

Residential Properties (First-hand Sales) Bill
Response to Questions from the Legal Service Division dated 25 April 2012

Questions	Administration's Response
<p><u>Clause 26</u></p> <p>1. Clause 26(4) provides that if there is any change to the price of a specified residential property, the vendor must revise the price list that sets out the price to reflect the change. Is there any requirement as to the time within which the vendor should revise the price list when there is a price change?</p> <p>2. Please also explain the time requirement for the revision of price list and its operation in the light of the requirement under clause 29 which provides that the vendor must make the relevant price list available to the general public during a period of at least 3 days before the date of sale of a specified residential property (both hard copies and on website).</p>	<ul style="list-style-type: none"> ● Taking into account Members' comments on this clause raised at the Bills Committee meeting on 2 May 2012, we will propose Committee Stage Amendment (CSA) to improve the drafting of this clause.
<p><u>Clause 27</u></p> <p>3. Is the notice which may be issued by the Secretary for Transport and Housing and published in the Gazette with respect to the number of properties to be covered in the price list under the various sub-clauses of clause 27 subsidiary</p>	<ul style="list-style-type: none"> ● A notice which may be made by the Secretary for Transport and Housing under clause 27(10) of the Bill is subsidiary legislation and is governed by section 34 of the Interpretation and General Clauses Ordinance (Cap. 1)

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<p>legislation and subject to the scrutiny of the Legislative Council under the Interpretation and General Clauses Ordinance (Cap. 1)?</p>	
<p>4. Please explain (and illustrate with examples, if possible) the operation of clause 28(1)(b), and in particular, whether the order as stated should be in ascending or descending order for the compliance with the requirement “(must state its order) in terms of the date of preparation”.</p>	<ul style="list-style-type: none"> Assuming that on 1 January 2012, a vendor issued for the first time a price list covering some residential properties in a development and then on 2 January 2012 issued another price list covering some other residential properties in the same development. The one issued on 1 January 2012 should bear a phrase to the effect that it is the first price list for the development, while the one issued on 2 January 2012 should bear a phrase to the effect that it is the second price list for the development. The price list issued on 2 January 2012 should not be named as the first price list for the development.
<p>5. What is required to be included in the “description of the residential property” contained in the price list under clause 28(2)(a)?</p>	<ul style="list-style-type: none"> A “description of the residential property” would, in the case of an apartment block, refer to the room number of the unit (if any), the floor of which the unit is located (if any), and the name of the block where the unit is located (if any).
<p><u>Clause 33</u></p> <p>6. The term “show flat” is not defined in the Bill. Clause 32 provides for the interpretation of “unmodified show flat”.</p>	<ul style="list-style-type: none"> “Show flat” is defined under clause 12 of the Bill. According to the current drafting of Division 4 of Part 2 of the Bill, it

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<p>Clause 33 provides that a show flat is a modified show flat if the requirements specified in sub-clauses (a), (b) and (c) are met. Under clause 34, for residential properties in an uncompleted development or in an uncompleted phase, the vendor must set up an unmodified show flat before he may set up a modified show flat. Is the vendor permitted to set up a show flat which is neither a “modified show flat” nor an “unmodified show flat” as prescribed under the Bill? If the answer is yes, is the type of show flat regulated under the Bill?</p>	<p>may be possible that a vendor may set up a show flat which is neither a “modified show flat” nor an “unmodified show flat”. We will propose CSA to tighten the drafting of the Bill in this respect.</p>
<p><u>Clause 35</u></p> <p>7. Does the “corresponding projected height of the residential property” in clause 35(5) refer to “the floor-to-ceiling height of the show flat”?</p>	<ul style="list-style-type: none"> ● The “corresponding projected height of the “residential property” is not exactly the same as “floor-to-ceiling height”. According to clause 12 of the Bill, projected height, in relation to a residential property, means the height of the residential property as calculated by deducting the thickness of the floor slab of the residential property as specified in relation to the residential property in the sales brochure for the development from the floor-to-floor height of the residential property as so specified. Floor finishes such as the floor screed and tiles attached to the floor slab and the plaster to the ceiling will not be taken into account in the above calculation.

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	<ul style="list-style-type: none"> ● At present, building plan will not show “floor-to-ceiling height”. The “floor-to-floor height” and “the thickness of floor slabs (excluding floor finishes) are provided in the building plans and structural plans respectively. ● The intention of clause 35(5) of the Bill is that if the floor-to-ceiling height of the show flat is less than the corresponding projected height of the residential property, the vendor must display in the show flat a notice stating the difference between those heights.
<p><u>Clause 38</u></p> <p>8. Please explain why the vendor may not restrict a person who views a modified show flat from taking measurements of the show flat (sub-clause (2)) whilst the vendor may not restrict a person who views an unmodified show flat from taking measurements, taking photographs or making video recordings of the show flat (sub-clause (1))?</p>	<ul style="list-style-type: none"> ● We have taken into account the comments from the Real Estate Developers Association of Hong Kong that there may be potential copyright issues for taking photographs or making video recordings in modified show flats. Therefore, we propose in the Bill that the vendor may not restrict a person who views a modified show flat from taking measurements of the show flat whilst the vendor may not restrict a person who views an unmodified show flat from taking measurements, taking photographs or making video recordings of the show flat.

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<p><u>Clause 40</u></p> <p>9. Is there any express provision in clause 40 which states that clause 40 applies only to completed development or phase?</p> <p>10. Although clause 41 provides for the mandatory requirements for comparable residential property for viewing (e.g. display of a plan), please explain what constitutes a “comparable residential property” under clause 40(2)(b)(i).</p>	<ul style="list-style-type: none"> ● There is an express provision in clause 14(3) of the Bill that Division 5 applies if there is a sale by the owner of – (a) a specified residential property in a completed development; or (b) for a development divided into 2 or more phases, a specified residential property in a completed phase of the development. ● The meaning of “comparable” should be read according to its everyday usage. ● The purpose of clause 40 of the Bill is that a prospective purchaser should be able to view the subject property (or a comparable property) before buying the subject property. The meaning of “comparable property” should be construed in that context. For example, if a unit in question has been rented out and cannot be arranged for viewing, the vendor may arrange a unit of a comparable size with a comparable layout for viewing.
<p><u>Clause 46</u></p> <p>11. Please explain why the requirements relating to the scale and furniture provided in clause 46(1) do not apply to a floor plan</p>	<ul style="list-style-type: none"> ● We have reviewed section 10(2) in Schedule 1 to the Bill and consider that the requirement on dimensions of furniture under

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<p>that is made available in the sales brochure (clause 46(2)).</p>	<p>clause 46 of the Bill should also apply to section 10(2) in Schedule 1 to the Bill, which sets out the requirements on the floor plan in a sales brochure. We will submit draft CSA on this to the Bills Committee for consideration.</p>
<p><u>Clause 48, 49 and 50</u></p> <p>12. Please explain why reference is made to the “owner” (and not the vendor) as a party to a preliminary sale and purchase agreement.</p> <p>13. Is the notice which may be issued by the Secretary for Transport and Housing and published in the Gazette to amend the percentage of the purchase price as preliminary deposit under clause 48(3) subsidiary legislation and subject to the scrutiny of the Legislative Council under Cap. 1?</p>	<ul style="list-style-type: none"> ● Since only the “owner” of the residential property can sell the property, reference is made to the “owner” (and not the vendor – which may have an extended meaning) as a party to a preliminary sale and purchase agreement. ● A notice which may be made by the Secretary for Transport and Housing under clause 48(3) of the Bill is subsidiary legislation and is governed by section 34 of Cap. 1.
<p><u>Clause 66</u></p> <p>14. Is there any difference between an act “that is likely to induce ...” (as in clause 66(1)(a)) and “with the view to inducing ...”? Please explain the mental element(s) involved in the 2 situations.</p>	<ul style="list-style-type: none"> ● We will revert on this point separately in due course.

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<p><u>Clause 68</u></p> <p>15. Please explain (and illustrate with examples, if possible) what is meant by “publishing, circulating, distributing or otherwise disseminating materials or their contents... by any other means, whether... magnetically, optically, manually...” as provided in clause 68(4)(a)(vii).</p>	<ul style="list-style-type: none"> ● We will revert on this point separately in due course.
<p><u>Clause 83</u></p> <p>16. Is the notice which may be issued by the Secretary for Transport and Housing and published in the Gazette to amend the Schedules under clause 83 subsidiary legislation and subject to the scrutiny of the Legislative Council under Cap. 1?</p>	<ul style="list-style-type: none"> ● A notice which may be made by the Secretary for Transport and Housing under clause 83 of the Bill is subsidiary legislation and is governed by section 34 of Cap. 1.

Transport and Housing Bureau
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