

立法會

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Panel on Housing

Meeting on 2 July 2013

Background brief on "Residential Properties (First-hand Sales) Ordinance and the Sales of First-hand Residential Properties Authority" prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Residential Properties (First-hand Sales) Ordinance (Cap. 621) ("the Ordinance") as well as the setting up of the Sales of First-hand Residential Properties Authority ("SRPA"), and summarizes the views and concerns expressed by Members in previous discussions.

Background

2. The Ordinance was passed by the Legislative Council ("LegCo") on 29 June 2012, and published in the Gazette on 6 July 2012. Coming into full implementation with effect from 29 April 2013, the Ordinance seeks to enhance the transparency and fairness of the sales arrangements and transactions of first-hand residential properties and consumer protection, and provide a level playing field for vendors of first-hand residential properties.

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. To ensure efficient implementation of the Ordinance, the Transport and Housing Bureau has set up SRPA under section 86(1) of the Ordinance. SRPA'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.

Deliberations by Members

Panel on Housing

5. The Panel on Housing ("the Panel") discussed at its meeting on 3 December 2012 the proposal to create two directorate posts in the Housing Department with effect from 1 April 2013 to cope with the workload arising from the implementation of the Ordinance.

Workload of SRPA

6. Noting that the manpower resources required by SRPA were based on the anticipated annual complaint rate, some Panel members were of the view that it might not be necessary to maintain a 30-member team to discharge the duties of SRPA if the complaint rate turns out to be lower than anticipated. The Administration explained that apart from handling complaints, SRPA was also 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 centralized database on first-hand residential properties, and planning and executing public education programmes, etc. Given the above, the Administration considered the staffing proposal reasonable and would conduct review on the staff establishment when necessary.

7. On publicity and education, members noted 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. SRPA would also enhance 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. Workshops for stakeholders would be organized.

Replacement of SRPA with an independent statutory body

8. Some Panel members enquired whether consideration would be given to replacing SRPA with an independent statutory body. The Administration responded that while it was open to such option, its priority was to bring the Ordinance and SRPA into operation by end of April 2013. The Administration would make reference to existing models, including that of the new Communications Authority which was formed by merging the then Office of the Telecommunications Authority and the relevant divisions of the Television and Entertainment Licensing Authority, when considering the option of turning SRPA into a statutory body.

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

9. In response to some members' enquiries as to whether the scope of the Ordinance would be extended to cover residential properties in the secondary market, the Administration advised that unlike the sales of first-hand residential properties where vendors were usually the developers, vendors of second-hand residential properties were usually individual owners. Under the Ordinance, vendors of first-hand residential properties had 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.

10. The Administration further advised that as SRPA would maintain a centralized electronic database containing the sales brochures, price lists, and registers of transactions of individual first-hand residential developments, when

the properties were subsequently sold in the second-hand market, purchasers would know about SA and other key information of the properties by searching the documents in SRPA's electronic database. Meanwhile, the Estate Agents Authority had requested estate agents to provide SA in the sale, purchase and leasing of residential properties in the secondary market so that the market could be geared up to the use of SA in property transactions.

Prosecution under the Ordinance

11. Panel members 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 were concerned about the offer of deferred benefits to senior officers of SRPA by developers for non-action against malpractices in property sales. The Administration explained that decisions on carrying out intensive investigations would be jointly considered by the senior staff of SRPA 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 were very clear about the compliance requirements in the sales of first-hand residential properties. The Head of SRPA would be required to make prompt and considered decisions on cases which should be referred to DoJ for consideration of prosecution and to explain SRPA's positions in public. Members further suggested that a working group be set up to assess the effectiveness and fairness of SRPA after it had been in operation for one or two years. They also requested the Administration to make efforts to ensure that no deferred benefits would be incurred.

12. With the support of the Panel, the proposal to create the two directorate posts for implementation of the Ordinance was submitted to the Establishment Subcommittee for consideration at the meeting on 30 January 2013. The Finance Committee subsequently approved the proposal on 15 March 2013.

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

13. The Residential Properties (First-hand Sales) Ordinance (Commencement) Notice ("the Commencement Notice") was published in the Gazette on 1 February 2013 –

- (a) to bring those provisions in the Ordinance relating to the short title, commencement of the Ordinance, interpretation of the Ordinance, and the appointment and functions of the Authority to be appointed under

section 86 of the Ordinance for implementing the Ordinance into operation on 2 April 2013; and

- (b) to bring the remaining provisions of the Ordinance into operation on 29 April 2013.

14. A subcommittee was formed to study the Commencement Notice. The Subcommittee reported to the House Committee on 15 March 2013. Members of the Subcommittee supported the implementation of the Ordinance to enhance the transparency and fairness of the sales arrangements of first-hand residential properties and enhance consumer protection. They did not propose any amendment to the Commencement Notice.

Readiness of SRPA

15. Some members of the Subcommittee were concerned about the readiness of SRPA and the stakeholders including vendors of first-hand residential properties when the Ordinance commenced operation on 29 April 2013. They had 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 SRPA.

16. The Administration had advised that the Ordinance was proposed to be implemented in two stages. This would enable the Secretary for Transport and Housing to appoint public officers to SRPA on or after 2 April 2013. SRPA would 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 would be offences, and SRPA would start taking enforcement actions with effect from 29 April 2013. The Administration had further advised that it was committed to implementing the Ordinance in accordance with the proposed time schedule and all necessary preparatory works were in hand.

Recruitment of staff for SRPA

17. On recruitment of staff for SRPA, some members expressed concern as to whether SRPA staff would be familiar with market practices and the sales tactics of property developers in order to ensure the effective enforcement of the Ordinance. In response, the Administration advised that the multi-disciplinary team of 30 non-directorate posts for SRPA would comprise civil servants from different disciplines, including housing managers, building surveyors, and estate surveyors, etc. The Police would provide training on investigation and

collection of evidence to the staff. Besides, two Senior Government Counsel posts in DoJ would be created to support the work of SRPA.

Council questions

18. Hon Frederick FUNG raised two questions relating to the Ordinance at the Council meetings on 23 January and 15 May 2013. Details of the Council questions are hyperlinked in the **Appendix** for ease of reference.

Latest development

19. The Administration proposes to report to the Panel at its meeting on 2 July 2013 on the implementation of the Ordinance and the work of SRPA since the full implementation of the Ordinance on 29 April 2013.

Relevant papers

20. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
27 June 2013

Appendix

List of relevant papers

Council/ Committee	Date of meeting	Paper
Legislative Council	27 June 2012	Report of the Bills Committee on Residential Properties (First-hand Sales) Bill (LC Paper No. CB(1)2202/11-12(01)) http://www.legco.gov.hk/yr11-12/english/bc/bc04/reports/bc040627cb1-2202-e.pdf
Panel on Housing	3 December 2012	Administration's paper on "Proposed creation of directorate posts for implementation of the Residential Properties (First-hand Sales) Ordinance" (LC Paper No. CB(1)222/12-13(01)) http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/hg1203cb1-222-1-e.pdf Minutes of meeting (LC Paper No. CB(1)515/12-13) http://www.legco.gov.hk/yr12-13/english/panels/hg/minutes/hg20121203.pdf
Legislative Council	30 January 2013	Legislative Council Brief issued by the Transport and Housing Bureau on 30 January 2013 http://www.legco.gov.hk/yr12-13/english/subleg/brief/14_brf.pdf
Subcommittee on Residential Properties (First-hand Sales) Ordinance (Commencement) Notice	28 February 2013	Background brief on "Residential Properties (First-hand Sales) Ordinance (Commencement) Notice" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)629/12-13(01)) http://www.legco.gov.hk/yr12-13/english/hc/sub_leg/sc07/papers/sc070228cb1-629-1-e.pdf Minutes of meeting (LC Paper No. CB(1)712/12-13) http://www.legco.gov.hk/yr12-13/english/hc/sub_leg/sc07/minutes/sc0720130228.pdf

Council/ Committee	Date of meeting	Paper
Subcommittee on Residential Properties (First-hand Sales) Ordinance (Commencement) Notice	13 March 2013	Administration's response to issues raised by members at the Subcommittee meeting on 28 February 2013 (LC Paper No. CB(1)686/12-13(01)) http://www.legco.gov.hk/yr12-13/english/hc/sub_leg/sc07/papers/sc070313cb1-686-1-e.pdf Minutes of meeting (LC Paper No. CB(1)1111/12-13) http://www.legco.gov.hk/yr12-13/english/hc/sub_leg/sc07/minutes/sc0720130313.pdf
House Committee	15 March 2013	Report of the Subcommittee on Residential Properties (First-hand Sales) Ordinance (Commencement) Notice (LC Paper No. CB(1)733/12-13) http://www.legco.gov.hk/yr12-13/english/hc/papers/hc0315cb1-733-e.pdf

Hyperlinks to relevant Council Questions:

Date	Council Question
23 January 2013	Council question raised by Hon Frederick FUNG http://www.info.gov.hk/gia/general/201301/23/P201301230299.htm
15 May 2013	Council question raised by Hon Frederick FUNG http://www.info.gov.hk/gia/general/201305/15/P201305150338.htm

Hyperlinks to relevant documents:

Government bureau/department	Document
Lands Department	Legal Advisory and Conveyancing Office – Circular Memorandum No. 71 http://www.landso.gov.hk/en/images/doc/71.pdf
Transport and Housing Bureau	Published guidelines in connection with the Residential Properties (First-hand Sales) Ordinance (Cap. 621) http://www.legco.gov.hk/yr12-13/english/hc/sub_leg/sc07/papers/sc07cb1-951-1-e.pdf