

立法會

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Panel on Housing

Meeting on 4 May 2015

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

Purpose

This paper provides updated 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 gives a brief account of the views and concerns expressed by members of the Panel on Housing ("the Panel") on the subject.

Background

2. The Ordinance was passed by the Legislative Council 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. Under the Ordinance, there are statutory 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. The Ordinance also provides for prohibitions against misrepresentation and the dissemination of false or misleading information. Contraventions of the Ordinance are criminal offences.

4. To ensure that the Ordinance is implemented effectively, the Transport and Housing Bureau has set up SRPA under section 86(1) of the Ordinance. SRPA undertakes the following tasks –

- (a) monitor compliance with the Ordinance;
- (b) issue guidelines for stakeholders;
- (c) handle complaints and public enquiries;
- (d) educate the public on matters relating to the provisions of the Ordinance;
- (e) conduct investigations on cases of non-compliance with the Ordinance; and
- (f) maintain the Sales of First-hand Residential Properties Electronic Platform ("SRPE") which contains the sales brochures, price lists, and registers of transactions made available by vendors of individual first-hand residential developments.

The work of SRPA as at 24 November 2014

5. According to the Administration¹, since the full implementation of the Ordinance on 29 April 2013 and up to 24 November 2014, vendors had offered for sale about 23 000 first-hand residential properties in 131 residential developments. SRPA had –

- (a) examined about 660 sales brochures (including the revised sales brochures), 1 500 price lists, 850 documents containing the sales arrangements, and 4 800 printed advertisements;
- (b) conducted 2 000 inspections on the registers of transactions and 5 200 inspections on the websites designated by vendors;
- (c) conducted 1 600 inspections on the sales offices and show flats, and some of the inspections were conducted jointly with the Estate Agents Authority ("EAA");
- (d) received 101 complaint cases, of which 75 were related to the Ordinance involving the sales of 40 first-hand residential developments;

¹ Written reply by the Acting Secretary for Transport and Housing to a question raised by Hon James TO at the Legislative Council meeting of 3 December 2014
(<http://www.info.gov.hk/gia/general/201412/03/P201412030424.htm>)

- (e) issued reminders to the public on 13 occasions in respect of the sales of individual first-hand residential developments/phases; and
- (f) provided prospective purchasers and members of the public with information useful to them.

Deliberations of the Panel

6. The Panel received a briefing by SRPA on the implementation of the Ordinance and its work on 2 July 2013, and was briefed on the latest work of SRPA on 6 January 2014. At the latter meeting, in response to members' enquiries, SRPA explained the progress of its investigation into the cases of non-compliance concerning the sales arrangements of some residential developments, including the Providence Bay, a development in West Kowloon and The Long Beach.

7. Separately, at the request of members, the Administration provided information vide LC Papers Nos. CB(1)1897/13-14(01) and CB(1)246/14-15(01) on 5 August and 18 November 2014 respectively on the follow up actions taken by SRPA in respect of the decision of the vendor of Mont Vert Phase I not to make available any completed first-hand residential property being offered for sale or any comparable residential property in the Phase for viewing by prospective purchasers before selling the property to the purchasers.

8. The major views and concerns expressed by members at the Panel meetings are summarized in the ensuing paragraphs.

Handling cases of contravention

9. Members requested for an explanation of SRPA's view that most of the contraventions found during the compliance checks were technical and minor in nature and might be committed out of carelessness. SRPA advised that there were some contraventions of the requirements of the Ordinance in almost all of the first version of the sales brochures of the residential developments which were made available after the implementation of the Ordinance. Most of such contraventions were omissions of some dimensions of the residential properties in the floor plans of those residential properties in the sales brochures, whereas the rest of the contraventions related to different aspects, such as textual mistakes. All those contraventions did not appear to have undermined the interest of purchasers. For the few suspected cases of contravention which SRPA considered to be of a more serious nature, investigation was being carried out.

10. Noting that there were contraventions of the requirements of the Ordinance relating to price lists, the documents containing the sales arrangements, the register of transactions, printed advertisements and even show flats, members were concerned about SRPA's promotion and education efforts, and urged SRPA to disclose details of the complaint cases and suspected cases of contravention for reference of the trade to avoid recurrence of similar contraventions. SRPA advised that it had been disseminating, through media and its website, timely information on sales practices or arrangements which might affect the interest of prospective purchasers.

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

11. Some 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.

12. SRPA 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 had noted SRPA's explanation of the requirement, and considered it practical.

Cooperation with the trade

13. As to whether SRPA had been in contact with the trade in identifying problems and solutions in implementing the Ordinance and whether there had been problems that affected the supply of first-hand residential properties in the market, SRPA advised that it had maintained contact with the trade, including REDA and understood that the trade had not encountered any insurmountable difficulties in operating under the new legal framework. The supply of first-hand residential properties was unaffected by the new legislative requirements.

Extending the application of the Ordinance to sales of residential properties in the secondary market

14. Members were concerned about possible confusions caused to the property market with two separate systems in place for the sales of first-hand residential properties and those in the secondary market, and urged the Administration to extend the Ordinance to cover the sales of second-hand

residential properties. The Administration responded that since the implementation of the Ordinance, EAA had taken parallel action to ensure that estate agents would provide saleable area in the sales of residential properties in the secondary market. EAA considered that the trade had largely followed the relevant practice circular in complying with this requirement.

15. The Administration further advised that purchasers of second-hand residential properties were on a more equal footing with the vendors, and the need to subject the sales of second-hand residential properties to a regulatory regime similar to that for the sales of first-hand residential properties was not that strong. Besides, vendors of second-hand residential properties would have practical difficulties and resource problems to comply with all the requirements governing the sale of first-hand residential properties, including the requirements on sales brochure. As SRPA would maintain SRPE, purchasers could know about the saleable areas and other key information on the properties by searching the documents in SRPE.

Sale of left-over first-hand residential properties

16. Some 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.

17. SRPA 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.

Prosecution under the Ordinance

18. Some members enquired about the level of authority for deciding whether or not investigation/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.

19. 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.

20. 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

21. At the Council meetings on 23 January and 15 May 2013, and 21 May and 3 December 2014, Hon Frederick FUNG, Hon Tony TSE and Hon James TO raised questions relating to the Ordinance. Issues covered in the questions included whether the Administration would consider providing the public free access to information on the saleable areas of residential flats from the Rating and Valuation Department; whether the Administration had assessed if the quantity and transaction volume of first-hand residential properties to be put up for sale would be affected by the implementation of the Ordinance; and the number of complaints received by SRPA and EAA. The Council questions and the Administration's replies are hyperlinked in the **Appendix**.

Latest development

22. The Administration will update members on the implementation of the Ordinance and the work of SRPA at the Panel meeting on 4 May 2015.

Relevant papers

23. 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	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))</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))</p> <p>Minutes of meeting (LC Paper No. CB(1)1766/12-13)</p>
Panel on Housing	6 January 2014	<p>Administration's paper on "The work of the Sales of First-hand Residential Properties Authority" (LC Paper No. CB(1)622/13-14(04))</p> <p>Background brief on "The work of the Sales of First-hand Residential Properties Authority" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)622/13-14(05))</p> <p>Minutes of meeting (LC Paper No. CB(1)1188/13-14)</p>
Panel on Housing	--	<p>Administration's response to letter dated 18 July 2014 from Dr Hon KWOK Ka-ki (LC Paper No. CB(1)1858/13-14(01)) requesting discussion on the suspected contravention of the Residential Properties (First-hand Sales) Ordinance by the vendor of Mont Vert Phase I (LC Paper No. CB(1)1897/13-14(01))</p>

Council/ Committee	Date of meeting	Paper
Panel on Housing	--	Administration's paper on "Progress of the investigation work of the Sales of First-hand Residential Properties Authority in respect of the "no viewing of residential properties" arrangement of Mont Vert Phase I (LC Paper No. CB(1)246/14-15(01))

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
21 May 2014	Council question raised by Hon Tony TSE http://www.info.gov.hk/gia/general/201405/21/P201405210497_print.htm
3 December 2014	Council question raised by Hon James TO http://www.info.gov.hk/gia/general/201412/03/P201412030424.htm