

**立法會**  
***Legislative Council***

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

**Meeting on 28 February 2013**

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information on the Residential Properties (First-hand Sales) Ordinance (Commencement) Notice ("the Commencement Notice") and summarizes previous discussions on the subject.

**Residential Properties (First-hand Sales) Ordinance (Cap. 621) and the Residential Properties (First-hand Sales) Ordinance (Commencement) Notice**

2. The Residential Properties (First-hand Sales) Ordinance ("the Ordinance") was passed by the Legislative Council ("LegCo") on 29 June 2012, and published in the Gazette on 6 July 2012. The Ordinance seeks to further 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, 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 the 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 than those mentioned in (a) above) come into operation.

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<sup>1</sup>, i.e. the Housing Department.

7. According to the Administration, the above-mentioned proposed arrangements will enable STH to appoint under section 86 of the Ordinance on or after 2 April 2013 a public officer to be the Authority and other public officers to assist the Authority in the performance of the Authority's functions, which 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;

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<sup>1</sup> The Government will however keep open the option of replacing SPRA with an independent statutory body for performing similar functions at an appropriate time.

- (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.

8. The Authority will then issue guidelines under section 88 of the Ordinance a few weeks before 29 April 2013 to ensure vendors of first-hand residential properties and other stakeholders will know in advance how to comply with the requirements of the Ordinance. The Authority will start enforcing the Ordinance on 29 April 2013 when the remaining provisions of the Ordinance come into operation.

### **Deliberations of the Panel on Housing**

9. The Panel on Housing ("the Panel") has not been consulted on the Commencement Notice. Nevertheless, the proposed creation of directorate posts for implementation of the Ordinance was discussed by the Panel at its meeting on 3 December 2012. A summary of the discussion is set out below.

### Workload of SPRA

10. Noting that the manpower resources required by SPRA are based on the anticipated annual complaint rate of about 2% out of the 20 000 first-hand residential properties being offered for sale in a year (i.e. 400 complaint cases in a year), some members have expressed the view that it might not be necessary to maintain a 30-member team to discharge the duties of SPRA if the complaint rate turns out to be lower than anticipated. The Administration has explained that the handling of complaints would only be a part of SPRA's functions. The 30-member team of SPRA would be responsible for a wide range of tasks, including carrying out regular inspections and checks on sales brochures, price lists, register of transactions and advertisements, conducting investigations, issuing guidelines, maintaining a centralised database on first-hand residential properties, and planning and executing public education programmes, etc. The range of duties would have to be discharged regardless of the number of complaints received. The Administration considers the staffing proposal reasonable at this stage and this would be reviewed when necessary.

11. On the publicity programmes to be carried out, the Administration has advised that publicity efforts would be made to educate the public that property size and property price per square foot/metre might only be quoted on the basis of saleable area ("SA") in sales brochures, price lists, and advertisements. Also, publicity efforts would be made to raise public awareness of the obligations of vendors of first-hand residential properties to make public the sales brochure at least seven days immediately before the commencement of sale and price list(s) at least three days immediately before the commencement of sale. SPRA would also organize workshops for stakeholders.

#### Replacement of SPRA with an independent statutory body

12. Some members have enquired whether consideration would be given to replacing SPRA with an independent statutory body. The Administration has explained that its priority is to bring the Ordinance and SPRA into operation by end of April 2013. It is open to the option of replacing SPRA with an independent statutory body at an appropriate time. It would make reference to existing models when considering the option of turning SPRA into a statutory body, including that of the new Communications Authority which is formed by merging the then Office of the Telecommunications Authority and the relevant divisions of the Television and Entertainment Licensing Authority.

#### Application of the Ordinance to sales of residential properties in the secondary market

13. Regarding other members' enquiry as to whether consideration would be given to extending the scope of the Ordinance to cover residential properties in the secondary market, the Administration has advised that unlike the sales of first-hand residential properties where the vendors are usually the developers, the vendors of second-hand residential properties are usually individual owners. Under the Ordinance, the vendors of first-hand residential properties have to comply with stringent requirements on sales brochures, price lists, show flats, and advertisements, etc. There would be practical difficulties on the part of individual owners of second-hand residential properties to comply with such requirements.

14. The Administration has further advised that as SPRA will maintain a centralized electronic database containing the sales brochures, price lists, and registers of transactions of individual first-hand residential developments, when the properties are subsequently sold in the second-hand market, purchasers would know about the SA and other key information of the properties by searching the documents in SPRA's electronic database. Meanwhile, the Estate Agents Authority has requested estate agents to provide SA in the sale, purchase and leasing of residential properties in the secondary market so that the market can be geared up to the use of SA in property transactions.

### Prosecution under the Ordinance

15. Members have also enquired about the level of authority for deciding whether or not prosecution actions should be taken against developers of first-hand residential properties for contravention of the Ordinance. They are concerned about the offer of deferred benefits to senior officers of SPRA by developers for non-action against malpractices in property sales. The Administration has explained that decisions on carrying out intensive investigations would be jointly considered by the senior staff of SPRA and more importantly, the final decision of whether or not to take prosecution actions would rest with the Department of Justice ("DoJ"). The provisions of the Ordinance are very clear about the compliance requirements in the sales of first-hand residential properties. The Head of SPRA would be required to make prompt and considered decisions on cases which should be referred to DoJ for consideration of prosecution and to explain SPRA's positions in public.

16. Members have suggested that a working group be set up to assess the effectiveness and fairness of SPRA after it has been in operation for one or two years. They have also requested the Administration to make efforts to ensure that no deferred benefits are incurred.

17. With the support of the Panel, the proposed creation of directorate posts for implementation of the Ordinance was submitted to the Establishment Subcommittee for consideration at its meeting on 30 January 2013. Members supported the proposal and recommended that the proposal be submitted to the Financial Committee for approval.

### **Latest position**

18. At the House Committee meeting on 8 February 2013, Members agreed to form a Subcommittee to study the Commencement Notice. The first meeting of the Subcommittee will be held on 28 February 2013.

### **Relevant papers**

19. A list of relevant papers is in the **Appendix**.

## Appendix

### Residential Properties (First-hand Sales) Ordinance (Commencement) Notice

#### List of relevant papers

Council/ Committee	Date of meeting	Paper
Legislative Council meeting	27 June 2012	Report of Bills Committee on Residential Properties (First-hand Sales) Bill (LC Paper No. CB(1)2202/11-12(01)) <a href="http://www.legco.gov.hk/yr11-12/english/bc/bc04/reports/bc040627cb1-2202-e.pdf">http://www.legco.gov.hk/yr11-12/english/bc/bc04/reports/bc040627cb1-2202-e.pdf</a>
Panel on Housing	3 December 2012	Information paper on "Proposed creation of directorate posts for implementation of the Residential Properties (First-hand Sales) Ordinance" provided by the Administration (LC Paper No. CB(1)222/12-13(01)) <a href="http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/hg1203cb1-222-1-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/hg1203cb1-222-1-e.pdf</a>  Minutes of meeting (LC Paper No. CB(1)515/12-13) <a href="http://www.legco.gov.hk/yr12-13/english/panels/hg/minutes/hg20121203.pdf">http://www.legco.gov.hk/yr12-13/english/panels/hg/minutes/hg20121203.pdf</a>