale of overseas residential properties conducted in Hong Kong. The Administration has explained that the objective of the Bill is to regulate the sale of first-hand residential properties situated in Hong Kong. The Bill has been drawn up after an extensive and detailed discussion over the past one and a half years, and based on the provisions under the Consent Scheme as well as the guidelines issued by REDA. The Bill provides a holistic and effective framework to regulate the sale of first-hand residential properties situated in Hong Kong. However, regulating the sale of overseas residential properties conducted in Hong Kong is a completely different subject that requires careful consideration. It will involve more than just adding a provision to stipulate that a particular part of the Bill will also apply to non-Hong Kong residential properties, given the need to define "first-hand residential properties" in the context of non-Hong Kong residential properties which is not likely

to be straight-forward. Also, a full examination of all the possible issues relating to the sale of overseas residential properties conducted in Hong Kong will need to be conducted to cater for those scenarios in the Bill. It will take considerable time to conduct such an exercise which may not be possible given the limited time available. Besides, it is inappropriate to single out a particular part from the Bill and apply it to other types of residential properties. It is also worth noting that where a sale of overseas residential property conducted in Hong Kong involves misrepresentation or false/misleading information, such wrongful act may attract criminal liability (depending on the circumstances of the case) under existing legislation, such as the Theft Ordinance (Cap. 210).

87. Some other members have sought clarification on the difference between the Bill and Cap. 210 in dealing with misrepresentation and dissemination of false or misleading information. According to the Administration, the charges of "theft", "fraud", and "obtaining property by deception" under sections 9, 16A and 17 of the Theft Ordinance respectively may be applicable where a sale of overseas property in Hong Kong involves misrepresentation or false/misleading information. The elements of the offences under the Bill are essentially the same as that of say the offence of fraud under section 16A(1)<sup>5</sup> of Cap. 210. The scope of "deceit" as defined in section 16A(3)<sup>6</sup> of Cap. 210 is a wide one and will encompass the acts of contravention under the Bill, including the making of reckless misrepresentation and dissemination of false or misleading information. As compared with the Bill which only aims to regulate the sale of first-hand residential property, the scope of fraud under Cap. 210 is wider as it will suffice if a person practicing the deceit obtained benefit for himself or for another person by, or if there is prejudice or substantial risk of prejudice to any person.

#### Defence provisions and other supplementary provisions on offences (Clauses 67 to 73)

88. The Bill provides for defence provisions as appropriate, including that of due diligence, for offences under the Bill. The Bill also provides that if a corporation or a specified body commits an offence under the Bill, and that if the commission of the offence is aided, abetted, counselled, procured or induced by an officer (i.e. director, manager and secretary of a company or body corporate) of the corporation /specified body /its holding company, or the offence is committed with the consent or connivance of, or is attributable to any recklessness on the part, such officer also

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<sup>5</sup> Section 16A(1) of Cap. 210 provides that "if any person by any deceit (whether or not the deceit is the sole or main inducement) and with intent to defraud induces another person to commit an act or make an omission, which results either - (a) in benefit to any person other than the second-mentioned person; or (b) in prejudice or a substantial risk of prejudice to any person other than the first-mentioned person, the first-mentioned person commits the offence of fraud and is liable on conviction upon indictment to imprisonment for 14 years".

<sup>6</sup> Section 16A(3) of Cap. 210 provides, inter alia, that "deceit" means "any deceit (whether deliberate or reckless) by words or conduct (whether by any act or omission) as to fact or as to law, including a deceit relating to the past, the present or the future and a deceit as to the intentions of the person practising the deceit or of any other person".

commits the offence and will be punished accordingly. Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under the Bill (other than an indictable offence) may be brought within three years after the commission of the offence.

89. Some members have enquired about the officers who will be held liable in the event of non-compliance with the Bill by HA, Urban Renewal Authority, Hong Kong Housing Society, and MTR Corporation Limited. The Administration has advised while different specified bodies have different organizational structures and post titles for their "officers", it is the nature of the post and not the title of the post-holder that matters. Generally speaking, the specified bodies referred to by members have clear organizational structures and delineation of responsibilities, including "boards" and management which reports to the "boards". It is worth noting that the officers of a company or specified body will not be automatically held liable when the company/specified body has committed an offence under 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".

90. Since contravention to certain provisions of the Bill would be an offence, members stress that such provisions should be clear as to when the offence is committed for the purpose of counting the three-year prosecution time limit. Taking into account members' view, the Administration has introduced CSAs to various provisions in the Bill to clarify the policy intention. To facilitate better understanding, a table setting out all the offences in the Bill with detailed particulars on the relevant provisions, the level of penalty, the time point for counting the three-year prosecution time limit, and the defence provisions that will be applicable to each offence is given in LC Paper No. CB(1) 2162/11-12(01).

91. Given that it is a defence for a person charged with an offence in relation to the issue or reproduction/transmission/live broadcast of information or advertisement to prove that he did not know at the time of the issue or reproduction/transmission/live broadcast of information or advertisement that the information was false or misleading to a material fact, members are concerned that the defence provision seems to have the effect of requiring a person being charged to prove his innocence. Besides, a person may still be subject to prosecution even if he/she has exercised due diligence in providing the evidence. According to the Administration, an offence in relation to dissemination of false or misleading information is not an offence of strict liability. The prosecution has to prove all the elements of the offence (including the mens rea that the defendants knows that, or is reckless as to whether the information concerned is false or misleading as to a material fact). Even if the prosecution has proved all the elements of the offence, it is a defence to the charge if the statutory defence is proved on the balance of probabilities. Assuming a person is suspected of contravening the offence in

relation to dissemination of false or misleading information (as to a material fact) that is likely to induce another person to purchase any specified residential property, the prosecutor should take into account any evidence collected during investigation in evaluating the sufficiency of evidence for determining whether there is a reasonable prospect of conviction. All these are important factors in considering the institution of criminal proceedings against the person. Each case must be considered on its own particular facts and in the light of surrounding circumstances.

#### The Authority (Clauses 74 to 83)

92. Under the Bill, STH may appoint a public officer to be the Authority for the purpose of the Ordinance, and may also appoint other public officers to assist the Authority in the performance of the Authority's functions. The functions of the Authority will include administering the provisions of the Ordinance, supervise compliance with the Ordinance (if enacted), educate the public on any matter relating to the provisions of the Ordinance (if enacted), and to perform other functions conferred on the Authority by or under the Ordinance (if enacted) or any other enactment. The Authority may also delegate any person as he/she thinks fit to set up an electronic database to provide information on the sale of first-hand residential developments.

93. Given that the Bill has express and detailed provisions governing the sale of first-hand residential properties, some members (including Mr Abraham SHEK) have questioned the need for the creation of the post of Authority. Instead of appointing a public officer, consideration should be given to appointing a committee to be the Authority to ensure transparency and impartiality. These members have also sought elaboration on how the Authority will supervise compliance with the Bill, and whether the manpower requirement to assist the Authority will be absorbed within the existing resources of THB and if not, the number of new posts to be created.

94. According to the Administration, 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 PASP and ASP 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, to supervise compliance with certain parts of the Ordinance (if enacted), 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. The Authority will also issue practice guidelines, carry out public education, and maintain data and statistics.

95. The Administration has further advised that the aim of setting up an enforcement unit under THB is to facilitate early implementation of the Bill and to maximize the use of public resources. The provisions in the Bill on the appointment of the Authority is similar to those in various existing ordinances, including section (4)1 of the Insurance Companies Ordinance (Cap. 41), section 5 of the Gas Safety Ordinance (Cap. 51), and section 22(1) of the Aviation Security Ordinance (Cap. 494). The initial thinking is that the enforcement unit should be headed by a public officer at an appropriate directorate level (the Authority) to be underpinned by an appropriate number of supporting staff. It will not be possible for THB or the Housing Department to absorb the work of the enforcement unit with its existing manpower resources. While the resource requirements for the enforcement authority have yet to be worked out, additional resources as necessary will be sought in accordance with the established resource allocation procedures after enactment of the Bill. Information on the organizational structure and functions of the enforcement unit will be made public in the Government's website. The Administration has stressed that the enforcement unit will operate in a transparent manner. Besides, the enforcement unit (being part of the Government structure) will be subject to the established checks and balance mechanism within the Administration, and will come under public scrutiny by the Legislative Council and the Ombudsman etc. The Administration will keep open the option of replacing the enforcement unit with an independent statutory body for performing similar functions at an appropriate time. It has also taken note of members' request for the Authority to provide a set of the published practice guidelines to the Legislative Council for information.

96. Noting that the Authority may perform functions (other than those referred to in paragraph 92) conferred on him/her by or under the Bill or any other enactment, members have enquired about the scope of "other functions". According to the Administration, the second limb merely provides that the Authority has to carry out functions as may be entrusted with under any new legislation in future. In that case, the Legislative Council will be duly consulted as the new legislation will need to be passed by the Legislature.

97. Some members have sought elaboration on the investigation powers of the Authority and how these compare with that of BA, as well as whether there is an appeal mechanism against the decisions of the Authority. The Administration has advised that as BA and the Authority are responsible for carrying out different functions, their investigation powers are of a different nature and hence not directly comparable. For instance, BA may at any time enter and where necessary, in the presence of a police officer, break into any premises or enter upon any land under section 22(1) of BO to ascertain compliance with the provisions of BO. However, such power is not conferred on the Authority because he/she does not need it. The Administration has further advised that while the Authority will carry out investigation, it does not make any decision on whether or not to take prosecution. Therefore, there is no need for an appeal mechanism against the decisions of the

Authority.

98. Referring to the electronic database to be set up by the Authority, members have suggested expanding it to cover both first-hand and second-hand residential properties to provide free access to information by the general public. According to the Administration, the electronic database will only provide information on the sale of first-hand residential properties, but the function of the database will be kept under review from time to time after its establishment. It is also worth noting that the Property Information Online set up by RVD provides the public with access to updated property information of all assessed private residential properties (excluding village houses) at a modest cost. In order to enhance transparency of valuation, it is RVD's long-term goal to provide payers of assessed private (excluding village houses) with information on SA of their own properties free of charge. RVD is currently exploring a more cost-effective way of doing so.

99. Some other members have enquired if the Authority will help purchasers to take civil actions against vendors. The Administration has advised that under SFO, the Securities and Futures Commission will not help investors to take civil action. By the same token, it may not be appropriate for the Authority to help purchasers to take civil actions against vendors. To facilitate individuals to lodge civil litigation against a vendor, the Administration will introduce CSA to stipulate that a person who makes a fraudulent misrepresentation or reckless misrepresentation by which another person is induced to purchase a specified residential property is liable to pay compensation by way of damages to the other person for a pecuniary loss that he has sustained as a result of the reliance on the misrepresentation, as in the case of SFO.

100. The Administration has further advised that consumers may apply to the Consumer Legal Action Fund (CLAF) which will provide financial support and legal assistance to meritorious cases relating to consumer transactions and involving significant public interest of injustice. For instance, CLAF assisted a group of consumers who purchased flats of a residential development project in lodging legal proceedings against the developer concerned for delay in completion of the project in 2009. To ensure that sufficient resources are available under CLAF to assist consumers with meritorious claims, the Administration has injected \$10 million each into the Fund upon its establishment in 1994 and subsequently in May 2010. As at February 2012, the balance of CLAF stood at \$19.83 million. The Administration has further advised that the Home Affairs Bureau has separately proposed expanding the scope of the Supplementary Legal Aid Scheme (SLAS)<sup>7</sup> under the Legal Aid Ordinance (Cap. 91) to cover monetary claims exceeding \$60,000 against vendors in the sale of first-hand completed or uncompleted residential properties. Buyers of

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<sup>7</sup> Supplementary Legal Aid Scheme (SLAS) came into operation in 1984 and aimed at providing legal assistance to people whose financial resources exceeded the upper limit allowed under Ordinary Legal Aid Scheme (i.e. \$260,000 at present), but below a prescribed amount (i.e. \$1.3 million at present). SLAS is a self-financing scheme which draws its funds from contributions from aided persons on the basis of damages awarded, the costs recovered in successful cases, and the application fees payable by applicants.

first-hand residential properties who are eligible may apply. The Secretary for Home Affairs has given notice to move a resolution under Cap. 91 to effect the expansion of the scope. Subject to the passage of the resolution by the Legislative Council, it is expected that the expanded scope could take effect in mid-2012.

101. While welcoming the provision of financial assistance to consumers in resolving disputes in relation to sale of first-hand residential properties, members have stressed the need for the Administration to keep in view the financial position of CLAF to ensure timely injection of fund as and when necessary. There is also a need to review the level of contribution from aided person under CLAF. The Administration assures the Bills Committee that it will closely liaise with the trustee of CLAF i.e. CC in monitoring the financial position of CLAF. It has also relayed to the Commerce and Economic Development Bureau members' request for reviewing the contribution requirement under CLAF.

Provisions required to be contained in PASP, APS (uncompleted development), ASP (completed development pending compliance), and ASP (completed development that is not completed development pending compliance) (Schedules 4 to 7)

102. Given the many mandatory provisions required to be contained in the relevant PASPs/ASPs, members have explored the feasibility of adopting the "impliedly incorporated" approach such that all the mandatory provisions are impliedly incorporated regardless of whether these are set out in the relevant PASPs/ASPs. Consideration could also be given for the Administration to set out in a pro forma all the prescribed provisions.

103. Having reviewed the applicability of the "impliedly incorporated" approach, the Administration has suggested status quo because there are blanks to be filled in for some provisions in Schedules 4 to 7 to the Bill. If all of the mandatory provisions are impliedly incorporated as such, there will be incomplete provisions in the relevant PASPs/ASPs. Given that it is a criminal offence for omitting any of the mandatory provisions required to be included in a PASP/ASP (the maximum penalty of which is a fine of \$500,000), the risk of vendors to deliberately omit any of the mandatory provisions in a PASP/ASP to be low. On the proposal of setting out the mandatory provisions in a pro forma, the Administration has advised that the legal effect will be similar to that of the current approach adopted in the Bill i.e. it will be a criminal offence if the pro forma is not used. However, it will not be user-friendly to use a pro forma setting out all the mandatory provisions for a PASP/ASP given that it is not the policy intention to require the mandatory provisions to be set out in a specified sequence in a PASP/ASP.

104. Referring to the inclusion of the clause "the vendor shall not restrict the purchaser's right to raise requisition or objection in respect of title" as one of the mandatory provisions in the relevant PASPs/ASPs, some members (including Ms Audrey EU and Mr Alan LEONG) are concerned that a purchaser may raise



requisition or objection in respect of title at any time (even just before the completion date) in the absence of a time limit for such requisitions. According to the Administration, vendors may put in provisions to prohibit purchasers' right to raise requisition in sale and purchase agreements if such a mandatory requirement is not required to be included in PASP/ASP. This is not acceptable from and not in line with the perspective of protecting consumer interest. Where an ASP is silent as to the time within which requisitions have to be raised, there will be an implied term that these have to be raised within a reasonable time. Various factors (including the time when the title deeds were delivered to the purchaser, the scheduled time for completion, the conduct of the parties as regards the requisitions, and the reasons for making such a late requisition) are to be taken into account in determining what a reasonable time is. In essence, it is a question of fact to be determined having regard to the circumstances. However, if a time period is prescribed within which requisitions have to be raised, a purchaser would be barred from raising a requisition with the vendor outside the prescribed time period even if he is able to establish that such requisition was raised within reasonable time having regards to the facts of his case. For the sake of clarity, the Administration will propose CSA to put beyond doubt that the "the purchaser's right to raise requisition" refers to the right "under the law".

105. In response to members' further question on the effect of setting out in a PASP/ASP additional provision in relation to the common law rights of purchaser (as of the date of the agreement) to raise requisition or objection in title, the Administration has advised that it would depend on whether the additional provision in question is consistent with the mandatory provisions and if not, the mandatory provisions prevail.

106. The Bills Committee has also examined other aspects of the Bill and raised no objection.

### **Committee Stage amendments**

107. A set of CSAs to be moved by the Administration is in **Appendix III**. The Bills Committee will not move any CSAs in its name. However, Mr LEE Wing-tat has indicated intention to move CSAs to the Bill.

### **Recommendation**

108. The Bills Committee supports the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting on 27 June 2012.

**Advice sought**

109. Members are requested to note the deliberations and recommendation of the Bills Committee.

Prepared by  
Council Business Division 1  
Legislative Council Secretariat  
15 June 2012

**Bills Committee on Residential Properties (First-hand Sales) Bill**

**Membership list**

**Chairman** Hon CHAN Kam-lam, SBS, JP

**Members** Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon LEE Cheuk-yan  
Hon James TO Kun-sun  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon LEE Wing-tat  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Paul CHAN Mo-po, MH, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Tanya CHAN

(Total : 19 Members)

**Clerk** Miss Becky YU

**Legal Adviser** Miss Kitty CHENG

**Date** 30 March 2012

### **List of organizations/individuals which/who have made written and/or oral representations to the Bills Committee**

- (1) Centaline Property Agency Limited
- (2) Civic Party
- (3) Consumer Council
- (4) Designing Hong Kong
- (5) Hong Kong Chamber of Professional Property Consultants Limited
- (6) Hong Kong Institute of Estate Agents Limited
- (7) Hong Kong Institute of Real Estate Administrators
- (8) Hong Kong Professionals And Senior Executives Association
- (9) Hong Kong Real Estate Agencies General Association
- (10) Mr YEUNG Wai-sing, member of the Eastern District Council
- (11) Ms YUNG Wing-sheung, member of the Islands District Council (Discovery Bay)
- (12) New People's Party
- (13) Professional Property Services Limited
- (14) Property Agencies Association
- (15) Swire Properties
- (16) The Hong Kong Conveyancing & Property Law Association Limited
- (17) The Hong Kong Institute of Architects
- (18) The Hong Kong Institute of Surveyors
- (19) The Law Society of Hong Kong
- (20) The Professional Commons
- (21) The Real Estate Developers Association of Hong Kong

## Residential Properties (First-hand Sales) Bill

**Committee Stage**Amendments to be moved by the Secretary for Transport and Housing

(as at 14.6.2012)

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “an agreement for sale and purchase nor an assignment has ever been entered into and” and substituting “a preliminary agreement for sale and purchase nor an agreement for sale and purchase has ever been entered into and in respect of which no assignment has ever been”.
2(1)	In the definition of <i>associate corporation</i> , by deleting “company or” (wherever appearing) and substituting “corporation or”.
2(1)	In the definition of <i>authorized person</i> , in paragraph (a), by deleting “supervises” and substituting “is appointed by the owner of the land to supervise”.
2(1)	In the definition of <i>building contractor</i> , in paragraph (b), by adding “general” after “registered”.
2(1)	In the definition of <i>sales brochure</i> , in paragraph (b), by deleting “section 16(2)(a)” and substituting “section 16A(2)”.
2(1)	In the definition of <i>specified body</i> , by deleting “under” and substituting “by”.

- 2(1) In the definition of *working day*, in paragraph (a), by adding “or a Saturday” after “holiday”.
- 2(1) By deleting the definition of *company*.
- 2(1) By adding—
- “corporation* (法團) means—
- (a) a company as defined by section 2(1) of the Companies Ordinance (Cap. 32); or
- (b) a company incorporated outside Hong Kong;
- immediate family member* (家人), in relation to an individual, means a spouse, parent, child, sibling, grandparent or grandchild of the individual;
- preliminary agreement for sale and purchase* (臨時買賣合約), in relation to a residential property, means an agreement in respect of the residential property that is entered into with a view to making an agreement for sale and purchase in respect of the residential property;”.
- 2 By adding—
- “(1A) In computing time for the purposes of this Ordinance, section 71(1) of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply.”.
- 4(2)(a) By deleting subparagraph (iii) and substituting—
- “(iii) neither a certificate of compliance nor a consent to assign has been issued by the Director of Lands in respect of the development; and”.
- 4(2)(b)(ii) In the Chinese text, by deleting “及” and substituting “而”.
- 4(2)(b) By deleting subparagraph (iii) and substituting—
- “(iii) neither a certificate of compliance nor a consent to assign has been issued by the Director of Lands in respect of the phase.”.

- 6 By deleting subclause (1) and substituting—
- “(1) In this Ordinance—
- residential property*** (住宅物業), in relation to a development or a phase of a development—
- (a) means any real property in the development or the phase constituting a separate unit used, or intended to be used, solely or principally for human habitation; and
- (b) excludes any premises used, or intended to be used, solely or principally as a hotel or guesthouse as defined by section 2(1) of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349).
- (1A) In subsection (1), a reference to use excludes any use in contravention of the land grant or the occupation permit (if any).”.
- 7(3)(b) By deleting “52(1)(g) or (2)(e)” and substituting “52(1)(i), (2)(a)(vi) or (3)(f)”.
- 7(3)(c) By adding “, (ha),” after “(h)”.
- 7(3)(d) By deleting “38(1) or (2),”.
- 8(5) By deleting “by a wall that is not” and substituting “otherwise than by”.
- 9 By adding “and (1A)” after “sections 2(1)”.
- 10(1)(a) By deleting “no” and substituting “neither a preliminary agreement for sale and purchase nor an”.
- 10(1)(b) In the Chinese text, by deleting “為之” and substituting “就該物業”.

- 10(2) By deleting “any of the 3 situations specified in subsections (3), (5) and (6)” and substituting “either of the situations specified in subsections (3) and (5)”.
- 10(4)(a) By deleting “under lease” and substituting “under a tenancy”.
- 10(4)(b) In the Chinese text, by deleting “除”.
- 10 By deleting subclause (6).
- 11(1)(a) By deleting “an agreement for sale and purchase” and substituting “a preliminary agreement for sale and purchase, or an agreement for sale and purchase,”.
- 11(1)(a) By deleting “any of the 3 situations specified in subsections (2),” and substituting “either of the situations specified in subsections”.
- 11 By deleting subclause (2).
- 11 By deleting subclause (3) and substituting—
- “(3) The first situation for subsection (1)(a) is that the preliminary agreement for sale and purchase, or the agreement for sale and purchase—
- (a) is entered into between—
- (i) a corporation or a specified body; and
- (ii) an associate corporation, or a holding company, of the corporation or specified body;
- or
- (b) is entered into between an individual and an immediate family member of the individual.”.
- 11(4) By deleting “third” and substituting “second”.



- 11(4)(a) By adding “one or more” after “consists of”.
- 11(4)(a) By deleting “the agreement for sale and purchase is the single agreement for sale and purchase” and substituting “the preliminary agreement for sale and purchase, or the agreement for sale and purchase, is the single agreement”.
- 11(4)(b) By deleting “the agreement for sale and purchase is the single agreement for sale and purchase” and substituting “the preliminary agreement for sale and purchase, or the agreement for sale and purchase, is the single agreement”.
- 11(4)(c) By adding “one or more” after “consists of”.
- 11(4)(c) By deleting “the agreement for sale and purchase is the single agreement for sale and purchase” and substituting “the preliminary agreement for sale and purchase, or the agreement for sale and purchase, is the single agreement”.
- 11 By deleting subclause (5) and substituting—
- “(5) The situation for subsection (1)(b) is that the assignment—
    - (a) is made by a corporation or a specified body to an associate corporation, or a holding company, of the corporation or specified body; or
    - (b) is made by an individual to an immediate family member of the individual.
  - (5A) On and after the date on which a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in respect of a residential property is terminated, or is declared void by the court, the preliminary agreement or the agreement is to be regarded as having never been entered into in respect of the residential property for the

purposes of section 10(1).”.

- 11(6) By deleting “(2),”.
- 11(6) By deleting “the agreement for sale and purchase mentioned in that subsection is entered into, terminated or declared void (as the case may be)” and substituting “the preliminary agreement for sale and purchase, or the agreement for sale and purchase, mentioned in that subsection is entered into”.
- 11 By adding—  
 “(6A) Subsection (5A) applies whether the preliminary agreement for sale and purchase, or the agreement for sale and purchase, mentioned in that subsection is entered into, terminated or declared void before, on or after the commencement of this section.”.
- 12 By deleting the definition of *relevant price list*.
- 12 In the Chinese text, in the definition of 示範單位, by deleting “潛在買方” and substituting “準買方”.
- 16 In the heading, by deleting “**Provision supplementary to section 15**” and substituting “**Prohibition on preparation of sales brochure by other person**”.
- 16(1) By adding “, for the purpose of making it available to the general public,” after “prepare”.
- 16 By deleting subclauses (2), (3), (4), (6) and (7).

- New By adding—
- “16A. Examination and revision of sales brochure**
- (1) The vendor may examine for the purposes of section 23 the sales brochure for the development to ascertain whether or not the information set out in the sales brochure is accurate as at the date of the examination.
  - (2) Any inaccuracy identified at an examination must be corrected by a revision to the sales brochure for the development.
  - (3) The vendor must, within 3 working days after the date of a revision, notify in writing each of the entities specified in Schedule 3 of the revision.
  - (4) If subsection (2) is contravened, the vendor commits an offence and is liable to a fine of \$500,000.
  - (5) If subsection (3) is contravened, the vendor commits an offence and is liable to a fine at level 6.”.
- 18(2) In the Chinese text, by deleting “然後須” and substituting “須繼而”.
- 18(2)(h)(i) In the English text, by adding “that is” after “form,”.
- 18(3) In the Chinese text, by deleting “然後須” and substituting “須繼而”.
- 18(5) In the Chinese text, by deleting “不適用於該項目的資料” and substituting “的任何資料不適用於該項目”.
- 18(5)(a) By deleting “and”.
- 18(5)(b) By deleting the full stop and substituting “; and”.
- 18(5) By adding—
- “(c) must comply with this section with respect to the location of that paragraph as if the information had been set out in

the paragraph.”.

18(6) By deleting “, (4) or (5)” and substituting “or (4)”.

New By adding—

**“18A. Contents of sales brochure: other information required to be set out**

- (1) The sales brochure for the development must set out relevant information that is specific to a residential property in the development, or relevant information that is specific to the development, if—
  - (a) the information is not otherwise required to be set out in the sales brochure; and
  - (b) the information is known to the vendor but is not known to the general public.
- (2) Subsection (1) does not authorize the sales brochure for the development to set out any information on the size or unit price of any residential property in the development otherwise than by reference to the saleable area of that property.
- (3) The sales brochure for the development must set out the address of the website designated by the vendor for development for the purposes of this Part. That address must be set out in such a manner that it is reasonably visible to any person reading the sales brochure.
- (4) The information specified in subsection (1) and (3) must be set out in the sales brochure after the information required by section 18.
- (5) If subsection (1) is contravened, the vendor commits an offence and is liable to a fine of \$500,000.
- (6) If subsection (3) or (4) is contravened, the vendor commits an offence and is liable to a fine at level 6.
- (7) In this section—
 

***relevant information*** (有關資料)—

  - (a) in relation to a residential property, means information on any matter that is likely to materially affect the enjoyment of the residential property; or

(b) in relation to a development, means information on any matter that is likely to materially affect the enjoyment of any residential property of the development;

***unit price*** (單位售價), in relation to any specified residential property, includes—

- (a) the price of the property per square foot; and
- (b) the price of the property per square metre.”.

19 By deleting subclause (2).

19(3) By deleting “or (2)”.

19 By deleting subclause (5).

19(6) By deleting “(2)(b), (3), (4)(b) or (5)” and substituting “(3) or (4)(b)”.

20(1) By deleting “must state the date on which it is printed.” and substituting—

“—

- (a) must state the date on which it is printed; and
- (b) must state, for each examination of the sales brochure under section 16A(1)—
  - (i) the date of the examination; and
  - (ii) the part of the sales brochure that has been revised to correct the inaccuracy (if any) identified at the examination.”.

20(2) By deleting “as at the date on which it is printed.” and substituting—

“—

- (a) as at the date on which it is printed; or
- (b) if the sales brochure has been examined under section 16A(1), as at the date of the last examination.”.

- 21 By adding—
- “(1A) If, under the land grant, the consent of the Director of Lands is required to be given for any sale and purchase of residential properties in the development that takes place before the conditions of the land grant have been complied with in respect of the development, the sales brochure for the development is not to be regarded as contravening subsection (1) for setting out any information that is required by the Director of Lands to be set out in the sales brochure as a condition for giving the consent.”.
- 22 By adding—
- “(7) In this section, a reference to an explanatory note or remark for the main text of the sales brochure excludes a note or remark that qualifies the contents of the main text.”.
- 23(1) and (3) By adding “immediately” after “7 days”.
- 23 By adding—
- “(9) In this section, a reference to the sales brochure for the development is a reference to the sales brochure for the development printed, or examined under section 16A(1), within the previous 3 months.”.
- New By adding—
- “23A. Application of sections 16A to 22 to sales brochure made available**
- Sections 16A(2) and (3), 17, 18, 18A, 19, 20, 21 and 22 apply only to a sales brochure, copies of which have been made available under section 23.”.
- 24 In the heading, by deleting “16” and substituting “16A”.
- 24(1) By deleting “16, 17, 18” and substituting “16A, 17, 18, 18A”.

- 26 By deleting subclause (4) and substituting—
- “(4) 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.”.
- 27(7) In the Chinese text, by deleting everything after “中，” and substituting “提述發展項目中的住宅物業的數目，就指明新界發展項目以外的發展項目而言，即提述經批准的建築圖則中所列的住宅物業的數目。”.
- 28(1) By deleting paragraph (b).
- 28(1)(c) By deleting “specified residential properties in the development.” and substituting “residential properties in the development;”.
- 28(1) By adding—
- “(d) must set out the date on which it is printed;
- (e) must state its order among all the price lists for the development in terms of the date on which it is printed; and
- (f) must, in relation to each revision made under section 26(4), set out the date on which the revision is made.”.
- 28(2)(a) In the Chinese text, by deleting “對”.
- 28(4)(b) In the Chinese text, by deleting “潛在買方” and substituting “準買方”.
- 28(6)(a) By adding “, and the stamp duty,” after “solicitors’ fees”.
- 28(8)(b) By deleting “that estate agent or another estate agent” and substituting “any estate agent”.

- 28 By adding—
- “(9A) In subsection (1), a reference to the number of residential properties in a development or a phase of a development is, in the case of a development other than a specified NT development, a reference to the number of residential properties as set out in the approved building plans.”.
- 28(11) By deleting “or (9)” and substituting “, (9) or (10)(a)”.
- 29(1) and (3) By adding “immediately” after “3 days”.
- 29 By adding—
- “(7) In this section—
- relevant price list*** (有關價單), in relation to a sale of a specified residential property, means the price list for the development or a phase of the development, that sets out—
- (a) the price of the specified residential property; or
- (b) where that price list has been revised under section 26(4) to reflect a change of the price of the specified residential property, the price of the specified residential property as last revised.”.
- New By adding—
- “29A. Application of sections 26 to 28 to price list made available**
- Sections 26(3) and (4), 27 and 28 apply only to a price list, copies of which have been made available under section 29.”.
- 30 By deleting subclauses (1) and (2) and substituting—
- “(1) The vendor must not seek any general expression of intent from any other person on the specified residential properties in the development, and must reject such a general expression of intent, before the first day on which copies of any price list setting out the prices of those specified residential properties have been made available under section 29(3).



- (2) The vendor must not seek any specific expression of intent from any other person on a specified residential property in the development, and must reject such a specific expression of intent, before the first day on which the specified residential property is offered to be sold.”
- 30(4) In the definition of *specific expression of intent*, by deleting “to specified residential properties” and substituting “to a specified residential property”.
- 30(4) In the definition of *specific expression of intent*, by deleting everything after “purchase” and substituting “the specified residential property on the basis that subject to an agreement being made, the expression does not bind the maker.”.
- 30 By adding—
- “(5) If the development is divided into 2 or more phases, subsections (1) and (2) apply as if a reference in those subsections to the development were a reference to the phase of which the specified residential property forms part.”.
- 31 In the heading, by deleting “**Sale of specified residential property at price in relevant**” and substituting “**Specified residential property to be sold or offered at price in**”.
- 31 By deleting subclause (1).
- 31(2) By adding “, or offer to sell,” after “only sell”.
- 31(2)(a) By deleting “relevant”.
- 31(2)(b) By deleting “where the relevant” and substituting “where that”.

- 31(2)(b) By deleting “the relevant price list” and substituting “the price list”.
- 31 By adding—
- “(2A) After the owner has sold the residential property to another person at the price mentioned in subsection (2)(a) or (b), that price may only be revised by virtue of any or all of the following—
- (a) clause 23 of Schedule 5, as contained in the agreement for sale and purchase under section 50A;
  - (b) a change in the terms of payment as set out in the price list for the development under section 28(5)(a);
  - (c) the availability of any gift, or any financial advantage or benefit, as set out in the price list for the development under section 28(5)(c), in connection with the purchase of the residential property.”.
- 31(3) By adding “or (2A)” after “(2)”.
- 32 By adding—
- “(1A) Even though the dimensions of the show flat, or of any bay window, air-conditioning plant room, balcony, utility platform or verandah in the show flat, are different from those specified in relation to the residential property in the sales brochure for the development, subsection (1)(b) is to be regarded as being satisfied if—
- (a) the difference is due to the finishes on the enclosing walls or boundary walls for, or internal partitions of, the show flat; and
  - (b) a notice stating the difference is displayed in the show flat.”.
- 32(3) By adding “(1A)(b) or” after “subsection”.
- 33 By renumbering the clause as clause 33(1).

- 33 By adding—
- “(2) Even though the dimensions of the show flat, or of any bay window, air-conditioning plant room, balcony, utility platform or verandah in the show flat, are different from those specified in relation to the residential property in the sales brochure for the development, subsection (1)(b) is to be regarded as being satisfied if—
- (a) the difference is due to the finishes on the enclosing walls or boundary walls for, or internal partitions of, the show flat; and
- (b) a notice stating the difference is displayed in the show flat.
- (3) A notice under subsection (2)(b) must be displayed in such a manner that the notice is reasonably visible to any person entering the show flat.”.
- 34 In the heading, by deleting “**Setting up**” and substituting “**Viewing**”.
- 34(1) By deleting “set up any show flat” and substituting “make any show flat available for viewing by prospective purchasers or by the general public”.
- 34(2) In the English text, by deleting “to set up” and substituting “to make available for viewing by prospective purchasers or by the general public”.
- 34(2) In the English text, by deleting “first set up” and substituting “first make available for viewing by prospective purchasers, or by the general public,”.
- 34(2)(a) In the Chinese text, by deleting “設置未落成發展項目中的住宅物業的示範單位” and substituting “開放未落成發展項目中的住宅物業的示範單位供準買方或公眾參觀”.

- 34(2)(b) In the Chinese text, by deleting “設置未落成期數中的住宅物業的示範單位” and substituting “開放未落成期數中的住宅物業的示範單位供準買方或公眾參觀”.
- 34(2) In the Chinese text, by deleting “設置該物業的無改動示範單位” and substituting “開放該物業的無改動示範單位供準買方或公眾參觀”.
- 34 By deleting subclause (3) and substituting—
- “(3) If an unmodified show flat of a residential property has been made available for viewing by prospective purchasers, or by the general public, under subsection (2), the vendor—
- (a) may also make available for viewing by prospective purchasers, or by the general public, a modified show flat of the residential property; and
- (b) must not make available for viewing by prospective purchasers, or by the general public, any other show flat of the residential property.”.
- 34(4) By deleting “If the vendor has set up a show flat under this section, the show flat” and substituting “A show flat of a residential property”.
- 34(4) By deleting “before the vendor has made copies of the sales brochure for the development or the phase” and substituting “under subsection (2) or (3) before copies of the sales brochure for the development or the phase have been made”.
- 34(5) By adding “, (3)(b)” after “(2)”.
- 35(1) By deleting “set up” and substituting “made available for viewing by prospective purchasers, or by the general public,”.

- 36(1) By deleting “set up” and substituting “made available for viewing by prospective purchasers, or by the general public,”.
- 37(1) By deleting “set up” and substituting “made available for viewing by prospective purchasers, or by the general public,”.
- 38(1) By deleting “the vendor has set up an unmodified show flat of a residential property” and substituting “an unmodified show flat of a residential property is made available for viewing by prospective purchasers, or by the general public,”.
- 38(2) By deleting “the vendor has set up a modified show flat of a residential property” and substituting “a modified show flat of a residential property is made available for viewing by prospective purchasers, or by the general public,”.
- 39 By deleting “sets up, in the case of section 14(2)(b),” and substituting “, in the case of section 14(2)(b), makes available for viewing by prospective purchasers, or by the general public,”.
- 42 By adding—  
“(2A) Subsection (1) does not apply if the residential property is held under a tenancy (other than a Government lease).”.
- 43 By deleting subclause (1) and substituting—  
“(1) During a period of at least 3 days immediately before a date of the sale mentioned in section 14(1), and on such a date, the vendor—  
(a) must make hard copies of a document containing the information specified in subsection (1A) available for collection by the general public free of charge;

and

- (b) must, in accordance with subsection (2), make the information specified in subsection (1A) available for inspection on the website designated by the vendor for the development for the purposes of this Part.

(1A) The following information is specified for the purposes of subsection (1)(a) and (b)—

- (a) the date and time when, and the place where, the specified residential property will be offered to be sold;
- (b) the number of specified residential properties in the development that will be offered to be sold on that date, and at that time and place;
- (c) a description of the specified residential properties mentioned in paragraph (b);
- (d) the method to be used to determine the order of priority in which each of the persons interested in purchasing any of those specified residential properties may select the residential property that the person wishes to purchase;
- (e) the method to be used, in any case where 2 or more persons are interested in purchasing a particular specified residential property, to determine the order of priority in which each of those persons may proceed with the purchase.”.

43(2) By deleting “The information must be published under subsection (1)” and substituting “For the purposes of subsection (1)(b), the information must be published”.

43(3) By deleting “(1)(a)” and substituting “(1A)(a)”.

44(1)(a)(i) In the English text, by adding “that is” after “approved form,”.

46(1) In the English text, by adding “, the floor plan” after “residential property”.

- 46(1)(a) By deleting “the floor plan”.
- 46(1) By deleting paragraph (b) and substituting—  
“(b) must show the dimensions of the furniture (if any) shown on that plan.”.
- 49 By adding before subclause (1)—  
“(1A) This section applies if a person enters into a preliminary agreement for sale and purchase with the owner in respect of the specified residential property.”.
- 49(1) By deleting “specified residential property within 3” and substituting “residential property within 5”.
- 49(1) By deleting “6” and substituting “8”.
- 49(2) In the Chinese text, by deleting “某人如” and substituting “如某人”.
- 49(2) By deleting “specified residential property within 3” and substituting “residential property within 5”.
- 50 In the heading, by deleting “**or agreement**”.
- 50 By deleting subclauses (2), (3), (4), (5), (6), (7) and (8).
- New By adding immediately after clause 50—  
**“50A. Owner must not enter into agreement without certain provisions**  
(1) This section applies to—  
(a) where a preliminary agreement for sale and purchase has been entered into in respect of the

- specified residential property, an agreement for sale and purchase in respect of the residential property; or
- (b) where no preliminary agreement for sale and purchase has been entered into in respect of the specified residential property, an agreement for sale and purchase in respect of the specified residential property.
- (2) The owner must not enter into the agreement for sale and purchase with any person unless that agreement contains the provisions set out in Schedule 5, 6 or 7 (as applicable in accordance with subsection (3))—
- (a) with additional information inserted in accordance with the instructions specified in those provisions as printed in italics; and
  - (b) with deletions made in accordance with the instructions specified in those provisions as marked with an asterisk (\*), a gamma ( $\gamma$ ), a beta ( $\beta$ ), a theta ( $\theta$ ), a pi ( $\pi$ ), a sigma ( $\Sigma$ ), an omega ( $\Omega$ ) or a psi ( $\Psi$ ).
- (3) For the purposes of subsection (2), the agreement for sale and purchase—
- (a) must contain the provisions set out in Schedule 5 in either of the following situations—
    - (i) the development is an uncompleted development;
    - (ii) for a development divided into 2 or more phases, the phase of which the residential property forms part is an uncompleted phase;
  - (b) must contain the provisions set out in Schedule 6 in either of the following situations—
    - (i) the development is a completed development pending compliance;
    - (ii) for a development divided into 2 or more phases, the phase of which the residential property forms part is a completed phase pending compliance; or
  - (c) must contain the provisions set out in Schedule 7 in either of the following situations—
    - (i) the development is a completed development but is not a completed



development pending compliance;

- (ii) for a development divided into 2 or more phases, the phase of which the residential property forms part is a completed phase but is not a completed phase pending compliance.

**50B. Provision supplementary to sections 50 and 50A**

- (1) For the purposes of sections 50 and 50A, a preliminary agreement for sale and purchase, or an agreement for sale and purchase, is to be regarded as having contained the provisions set out in Schedule 4, 5, 6 or 7 (as applicable) if—
  - (a) in the case of a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in English, the preliminary agreement or the agreement contains the provisions set out in Part 1 of that Schedule;
  - (b) in the case of a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in Chinese, the preliminary agreement or the agreement contains the provisions set out in Part 2 of that Schedule; or
  - (c) in the case of a preliminary agreement for sale and purchase, or an agreement for sale and purchase, in English and Chinese, the preliminary agreement or the agreement contains the provisions set out in Parts 1 and 2 of that Schedule.
- (2) Where a preliminary agreement for sale and purchase, or an agreement for sale and purchase, contains a provision set out in Schedule 4, 5, 6 or 7 in compliance with section 50 or 50A(2), the provision prevails over any other provision of the preliminary agreement or the agreement that is inconsistent with it.

**50C. Offences relating to sections 50 and 50A**

- (1) If section 50 or 50A(2) is contravened, the owner commits an offence and is liable to a fine of \$500,000.
- (2) Section 50 or 50A(2) is not to be regarded as having

been contravened only because—

- (a) when a provision set out in Schedule 4, 5, 6 or 7 is incorporated into a preliminary agreement for sale and purchase or an agreement for sale and purchase—
    - (i) the provision has been assigned as a schedule to that preliminary agreement or that agreement; or
    - (ii) the clause number of the provision has been reassigned; or
  - (b) a cross reference to that provision in another provision in that preliminary agreement or that agreement has been revised accordingly.
- (3) Subject to section 48(2), a contravention of section 50 or 50A(2) does not affect the validity or enforceability of the preliminary agreement for sale and purchase or the agreement for sale and purchase.”.

51(1) and (2) By deleting “keep one” and substituting “keep for the purposes of section 53 one (and only one)”.

52 By deleting subclauses (1), (2), (3), (4) and (5) and substituting—

- “(1) The Register of Transactions for the development must, in relation to each residential property in the development that is a specified residential property on the first day on which the Register is required to be kept under section 51(1), set out the following information in the form specified by the Authority—
- (a) a description of the residential property;
  - (b) a description of the parking space that is sold together with the residential property under one single preliminary agreement for sale and purchase or agreement for sale and purchase;
  - (c) the date of any preliminary agreement for sale and purchase to which subsection (2)(a) applies;
  - (d) the date of any agreement for sale and purchase to which subsection (2)(b) or (3) applies;
  - (e) the price of any transaction under the preliminary

- agreement mentioned in paragraph (c) or under the agreement mentioned in paragraph (d);
- (f) the details and date of any revision of that price under section 31(2A);
  - (g) the terms of payment (including any discount on the price, and any gift, or any financial advantage or benefit, made available in connection with the purchase);
  - (h) the date on which any agreement for sale and purchase to which subsection (2)(b) or (3) applies is terminated;
  - (i) whether the purchaser under the preliminary agreement mentioned in paragraph (c) or under the agreement mentioned in paragraph (d) is or is not a related party to the vendor.
- (2) If the owner enters into a preliminary agreement for sale and purchase with another person in respect of a specified residential property in the development—
- (a) the vendor must, within 24 hours after the owner enters into the preliminary agreement, enter in the Register of Transactions for the development the following particulars—
    - (i) a description of the residential property;
    - (ii) a description of the parking space that is sold together with the residential property under that preliminary agreement;
    - (iii) the date of that preliminary agreement;
    - (iv) the price of the transaction;
    - (v) the terms of payment (including any discount on the price, and any gift, or any financial advantage or benefit, made available in connection with the purchase);
    - (vi) whether the person is or is not a related party to the vendor;
  - (b) within 1 working day after the date on which the owner enters into an agreement for sale and purchase with that other person in respect of the residential property, the vendor—
    - (i) must enter the date of that agreement in the Register of Transactions for the development; and

- (ii) if there is any change in the particulars of the transaction mentioned in paragraph (a)(vi), must revise the entry in the Register of Transactions; and
  - (c) where that other person has not entered into an agreement for sale and purchase with the owner in respect of the residential property within 5 working days after the date on which the preliminary agreement is entered into, the vendor must, on the 6th working day after that date, indicate that fact in the Register of Transactions for the development in relation to the residential property.
- (3) Within 1 working day after the date on which the owner enters into an agreement for sale and purchase in respect of a specified residential property in the development (for which property no preliminary agreement for sale and purchase has been entered into), the vendor must enter in the Register of Transactions for the development the following particulars—
  - (a) a description of the residential property;
  - (b) a description of the parking space that is sold together with the residential property under that agreement;
  - (c) the date of that agreement;
  - (d) the price of the transaction;
  - (e) the terms of payment (including any discount on the price, and any gift, or any financial advantage or benefit, made available in connection with the purchase);
  - (f) whether the person is or is not a related party to the vendor.
- (4) Within 1 working day after the date on which the price of a residential property is revised under section 31(2A), the vendor must enter the details and that date in the Register of Transactions for the development.
- (5) If an agreement for sale and purchase to which subsection (2)(b) or (3) applies is terminated, the vendor must, within 1 working day after the date of termination, enter that date in the Register of Transactions for the development.”.

52(7)(a) By deleting “a company” and substituting “a corporation”.

- 52(7)(a)(vi) By deleting “; or” and substituting a semicolon.
- 52(7)(b)(ii) By deleting the full stop and substituting “; or”.
- 52(7) By adding—
- “(c) where that vendor is a partnership, the person is—
    - (i) a partner of that vendor, or a parent, spouse or child of such a partner; or
    - (ii) a private company of which such a partner, parent, spouse, child is a director or shareholder.”.
- 52 By deleting subclause (9) and substituting—
- “(9) This section applies only to a Register of Transactions that has been made available under section 53.”.
- 53(3) By deleting “date on which the first assignment of each specified residential property in the development” and substituting “day on which the first assignment of each residential property in relation to which section 52(1) applies”.
- New By adding—
- “53A. Purpose of Register of Transactions**

The purpose of the Register of Transactions for the development is to provide a member of the public with the transaction information relating to the development, as set out in the Register, for understanding the residential property market conditions in Hong Kong.”.
- 54 By deleting “specified”.
- 55(2) By adding “one or more” after “consisting of”.

- 55(2)(a) and (b) By adding “preliminary agreement for sale and purchase or” after “single”.
- 55(3)(a) and (b) By adding “preliminary agreement for sale and purchase or” after “single”.
- 55(4)(a) and (b) By adding “preliminary agreement for sale and purchase or” after “single”.
- 55(5)(a) By adding “one or more” after “consisting of”.
- New By adding—  
**“55A. Exception: property sold or offered to be sold to associated entity**  
 Divisions 2, 3, 4, 5, 6 and 7 do not apply if—
- (a) the specified residential property is sold by a corporation or a specified body, or is offered by a corporation or a specified body to be sold, to an associate corporation, or a holding company, of the corporation or specified body; or
  - (b) the specified residential property is sold by an individual, or is offered by an individual to be sold, to an immediate family member of the individual.”.
- New By adding—  
**“55B. Exception: development constructed by Housing Authority**  
 Divisions 2, 3, 4, 5, 6, 7 and 8 do not apply if the development is constructed by the Housing Authority.”.
- 56(2) By deleting paragraphs (a) and (b) and substituting—
- “(a) who holds that property under a tenancy (other than a Government lease); and

- (b) who, as at the date of that property being sold or offered to be sold (as the case may be), has so held that property for a continuous period of at least one year.”.
- 58 In the heading, by deleting “**unsold**” and substituting “**specified residential**”.
- 58 By deleting subclause (1) and substituting—
- “(1) If a specified residential property in a completed development, or a completed phase of a development, is offered by the owner to be sold to a person, the vendor must, as soon as practicable after the offer is made, provide the person with a single document (*vendor’s information form*) printed within the previous 3 months.”.
- 60(1) In the English text, by deleting “if the person” and substituting “if”.
- 60(1)(a) In the English text, by adding “the person” before “publishes”.
- 61 By deleting subclause (1) and substituting—
- “(1) If an advertisement is published by the vendor or by another person with the consent of the vendor, the advertisement must state that fact.”.
- 61(4) By adding “size or” after “on the”.
- 61(6) By deleting “(3)” and substituting “(3)(b)”.
- 62(4) In the Chinese text, by deleting “潛在買方” and substituting “準買方”.
- 63(3)(a) By deleting “a company” and substituting “a corporation”.
- 63(3)(b) By deleting “company” and substituting “corporation”.

63 By adding—

“(3A) An advertisement must, in the case of a specified NT development, state—

- (a) the period for which the authorized person for the development is appointed to supervise the construction of the development; and
- (b) the period for which the building contractor for the development is appointed to construct the development.”.

63(11) By adding “(3A),” after “(3),”.

New By adding immediately before clause 65—

**“64A. Interpretation of Part 4**

- (1) For the purposes of this Part, a person makes a fraudulent misrepresentation—
  - (a) if the person makes a statement that, when it is made, is to the person’s knowledge false, misleading or deceptive;
  - (b) if the person makes a promise that, when it is made—
    - (i) is to the person’s knowledge incapable of being fulfilled; or
    - (ii) the person has no intention of fulfilling; or
  - (c) if—
    - (i) the person makes a statement; and
    - (ii) the person intentionally omits a material fact from the statement, with the result that the statement is rendered false, misleading or deceptive when it is made.
- (2) For the purposes of this Part, a person makes a reckless misrepresentation—
  - (a) if the person recklessly makes a statement that, when it is made, is false, misleading or deceptive;
  - (b) if the person recklessly makes a promise that,



when it is made, is incapable of being fulfilled;  
or

- (c) if—
  - (i) the person makes a statement; and
  - (ii) the person recklessly omits a material fact from the statement, with the result that the statement is rendered false, misleading or deceptive when it is made.”.

65 In the heading, by adding “: **criminal liability**” after  
“**Misrepresentation**”.

65 By deleting subclauses (3), (4) and (5).

New By adding—

**“65A. Misrepresentation: civil liability**

- (1) This section applies if a person makes a fraudulent misrepresentation or reckless misrepresentation by which another person is induced to purchase a specified residential property.
- (2) The person who makes the misrepresentation is liable to pay compensation by way of damages to the other person for any pecuniary loss that the other person has sustained as a result of the reliance by the other person on the misrepresentation. This subsection applies whether or not the person who makes the misrepresentation also incurs any other liability.
- (3) An action may be brought against a person under subsection (2) even though the person has not been charged with or convicted of an offence by reason of a contravention of section 65.
- (4) To avoid doubt, if—
  - (a) a court has jurisdiction to determine an action brought under subsection (2); and
  - (b) apart from this section, the court has jurisdiction to entertain an application for an

injunction,

the court may grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it thinks fit.

- (5) This section does not affect, limit or diminish any rights conferred on a person, or any liability that a person may incur, under the common law rules or equitable principles or any other Ordinance.”.

- Part 5                    In Division 2, by deleting the heading and substituting—
- “Division 2—Defence for Offences in Relation to False or Misleading Information”.**
- 72                        In the heading, by deleting “**Liability of company officers etc. for offence committed by company**” and substituting “**Liability of officers etc. for offence committed by corporation or specified body**”.
- 72(1)(a)                By deleting “company” and substituting “corporation”.
- 72(1)(b)  
(i)(A)                    By deleting “the company” (wherever appearing) and substituting “the corporation”.
- 72(2)                    By deleting “company” and substituting “corporation”.
- 72(3)                    In the definition of *officer*, by adding “as defined by section 2(1) of the Companies Ordinance (Cap. 32)” after “a company”.
- 72(3)                    In the definition of *officer*, in paragraph (a)(ii), by deleting “section 2(1) of the Companies Ordinance (Cap. 32)” and substituting “that section 2(1)”.

- 72(3) In the definition of *officer*, in paragraph (b), by adding “a company incorporated outside Hong Kong or” after “to”.
- 72(3) In the definition of *officer*, in paragraph (b)(i) and (ii), by adding “company or” before “specified body”.
- 77(1)(b) By deleting “, (5) or (6)” and substituting “or (5)”.
- 79 By adding—
- “(8) The Authority or a public officer appointed under section 74(1)(b) may not require a person to produce any record or document, or disclose any information, that the person would on grounds of legal professional privilege be entitled to refuse to produce or disclose.”.
- 80(5) By deleting “company” (wherever appearing) and substituting “corporation”.
- Schedule 1 By deleting “[ss. 7, 16” and substituting “[ss. 7”.
- Schedule 1,  
section  
2(2)(a) By deleting “a company” and substituting “a corporation”.
- Schedule 1,  
section  
2(2)(b) By deleting “company” and substituting “corporation”.
- Schedule 1,  
section 2 By adding—
- “(3) The sales brochure must, in the case of a specified NT development, state—
- (a) the period for which the authorized person for the development is appointed to supervise the construction of the development; and

- (b) the period for which the building contractor for the development is appointed to construct the development.”.

- Schedule 1,  
section  
3(2)(a)      By deleting “a natural person” and substituting “an individual”.
- Schedule 1,  
section 3(2)      By adding—  
                  “(ab) the vendor or a building contractor for the development is a partnership, and a partner of that vendor or contractor is an immediate family member of such an authorized person;”.
- Schedule 1,  
section  
3(2)(b)      By deleting “a company” and substituting “a corporation”.
- Schedule 1,  
section  
3(2)(c)      By deleting “a natural person” and substituting “an individual”.
- Schedule 1,  
section 3(2)      By adding—  
                  “(ca) the vendor or a building contractor for the development is a partnership, and a partner of that vendor or contractor is an immediate family member of an associate of such an authorized person;”.
- Schedule 1,  
section  
3(2)(d)      By deleting “a company” and substituting “a corporation”.
- Schedule 1,  
section  
3(2)(e)      By deleting “a natural person” and substituting “an individual”.

- Schedule 1,  
section 3(2)      By adding—  
                  “(ea) the vendor or a building contractor for the development is a partnership, and a partner of that vendor or contractor is an immediate family member of a proprietor of a firm of solicitors acting for the owner in relation to the sale of residential properties in the development;”.
- Schedule 1,  
section  
3(2)(f)      By deleting “a company” and substituting “a corporation”.
- Schedule 1,  
section  
3(3)(a)(i)      By deleting “(b), (c)” and substituting “(ab), (b), (c), (ca)”.
- Schedule 1,  
section  
3(3)(a)(ii)      By adding “, (ea)” after “(e)”.
- Schedule 1,  
section  
3(3)(b)      By adding “partner,” after “contractor,”.
- Schedule 1,  
section  
3(4)(c)      By deleting “a company” and substituting “a corporation”.
- Schedule 1,  
section 3(4)      By adding—  
                  “(ca) the vendor or a building contractor for the development is a partnership, and such an authorized person, or such an associate, is an employee of that vendor or contractor;”.
- Schedule 1,  
section  
3(4)(f)      By deleting “a company” and substituting “a corporation”.

- Schedule 1,  
section 3(4) By adding—  
“(fa) the vendor or a building contractor for the development is a partnership, and a proprietor of such a firm of solicitors is an employee of that vendor or contractor;”.
- Schedule 1,  
section 3(4)(g) By deleting “a company, and the company” and substituting “a corporation, and the corporation”.
- Schedule 1,  
section 3(4)(h) By deleting “a company” and substituting “a corporation”.
- Schedule 1,  
section 3(5)(a)(i) By deleting “or (c)” and substituting “, (c) or (ca)”.
- Schedule 1,  
section 3(5)(a)(ii) By deleting “or (f)” and substituting “, (f) or (fa)”.
- Schedule 1,  
section 3(6) In the definition of *associate*, in paragraph (b), by deleting “company” and substituting “corporation”.
- Schedule 1,  
section 3 By deleting subsection (7).
- Schedule 1,  
section 10(2)(a) In the English text, by deleting “have that scale marked on the plans” and substituting “has that scale marked on the plan”.
- Schedule 1,  
section 10(2) By adding—  
“(ab) must show the dimensions of the furniture (if any) shown on the plan;”.

- Schedule 1,  
section  
13(2)(c)      By deleting “3 working days after the date on which the purchaser signs” and substituting “5 working days after the date on which the purchaser enters into”.
- Schedule 1,  
section  
15(2)(e)      By adding “or facilities” after “structures”.
- Schedule 1      By adding—
- “18A. Elevation plan**
- (1) The sales brochure must set out a plan showing all elevations of the development.
- (2) The plan showing the elevations must be in colour.
- (3) The plan showing the elevations must be certified by the authorized person for the development that the elevations—
- (a) are prepared on the basis of the approved building plans for the development as of a date specified by the authorized person; and
- (b) are in general accordance with the outward appearance of the development.”.
- Schedule 1,  
section  
26(1)(b)      By deleting “and”.
- Schedule 1,  
Part 3      In the heading, by deleting “**and (2)**”.
- Schedule 1      By deleting section 29.
- Schedule 1,  
section 33(b)      By deleting “Part 3 of this Schedule applies as if section 29(3)(a)” and substituting “Part 2 of this Schedule applies as if section 18A(3)(a)”.

- Schedule 3      By deleting “[ss. 16” and substituting “[ss. 16A”.
- Schedule 3      In the heading, by deleting “**16(2)(b)**” and substituting “**16A(3)**”.
- Schedule 4      By deleting “[ss. 9, 50” and substituting “[ss. 9, 50, 50B, 50C”.
- Schedule 4,  
Part 1, clause  
1(b)            By adding “(1)” after “section 2”.
- Schedule 4,  
Part 1, clause  
4(a)            By deleting “third” and substituting “fifth”.
- Schedule 4,  
Part 1, clause  
4(b)            By deleting “sixth” and substituting “eighth”.
- Schedule 4,  
Part 1, clause  
7                By deleting “3” and substituting “5”.
- Schedule 4,  
Part 1, clause  
10                By deleting “The Vendor shall not restrict the Purchaser’s right” and substituting “Without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser’s right under the law”.
- Schedule 4,  
Part 2, clause  
1(b)            By adding “(1)” after “第2”.



- Schedule 4,  
Part 2, clause  
4(a) By deleting “第三” and substituting “第五”.
- Schedule 4,  
Part 2, clause  
4(b) By deleting “第六” and substituting “第八”.
- Schedule 4,  
Part 2, clause  
7 By deleting “3” and substituting “5”.
- Schedule 4,  
Part 2, clause  
10 By deleting “賣方不得限制買方” and substituting “在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律”.
- Schedule 5 By deleting “[ss. 9, 50” and substituting “[ss. 9, 31, 50A, 50B, 50C”.
- Schedule 5,  
Part 1, clause  
1(f)(i) and  
(iii) By deleting “the Government Grant” and substituting “the conditions of the Government Grant <sup>Σ</sup>[in so far as they relate to the Phase]”.
- Schedule 5,  
Part 1, clause  
1 By deleting sub-clause (i) and substituting—  
 “\*(i) “expiry date of the Building Covenant Period” means—  
 (i) the last day of the period within which the Development is required to be completed under the \*Government Grant/Exclusion Order/Redevelopment Order; or  
 (ii) if that period has been extended by the Government, the last day of the extended period;]”.
- Schedule 5,  
Part 1, clause By deleting “Blocks [*insert block numbers*]” and substituting “[*insert*

1(o) *description of buildings comprising the Phase*”.

Schedule 5,  
Part 1, clause  
1 By adding—  
“\*[(pa) “Redevelopment Order”—  
(i) means \*a redevelopment order (as defined by the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337))/an order for sale (as defined by the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)), dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*]; and  
(ii) includes any order amending that \*redevelopment order/order for sale;]”.

Schedule 5,  
Part 1, clause  
3 By deleting sub-clauses (a) and (b) and substituting—  
“[*insert payment terms in such a way that the operation of clause 15 will not be affected*].”.

Schedule 5,  
Part 1, clause  
4(c) By adding “<sup>Σ</sup>[in so far as they relate to the Phase]” after “of the Government Grant”.

Schedule 5,  
Part 1 By deleting clause 5 and substituting—  
“\*[5. Despite clause 4(c), the Vendor shall complete the Development by the expiry date of the Building Covenant Period as required under the \*Government Grant/Exclusion Order/Redevelopment Order. If at any time it appears likely in the opinion of the Authorized Person that the Development will not be completed by the expiry date of the Building Covenant Period, the Vendor shall promptly apply for and obtain such extension of time for completing the Development as is required and shall pay any premium to the Government for such extension. The Vendor shall notify the Purchaser in writing of such application and the terms of extension granted within 30 days after each event.”.

Schedule 5,  
Part 1, clause  
6           By deleting “\*Building Covenant Period/period allowed by the  
Redevelopment Order or such extension period as may have been  
granted” and substituting “Building Covenant Period”.

Schedule 5,  
Part 1, clause  
6           By adding “]” after “Agreement.”.

Schedule 5,  
Part 1           By deleting clause 14 and substituting—

“14.   (a)   Where, under the Government Grant, the consent of  
the Director of Lands is required to be given for this  
sale and purchase, the Vendor shall notify the  
Purchaser in writing that the Vendor is in a position  
validly to assign the Property within one month after  
the issue of the Certificate of Compliance or the  
consent of the Director of Lands to assign,  
whichever first happens.

(b)   Where, under the Government Grant, the consent of  
the Director of Lands is not required to be given for  
this sale and purchase, the Vendor shall notify the  
Purchaser in writing that the Vendor is in a position  
validly to assign the Property within six months after  
the issue of the Occupation Document.”.

Schedule 5,  
Part 1, clause  
16           By deleting “, the Vendor shall not restrict the Purchaser’s right” and  
substituting “and without prejudice to Sections 13 and 13A of the  
Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not  
restrict the Purchaser’s right under the law”.

Schedule 5,  
Part 1, clause  
24(c) and (d)   By adding “and all other solicitors (if any) acting for the Vendor in the  
sale of the residential units in the <sup>y</sup>Phase/Development” after “of the  
Vendor’s Solicitors”.

Schedule 5,  
Part 1           By deleting—

“π       Applicable where, under the Government Grant, the consent of the  
Director of Lands is required to be given for the Vendor to enter into

this Agreement. Delete as appropriate.”

and substituting—

- “π Applicable where, under the Government Grant, the consent of the Director of Lands is required to be given for the Vendor to enter into this Agreement. Delete as appropriate.
- Σ Applicable for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance ( of 2012)) except the final phase of a phased development. Delete as appropriate.”.

Schedule 5, Part 2, clause 1(f)(i) and (iii) By adding “的條件<sup>2</sup>[只限於與本期有關的範圍內]” after “批地書”.

Schedule 5, Part 2, clause 1 By deleting sub-clause (i) and substituting—

“\*(i) “建築契諾屆滿日期”指—

(i) 須根據\*政府批地書／豁除令／重新發展令完成本發展項目的限期的最後一日；或

(ii) (如政府已延長該限期)經延長的限期的最後一日；]”.

Schedule 5, Part 2, clause 1(o) By deleting “第[填上座數]座” and substituting “[填上組成本期的建築物的描述]”.

Schedule 5, Part 2, clause 1 By adding—

“\*(pa) “重新發展令”—

(i) 指日期為[填上文書的日期]並於土地註冊處以註冊摘要第[填上註冊摘要編號]號註冊的、\*(《已拆卸建築物(原址重新發展)條例》(第337章)所界定的)重新發展令／(《土地(為重新發展而強制售賣)條例》(第545章)所界定的)售賣令；及

(ii) 包括修訂該\*重新發展令／售賣令的命令；]”.

Schedule 5, Part 2, clause By deleting sub-clauses (a) and (b) and substituting—

- 3 “[填上不影響第15條的施行的付款條款]。”
- Schedule 5,  
Part 2, clause  
4(c) By deleting “遵照<sup>1</sup>[政府批地書的條件]” and substituting “符合<sup>2</sup>[政府批地書的條件<sup>2</sup>[只限於與本期有關的範圍內]]”.
- Schedule 5,  
Part 2 By deleting clause 5 and substituting—  
“\*[5. 即使有第4(c)條的規定，賣方須根據\*政府批地書／豁除令／重新發展令的規定，於建築契諾屆滿日期或之前，完成本發展項目。如認可人士在任何時間認為，本發展項目相當可能不會於建築契諾屆滿日期或之前完成，則賣方須即時申請及取得完成本發展項目所需的延期，並須就該項延期，向政府支付補價。賣方須將申請一事及批予延期的條款，分別於提出申請及獲批予延期後的30日內，以書面通知買方。】”。
- Schedule 5,  
Part 2, clause  
6 By deleting “\*建築契諾屆滿日期／重新發展令容許的限期的屆滿日期或獲批予的延期的屆滿日期” and substituting “建築契諾屆滿日期”。
- Schedule 5,  
Part 2, clause  
6 By adding “]” after “申索。”。
- Schedule 5,  
Part 2 By deleting clause 14 and substituting—  
“14. (a) (凡根據政府批地書，進行本買賣需獲地政總署署長同意)賣方須在合格證明書或地政總署署長的轉讓同意(以較先發生者為準)發出後的一個月內，就賣方有能力有效地轉讓本物業一事，以書面通知買方。  
(b) (凡根據政府批地書，進行本買賣不需獲地政總署署長同意)賣方須在佔用文件發出後的六個月內，就賣方有能力有效地轉讓本物業一事，以書面通知買方。”。

- Schedule 5,  
Part 2, clause  
16 By deleting “，賣方不得限制買方” and substituting “及在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律”。
- Schedule 5,  
Part 2, clause  
24(c) and (d) By adding “及在<sup>7</sup>本期／本發展項目的住宅單位的買賣中代表賣方行事的所有其他律師(如有的話)” after “如賣方律師”。
- Schedule 5,  
Part 2 By deleting—  

“ $\pi$  凡根據政府批地書，賣方訂立本合約需獲地政總署署長同意，即適用。將不適用者刪去。”

and substituting—  

“ $\pi$  凡根據政府批地書，賣方訂立本合約需獲地政總署署長同意，即適用。將不適用者刪去。

$\Sigma$  適用於分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)但分期發展項目的最後一期除外。將不適用者刪去。”
- Schedule 6 By deleting “[ss. 9, 50” and substituting “[ss. 9, 50A, 50B, 50C”.
- Schedule 6,  
Part 1, clause  
1(f)(i) and  
(iii) By deleting “the Government Grant” and substituting “the conditions of the Government Grant  <sup>$\Sigma$</sup> [in so far as they relate to the Phase]”.
- Schedule 6,  
Part 1, clause  
1(m) By deleting “Blocks [*insert block numbers*]” and substituting “[*insert description of buildings comprising the Phase*]”.
- Schedule 6,  
Part 1, clause  
3 By deleting sub-clauses (a) and (b) and substituting—  

“[*insert payment terms in such a way that the operation of clause 13 will not be affected*]”.
- Schedule 6,  
Part 1, clause By adding “ <sup>$\Sigma$</sup> [in so far as they relate to the Phase]” after “Government

- 4(c) Grant”.
- Schedule 6,  
Part 1, clause  
14 By deleting “, the Vendor shall not restrict the Purchaser’s right” and substituting “and without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser’s right under the law”.
- Schedule 6,  
Part 1, clause  
21(c) and (d) By adding “and all other solicitors (if any) acting for the Vendor in the sale of the residential units in the <sup>7</sup>Phase/Development” after “of the Vendor’s Solicitors”.
- Schedule 6,  
Part 1 By deleting—
- “<sup>θ</sup> Delete “Development” for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance ( of 2012)) except the final phase. Otherwise delete “Phase”.”
- and substituting—
- “<sup>θ</sup> Delete “Development” for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance ( of 2012)) except the final phase. Otherwise delete “Phase”.
- Σ Applicable for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance ( of 2012)) except the final phase of a phased development. Delete as appropriate.”.
- Schedule 6,  
Part 2, clause  
1(f)(i) and  
(iii) By adding “的條件<sup>Σ</sup>[只限於與本期有關的範圍內]” after “批地書”.
- Schedule 6,  
Part 2, clause  
1(m) By deleting “第[填上座數]座” and substituting “[填上組成本期的建築物]的描述”.
- Schedule 6,  
Part 2, clause By deleting sub-clauses (a) and (b) and substituting—

- 3 “*[填上不影響第13條的施行的付款條款]*。”
- Schedule 6,  
Part 2, clause  
4(c) By deleting “遵照<sup>1</sup>[政府批地書的條件]” and substituting “符合<sup>2</sup>[政府批地書的條件<sup>2</sup>[只限於與本期有關的範圍內]]”.
- Schedule 6,  
Part 2, clause  
14 By deleting “，賣方不得限制買方” and substituting “及在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律”.
- Schedule 6,  
Part 2, clause  
21(c) and (d) By adding “及在<sup>1</sup>本期／本發展項目的住宅單位的買賣中代表賣方行事的所有其他律師(如有的話)” after “如賣方律師”.
- Schedule 6,  
Part 2
- By deleting—
- “<sup>0</sup> 如屬分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)及除最後一期外，刪去“本發展項目”，否則刪去“本期”。”
- and substituting—
- “<sup>0</sup> 如屬分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)及除最後一期外，刪去“本發展項目”，否則刪去“本期”。
- <sup>Σ</sup> 適用於分期發展項目(《一手住宅物業銷售條例》(2012年第 號)所指者)但分期發展項目的最後一期除外。將不適用者刪去。”.
- Schedule 7 By deleting “[ss. 9, 50]” and substituting “[ss. 9, 50A, 50B, 50C]”.
- Schedule 7,  
Part 1, clause  
3 By deleting “as stakeholders”.
- Schedule 7,  
Part 1, clause  
3 By deleting sub-clauses (a) and (b) and substituting—
- “*[insert payment terms in such a way that the operation of clause 4 will not be affected]*.”.



- Schedule 7,  
Part 1, clause  
5      By deleting “, the Vendor shall not restrict the Purchaser’s right” and substituting “and without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser’s right under the law”.
- Schedule 7,  
Part 1      By adding—  
                  “11A. If and so long as there is a mortgage of or charge on the Property, any part of the purchase price shall be paid to the Vendor’s Solicitors as stakeholders and shall be applied by them only for the purpose of obtaining reassignment/release of the Property unless a sufficient sum is held to obtain such reassignment/release in which case the Vendor’s Solicitors may release to the Vendor the amount of excess over and above the sum sufficient to discharge the mortgage or charge.”.
- Schedule 7,  
Part 2, clause  
3      By deleting “作為保證金保存人的”.
- Schedule 7,  
Part 2, clause  
3      By deleting sub-clauses (a) and (b) and substituting—  
                  “[填上不影響第4條的施行的付款條款]。”.
- Schedule 7,  
Part 2, clause  
5      By deleting “，賣方不得限制買方” and substituting “及在不損害《物業轉易及財產條例》(第219章)第13及13A條的原則下，賣方不得限制買方根據法律”.
- Schedule 7,  
Part 2      By adding—  
                  “11A. 如有本物業的按揭或押記，則在有上述按揭或押記之時，售價的任何部分均須支付予作為保證金保存人的賣方律師，賣方律師只可將該款項運用於取得本物業的再轉讓/解除，但如賣方律師所持的款項足以取得該項再轉讓/解除，則屬例外，而在此情況下，賣方律師可向

賣方發放超出足以解除該按揭或押記的款項的剩餘款額。”。

Schedule 8,  
section 1(1)      By deleting paragraphs (a), (b), (c), (j) and (k).

Schedule 8,  
section 1(1)      By adding—  
                  “(ha) any notice received by the vendor from the Government or  
                  requiring the vendor to demolish or reinstate any part of  
                  the development;”.

Schedule 8,  
section 1      By deleting subsection (2).

Schedule 8,  
section 2      By deleting “and (h) and (2)” and substituting “, (h) and (ha)”.