

Legislative Council Panel on Housing
Supplementary Information

Purpose

Regarding the supplementary information requested by Members at the Legislative Council (LegCo) Panel on Housing (Panel) meetings on 10 April, 7 May, 4 June and 10 July 2018; as well as the motions passed at the meetings on 7 May and 4 June 2018¹, this paper provides the relevant response and information.

Sales of first-hand residential properties

2. The Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“the Ordinance”) came into full implementation on 29 April 2013. The Ordinance aims to enhance the transparency and fairness of the sales of first-hand residential properties, strengthen 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, sales arrangements, register 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. It also prohibits misrepresentation and the dissemination of false or misleading information.

4. According to the Ordinance, vendors selling first-hand residential properties to which the Ordinance applies must make available a sales brochure for the development. The sales brochure must comply with all the requirements as set out in the Ordinance. The Ordinance regulates strictly the contents of a sales brochure, which must not set out any information other than that required or authorised by the Ordinance. Vendors must also set out information in the sales brochure in the order specified in the Ordinance.

¹ LC Paper Nos. CB(1) 932/17-18(01) to (02), and CB(1) 1071/17-18(01).

5. Section 14(2) of Part 1 of Schedule 1 of the Ordinance stipulates that the sales brochure must set out a summary of the provisions of the draft deed of mutual covenant (DMC) or the DMC which contains the following information:

- (a) the common parts of the development;
- (b) the number of undivided shares assigned to each residential property in the development;
- (c) the term of years for which the manager of the development is appointed;
- (d) the basis on which the management expenses are shared among the owners of the residential properties in the development;
- (e) the basis on which the management fee deposit is fixed; and
- (f) the area (if any) in the development retained by the owner for that owner's own use.

Information on whether animals can be kept in a development is set out in the DMC. Prospective purchasers can inspect the DMC at the place where the sale takes place, and on the website designated by the vendor for the development. They can also check with the vendor.

6. Through the “Notes to Purchasers of First-hand Residential Properties” published at the beginning of the sales brochure, the Sales of First-hand Residential Properties Authority (SRPA) has reminded prospective purchasers to pay attention to whether animals can be kept in a residential property. The SRPA has also issued Frequently Asked Questions and Answers to the trade, pointing out that property management related matters might have influence on the home purchase decisions of prospective purchasers; vendors are encouraged to set out in other publications or promotional materials information that is not required or authorised by the Ordinance to be set out in the sale brochure (e.g. whether pet keeping is allowed in the development), for the reference of prospective purchasers.

7. The SRPA has all along checked vendors' compliance with the Ordinance, and issued directives and reminders to the trade when necessary. Meanwhile, the SRPA will, through various channels, continue to remind prospective purchasers of issues that they should pay attention to when purchasing first-hand residential properties.

8. In fact, the SRPA has maintained close liaison with vendors, related parties and stakeholders to help them understand the requirements of the Ordinance, and listen to their views on the enhancement of transparency and fairness of the sales of first-hand residential properties. The SRPA noted that the views are two-sided, one calling for strengthening the Ordinance for better consumer protection, the other urging for relaxation of some requirements under the Ordinance.

9. Since its implementation, the Ordinance has been effective in allowing prospective purchasers of first-hand residential properties to get hold of the sales information on first-hand residential properties and the relevant transaction information in the first-hand residential property market. The vendors have also made good efforts to comply with the requirements of the Ordinance. The sales of first-hand residential properties have become more transparent, fairer and more orderly.

10. The Ordinance has been in implementation for five years. We will continue to accumulate experience for future review, and it is not appropriate to introduce amendments without thorough consideration. The SRPA will keep the implementation of the Ordinance under constant review, taking into account opinions and concerns about the Ordinance of relevant stakeholders, prospective purchasers and members of the public.

11. As for whether an item can be considered as a part of the saleable area of a residential property, this will depend on whether it falls within the definition of “saleable area” under section 8 of the Ordinance. Under section 8(1) of the Ordinance, “saleable area” in relation to a residential property –

- (a) means the floor area of the residential property;
- (b) includes the floor area of every one of the following to the extent that it forms part of the residential property –
 - (i) a balcony;
 - (ii) a utility platform;
 - (iii) a verandah; and
- (c) excludes the area of every one of the items specified in Part 1 of Schedule 2 to the extent that it forms part of the residential property.

12. In general, if an area is to be included in the saleable area of a residential property, the provisions of the DMC of the development/phase, the agreement for sale and purchase and the assignment of the residential property should clearly stipulate that the area is to be made legally for the exclusive use of the owner of the residential property concerned.

Expediting the Supply of First-hand Private Flats

13. To encourage developers to expedite the supply of first-hand private residential flats, the six new housing initiatives announced by the Chief Executive on 29 June include amendment to the Lands Department Consent Scheme to improve sales practices, and introduction of “Special Rates” on vacant first-hand private residential units.

14. To improve market transparency and enhance consumer protection, the Government has amended the Consent Scheme, requiring developers to offer for sale no less than 20% of the total number of residential units subject to the relevant pre-sale consent at each turn of sale, regardless of the sales method. If the remaining unsold residential units are less than 20%, the developer has to offer for sale all remaining units in one go. The new requirement has come into effect on 29 June, and applies to new pre-sale consent applications and applications being processed by Lands Department under the Consent Scheme at that time.

15. For “Special Rates”, the Government proposed to amend the Rating Ordinance, requiring owners (mainly developers) of first-hand private residential units with the Occupation Permit issued for 12 months or more to furnish annual returns to the Government on the occupancy status of the units. Units that have not been occupied or rented out for more than six months during the past 12 months will be considered as vacant and subject to “Special Rates”. “Special Rates” will be collected by the Rating and Valuation Department annually at two times the rateable value of the units concerned. The Government plans to introduce an Amendment Bill into the LegCo during the 2018/19 legislative session. “Special Rates” will take effect after gazettal of the Amendment Ordinance following passage of the Amendment Bill in LegCo.

16. The above two measures complement with each other and can encourage more timely supply of first-hand private flats in the market.

Tenancy Control

17. The Government has reiterated on various occasions that tenancy control is a highly controversial issue. The Government has studied this subject time and again, but there is yet no consensus in the community over this issue. In 2013, the Long Term Housing Strategy Steering Committee (the Steering Committee) launched a three-month public consultation on Hong Kong's Long Term Housing Strategy (LTHS). Among other issues, the Steering Committee invited public views on whether tenancy control (including control on rent and security of tenure) should be re-launched. In February 2014, the Steering Committee published the LTHS Report on Public Consultation, which set out that while there was rather strong support for re-launching tenancy control amongst concern groups for the grassroots and tenants of sub-divided units, views from respondents amongst the general public were relatively mixed. Some respondents cast doubt on the effectiveness of tenancy control in offering the intended protection to tenants. The Steering Committee was concerned about the consequences of implementing tenancy control, which might induce an immediate increase in rental levels and a reduction in supply of rental units. Given the controversies surrounding tenancy control, the Steering Committee cautioned that clear community consensus had to be secured before any form of tenancy control was contemplated.

18. The Government subsequently conducted a detailed study on Hong Kong's past experience and overseas experience in implementing tenancy control. The Government then briefed the Panel and listened to public views in July 2014². After considering this study and the views of the Steering Committee, the Government promulgated the LTHS in December 2014 and elaborated its views on tenancy control in paragraphs 6.15 - 6.18 of the LTHS. In sum, empirical findings, both local and overseas, suggest that tenancy control measures often lead to an array of unintended consequences including those to

² The relevant paper is 'Tenancy Control' (LC Paper No. CB(1)1709/13-14(01)).

the detriment of the tenants whom the measures seek to assist. The unintended consequences include reducing supply of rented accommodation; limiting access to adequate housing by the socially disadvantaged as landlords have become more selective about their tenants; encouraging certain behaviour from landlords to offset the impact of the tenancy control measures (including charging a higher initial rent and demanding excessive miscellaneous charges); and discouraging proper maintenance of the rented accommodation by landlords. Public views on the subject are diverse. While there is considerable support of the revival of tenancy control among households with poor living conditions, others cast doubt on the effectiveness of the measure in offering the desired protection to grassroots tenants, having regard to the unintended consequences aforementioned.

19. There are views suggesting the Government to implement tenancy control only on units below a certain size or rent. However, as seen from the tenancy control experience of some overseas economies, if tenancy control is imposed only on a particular market sector (often on lower-end residential properties), there may be inadvertent spillover effects on the uncontrolled sector. For example, as some tenants will not be able to rent flats in the controlled sector, they may be forced to seek accommodation in the uncontrolled sector, hence pushing up the rent level of the latter. Besides, some overseas experience suggests that tenancy control has failed to effectively address the housing needs of the grassroots, since control measures often target at specific classes of premises instead of particular groups of households. With the implementation of tenancy control, a prospective tenant may find it difficult to secure a tenancy through the open market, and can only obtain information of rented accommodation through indirect means, which will not be easily accessible by the socially disadvantaged.

20. Weighing the pros and cons, the Government is of the view that introducing any form of tenancy control amid the current tight housing supply may be counterproductive and will not be in the interest of the grassroots and the general public.

21. The continued increase in land and housing supply remains the fundamental solution to the problems of surging housing price and rent and housing difficulties caused by insufficient supply. The Government will continue to work closely with the community, endeavour to expedite the

construction of public housing flats in accordance with the supply targets under the LTHS, and increase housing land supply, so as to effectively address the housing needs of the society. According to the latest projection, the total housing supply target for the ten-year period from 2018/19 to 2027/28 is 460 000, with 200 000 units being public rental housing (PRH) and 80 000 units being subsidised sale flats. To increase housing supply, the Government will continue to increase the housing land supply in the short, medium and long term through a multi-pronged approach, which includes increasing the development density of developed areas, rezoning existing land, developing new development areas, etc. Also, the Task Force on Land Supply has launched a five-month public engagement exercise in late April 2018. It aims to facilitate the community discussions of the pros and cons of different land supply options without making any presumptions in advance.

22. Also, the Chief Executive mentioned in the 2017 Policy Address that the Government would facilitate the implementation of various short-term community initiatives to increase the supply of transitional housing, with a view to alleviate the hardship faced by families awaiting PRH and the inadequately housed. To this end, the Chief Executive announced on 29 June 2018 that a task force will be set up under the Transport and Housing Bureau to provide one-stop, coordinated support to assist and enable more non-government institutions in pursuing transitional housing. These transitional housing initiatives help make use of the potential and resources in the community outside the Government to offer flexible and multiple relief measures for the beneficiaries. The Government will support and facilitate such initiatives as necessary, including offering suggestions and assistance regarding the compliance of administrative and statutory procedures.

Tenancy control in Sweden

23. At the meeting on 4 June 2018, a Member requested the Government to provide details of tenancy control measures in Sweden. In Sweden, tenancy control includes control on rent and security of tenure. Rent control is applicable to all private domestic premises. According to the mechanism, tenancy agreements should not contain provisions for progressive rent increase or index-linked rents. Setting of rents is based on the utility-value system and rent negotiation system. Under the utility-value system, rents for a particular unit should reflect the general tenants' perception of its utility-value. The

utility-value system in general takes into account the quality and facilities of the premises concerned. Location of the premises is an unimportant consideration in determining the rent. Rent negotiation system is a collective bargaining system where the Swedish Union of Tenants takes the lead in negotiating rent with the landlords. According to the webpage of the Swedish Union of Tenants, its aim is to maintain average rents at not more than 25% of average disposable income, and annual rent increase no faster than the rate of increase of the composite consumer price index (CPI). According to a report of the above organisation published in June 2018, the average rent in Sweden is 28% of the average disposable income. The rent rose by 2.4% in the same year, 0.3% higher than the CPI rate of increase. A landlord is required to notify the tenant if he proposes to increase the rent. The proposal will be deemed as accepted if the tenant does not raise any objection within two months. In case of disputes, the landlord may appeal to the Rent Tribunal for a judgement. The Tribunal will assess whether the proposed rent is reasonable by referring to the “utility-value system”.

24. As for security of tenure, the Land Code of Sweden provides that, a tenant normally has a legal right to stay in his/ her unit and cannot be forced to leave without an appropriate reason. Such reason may include: the tenant’s failure to pay rent for more than one week after the payment day; the tenant’s transfer of tenancy without consent or permission of the landlord; the tenant contravenes the permitted uses of the premises; the tenant offers accommodation to outsiders to the detriment of the landlord; the tenant refuses the landlord’s access to the premises for necessary repairs; the tenant violates any contractual obligation under the lease which is of exceptional importance to the landlord; and the tenant uses the premises for illicit uses. Generally speaking, a three-month notice in writing is required to terminate a tenancy. The Land Code also allows a tenant to make good of the violations during the notice period in order to cancel the notice of cancellation.

25. According to “Economic Surveys: Sweden 2017” published by the Organisation for Economic Co-operation and Development (OECD), the organisation was of the view that Sweden’s tenancy control measures were too stringent. Low returns from renting a flat discouraged investment in the private rental market and encouraged conversion of rental dwellings to other types of housing. Acute rental housing shortages suppressed labour mobility, especially to low-income households, and may lead to spatial segregation.

OECD suggests the Swedish government to loosen tenancy control measures gradually so as to allow a gradual adjustment of the rent to market level. OECD considers that this should help increase supply of rental unit and labour mobility, and allow a more effective use of existing housing resources.

Quota and Points System (QPS)

26. It is the Hong Kong Housing Authority's (HA's) objective to provide public rental housing to low-income families and individuals who cannot afford private rental accommodation. Given the limited PRH resources, it is HA's policy to accord priority to general applicants (i.e. family and elderly one-person applicants) in the allocation of PRH units, with the target of providing the first flat offer at around three years on average³. Furthermore, HA introduced QPS in September 2005 to rationalise and re-prioritise the allocation of PRH to non-elderly one-person applicants⁴. The target of providing the first flat offer to general applicants at around three years on average is not applicable to QPS applicants.

27. As at end-September 2018, there were about 150 200 general applicants and 117 500 non-elderly one-person applicants. HA has not maintained statistics on the respective number of QPS applicants aged below 45 and 45 or above. However, according to the Survey on Public Rental Housing Applicants 2017, as at end-March 2017, there were 66 500 cases (52%) and 62 100 cases (48%) of QPS applicants aged under 30 and 30 or above respectively.

28. Taking into account the recommendations of the LTHS Steering Committee, public opinions collected during the public consultation on LTHS, the Director of Audit's report, and views of the LegCo Public Accounts

³ Waiting time refers to the time taken between registration for PRH and first flat offer, excluding any frozen period during the application period (e.g. when the applicant has not yet fulfilled the residence requirement; the applicant has requested to put his/her application on hold pending arrival of family members for family reunion; the applicant is imprisoned, etc.). The average waiting time for general applicants refers to the average of the waiting time of those general applicants who were housed to PRH in the past 12 months.

⁴ Unlike general applicants, the priority of QPS applicants in PRH allocation is determined by the total points accumulated by applicants under the points system. Such points are determined based on a host of factors, including the applicants' age, whether they are already living in PRH and their waiting time.

Committee, the Subsidised Housing Committee (SHC) of HA endorsed refining QPS in October 2014. In addition to refining the points system to accord higher priority to older applicants and increasing the annual quota, SHC also endorsed that starting from 2015/16, regular checking would be conducted on the eligibility of QPS applicants who have waited for five years but not yet due for detailed vetting within the next two years. Such regular checking would enable HA to assess the demand for PRH of non-elderly one-person applicants more accurately⁵.

29. The Panel passed a motion at its meeting on 7 May 2018, pointing out that a waiting time target should be set for QPS applicants, and such target should ultimately be brought in line with the average waiting time target for general applicants (i.e. providing the first flat offer at about three years on average). The objective of QPS is to re-prioritise PRH allocation to non-elderly one-person applicants, and accord priority to general applicants in the allocation of PRH units. Therefore, the priority of QPS applicants in PRH allocation depends on the points accumulated by applicants with regards to a host of factors (instead of the waiting time solely). Considering that PRH supply remains tight, and that the average waiting time for general applicants are lengthening, HA considers the suggestion not practicable. Furthermore, in order to cater for older non-elderly one-person applicants with lower social mobility, HA has already taken a pragmatic move to increase such applicants' chance of PRH allocation through increasing the annual quota and refining the points system.

30. Regarding reinstatement and review (as a result of regular checking) of cancelled PRH applications, according to the prevailing mechanism, if an applicant has any objection to the cancellation of their PRH application, the applicant must raise a request for review with supporting documents within two months from the date of HD's notification letter. Late requests will not be considered. In addition, the prevailing PRH application policy has in place a mechanism for reinstatement of PRH applications. Applicants who had their applications cancelled as they had exceeded the income limit and/or the total net asset limit can apply to reinstate their applications, if there is a change in family particulars, or if they meet the PRH eligibility again due to the revision of the income limit and/or the total net asset limit. Requests for reinstatement must

⁵ Relevant details are provided in LC Paper No. CB(1)898/17-18(04).

be raised after six months and within two years from the first date of cancellation of the application.

31. Among the PRH applications cancelled during the 2015/16 and 2016/17 QPS checking exercises, about 760 applicants had their applications reinstated after providing sufficient evidences to substantiate their reinstatement requests; such reasons for review or reinstatement include being hospitalised, imprisoned, moved but unable to notify HD in time, drop in income or asset, etc. About 840 requests for review/reinstatement have been rejected as no justifiable reasons or sufficient evidence could be provided or that the income limit and/or the total net asset limit are still exceeded after vetting.

Tenancy termination rate of HA's flatted factory estates

32. In the last five financial years, the tenancy termination rate of HA's flatted factory estates maintained at around 1%.

Transport and Housing Bureau
December 2018