Residential Properties (First-hand Sales) Bill

Administration's Response to Issues Raised by Members at the Bills Committee Meeting held on 22 May 2012 (Part II)

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 22 May 2012, Members raised enquires on a number of issues relating to the Bill. The Administration's response to item 1 on the list of the follow-up actions is set out in LC paper No. CB(1) 2048/11-12(02). The responses to the remaining items are set out below.

(2) To provide the legal advice which forms the basis of the Administration's response to the issues pertaining to the submission from the Real Estate Developers Association of Hong Kong (REDA).

2. We attach **at Annex** for Members' reference a paper jointly prepared by the Transport and Housing Bureau and the Department of Justice which sets out the basis of the Administration's response to the issues raised in the joint legal opinion submitted by REDA to the Bills Committee.

(3) To include in the speech of the Secretary for Transport and Housing to be delivered at the resumption of Second Reading debate on the Bill a pledge that the Administration will endeavour to work out a standardized definition of "gross floor area".

3. The lack of a standardized definition of GFA for a property is one of the reasons, but not the only reason, why we propose in the Bill that saleable area (SA) should be the only basis for presenting the floor area and price per square foot/metre for a property in the sale of a first-hand residential property. There are other considerations, including the consideration that the use of GFA per property may not be the most preferred way of showing the public and the prospective buyers the floor area of a residential property. There were many views received during the public consultation period which expressed support for using SA only

to present the floor area and price per square foot/metre for a property. We consider that our proposed approach of requiring vendors to provide (i) the 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 area of common facilities in the development, a viable and more direct means to let prospective buyers know what are they buying for.

4. We consider it not appropriate for the Administration to undertake to work out a standardized definition of "gross floor area" for a property.

(4) To review the definition of "saleable area" in both the Consent Scheme and the Bill to ensure consistency.

5. The definition of SA in the Bill is in substance the same as the one used under the Consent Scheme, except that under the Consent Scheme, it is silent on whether “stairhood” should be included or excluded from the calculation of SA while we have made clear in the Bill that “stairhood” is excluded from the definition of SA. There was a general consensus among the relevant stakeholders (including the Real Estate Developers Association of Hong Kong (REDA), the Hong Kong Institute of Surveyors, the Hong Kong Institute of Architects, the Consumer Council (CC), and the Law Society of Hong Kong) at the Steering Committee on the Regulation of the Sales of First-hand Residential Properties by Legislation that “stairhood” should be excluded from the definition of SA.

6. The other differences between the Consent Scheme and the Bill regarding the definition of SA are textual (e.g. breaking up a long sentence as it so appears in the Consent Scheme into a few shorter sentences in the Bill).

7. Upon the enactment of the Bill, Lands Department will make appropriate revisions to the wordings of the definition of SA in the Consent Scheme to tally them with the definition of SA in the Bill

(5) To consider extending the time limits within which information on transactions should be disclosed.

8. During the public consultation exercise, we have received different opinions on the time limits within which transaction information should be disclosed. For example, REDA considered longer time should be given to vendors to disclose transaction information, whereas CC called for real-time on-line disclosure of transaction information.

9. The proposed requirements on the disclosure of transaction information as set out in the Bill strikes a balance between ensuring timely dissemination of updated and the provision of accurate transaction information in a user-friendly manner, and the practical need to give vendors reasonable lead time to make ready the transaction information accurately. We remain of the view that the proposed time limits set out under clause 52 of the Bill are appropriate.

Transport and Housing Bureau
May 2012

Bills Committee on
Residential Properties (First-hand Sales) Bill 2012:

Response to
Real Estate Developers Association of Hong Kong ("REDA")'s Submission

REDA submitted the Joint Opinion of Lord Pannick QC, Tristan Jones and Wilson Leung dated 19 April 2012 ("the Opinion") to the Bills Committee on 20 April 2012. The Department of Justice has considered the Opinion carefully and has provided input to the Bureau. The Opinion expresses the view that the following measures in the Bill would be unconstitutional:

(a) the requirement in clause 27 that some vendors of first-hand properties must publish price lists concerning the prices of a minimum number of properties, contrary to the right to property in Articles 6 and 105 of the Basic Law ("BL 6 and BL 105");

(b) the prohibition on relevant vendors from providing information on the price per square foot or metre in any format in the advertisement, sales brochure and the price list of a first-hand property, other than saleable area, contrary to the right to freedom of expression in Article 16 of the Hong Kong Bill of Rights ("BOR").

2. This paper sets out the Administration's response to the Opinion, and explains why in our view the relevant measures are constitutional.

PART I – Compatibility of clause 27 with Articles 6 and 105 of the Basic Law

3. The Bill requires the vendor to prepare a price list and to make it available to the general public at least 3 days before sale (clauses 26 and 29). The price list must cover a minimum number of properties as follows:

(a) if there are 30 or fewer properties in the development, the price list must cover all the properties;

(b) if there are more than 30 but less than 100 properties in the development, each price list must cover at least 30 properties;

(c) if there are 100 or more properties in the development, the first price list must cover 20% of the number of the properties or 50 properties, whichever is the greater. Each subsequent price list must cover at least 10% of the number of the properties (clause 27).

4. The property must be sold at the price specified in the price list. The vendor may revise the price list but the revised price list must be made available 3 days before sale and the property must be sold at the price specified in the revised price list (clause 31). However, the vendor is not required under the Bill to offer for sale any of the properties included in the price list.

BL 6 and BL 105

5. BL 6 provides:

> "The [HKSAR] shall protect the right of private ownership of property in accordance with law."

6. BL 105 further provides:

> "The [HKSAR] shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property."

7. BL 105 expressly provides for the right to compensation for "deprivation" of property. For cases involving interferences with property rights which fall short of "deprivation", there is the issue of whether the "fair balance" test developed under the European

jurisprudence in relation to Article 1 of Protocol No.1 to the European Convention on Human Rights which also protects property rights would apply as an implicit requirement under BL 6 and BL 105.[1]

8. Under the "fair balance" test developed under the European jurisprudence, any interference with property rights would need to strike a fair balance between the demands of the general interest of the society (which any interference with property rights must aim to serve) and the requirements of the protection of the individual's rights. There must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

9. In the absence of any local court decision that BL 6 and BL 105 impose the implicit requirement of the "fair balance" test in cases involving interferences with property rights falling short of "deprivation", it is arguable that such interferences are not required to satisfy the "fair balance" test and are only subject to the requirement of "in accordance with law" under BL 6 and BL 105.[2]

The Opinion

10. The Opinion argued that the requirement to cover a minimum number of properties in the price list would engage BL 105 by restricting the vendor's right to dispose of its property (para 54). It then accepted that the stated aim of the requirement (ie "*to enable prospective purchasers to get a fuller picture of the prices of a considerable number of properties in a development*") would be regarded as a legitimate aim (paras 55-56 and 58-59).

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[1] Article 1 of Protocol No. 1 provides:
"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

[2] In *The Hong Kong Buddhist Association v The Occupiers & Anor*, HCMP 4108/2003 (8 September 2006) and *Harvest Good Development Ltd v Secretary for Justice & Ors* [2007] 4 HKC 1, while our courts considered the "fair balance" test in relation to an interference with property rights, their discussions on that test were obiter dicta. Likewise, in *Securities and Futures Commission v "C"& Ors*, HCMP 727/2008 (22 October 2008) and *HKSAR v Asaduzzman*, HCMA 314/2009 (7 May 2010), the courts proceeded on the basis that the parties had agreed that the "fair balance" test applied without any detailed analysis of whether the application of such a test was justified under BL 6 and BL 105.

11. The Opinion went on to query how the requirement could achieve its stated aim when the vendors need not offer for sale those properties included in the price list and may revise the price list prior to sale (paras 59-61). It stated that the requirement would be highly vulnerable to a constitutional challenge under BL 6 and BL 105 unless the Government provides a cogent explanation on the "rational connection" between the requirement and its stated aim (paras 62 and 82).

Administration's views

12. The Opinion did not seek to argue that the requirement to cover a minimum number of properties in the price list would constitute "deprivation" of property for the purpose of BL 105 requiring payment of compensation. Instead, it argued that the requirement would fail to satisfy the "fair balance test". Yet, the Opinion did not address the more fundamental question of whether the application of the "fair balance" test is justified under BL 6 and BL 105.

13. Even assuming that the "fair balance" test applies, it has been observed that under the European jurisprudence where property rights are concerned, states have a considerable margin of appreciation in determining the existence of a problem of general public concern and in implementing measures designed to meet it. In certain areas such as housing, the courts have stated that they will only intervene where a State has exercised its judgment in a "manifestly unreasonable way".[3]

14. The following passages extracted from Tom Allen, *Property and the Human Rights Act 1998* (Oxford: Hart, 2005) are particularly relevant:

> "Of course, if a State fails to provide any reason for an interference, it would follow that [Article 1 of Protocol No. 1] had been violated. However, ***there are no cases where the European Court has rejected the State's argument that its purpose was legitimate***." (p 130)

[3] Simor and Emmerson QC, *Human Rights Practice* (updated to February 2007) at para 15.045.

> "Once it is determined that the aim of the interference is legitimate, the next issue is whether the interference actually serves the aim. On this point, ***the level of scrutiny is again very low***. This follows from the tendency of the Court to describe the aim of domestic laws in the widest terms possible." (p 132)
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> "The effect is to make the degree of scrutiny of the legitimacy and the rationality of an interference so low that ***it amounts to little more than a test of good faith, which is met by simple assertions on the part of the government***. For example, the Court has stated that it is enough that the State 'may have considered it necessary' to resolve a problem." (p 133)
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> "Given the level of deference exercised by the courts, and the generality of the limitations to [Article 1 of Protocol No. 1] (contrasted with, for example, Article 10(2)), ***it seems doubtful that there is any real chance of success for an argument that an interference does not serve a legitimate aim***." (p 135) (emphasis added)

15. Turning to the present case, the Administration has pointed out that the requirement to cover a minimum number of properties in the price list seeks to address the undesirable market practice of "sale-by-small-batches", to enhance information transparency and to tackle price rigging. It is a common practice for developers to include as few residential properties as possible in a batch of sale in order to contain the damage if the price is proven too low or too high.

16. The practice of "sale-by-small-batches" has caused grave public concern since prospective purchasers will only have access to the prices of a small number of properties in a development at any particular point of time and can only make their decisions with very limited knowledge about the overall prices of the properties in the development. There are demands from LegCo members and stakeholders (e.g. the Consumer Council and estate agents) to address the public concern.

17. Although vendors need not sell the properties covered in the price list and can revise the list prior to sale, they would unlikely change

the prices already made known to the public since this would not be perceived well by the public. Given that vendors would unlikely set prices arbitrarily even for those properties which are not intended for sale immediately, the Administration considers that the requirement to cover a minimum number of properties in the price list would enable purchasers to get a fuller picture of the prices of a considerable number of properties in a development.

18. In view of the relevant European jurisprudence, our courts are likely to give the Administration a considerable margin of appreciation on the question of "rational connection" and their level of scrutiny of the Administration's views on this question is likely to be low. On this basis, the requirement to cover a minimum number of properties in the price list is likely to be seen by our 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.

PART II – Compatibility of clause 61(4) and similar provisions with Article 16 of the Bill of Rights

19. Clause 61(4) of the Bill provides that an advertisement must not give information on the unit price of any specified residential property otherwise than by reference to the saleable area of that property. A person who contravenes the above provision would commit an offence and would be liable to a fine of $500,000. There are similar provisions in respect of the sales brochure and the price list for a development.[4]

20. The Opinion stated that the practical significance of clause 61(4) is that it prevents vendors from providing information on the price per square foot/metre in any format other than the saleable area in the advertisement of first-hand residential property. In particular, vendors will not be able to quote the price using Gross Floor Area ("GFA"). This prohibition, according to the Opinion, is a disproportionate restriction of vendors' right to freedom of expression and is unconstitutional.

[4] In relation to sales brochures, see clause 18(2)(k), section 11 of Schedule 1, and clause 21; in relation to price lists, see clause 28(2)(b) and (c), (9) and (11).

The right to freedom of expression

21. Freedom of expression is protected by Article 16(2) and (3) of the BOR and is constitutionally guaranteed by Article 27 of the Basic Law.[5] Where a constitutionally protected right is involved, a two-stage inquiry is required.[6] First, has a right protected by the Basic Law or the BOR been infringed? Second, if so, can such infringement be justified? In deciding necessity or justification, the courts would apply the following proportionality test:[7]

> "(1) the restriction must be rationally connected with one or more of the legitimate purposes; and (2) the means used to impair the right of peaceful assembly must be no more than is necessary to accomplish the legitimate purpose in question."

22. The test is "no more than is necessary to accomplish the aim", meaning that it "does not go beyond what is proportionate".[8] The proportionality test does not require that the least possible intrusive means of attaining the objective be searched out and adopted as long as the measure is "from a range of means which impairs [the right] as little as is reasonably possible".[9]

23. Restriction is permissible if it is necessary for "respect of the rights of others". The permissible limitation of protection of "rights of others" is a catch-all limitation, and is potentially very broad.[10] It is not

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5 Article 27 of the Basic Law provides that "Hong Kong residents shall have freedom of speech, of the press and of publication". Article 16(2) and (3) of the BOR provides: "(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary – (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals."

6 See *Secretary for Justice v Yau Yuk Lung* [2006] 4 HKLRD 196, at 208 B-C (para 45); *Leung v Secretary for Justice* [2006] 4 HKLRD 211, at 234 G-H (para 43).

7 *Leung Kwok Hung v HKSAR* (2005) 8 HKCFAR 229 at 253I, para 36.

8 *HKSAR v Szeto Wah*, HCMA 164/2011, 11 August 2011, para 29.

9 *Attorney General of Hong Kong v Lee Kwong-kut* [1993] AC 951, at 972D; *Dr Kwok Hay Kwong v Medical Council of Hong Kong*, CACV 373/2006, 24 January 2008, para 71; *Dr Chan Hei Ling Helen v Medical Council of Hong Kong*, CACV 403/2006, 30 April 2009, paras 52 and 60.

10 Joseph, Schultz and Castan, *The ICCPR Cases, Materials and Commentary* (2000), para 18.37.

limited only to fundamental rights or BOR rights.[11] The "rights" may relate to the interests of other persons or to those of the community as a whole.[12]

Commercial expression

24. The Opinion argued that freedom of expression is not a context in which the court will normally recognise a broad margin of appreciation for the legislature. However the Administration would like to point out that commercial speech or expression is treated as being of less importance than political or artistic expression in international human rights jurisprudence. Restrictions on commercial speech will generally be subject to less strict scrutiny on the basis that what is being served is a private, rather than a public interest. Thus a wide margin of appreciation will be extended where the speech interfered with is found to have an essentially competitive purpose.[13] Human rights commentators have expressed the view that:

> "The justifications for restricting commercial speech are generally accepted to be stronger than in the case of political (and possibly artistic) speech. Clearly there is a public interest in forbidding false or misleading claims about products or services. These competing interests of consumer protection and fair competition mean that in every jurisdiction commercial speech is subject to considerable regulation."[14]

25. The Court of Appeal in *Dr Kwok-hay Kwong v Medical Council of Hong Kong* agreed that freedom of expression includes the right to advertise. But it also accepted the general proposition that where commercial gain is involved, less justification is required for restrictions than would otherwise be the case where more serious aspects of the freedom of expression are at stake. The right of free expression would in such cases be at the lower or even lowest end of the spectrum of this protected right. The Court noted that the public interest as far as advertising is concerned lies in the provision of relevant material to enable informed choices to be made, but "it is also important to bear in

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11 M Nowak, *UN Covenant on Civil and Political Rights – CCPR Commentary* (2nd revised edition, 2005), Article 19, para 51.

12 N Jayawickrama, *The Judicial Application of Human Rights Law* (2002), p 710.

13 R Clayton and H Tomlinson, *The Law of Human Rights* (2nd edn, 2009), paras 15.290-15.298.

14 Andrew Nicol QC, Gavin Millar QC & Andrew Sharland, *Media Law & Human Rights* (2001) para 12.1.3.

mind the need to protect the public from the disadvantages of advertising".[15]

26. In the more recent case of *Dr Chan Hei Ling Helen v Medical Council of Hong Kong*, the Court of Appeal endorsed the view that less justification is required where commercial gain is involved. In relation to the argument that public endorsement of a product should be allowed provided the information is accurate, honest and not misleading, the Court of Appeal pointed out that "accuracy may be difficult to verify and the manner in which the information is presented may lack balance, objectivity and impartiality when the person conveying the information has a conflict of interest."[16]

Margin of appreciation in the context of socio-economic policies

27. In the most recent case of *Fok Chun Wa v Hospital Authority*,[17] the Court of Final Appeal noted that in some circumstances it will be appropriate for the courts to recognise that there is an area of judgment within which the judiciary will defer, on democratic grounds, to the considered opinion of the elected body whose act or decision is said to be incompatible with human rights. It will be easier for such an area of judgment to be recognised where the right itself requires a balance to be struck, much less so where the right is stated in terms which are unqualified. It will be easier for it to be recognised where the issues involve questions of social or economic policy, much less so where the rights are of high constitutional importance or are of a kind where the courts are especially well placed to assess the need for protection.

28. The Court of Final Appeal in *Fok Chun Wa* held that the principle of margin of appreciation reflects the different constitutional roles of the judiciary on the one hand, and the executive and legislature on the other. The judiciary is the part of government which has the responsibility for applying the law. Matters of state or community policy such as the socio-economic policies of a government are matters predominantly for the executive or the legislature. It would not usually

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15 CACV 373/2006, 24 January 2008, paras 29-34.

16 CACV 403/2006, 30 April 2009, para 57. On appeal in *Medical Council of Hong Kong v Helen Chan*, FACV 13/2009, 14 May 2010, the Court of Final Appeal noted at para 81 that the speech involved was commercial rather than political speech.

17 FACV 10/2011, 2 April 2012, paras 61-69.

be within the province of the courts to adjudicate on the merits or demerits of government socio-economic policies.

29. The Court further held that in the context of socio-economic policies, there may be open to the authorities a number of solutions to any perceived problem. Assessment of the advantages and disadvantages of the various legislative alternatives is primarily a matter for the legislature. The possible existence of alternative solutions does not in itself render the contested legislation unjustified. The Court concluded that "unless the solution or alternative in question is manifestly beyond the spectrum of reasonableness (or manifestly without reasonable foundation) the court will not interfere.[18]

Administration's views

30. The prohibition on providing information in advertisement, sales brochure, price list, of specified (first-hand) residential property, on the price per square foot/metre in any format other than saleable area, a concept clearly defined by clause 8 of the Bill, has been proposed in view of the following considerations.

31. The Administration considers that it is important that information about flat size and flat price per square foot/metre is provided to prospective purchasers in a clear, accurate and consistent manner so that they can compare flat prices of different developments calculated on the same area basis. There is, however, no commonly adopted definition of GFA per flat. It is impossible to work out such a definition in the foreseeable future as it is not just a matter of what items are to be included in the calculation of GFA, but also how each item is to be measured. REDA has proposed to use "residential common areas" for the calculation of GFA of a property but different developers may include different items in such "residential common areas" in different developments.

32. In the absence of a commonly adopted definition of GFA per flat, allowing the use of GFA for quoting flat size and flat price per square foot/metre in advertisement, sales brochure, price list, alongside the

[18] Above, paras 74-76. See also *Dr Kwok Hay Kwong v Medical Council of Hong Kong*, CACV 373/2006, paras 22-25..

statutorily defined saleable area, will cause confusion rather than enable prospective purchasers to make an informed decision. In fact, it will go against the intent that information about flat size and flat price per square foot/metre should be provided to prospective purchasers in a clear, accurate and consistent manner so that they can compare flat prices of different developments calculated on the same area basis. Different vendors may include different items in the constituents of "apportioned share of common areas" in their calculation of GFA for a flat. The methodologies adopted to determine unit prices of flats calculated on the basis of GFA are likely to be inconsistent among vendors and not transparent. Prospective purchasers are unable to carry out an apple-to-apple comparison of the size, price and "efficiency ratio" of flats bearing the same GFA in different residential property developments.

33. We use a hypothetical case to illustrate the confusion caused to prospective purchasers if GFA is used for quoting flat size and flat price.

> For example, the following items are included in the "apportioned share of common area" of the properties of Development A: lift lobbies; electrical meter rooms; refuse rooms; clubhouse; staircase; and transformer room.
>
> On the other hand, the following items are included in the "apportioned share of common area" of the properties of Development B: the six aforementioned items; caretakers' office; fire services' room; and filtration plant room etc.
>
> We assume that the saleable area of a residential property in Development A is 80 square metres, and the "apportioned share of common area" for calculating the GFA for that property is 20 square metres. The GFA for that property in Development A is therefore 100 square metres.
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> We further assume that the saleable area of a residential property in Development B is 80 square metres, and the "apportioned share of common area" for calculating the GFA for that property is 50 square metres. The GFA for that property in Development B is therefore 130 square metres.
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> If both properties are offered at the same price and if GFA is allowed to be used to present the floor area of the properties, a purchaser will probably choose the properties of Development B which appear to be better value for money when compared with those of Development A which does not include caretakers' office, fire services' room and

filtration plant room in calculating the "apportioned share of common area".

34. Although property size and property price would not be allowed to be quoted on the basis of GFA in advertisement, sales brochure, price list, a vendor would be required to provide information on the area of common facilities (eg resident's clubhouse) on an aggregate basis as well as the area of those features which the owners will have exclusive use. As such, there would not be a total and absolute ban on the disclosure of GFA-related information. We consider that the proposed approach of requiring vendors to provide information about: (a) the saleable area of a residential property; (b) the area of those features which the owners of a residential property will have exclusive use; and (c) holistically the types and area of common facilities in the development, a viable and more direct means to let prospective purchasers know what are they buying for.

35. We note that the proposed measure restricts the vendors' right to freedom of expression in the advertisement of specified (first-hand) residential property. However, the right may be restricted if the measure is proportionate to a legitimate aim. The proposed measure pursues the aim of protecting the legitimate interests of prospective purchasers and has a rational connection to that aim. It falls within the range of means which impairs the right to expression as little as is reasonably possible and is therefore proportionate. The alternative solution suggested by REDA is not practicable. In any event, the possible existence of alternative solutions does not in itself render the proposed measure unjustified.

36. The proposed measure has the support of the Steering Committee on Regulation of the Sale of First-hand Residential Properties by Legislation, the Consumer Council and various professional bodies, political parties and estate agency associations. Many respondents to our public consultation also support using saleable area only to present the floor area and price per square foot/metre for a property. The Administration considers that the proposed measure has a reasonable foundation and is not manifestly beyond the spectrum of reasonableness.

37. It is a matter for the legislature to assess the advantages and disadvantages of the various legislative options and the merits and demerits of the proposed measure to be introduced to the sale of first-hand residential property. Given that the right to freedom of expression requires a balance to be struck and the proposed measure involves commercial expression and questions of socio-economic policy, the legislature has a wide margin of appreciation in assessing the need for such measure.

38. With regard to the argument that the Government's objective will only be partly met by the proposed measure since GFA will still be permitted in the secondary market, we note that information on saleable area of all assessed second-hand residential properties in Hong Kong (except village houses) is readily available from the Property Information Online operated by the Rating and Valuation Department ("RVD") at a charge of $9 per property search. RVD's long-term goal is to provide payers of assessed private residential properties (excluding village houses) free access to saleable area information of their own properties.

39. The Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap 511, sub leg C) already requires that an estate agent must, where applicable, provide information on the saleable area of a property (including a second-hand residential property) to prospective purchasers. Nonetheless, the Estate Agents Authority has from time to time received complaints about estate agents' provision of unclear or misleading floor area information to their clients in respect of second-hand residential properties. In May 2012, the Authority issued a practice circular on the provision of floor area information for second-hand residential properties. The circular requires that if the floor area information of a property is included in an advertisement or in other situations and the saleable area of that property can be obtained from RVD or the first agreement, then estate agents must provide the saleable area. It can be seen that there is growing trend from quoting GFA for a property to quoting saleable area for a property in the sale of second-hand residential properties.

40. In anticipation of the passage of the Bill, the Administration is planning various public education activities to be launched after the enactment and before the coming into operation of the Bill, to help bring about the mindset change that saleable area should be the only basis for quoting property area and price per square foot/metre, including the broadcast of Announcement of Public Interest, the publication of pamphlets in collaboration with the Consumer Council, and the organization of workshops for estate agents in consultation with the Estate Agents Authority.

Conclusion

41. To conclude, the Administration does not consider the requirement to cover a minimum number of properties in the price list under clause 27 of the Bill, or the prohibition on providing information on price per square foot/metre otherwise than by reference to the saleable area of the property in advertisement, sales brochure, price list, to be inconsistent with the protection of property rights under BL 6 and BL 105 or the right to freedom of expression under BOR 16 respectively. The Administration maintains the view that the proposed measures in the Bill are in conformity with the Basic Law and the BOR and are constitutional.

Transport and Housing Bureau
Department of Justice
May 2012