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**Paper for Panel on Housing**

**Report of the Subcommittee to study the Sales Descriptions  
of Uncompleted Residential Properties White Bill**

**Purpose**

This paper reports on the deliberations of the Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill.

**Background**

2. To address the current inadequacy of protection for purchasers of uncompleted residential properties in Hong Kong, the Law Reform Commission (LRC) recommended in its report issued in April 1995 that legislation should be introduced to require developers to produce sales brochures for the sale of local uncompleted residential properties, and that the brochures should contain certain specified information, with appropriate penalties for non-compliance. Based on the public response to LRC's recommendations, the Government has drafted the Sales Descriptions of Uncompleted Residential Properties Bill. In view of widespread interest in the community on this subject, the Government has published it as a White Bill for public consultation before introducing the legislation into the Legislative Council.

**The White Bill**

3. The White Bill seeks to enhance the accuracy, uniformity and transparency of information provided in sales brochures and advertisements regarding the public sale of local uncompleted residential flats. It requires all developers to provide sales brochures regarding any public sale of uncompleted residential properties, and stipulates certain key information to be included in these brochures. The specified information includes location plan, floor plan, floor area, fittings and finishes, car parking spaces, salient conditions of the Government lease, salient provisions in the Deed of Mutual Covenant, defect liability period, completion date, slope maintenance, price list, number of units put up for sale, mortgage loans and payment scheme, and other fees and charges payable.

**The Subcommittee**

4. The Panel on Housing was briefed by the Administration on the White Bill at its special meeting on 7 April 2000, the day when the document was published in the Gazette

for public consultation until 7 July 2000. To enable members to understand the requirements laid down in the White Bill and its implications, the Panel decided to form a Subcommittee to study the White Bill. Under the Chairmanship of Hon LEE Wing-tat, the Subcommittee has held three meetings with the Administration, and has met with representatives from the Consumer Council, the real estate developers associations and professional bodies. The membership list of the Subcommittee together with the list of organizations received by the Subcommittee are at **Appendices I and II**.

### **Deliberations of the Subcommittee**

5. The Subcommittee has examined in detail the proposals contained in the White Bill, with particular focus on how the provisions would ensure that the supply of information on uncompleted residential properties by property developers are accurate and adequate. The deliberations of the Subcommittee are set out in the ensuing paragraphs.

#### Measurement of floor areas

6. The Bill seeks to eliminate the present confusion in the methods of calculating floor areas by standardizing the definition of floor areas of uncompleted units for sale, and making it mandatory to state the “saleable area” and the “gross floor area” in the sales brochures. The “saleable area” refers to the floor area contained within the enclosing walls of a residential property measured up to the external edge of the enclosing wall or the centre line of a separating wall between two adjoining units. The definition of saleable area has been used widely in sales brochures and agreements for sale and purchase of uncompleted residential properties under the Lands Department Consent Scheme. It is also consistent with the Code of Measuring Practice published by the Hong Kong Institute of Surveyors. The “gross floor area” of a residential property is an apportioned share of the total domestic gross floor area of the development calculated in accordance with regulation 23(3)(a) of the Building (Planning) Regulations as approved by the Building Authority. This is equal to the saleable area of the flat together with a proportionate share of all common areas approved by the Building Authority. The method of apportionment and the main components of common areas have to be detailed in the sales brochure. The area of bay windows, roof and other ancillary facilities should be stated separately.

7. Some members consider it more reasonable from a consumer point of view for the sales brochure to disclose the “internal floor area” or the “net usable area”. These refer to the area contained within the internal walls of a property but excluding all internal partitions. In this way, the purchaser will have a clear idea of the exact area which could be put to use. The Administration explains that there are technical difficulties in providing accurate measurements for internal floor areas, particularly for uncompleted properties as the actual construction and finishing process can affect the thickness of walls and therefore the internal floor area. The requirements in the Bill with regard to floor plans, thickness of the load-bearing walls of the top, median and lowest floors, together with the need to disclose the “gross floor area” and “saleable area” should provide sufficient information for flat purchasers without creating unnecessary confusion and disputes. The Administration stresses that while the Bill aims to enhance consumer protection, the provisions included must be practicable and enforceable in order to be

effective.

8. Noting the Administration's explanation, some members have suggested that in disclosing the internal floor area, a specified margin of discrepancy could be allowed. In this way, if the property should fall beyond the specified margin of discrepancy, the purchasers should be given the right to cancel the contract entered into with the developer for the sale of the uncompleted residential property. The Administration considers that the provision of a margin of discrepancy may not necessarily be in the best interest of the consumer. For example, if a 5% margin of discrepancy of the internal floor area is allowed, then a range of actual internal floor area ranging from 85.5 to 94.5 square metres will be "acceptable" for a residential property with stated internal floor area of 90 square metres. It may not be in the interest of purchasers to be bound by the terms of the agreement to accept such variation. There are also mixed views as to whether there should be mechanisms for price adjustments for discrepancies within an accepted limit i.e. upward price adjustments for the excess area built and vice versa. The Administration's view is shared by the Consumer Council and the Real Estate Developers Association of Hong Kong (REDA). REDA further points out that the proposed allowance of discrepancy may give rise to disputes and litigation, thereby affecting the normal operation of the property market.

9. The Administration is also concerned that the inclusion in sales brochures of too many different types of floor areas of residential units on sale will create confusion for home buyers. According to the Administration, "gross floor area" and "saleable area" are commonly used by private developers in floor area measurements for uncompleted residential properties. The adoption of standardized measurements of "gross floor area" and "saleable area" as proposed under the Bill will enhance uniformity and transparency and will greatly facilitate potential homebuyers in accurately comparing the size (and price) of uncompleted residential properties. Nevertheless, the Administration will take into account the views gathered when drafting the legislation.

10. Members also note that the proposed requirements for floor area measurements under the White Bill will apply only to uncompleted properties and not completed properties or properties in the secondary market. This will make it difficult to compare the selling prices in terms of per unit area. The Administration advises that it is planning to extend the floor area measurements to completed properties as well and a Working Group under the LRC has been examining the issue.

#### Effect of certain information in sales brochures

11. Members note the explanation provided by the Administration on the divisions of provisions in Schedule 1 to the Bill, the effect of which is set out in clause 6 of the Bill. According to the Administration, information contained in Part I of Schedule 1 pertains to general information which may be changed due to factors beyond the developer's control. Such will include location and disposition plans, floor plans and floor areas etc. Meanwhile, Part II of Schedule 1 sets out important information which is known to the developers and is not subject to change. These will include land use, conditions of Government lease, and Deed of Mutual Covenant etc. These will be presumed to be representation of facts and the purchaser shall be presumed to have been induced by such

representation to enter into contract. As such, remedies for misrepresentation would be available if inaccurate information is provided pursuant to Part II. As for Part III of Schedule 1, the information contained are matters within the developer's control and are presumed to be implied contractual terms. Purchasers may sue the developers for breach of contract if the information required to be provided under Part III is inaccurate. In essence, the civil actions in pursuit of remedies for inaccurate information provided under Parts II and III will have a better chance of success than that as provided under Part I, as the latter would require the purchaser to prove that it is a misrepresentation of fact and that the purchaser has relied on it to make his decision. The Bill will not diminish in any way the existing rights of purchasers.

12. Members have pointed out that part of the information to be provided pursuant to Part I, such as the layout plan and the completion schedule, is also of significant concern and relevance to a purchase decision and should therefore be included in Part II or Part III of Schedule 1 instead. The Administration explains that in considering the type of information to be contained in each Part of the Schedule, one of the main factors to be taken into consideration is whether the information is within the developer's control. As such, completion dates and layout plans which are subject to changes and unforeseen circumstances should not be included in Part II or III of Schedule 1.

13. While the Consumer Council suggests that greater consumer protection be accorded in respect of information provided in Part I of Schedule 1, REDA expresses reservation about this suggestion. The Administration agrees to consider both sides of the argument when finalising the draft legislation.

#### Location plan

14. Section 4 of Schedule 1 to the Bill provides that sales brochures should contain a location plan showing the development and its adjacent areas. The location plan should show major communal facilities or proposed communal facilities, known to the developers, in the area covered by the plan. Major communal facilities include stations for public transport, refuse collection points etc. The location plan should show the land use or intended land use, as specified in the town plan, of any land within 0.5 km from the boundary of the lot upon which the development is constructed. It should also contain information on any building or structure of substantial dimension intended to be constructed or erected in any open area or on the roof, podium etc. of any building in the development known to the developer.

15. Members share the concern of REDA that the developers did not have ready access to town plans other than the gazetted outline zoning plans and therefore may have difficulties in meeting the requirements of the Bill. They have also pointed out that references to Government/institutions and community (G/IC) uses commonly used in town plans could result in obnoxious facilities being constructed in the vicinity of a residential development.

16. The Administration agrees to examine the arrangements in relation to the access to statutory and non-statutory town plans by developers. In respect of "G/IC" zoning in town plans, the Administration will look into the feasibility of providing a list of possible

public facilities which may be represented by “G/IC“ zoning for public reference. It will try to strike a balance between the concerns of developers and the interests of consumers when finalising the draft legislation. The suggestion of the Hong Kong Institute of Real Estate Administration (HKIREA) of a one-month cut-off date for gathering information on land use before printing of sales brochures is also noted.

17. As regards changes to town plans made after the printing of sales brochures, the Administration advises that the developers will not be held responsible for these changes. Purchasers can refer to subsequent versions of the outline zoning plans for any changes in land use in the adjacent areas. As the Bill does not contain specific provisions in respect of information concerning future major communal facilities in the vicinity, the Administration would welcome views on the issue.

#### Disposition plans of large scale developments to be completed in phases

18. Members share the concerns of REDA, HKIREA and the Hong Kong Institute of Architects (HKIA) that the requirement of providing detailed information on later phases of a large residential development would reduce the flexibility of developers in refining the overall design of the project in later phases of development.

19. The information provided by the Administration indicates that according to the proposed definition of “development” under clause 2 of the Bill, different phases of a phased development would be treated as independent projects and as such, the developers need only to disclose the information relating to the phase in question and the land use of the adjacent areas within 0.5 km from the boundary of the lot. However, for the protection of consumer interests, the developers should provide information to the best of their knowledge.

20. Members have requested the Administration to advise on the possible legal obligations of developers who, in an attempt to boost the sales of their properties, have chosen to include in their sales brochures future communal/recreational facilities which will be shared amongst different phases of development. The Administration advises that if the information provided by the developers turned out to be inaccurate, the purchaser could take civil proceedings against the developer if he could prove that there is a misrepresentation of fact and that he has relied on such a fact to make the purchase decision.

21. In response to members, the Administration agrees to explore the feasibility of specifying in the sales brochure that details on facilities to be provided in subsequent phases are subject to changes, and to identify ways to notify purchasers of such subsequent changes.

#### Finishes and fittings

22. Members note the concerns of HKIA that it would be difficult on the part of the Authorized Person to comply with the provisions of the White Bill in certifying that alternative finishes and fittings are of equivalent standard, since such decisions are likely to be subjective. However, members also share the view of the Consumer Council that

the purchasers are not equipped with the knowledge to assess the quality of alternative finishes and fittings offered by the developers. The Administration welcomes views from the public on this matter before deciding whether to make changes to the proposed requirement in the Bill

#### Sample property

23. As sample properties provide important references for potential purchasers, members would wish to be assured that these should be representative in terms of dimension and internal partitions of the actual unit for sale. Some members also point out the need for the developer to keep the sample property for a certain period of time to facilitate reference by purchasers while others have requested that the dimensions of the different rooms should be stated clearly in the sample property and that these should correspond to dimensions given in the sales brochure.

24. The Administration advises that while there might be practical difficulties for developers to keep the sample property for an extended period of time, efforts will be made to ensure that the sample properties will be presented in terms of actual surrounding environment and be representative in terms of dimensions and partition. The Administration welcomes further views from the public on the proposed requirements regarding sample properties.

#### Floor plan

25. In response to the concern of some members regarding the disclosure of information relating to water pipes or fuse box in floor plans, the Administration explains that sections 6 and 32 of Schedule 1 to the White Bill have respectively required for the provision of information such as location of exposed pipes and electrical installations inside the property. As regards electrical installations, it is provided under item 3(g) of the Table under Section 32 that sales brochures should include information on electrical fittings including any safety devices, whether the wiring is concealed and location of electric sockets etc.

#### **Advice sought**

26. Members are invited to note the deliberations of the Subcommittee.

立法會房屋事務委員會  
研究未建成住宅物業銷售說明白紙條例草案  
小組委員會

LegCo Panel on Housing  
Subcommittee to study the Sales Descriptions  
of Uncompleted Residential Properties White Bill

委員名單  
Membership list

李永達議員(主席)	Hon LEE Wing-tat (Chairman)
何世柱議員	Hon HO Sai-chu, SBS, JP
何承天議員	Hon Edward HO Sing-tin, SBS, JP
何俊仁議員	Hon Albert HO Chun-yan
李華明議員	Hon Fred LI Wah-ming, JP
吳亮星議員	Hon NG Leung-sing
夏佳理議員	Hon Ronald ARCULLI, JP
涂謹申議員	Hon James TO Kun-sun
陳婉嫻議員	Hon CHAN Yuen-han
陳鑑林議員	Hon CHAN Kam-lam
程介南議員	Hon Gary CHENG Kai-nam, JP
黃宏發議員	Hon Andrew WONG Wang-fat, JP
楊 森議員	Dr Hon YEUNG Sum

合共： 13 位議員  
Total : 13 Members

日期： 2000 年 4 月 28 日  
Date : 28 April 2000

**List of organizations received by the  
Subcommittee to study the Sales Descriptions  
of Uncompleted Residential Properties White Bill**

1. Consumer Council
2. The Real Estate Developers Association of Hong Kong
3. Hong Kong Institute of Real Estate Administration
4. The Hong Kong Institute of Architects
5. The Hong Kong Institution of Engineers
6. The Hong Kong Institute of Surveyors
- \*7. The Hong Kong Association of Banks

\* written submission only.