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Panel on Housing

Meeting on 6 January 2014

Background brief on
"The work of the Sales of First-hand Residential Properties Authority"
prepared by the Legislative Council Secretariat

Purpose

1. This paper provides background information on the implementation of the Residential Properties (First-hand Sales) Ordinance (Cap. 621) ("the Ordinance") as well as the work 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 came into full implementation on 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 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 the Sales of First-hand Residential Properties Electronic Platform ("SRPE"), which is an electronic database containing the sales brochures, price lists, and registers of transactions of individual first-hand residential developments.

The work of SRPA up to June 2013

5. During the period between the full implementation of the Ordinance on 29 April 2013 and 20 June 2013, the SRPA had –

- (a) examined the sales documents and advertisements made available by vendors under the Ordinance, and conducted compliance checks by making 49 visits to sales offices and show flats of first-hand residential properties which had come into operation since 29 April 2013. SRPA considered that they had generally complied with the requirements of the Ordinance; and
- (b) received four complaints and 331 enquiries. It had responded to enquiries which were straight-forward promptly, and not later than 21 days for the majority of those more complicated cases.

Deliberations by the Panel on Housing

6. 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. The Panel also received a briefing on the implementation of the Ordinance and the work of SRPA on 2 July 2013.

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

7. 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.

8. The Administration further advised that as SRPA would maintain SRPE, 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 the saleable area ("SA") and other key information of the properties by searching the documents in SRPE. 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.

Sale of left-over first-hand residential properties

9. Some Panel members enquired whether developers who kept some flats in a development for rent were required to go through all the procedures in accordance with the Ordinance again when the remaining flats were offered for sale at a later stage. They also enquired about the application of the Ordinance in situations where remaining flats were sold after the commencement of the Ordinance. The Administration advised that the sale of left-over first-hand residential properties in a residential development of which sale had commenced before the implementation of the Ordinance was subject to the Ordinance. However, the Ordinance would not apply if the development was completed and at least 95% of the residential properties in the development had been leased out

for a period of at least 36 months after the issue of the occupation permit. Moreover, if a first-hand residential property was sold to a sitting tenant who had been holding that property under a tenancy for a continuous period for at least one year and if that sitting tenant agreed in writing not to ask for a sales brochure, there would be no need for the vendor to make available the sales brochure to that sitting tenant.

Requiring other trades to use SA instead of gross floor area in business dealings

10. Some members enquired whether insurance agencies as well as other relevant trades which had been using gross floor area ("GFA") in their business dealings should be required to conform to the provisions of the Ordinance by using SA instead of GFA. The Administration advised that relevant trades would be informed of the use of SA only in quoting property size in the sale of first-hand residential properties. However, as the requirement of using SA as the only basis for quoting property size only applied to the sale of first-hand residential properties under the Ordinance, such requirement could not be enforced in other dealings. Moreover, SRPA considered that it might not be proper for SA to be used as the basis for home insurance calculation as SA did not cover all of the areas which formed part of a residential property.

Requirement of making available sales brochures before the sale of first-hand residential properties

11. Some Panel members were concerned about the requirement for sales brochures to be made available seven days before the sale of first-hand residential properties and for them to be provided continuously on a 24-hour basis. A member did not support the requirement as this might pose difficulties on developers operating on a small scale. The Administration advised that it had explained to the Real Estate Developers Association of Hong Kong ("REDA") that the above requirement would be satisfied if the hard copies of the sales brochures were made available at any place as designated by the vendor, not necessarily at the sales office of that development. REDA noted SRPA's explanation of the requirement, and considered it practical.

Prosecution under the Ordinance

12. 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. 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.

Council questions

13. 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

14. The Administration proposes to update the Panel on the work of SRPA at its meeting on 6 January 2014.

Relevant papers

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

The work of the Sales of First-hand Residential Properties Authority

List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Housing	3 December 2012	<p>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</p> <p>Minutes of meeting (LC Paper No. CB(1)515/12-13) http://www.legco.gov.hk/yr12-13/english/panels/hg/minutes/hg20121203.pdf</p>
Panel on Housing	2 July 2013	<p>Administration's paper on "Implementation of the Residential Properties (First-hand sales) Ordinance and the work of the Sales of First-hand Residential Properties Authority" (LC Paper No. CB(1)1391/12-13(02)) http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/hg0702cb1-1391-2-e.pdf</p> <p>Background brief on "Residential Properties (First-hand Sales) Ordinance and the Sales of First-hand Residential Properties Authority" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)1391/12-13(03)) http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/hg0702cb1-1391-3-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1766/12-13) http://www.legco.gov.hk/yr12-13/english/panels/hg/minutes/hg20130702.pdf</p>

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.landsd.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