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Paper for the House Committee

**Report of the Subcommittee on Residential
Properties (First-hand Sales) Ordinance (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Residential Properties (First-hand Sales) Ordinance (Commencement) Notice ("the Commencement Notice").

Background

The Commencement Notice

2. The Residential Properties (First-hand Sales) Ordinance ("the Ordinance") was passed by the Legislative Council on 29 June 2012, and published in the Gazette on 6 July 2012. The Ordinance seeks to enhance the transparency and fairness of the sales arrangements of first-hand residential properties and enhance consumer protection.
3. The Ordinance sets out detailed requirements in relation to sales brochures, price lists, show flats, viewing of property in completed development or phase, disclosure of transaction information, advertisements, sales arrangements, and the mandatory provisions for the Preliminary Agreement for Sale and Purchase and Agreement for Sale and Purchase for the sales of first-hand residential properties. It also provides for prohibitions against misrepresentation and dissemination of false or misleading information. Offences are created for the contravention of the provisions in the Ordinance.
4. During the Bills Committee's scrutiny of the Residential Properties (First-hand Sales) Bill ("the Bill") and at the resumption of the second reading debate of the Bill, the Administration has undertaken to bring the Ordinance into operation within 12 months after the Ordinance was enacted.
5. Section 1(2) of the Ordinance provides that the Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Housing

("STH") by notice published in the Gazette. By way of the Commencement Notice published on 25 January 2013, STH has appointed –

- (a) 2 April 2013 as the day on which sections 1 to 9 of the Ordinance (short title and commencement, and interpretation clauses), Division 1 of Part 6 of the Ordinance (the appointment and functions of the Authority and related provisions), and Schedule 2 to the Ordinance (interpretation clauses) come into operation; and
- (b) 29 April 2013 as the day on which the remaining provisions of the Ordinance (i.e. provisions other those mentioned in (a) above) come into operation.

Sales of First-hand Residential Properties Authority

6. To facilitate early implementation of the Ordinance and maximize the use of public resources, the Administration proposes that the Sales of First-hand Residential Properties Authority ("SPRA") be set up under the Housing Branch of the Transport and Housing Bureau, i.e. the Housing Department, to enforce the Ordinance. SPRA's functions include –

- (a) to administer and supervise compliance with the provisions of the Ordinance (including monitoring sales practices through regular inspections and checks on sales brochures, price lists, show flats, sales offices, registers of transactions, sales arrangement announcements, vendors' websites and advertisements);
- (b) to handle complaints and public enquiries;
- (c) to arrange publicity programmes and educate the public on matters relating to the sales of first-hand residential properties;
- (d) to issue practice guidelines for stakeholders, conduct investigations on cases of non-compliance and contravention against the provisions of the Ordinance; and
- (e) to maintain an electronic database containing the sales brochures, price lists, and registers of transactions of individual first-hand residential developments.

7. SPRA will issue guidelines under section 88 of the Ordinance a few weeks before 29 April 2013 to facilitate vendors of first-hand residential properties and other stakeholders to comply with the requirements of the Ordinance. SPRA will start enforcing the Ordinance on 29 April 2013 when all

the provisions of the Ordinance come into operation.

The Subcommittee

8. At the House Committee meeting on 8 February 2013, members agreed that a subcommittee should be formed to examine the Commencement Notice. To allow sufficient time for scrutiny, a resolution was passed at the Council meeting on 20 February 2013 to extend the scrutiny period for the Commencement Notice to the Council meeting of 27 March 2013. Under the chairmanship of Hon CHAN Kam-lam, the Subcommittee has held two meetings to discuss with the Administration. The membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

9. The Subcommittee supports the implementation of the Ordinance to enhance the transparency and fairness of the sales arrangements of first-hand residential properties and to enhance consumer protection. Some members, however, are concerned about the readiness of SRPA and the stakeholders including vendors of first-hand residential properties when the Ordinance commences operation on 29 April 2013. They have sought information on the progress of the preparatory work for the implementation of the Ordinance, in particular the preparation and contents of the guidelines to be issued under the Ordinance and the recruitment of staff for SPRA.

10. The Administration has advised that the Ordinance is proposed to be implemented in two stages. This will enable STH to appoint public officers to SRPA on or after 2 April 2013. SRPA will then be able to issue guidelines to the trade by early April 2013. Failure to comply with the requirements in the Ordinance on or after 29 April 2013 will be offences, and SRPA will start taking enforcement actions with effect from 29 April 2013. The Administration has further advised that it is committed to implementing the Ordinance in accordance with the proposed time schedule and all necessary preparatory works are in hand.

Guidelines to be issued under the Ordinance

11. Noting that SPRA will be issuing guidelines to vendors of first-hand residential properties and other stakeholders soon, members have enquired about the progress made in preparing the guidelines.

12. The Administration has informed the Subcommittee that SPRA will issue guidelines under section 88 of the Ordinance, practice notes, and Frequently Asked Questions and Answers ("FAQs") to facilitate vendors and related parties (e.g. conveyancing solicitors, surveyors and architects) to comply with the Ordinance and understand the requirements of SRPA. These documents will primarily cover the following aspects in relation to the sales of first-hand residential properties –

- (a) Sales brochure;
- (b) Price list;
- (c) Sales arrangements and other information;
- (d) Register of transactions;
- (e) Submission of documents to SRPA; and
- (f) Submission of information to the Sales of First-hand Residential Properties Electronic Platform ("the SRPE").

13. Some members have enquired about the legal status of the guidelines, practice Notes and FAQs, and whether non-compliance with any of these documents will constitute an offence under the Ordinance. According to the Administration, the guidelines will indicate the manner in which SRPA proposes to perform its function or exercise its power, and provide guidance on the operation of the major provisions of the Ordinance. As stipulated in section 88(3) of the Ordinance, the guidelines are not subsidiary legislation. Under section 88(5) of the Ordinance, a person does not incur any civil or criminal liability only because the person has contravened any of the guidelines. However, if in any legal proceedings, the court is satisfied that a guideline is relevant to determining a matter that is the issue, the guideline is admissible as evidence in the proceedings; and the proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

14. The Administration has also advised that the practice notes are best practices which SRPA recommends vendors to follow, for reasons of consistency and standardization. Non-compliance with the best practices per se will not be regarded as a contravention of the Ordinance or a commission of an offence under the Ordinance. As for FAQs, they aim to facilitate the trade to understand how SRPA look at specific provisions of the Ordinance.

15. In response to members' enquiry, the Administration has advised that if it is observed that vendors have consistently deviated from specific parts of the guidelines, practice notes or FAQs, it will discuss with the Real Estate Developers Association of Hong Kong ("REDA") to understand whether vendors have practical difficulties at the operational level to follow those

specific requirements and advice as set out in the guidelines, practice notes or FAQs. If that is the case, the Administration may consider revising the guidelines, practice notes and FAQs as appropriate.

16. Some members have expressed concern as to whether the guidelines contain specific provisions that ensure vendors will provide sufficient information in the sales brochure on the difference in levels between the lowest residential floor of the building blocks and the adjacent streets. The Administration has responded that under section 18 of Part 2 of Schedule 1 to the Ordinance, 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 visualize the relationship between the lowest residential floor of a building and the level of the adjacent street, regardless of how that lowest residential floor is named. Moreover, it is mandatory for vendors to provide a plan showing all elevations of the development in the sales brochures under section 19 of Part 2 to Schedule 1 of the Ordinance. A member has suggested that in the long run, there should be guidelines/practice notes requiring vendors to show the relation between the levels of each residential floor and an adjoining slope (if there is such a slope). The Administration has noted the suggestion and will consider whether there is such a need and whether it is possible for SRPA to require the disclosure of such information when reviewing the guidelines, practice notes and FAQs in future.

17. Some members are also concerned as to whether the guidelines will cater for developments which comprise both residential and commercial premises and will require vendors to mention in the sales brochure that some of the properties in the development are for commercial uses. The Administration has explained that the Ordinance applies to "residential property" as defined under section 6 of the Ordinance. In addition, the Ordinance provides that the sales brochure must set out "relevant 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. This is a safeguard to buyers. In response to members' request, the Administration will consider if there is a need to include this as an example of "relevant information" in the guidelines, practice notes or FAQs.

Readiness of stakeholders to comply with the Ordinance

18. Some members have stressed that the guidelines and practice notes should be clear and specific to facilitate compliance by vendors. Other members have also enquired about the Administration's consultation with stakeholders on the contents of the guidelines, practice Notes and FAQs and whether they are clear about the requirements.

19. The Administration has informed the Subcommittee that the relevant stakeholders, including REDA, the Law Society of Hong Kong ("the Law Society"), the Hong Kong Institute of Surveyors, the Hong Kong Institute of Architects, the Consumer Council and the Estate Agents Authority have been consulted on the draft guidelines, practice notes and FAQs starting from November 2012. In particular, meetings have been held with REDA and the Law Society to discuss the draft documents in detail. The various stakeholders are supportive of SRPA issuing guidelines, practice notes and FAQs. They consider it is crucial that vendors and related parties involved in the preparation of the sales of first-hand residential properties have the same understanding of the requirements of the Ordinance as SRPA, and that there are clear instructions to follow. They have provided constructive and useful input and comments on how to improve the draft guidelines, practice notes and FAQs.

20. The Administration has further advised that it will continue to meet with the stakeholders to hear their comments on the second draft of the documents, which have incorporated the previous comments made by stakeholders as appropriate. It will wrap up discussions with the stakeholders and finalize the guidelines, practice notes and FAQs in March for issue in early April 2013.

21. Members note REDA's view that, as transitional arrangements, the sales brochure, price lists and sales arrangements of first-hand residential properties in a development or a phase of a development which have already been made available before 29 April 2013 should not be subject to the Ordinance even if the properties are being offered for sale on or after 29 April 2013. REDA has proposed that only if those properties are continued to be offered for sale 12 months or beyond after 29 April 2013 should the sales be required to comply with the requirements under the Ordinance.

22. On REDA's suggestions on the transitional arrangements, the Administration has advised that vendors are well aware that the Ordinance was enacted in June 2012, and that the Ordinance will be brought into operation within 12 months from then. There is a de facto transitional period of about 10 months counting from the date of enactment to the date of implementation of the Ordinance for vendors to prepare themselves for the Ordinance. The Administration does not consider it necessary or possible to grant another 12 months grace period for the sale of some of the first-hand residential properties. Nevertheless, SRPA and the Lands Department will provide the following final transitional arrangements respectively –

- (a) the Lands Department will issue a circular memorandum by early April 2013 to set out the transitional arrangements for projects subject to the Lands Department Consent Scheme in relation to the implementation of the Ordinance. In gist, instead of having to be bound by the current requirements of the Consent Scheme on sales

brochures and price lists etc, vendors may apply to the Lands Department so that they may make available sales brochures and price lists in accordance with the Ordinance before 29 April 2013 without being considered as breaching the requirements of the Consent Scheme; and

- (b) for first-hand residential properties in a development which are intended to be offered for sale on or after 29 April 2013, including residential properties in a development which have commenced sale before 29 April 2013, sale may continue/commence on 29 April 2013 if sales brochures which comply with the relevant requirements under the Ordinance are made available on or before 22 April 2013 (7 days requirement) in accordance with section 25 of the Ordinance; if price lists which comply with the relevant requirements under the Ordinance are made available before 26 April 2013 (3 days requirement) in accordance with section 32 of the Ordinance; and if sales arrangements which comply with the relevant requirements under the Ordinance are made available on or before 26 April 2013 (3 days requirement). The Register of Transactions is only required to set out transaction information of residential properties of which their Preliminary Agreements for Sale and Purchase are signed on or after 29 April 2013.

23. Some members have expressed concern as to whether the stakeholders are ready to comply with the requirements of the Ordinance, and whether SRPA will provide briefings for vendors. The Administration has advised that SRPA will organize briefing sessions in early April 2013 to brief stakeholders on the Ordinance, the guidelines, practice notes and FAQs. Also, SRPA is developing the SRPE, which is a centralized database established under the Ordinance to provide public access to the sales brochures, price lists and registers of transactions of first-hand residential developments that are subject to the regulation of the Ordinance. The SRPE will be ready for public access on 29 April 2013. To facilitate vendors to understand how to provide the electronic copies of the afore-mentioned documents to the SRPE as required by the Ordinance, two workshops have been arranged in March 2013 for vendors. Vendors may also participate in the trial run on how to submit electronic documents for uploading onto the SRPE to be carried out in late March 2013.

24. The Administration has further advised that an Announcement of Public Interest, a pamphlet for prospective purchasers, and advertisements promoting the commencement of the Ordinance are readily available for broadcast, distribution and making public anytime. The website of SRPA will be ready for public access on 29 April 2013. A hotline on matters relating to the Ordinance will come into operation to dovetail with the publicity programme.

Recruitment of staff for SPRA

25. The Subcommittee notes that SPRA will have an establishment of 32 staff and the Administration has obtained the support of the Establishment Subcommittee for the creation of the two directorate posts, namely an Administrative Officer Staff Grade B and a Principal Executive Officer. Some members are concerned about the recruitment situation of the 30 non-directorate staff and whether these staff would be familiar with market practices. They consider it necessary that efforts be made for SRPA to leverage on the expertise and experience of people who are familiar with the sales tactics of property developers so as to ensure the effective enforcement of the Ordinance.

26. The Administration has advised that it will seek the Finance Committee's approval for the creation of the two directorate posts on 15 March 2013. The multi-disciplinary team of 30 non-directorate posts for SRPA will comprise civil servants from different disciplines, including housing managers, building surveyors, and estate surveyors, etc. The posts are being created through the established procedures and will be filled starting from 1 April 2013. The Police will provide training on investigation and collection of evidence to the staff. Besides, the Department of Justice will create two Senior Government Counsel posts, one in the Planning, Environment, Lands and Housing (Advisory) Unit of the Civil Division and the other in the Prosecutions Division, to support the work of SPRA.

Advice sought

27. The Subcommittee will not propose any amendment to the Commencement Notice. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Residential Properties (First-hand Sales) Ordinance
(Commencement) Notice**

Membership list

Chairman Hon CHAN Kam-lam, SBS, JP

Members Hon James TO Kun-sun
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon CHAN Han-pan
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP

(Total : 13 Members)

Clerk Ms Miranda HON

Legal Adviser Miss Kitty CHENG

Date 28 February 2013