

# 立法會 *Legislative Council*

LC Paper No. CB(1)765/16-17(05)

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## **Panel on Housing**

**Meeting on 11 April 2017**

### **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, strengthen 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, sales arrangements, registers of transactions, show flats, viewing of completed residential properties, advertisements, 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 relevant provisions in the Ordinance are criminal offences.

4. To ensure that the Ordinance is implemented effectively, the Secretary for Transport and Housing has, in accordance with section 86(1) of the Ordinance, appointed public officers to implement the Ordinance, and they are the staff members of SRPA. 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 suspected contraventions of 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/phases.

#### The work of SRPA

5. According to the Administration, since the full implementation of the Ordinance on 29 April 2013 and up to 31 March 2016, vendors had offered to sell about 42 400 first-hand residential properties in about 230 residential developments/phases.<sup>1</sup> As at 31 March 2016, SRPA had –

- (a) examined about 850 sales brochures, about 2 600 price lists, about 2 200 documents containing the sales arrangements, and about 8 900 printed advertisements;
- (b) conducted regular inspections on vendors' designated websites, and about 3 300 inspections on registers of transactions;
- (c) conducted about 2 600 inspections on the sales offices and show flats of first-hand residential properties, some of the inspections were conducted jointly with the Estate Agents Authority ("EAA");

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<sup>1</sup> In the period from 29 April 2013 to 31 March 2015, vendors have offered to sell about 27 900 first-hand residential properties in about 160 residential developments/phases ([LC Paper No. CB\(1\)787/14-15\(03\)](#)).

- (d) received about 4 000 enquiries;
- (e) received 177 complaint cases, of which 138 were related to the Ordinance while the remaining 39<sup>2</sup> were not;
- (f) issued eight sets of practice notes and 126 frequently asked questions and answers to the trade, six sets of guidelines covering matters on sales brochures, price lists, sales arrangements, registers of transactions and how to submit documents to SRPA and SRPE;
- (g) collaborated with EAA to organize two seminars for estate agents in March 2015, aiming at enhancing their awareness on the Ordinance and EAA's Practice Circulars in respect of the sales of first-hand residential properties;
- (h) issued reminders to the public on 14 occasions in respect of the sales of first-hand residential developments/phases;
- (i) provided prospective purchasers and members of the public with information useful to them;<sup>3</sup> and
- (j) carried out investigations on suspected contraventions of the Ordinance, and referred investigation reports on suspected contraventions to the Prosecutions Division of Department of Justice.<sup>4</sup>

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<sup>2</sup> According to the Administration, the remaining 39 complaint cases are on matters outside the SRPA's purview.

<sup>3</sup> The SRPA website and SRPE provide prospective purchasers and members of the public with access to information. As at 31 March 2016, there were on average about 15 000 visits per month and 27 000 visits per month to the SRPA website and SRPE respectively.

<sup>4</sup> As at 31 March 2016, prosecution action has been taken against a vendor of a development involving 19 counts of offence.

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

6. The Panel received briefings by SRPA on the implementation of the Ordinance and its work each year<sup>5</sup>, and SRPA last updated the Panel on the subject at the meeting on 10 May 2016. The major views and concerns expressed by members are summarized in the ensuing paragraphs.

### Sales practices of vendors of first-hand residential properties

7. Referring to the Hong Kong Monetary Authority's counter-cyclical measures announced in late February 2015 to lower the maximum loan-to-value ratio for residential properties by 10%<sup>6</sup>, some members noted with concern that some developers had responded by offering a second or even further mortgages to purchasers of first-hand residential properties, and enquired how the Administration would ensure a proper control in this regard. Some members were concerned about vendors' tactic to mislead prospective purchasers into believing that gift items, such as furniture and electrical appliances, were not included in the selling prices of a residential development/phase, and asked whether it was mandatory to set out the gift items in the price lists.

8. SRPA advised that developers had the discretion to decide the types of financial advantage and benefit, including mortgage arrangements, offered to purchasers of first-hand residential properties. The mortgage arrangements had to comply with the relevant laws and regulations. Under the Ordinance, developers were required to set out in the price lists the prices, the discounts, the gifts, and the financial advantages and benefits in connection with the purchase of residential properties. The transaction prices as shown in the registers of transactions reflected the consideration after deducting the discounts and financial advantages and benefits as appropriate. When there was a difference between the transaction price as recorded in the register of transactions and the price as set out in the price list, it meant that there were discounts and/or financial advantages and benefits applied to the purchase.

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<sup>5</sup> The Panel received the briefings at the meetings on 2 July 2013, 6 January 2014, 4 May 2015 and 10 May 2016.

<sup>6</sup> To strengthen banks' risk management and resilience, the Hong Kong Monetary Authority announced the seventh round of macro-prudential measures on property mortgage on 27 February 2015. This included, among others, lowering the maximum loan-to-value ("LTV") ratio for self-use residential properties with value below HK\$7 million by a maximum of 10 percentage points. For example, the maximum LTV ratio applicable to properties with value at HK\$6 million or below and subject to the LTV cap of 70% will be lowered to 60%.

### Complaint cases

9. Noting that of the 177 complaint cases received by SRPA up to 31 March 2016, 120 cases were concerning sales brochures, sales arrangements, advertisements and misrepresentation and/or dissemination of false or misleading information, some members were concerned whether the relevant requirements were too stringent for the trade to comply with, and some other members cast doubt on the deterrence of the Ordinance. Pointing out that the coverage of important information in printed advertisements of first-hand residential properties was in general too small to draw the attention of readers, members asked if SRPA would consider making it mandatory that such information be made reasonably conspicuous to readers.

10. SRPA advised that guidelines, practice notes, and frequently asked questions and answers had been issued to facilitate vendors and related parties to understand the requirements of the Ordinance. The Ordinance set out detailed requirements in relation to advertisements. It stipulated the minimum font size requirements for the prescribed statements in a printed advertisement, which varied in accordance with the size of the advertisement. Complaints involving advertisements included aspects such as the omission of the information required or false or misleading information. Misrepresentation or dissemination of false or misleading information was an offence under the Ordinance.

### Investigations and prosecutions

11. Noting that SRPA would seek the advice of the Department of Justice in the process of investigations as appropriate, members suggested that SRPA should act in line with the Consumer Council's practice of making public the details of the complaint cases which had been referred to the Department of Justice for consideration or cases that warranted attention of prospective purchasers. Consideration should also be given to releasing the names of the vendors under complaints to alert prospective purchasers.

12. SRPA advised that for situations involving suspected contraventions of the Ordinance which would possibly affect prospective purchasers' interest seriously, SRPA would, apart from instigating investigations, alert prospective purchasers of the situations concerned through the media in the first instance. As at 31 March 2016, SRPA had issued reminders to the public on 14 occasions in respect of the sales of individual first-hand residential developments/phases, all of which were available in SRPA's website for public inspection. The names of the residential developments/phases concerned would be mentioned specifically in those reminders as and when necessary.

13. SRPA explained that the suggestion for the Authority to mention the names of vendors who were suspected of having contravened the Ordinance might have legal implications. It was more effective to mention in the reminders the names of the residential developments/phases rather than the names of the vendors concerned as developers would normally set up a new company to be the vendor of a development/phase and the public might not recognize the identity of the developer from the name of the vendor.

14. Members noted that the Consumer Council had released a report in November 2014 of its study on the sales of first-hand residential properties<sup>7</sup>, and asked whether SRPA would consider implementing the Consumer Council's recommendations, such as sending mysterious shoppers to inspect the sales arrangements of vendors.

15. SRPA advised that it had carried out inspections on all of the sales offices and show flats of first-hand residential properties which were open to the public on or after the implementation of the Ordinance, and some of the inspections were conducted jointly with EAA without making known to the vendors beforehand. In most cases, the SRPA staff members' identity was not revealed.

### **Latest development**

16. The Administration will update members on the implementation of the Ordinance and the work of SRPA at the Panel meeting on 11 April 2017.

### **Relevant papers**

17. A list of relevant papers is in **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
3 April 2017

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<sup>7</sup> Hyperlink of the report:

[https://www.consumer.org.hk/ws\\_en/competition\\_issues/reports/20141111.html](https://www.consumer.org.hk/ws_en/competition_issues/reports/20141111.html)

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

### List of relevant papers

Committee	Date of meeting	Paper
Panel on Housing	2 July 2013	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. <a href="#">CB(1)1391/12-13(02)</a> )  Minutes of meeting (LC Paper No. <a href="#">CB(1)1766/12-13</a> )
Panel on Housing	6 January 2014	Administration's paper on "The work of the Sales of First-hand Residential Properties Authority" (LC Paper No. <a href="#">CB(1)622/13-14(04)</a> )  Minutes of meeting (LC Paper No. <a href="#">CB(1)1188/13-14</a> )
Panel on Housing	4 May 2015	Administration's paper on "The work of the Sales of First-hand Residential Properties Authority" (LC Paper No. <a href="#">CB(1)787/14-15(03)</a> )  Minutes of meeting (LC Paper No. <a href="#">CB(1)1024/14-15</a> )
Panel on Housing	10 May 2016	Administration's paper on "The work of the Sales of First-hand Residential Properties Authority" (LC Paper No. <a href="#">CB(1)861/15-16(01)</a> )  Minutes of meeting (LC Paper No. <a href="#">CB(1)1060/15-16</a> )

### Hyperlinks to relevant Council Questions:

Date	Council Question
23 January 2013	<a href="#">Council question</a> raised by Hon Frederick FUNG Kin-kee
15 May 2013	<a href="#">Council question</a> raised by Hon Frederick FUNG Kin-kee
21 May 2014	<a href="#">Council question</a> raised by Hon Tony TSE Wai-chuen
3 December 2014	<a href="#">Council question</a> raised by Hon James TO Kun-sun