

立法會
Legislative Council

LC Paper No. CB(1)1111/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/SS/7/12/1

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

**Minutes of second meeting
held on Wednesday, 13 March 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
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 WU Chi-wai, MH
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Dennis KWOK

Members absent : Hon Alan LEONG Kah-kit, SC
Hon CHAN Han-pan
Hon Alice MAK Mei-kuen, JP
Hon Christopher CHEUNG Wah-fung, JP

Public Officers attending : **For item I**

Mr Eugene FUNG
Deputy Secretary for Transport and Housing
(Special Duties)

Mrs Hedy CHU
Principal Assistant Secretary for Transport and
Housing (Special Duties)

Miss Sharon KO
Senior Administrative Officer (Special Duties)(1)

Mr Lawrence PENG
Senior Assistant Law Draftsman
Department of Justice

Mrs Maria LAM
Assistant Director/Legal/
Kowloon & New Territories West
(Legal Advisory and Conveyancing Office)
Lands Department

Mr Armstrong CHU
Chief Land Conveyancing Officer/
Port and Railway Development
(Legal Advisory and Conveyancing Office)
Lands Department

Clerk in Attendance : Ms Miranda HON
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)1

Action

I. Meeting with the Administration

(LC Paper No. CB(1)686/12-13(01) — Administration's response to issues raised by members at the Subcommittee meeting on 28 February 2013)

The Subcommittee deliberated (index of proceedings attached at the **Annex**).

Action

2. The Administration was requested to consider including in the guidelines/practice notes the requirement for vendors to disclose specific information regarding the relation between the levels of each residential floor and an adjoining slope (if there is such a slope). In addition, for developments comprising both residential and commercial premises, the Administration was requested to consider requiring vendors to mention in the sales brochure that some of the properties in the developments were for commercial uses.

3. As the Subcommittee had completed scrutiny of the Residential Properties (First-hand Sales) Ordinance (Commencement) Notice, members agreed that the Chairman should make a verbal report on the deliberations of the Subcommittee at the House Committee meeting on 15 March 2013, to be followed by a written report in the following week.

4. The Chairman reminded members that the deadline for giving notice to amend the Commencement Notice would be 20 March 2013 and that the scrutiny period (which had been extended by resolution) would expire on 27 March 2013.

II. Any other business

5. There being no other business, the meeting ended at 11:25 am.

Council Business Division 1
Legislative Council Secretariat
23 May 2013

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

**Proceedings of the second meeting
on Wednesday, 13 March 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
|--|--|---|-----------------|
| <i>Agenda Item I - Meeting with the Administration</i> | | | |
| 000524 - 000635 | Chairman | Opening remarks | |
| 000636 - 001145 | Chairman Administration | The Administration's explanation on its response to issues raised by members at the last Subcommittee meeting on 28 February 2013 (LC Paper No. CB(1)686/12-13(01). | |
| 001146 - 001808 | Chairman Mr TAM Yiu-chung Administration | <p>Mr TAM Yiu-chung's enquiry about the difference between the guidelines issued under section 88 of the Residential Properties (First-hand Sales) Ordinance ("the Ordinance") and the practice notes in terms of legal status and consequence of non-compliance.</p> <p>The Administration's response that –</p> <p>(a) penalties would only be incurred for contravention of provisions of the Ordinance;</p> <p>(b) section 88(3) of the Ordinance provided that the guidelines were not subsidiary legislation and section 88(5) provided that a person did not incur any civil or criminal liability only because the person had contravened any of the guidelines. However, if in any legal proceedings, the court was satisfied that a guideline was relevant to determining a matter that was the issue, the guideline was admissible as evidence in the proceedings; and</p> <p>(c) the practice notes and the Frequently Asked Questions and Answers ("FAQs") were not guidelines and they were issued to facilitate the trades to comply with the Ordinance.</p> | |
| 001809 - 002210 | Chairman Mr Abraham SHEK Administration | Mr Abraham SHEK's concerns about the large number of guidelines and practice notes with which the trades would have to comply and the need for clarity. | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) the status of guidelines, practice notes and FAQs were set out clearly in the respective documents ; (b) the stakeholders, including the Real Estate Developers Association of Hong Kong and the Law Society of Hong Kong, welcomed the guidelines, Practice Notes and FAQs to facilitate compliance with the Ordinance; and (c) the stakeholders were invited to comment on the draft guidelines, practice notes and FAQs at an early stage. Some of the suggestions raised by stakeholders on the first draft of those documents had been incorporated into the second draft. | |
| 002211 - 002849 | Chairman Mr James TO Administration | <p>Mr James TO's enquiries that –</p> <ul style="list-style-type: none"> (a) whether the guidelines would contain specific provisions that required vendors to provide sufficient information on special features in the sales brochure, as in the case of the sale of a first-hand residential development in Ma On Shan where the lowest residential floor of the building blocks was at the same level of the adjacent streets; and (b) whether the guidelines would require vendors to provide information on adjoining slopes which were at a higher level than the lowest residential floor of the building blocks. <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) section 18 in Part 2 of Schedule 1 to the Ordinance provided for the requirement of a cross-section plan of the building showing the relation between the adjacent street level and the level of the lowest residential floor with reference to a known datum, as illustrated in Annex C to G01/13 to the Administration's paper; (b) while the Ordinance did not provide for the disclosure of adjoining slopes, it required vendors to disclose in the sales brochure specific information about a | |

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| | | <p>residential property in the development which was known to the vendor but not to the general public, and was likely to materially affect the enjoyment of the residential property; and</p> <p>(c) as requested by members, the Administration would consider if there was a need to strengthen the requirement on this front in future.</p> | |
| 002850 - 003910 | Chairman Mr James TO Administration | <p>Mr James TO's enquiries on whether the guidelines would cater for developments comprising both residential and commercial premises and require vendors to mention in the sales brochure that some of the properties in the development were for commercial uses.</p> <p>The Administration's response that –</p> <p>(a) the Ordinance applied to residential properties as defined under section 6 of the Ordinance;</p> <p>(b) the guidelines would apply to the sale of first-hand residential units in mixed developments;</p> <p>(c) vendors were required to set out in the sales brochure "relevant information" about a residential property in the development which was known to the vendor but not to the general public, and was likely to materially affect the enjoyment of the residential property. This was a safeguard to buyers; and</p> <p>(d) as requested by members, the Administration would consider if there was a need to strengthen the requirement on this front in future.</p> | |
| 003911 - 004047 | Chairman | Legislative timetable | |