



Residential Properties (First-hand Sales) Ordinance

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About ONC Lawyers

Milestones

- Established in 1992
- Joined MSI International in 2008 (over 250 member firms in over 100 countries worldwide)
- Full service law firm and ranked 5th among local law firms and was voted as one of the leading IP firms in Hong Kong in 2010 by Asian Legal Business
- Selected as a "highly recommended" law firm in HK alongside other major local law firms by Asialaw in 2013

Current status

- 30+ lawyers, 9 trainee solicitors, 8 legal executives or paralegal
- Total staff: around 100

Social contribution

- Sponsor of scholarship to CityU, CUHK & HKU
- Awarded 5 Years+ Caring Company Logo since 2009

About ONC Lawyers

Our Values

- Integrity
 - honesty and universal moral principles
- Collaboration
 - mutual respect and appreciation
 - teamwork and empowerment
- Excellence
 - pursuing professional excellence
- Solutions
 - most cost-effective and workable solution in its simplest form



Chronology

| Date | Event |
|------------------------------------|----------------------------------------------------------------------------------------|
| 29 November 2011 – 28 January 2012 | Public consultation on the Residential Properties (First-hand Sales) Bill |
| 29 June 2012 | The Ordinance was passed by LegCo |
| 6 July 2012 | The Ordinance was published in Gazette |
| 2 April 2013 | Sections 1-9, Division 1 of Part 6 and Schedule 2 of the Ordinance came into operation |
| 29 April 2013 | Remaining provisions of the Ordinance will come into operation |

Preliminary (Part 1)

Vendor

- The Ordinance applies to a Vendor
- The Vendor is defined in s.7. Broadly speaking is defined as the owner of the residential property
- However, where the owner engages external help – a person to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development/phase, then the Vendor may include both:
 - Owner
 - Helper, stated as the “person so engaged” in the Ordinance
- Who then is the Vendor?
 - Whether the Vendor will mean both the owner and the person so engaged or either one can be quite confusing. A two-step approach is recommended.
 - First step: which part of the Ordinance is in issue?
 - Second step: which section in that part of the Ordinance in particular is in issue?

Vendor in Part 2 or Schedule 1 or 8

First Step:

- Normally, both the owner and the person so engaged

Second Step: Which Section of Part 2 or Schedule 1 or 8 (Exceptions)

- Each one – the owner and the person so engaged:
 - S.59(1)(i) – whether the Purchaser is a related party to the Vendor in a Register of Transactions (explained below)
 - Ss.59(2)(a)(vi) or (3)(f) – whether a person who enters into a preliminary or formal agreement for sale and purchase is a related party to the Vendor in a Register of Transactions (explained below)
 - S.2(2)(a) of Schedule 1 – stating in the Sales Brochure the names of the Vendor and every holding company of the Vendor if the Vendor is a corporation

Vendor in Part 2 or Schedule 1 or 8 (Continued)

- Either one – either the owner or the person so engaged:
 - S.31(8) – name of the estate agent whom a Vendor has engaged must be stated in the price list
 - Ss.3(2), (3) or (4) of Schedule 1 – concerning the relationship between the Vendor and other parties involved in the development
 - Ss.1(e), (f) or (g) of Schedule 8 – information regarding notices received of sums contributable from owners of development, demolition or reinstatement and pending claims received or known to the Vendor to be given in a vendor's information form
- Both or either one
 - Ss.38(2) or (3) – the Vendor to make available an unmodified show flat for viewing by prospective purchasers
 - Ss.46(1) or 50(1) – the Vendor is not to restrict people from taking measurements, photographs or video recordings of residential property, and have scale and dimensions of furniture displayed on floor plan

Vendor in Part 3

First Step

- Normally both the owner and the person so engaged, subject to the following exceptions

Second Step: Which Section of Part 3 (Exceptions)

- S.73(3)(a) – each one: the owner and the person so engaged
 - Advertisement to state the name of the Vendor and its holding company if the Vendor is a corporation
- S.71(1) – either one: either the owner or the person so engaged
 - Advertisement must state whether it was published by the Vendor or by another person on behalf of the Vendor with the Vendor's consent

Applicability to Specified Residential Properties

- Applies to specified residential properties, which are properties defined under s.10
- Residential Property (s.6)
 - Any real property in a development / phase which constitutes a separate unit that is used, or intended to be used, solely or principally for human habitation
 - Hotel or guesthouse is excluded – there may be possible amendments in the aftermath of Cheung Kong's sale of The Apex Horizon units
 - Interpretation of "Residential Property" is based on use. If a property is used in contravention of the land grant or the occupation permit, it will not be considered a residential property even if used or intended to be used for human habitation

Applicability to Specified Residential Properties

- Specified residential properties (s.10): residential properties sold for the first time, meaning residential properties for which no:
 - Preliminary agreement for sale and purchase ("PSPA")
 - Agreement for sale and purchase ("SPA")
 - Assignmenthas been entered into
- 2 exceptions (s.10):
 - Where at least 95% of the residential properties in the development or phase have been rented out for at least 36 months (whether continuous or aggregate) (referred to as "qualified residential property" under s.10(4)(a))
 - Where the development consists of a New Territories building where a certificate of exemption has been issued under s 5(a) of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121). However, where the development consists of more than one building, the exception will not apply.

Applicability to Specified Residential Properties

Disregarded Sale & Purchase Agreements (SPA) / Provisional Sale & Purchase Agreements (PSPA) / Assignments (s.11)

- PSPA / SPA / Assignments that are not regarded as being entered into in terms of residential properties
- PSPA / SPA in relation to the following:
 - Sale between associated corporate structures
 - Sale within a family (one immediate family member to another)
 - Sale of:
 - Either all the multi-unit buildings
 - Or all the housesin a development to the same person, as long as the multi-unit buildings or houses concerned are specified residential properties
 - Regardless whether the development consists wholly of multi-unit buildings or wholly of houses, or is a mixture of both multi-unit buildings and houses
- Assignment for:
 - Sale between associated corporate structures
 - Sale within a family (one family member to another)

Other Noteworthy Definitions

Authorised Personnel

- Authority (s.2) – The Sale of First-hand Residential Properties Authority
 - The public officer appointed by the Secretary for Transport and Housing to administer the Ordinance
 - The Secretary set up the Sale of First-hand Residential Properties Authority (the “SRPA”) for this purpose
- Authorised person (s.2)
 - New Territories development: The person appointed by the owner of the land to supervise the construction of the development
 - Other cases: the co-ordinator of building works for the development or phase as appointed under the Buildings Ordinance (Cap. 123)

Other Noteworthy Definitions

Developments

- Completed development (s.4)
 - Specified NT development: A specified NT development for which a no-objection letter has been issued for every building in the development, or a certificate of compliance or consent to assign has been issued by the Director of Lands in respect of the development
 - Any other case: an occupation permit has been issued for every building in the development
- Uncompleted development (s.4)
 - Any development that is not a completed development
- Specified NT development (s.5)
 - A development for which a certificate of exemption has been issued under s.5(a) of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) in respect of building works for every building in the development

Other Noteworthy Definitions

Area of residential property

- Saleable area (s.8)
 - Floor area of the residential property
 - Floor area of a balcony, utility platform or verandah to the extent that it forms part of the residential property
 - Excludes Schedule 2 Part 1 items:
 - An air-conditioning plant room, a bay window, a cockloft, a flat roof, a garden, a parking space, a roof, a stairhood, a terrace, a yard
- Floor area (s.8)
 - Of residential property or balcony, utility platform or verandah:
 - Measured from the exterior of the enclosing walls
 - Includes internal partitions and columns
 - Excludes common parts outside enclosing walls
 - An additional exclusion for balcony, utility platform or verandah:
 - Excludes area covered by any enclosing wall that abuts onto the residential property

Other Noteworthy Definitions

Companies and Corporations

- Corporation (s.2)
 - Includes companies incorporated outside Hong Kong
- Associate corporation (s.2)
 - In relation to a corporation or specified body, means the subsidiary of the:
 - corporation / specified body, or
 - holding company of the corporation / specified body
- Holding company (s.2)
 - Adopts the definition in the Companies Ordinance
- Subsidiary (s.2)
 - Uses the meaning under the Companies Ordinance: a company (e.g., A Ltd) is a subsidiary of, e.g. B Ltd if:
 - B Ltd controls the composition of A Ltd's board of directors
 - B Ltd controls more than half of the voting power of A Ltd
 - B Ltd holds more than half of A Ltd's issued share capital (excluding shares that give no right to participate beyond a certain amount in profits / capital distribution), or
 - A Ltd is a subsidiary of B Ltd's subsidiary (i.e. B Ltd is A Ltd's ultimate holding company)

Other Noteworthy Definitions

Parties involved in the Development and their relations

- Owner (s.2)
 - The legal or beneficial owner of the residential property
- Immediate family member (s.2)
 - A spouse, parent, child, sibling, grandparent or grandchild of the individual involved

Other Noteworthy Definitions

Time and Date

- Material date (s.2)
 - Uncompleted development or uncompleted phase:
 - Where consent of Director of Lands is required to be given for any sale and purchase of residential properties in the development or phase under the land grant: date on which conditions are complied with
 - Where the consent of the Director of Lands is not required:
 - Specified NT development: the date on which the development is completed in compliance with the conditions of the certificate of exemption
 - For any other case: the date on which the development / phase is completed in compliance with the approved building plans
 - Completed development / phase pending compliance: the date on which conditions are complied with
- Working day (s.2)
 - A day that is not a general holiday (including Sundays), a Saturday, a black rainstorm warning day or gale warning day

Sales Brochure (Part 2 Division 2)

Bilingual Publication of Sales Brochure

Bilingual Publication

- “Sales Brochure” in English and “售樓說明書” in Chinese (s.15)
 - Must have these expressions printed as title on cover of brochure (s.18)

Title Requirements

- Font size requirements (s.18)
 - “Sales Brochure” to be at least 18 point Times New Roman typeface
 - “售樓說明書” to be at least 18 point 新細明體 typeface
- Contravention of title requirements: fine of HK\$100,000 (s.18)

Sales Brochure Requirements

- The Vendor must prepare sales brochure (s.15(1))
- Phases: must publish sales brochure for each phase (s.15)
- Contravention of sales brochure requirements (either failure to publish bilingual sales brochure, or failure to publish for each phase): fine of HK\$1 million
- No person except the Vendor may prepare the sales brochure (s.16)
 - Contravention: fine of HK\$1 million
- Examination and revision (s.17)
 - Any inaccuracy upon examination to be corrected by revision
 - Contravention: fine of \$500,000
 - The Vendor to notify the Authority (the public officer appointed by the Secretary to be authority for the Ordinance) in writing of revision within 3 working days after revision
 - Contravention: fine of HK\$100,000

Contents of Brochure (s.19)

- Split into requirements of 3 different sub-sections

| Sub-section | Contents |
|-------------|-------------------------------------------------------------------------------------------------|
| S.19(1) | Steps which a person is advised to take for person's own protection before deciding to purchase |
| S.19(2) | Schedule 1 Part 1 information |
| S.19(3) | Schedule 1 Part 2 information |

I. Contents of Brochure (s.19(1))

S.19(1) requirements

Contents of sales brochure: information required to be set out

- The beginning of the brochure "must first set out" steps which a person is advised to take for person's own protection before deciding to purchase. The Authority has issued a 9 pages Guideline on "Notes to Purchaser of First-hand Residential Properties"

II. Contents of Brochure (s.19(2))

S.19(2) requirements

- Information in s.19(2) must be set out in the sales brochure in the order specified in Schedule 1 Part 1 (s.19(4))
- Information on the Development (Schedule 1 Part 1, s.1)
 - Name of street and number, the total number of storeys (or houses), floor numbering as provided in the approved building plans, omitted floor numbers and refuge floors
 - Uncompleted – the estimated material date of completion, the fact that the estimated material date is subject to extension; where consent required, that the certificate of compliance / consent to assign is conclusive evidence that the development is completed or deemed completed; where consent not required, issue of a letter of no objection from the Director of Lands for specified New Territories development, or in other cases the issue of an Occupation Permit is evidence that the development is deemed to be completed
 - Completed but pending compliance – estimated material date is subject to extension; issue of certificate of compliance or consent to assign is conclusive evidence that the development has been completed

II. Contents of Brochure (s.19(2))

Information on the Vendor and others involved in the development (Schedule 1 Part 1, ss.2 and 3)

- The sales brochure must state the names of the Vendor and others involved in development, meaning the Authorised Person, the building contractor, the firm of solicitors, the authorised institution that provides finance for the construction, any other person who has made a loan to finance the construction
- In case of specified NT development, the Brochure must also specify:
 - The period of appointment of the Authorised Person
 - The period of engagement of the building contractor
- Note: the Vendor here applies to either the owner or the person so engaged (and not both as is normally the case)

II. Contents of Brochure (s.19(2))

Relationship between Parties (Schedule 1 Part 1, s.3)

- The brochure must state the relationship between the Vendor and the others involved in the development
- Two types of relationships are identified:
 - 1. Family relations
 - 2. Shareholder or employment relations
- Note: the Vendor here applies to either the owner or the person so engaged (and not both as is normally the case)

II. Contents of Brochure (s.19(2))

Family relationship (Schedule 1 Part 1, s.3)

- Immediate family member (s.2)
 - A spouse, parent, child, sibling, grandparent or grandchild of the individual involved
- How much of the relationship / position / name of the relevant person must be disclosed?
 - The name of the AP or name of the firm of solicitors must be stated
 - Stating that the Vendor / building contractor is an “immediate family member” is sufficient. There is no need to further state the exact nature of the relationship
 - There is no need to state the name of the director / secretary
- Associate
 - Means a proprietor of the firm where the Authorised Person is a proprietor, or director of the corporation where the Authorised Person is a director

II. Contents of Brochure (s.19(2))

Family relationship (Schedule 1 Part 1, s.3(2))

| | |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a) and g) | The Vendor (V) / building contractor – individual AP / proprietor of solicitors is an immediate family member |
| b) and h) | V / building contractor – partnership AP / proprietor of solicitors is an immediate family member of a partner of V / contractor |
| c) and i) | V / building contractor – corporation AP / proprietor of solicitors is an immediate family member of director / secretary of V / contractor / holding company of V |
| d) | V / building contractor – individual Associate of AP is an immediate family member of V / contractor |
| e) | V / building contractor – partnership Associate of AP is an immediate family member of a partner of V / contractor |
| f) | V / building contractor – corporation Associate of AP is an immediate family member of a director / secretary of V / contractor / holding company of V |

II. Contents of Brochure (s.19(2))

Shareholder or employment relationship (Schedule 1 Part 1, s.3)

| | |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a) and e) | Where the Vendor (V) / holding company of V / building contractor is a private company AP or associate or proprietor of the firm of solicitors holds at least 10% in the private company |
| e) and f) | Where V / holding company of V / building contractor is a listed company AP or associate or proprietor of the firm of solicitors holds at least 1% in the listed company |
| c) and g) | Where V / holding company of V / building contractor is a corporation AP or associate or proprietor of the firm of solicitors is an employee of the corporation |
| d) and h) | Where V / building contractor is a partnership AP or associate or proprietor of the firm of solicitors is an employee of the partnership |
| i) | Where V / building contractor is a corporation AP is a director / employee in an associate corporation of V / holding company of V / building contractor |

II. Contents of Brochure (s.19(2))

Shareholder or employment relations

(Schedule 1 Part 1, s.3)

- Must state: the name of the Authorised Person and of the solicitors' firm
- No need to state: the percentage / the amount of shareholding held

II. Contents of Brochure (s.19(2))

- Design of development
 - Whether non-structural prefabricated external walls / curtain walls exist
 - The thickness range and total area of these walls, if any
- Property management – name of manager
- Location plan (Schedule 1 Part 1, s.6)
 - 16 cm x 16 cm at least
 - English letters / numbers for the legend must at least be the equivalent of 10 point Times New Roman typeface
 - Chinese letters / numbers for the legend must at least be the equivalent of 10 point 新細明體 typeface
 - Location of development, name of every street, building, facility or certain structures within 250 m from the development's boundary
 - Clinic, crematorium, columbarium, mortuary, slaughterhouse, cemetery, landfills (including ex-landfills), landfill gas flaring plant, religious institution (including a church or Tsz Tong), refuse collection point, funeral parlour, cemetery, social welfare facilities (including home for mentally disabled)
 - Scale must be indicated

II. Contents of Brochure (s.19(2))

Schedule 1 Part 1, s.8

- Aerial photograph
 - Latest one by Survey and Mapping Office of the Lands Department, taken from a flying height of below 7000 feet
 - 16 cm x 16 cm at least
 - Development and surroundings within 250 m must be shown
- Outline zoning plan or development permission area plan (draft or approved) or plan deemed to be a draft plan under s.25(7) of the Urban Renewal Authority Ordinance
 - 16 cm x 16 cm at least
 - English letters / numbers for legend must be at least 10 point Times New Roman typeface
 - Chinese, at least 10 point 新細明體 typeface
 - Existing and proposed uses of all land within 500 m must be shown

II. Contents of Brochure (s.19(2))

More Plans (Schedule 1 Part 1, ss.9 and 10)

- Layout plan
 - Scale, location and layouts of development including undeveloped land (with intended use) and the estimated date of completion of uncompleted buildings or facilities
- Floor plans of residential properties
 - Scale: at least 1:200, scale has to be marked on plan
 - Dimensions: internal and external dimensions of the residential property and individual compartments; furniture
 - Thickness of floor slabs and internal partitions
 - Floor to floor height
 - Must state: internal areas of residential properties on upper floors generally slightly larger than those of lower floors because of reducing thickness of structural walls on upper floors

II. Contents of Brochure (s.19(2))

- Area of residential properties (Schedule 1 Part 1, s.11)
 - Saleable area
 - Floor area of balcony, utility platform, verandah
 - Area of Schedule 2 Part 1 items (i.e. the 10 items – air-conditioning plant room, bay window, cockloft, flat roof, garden, parking space, roof, stairhood, terrace, yard) where they form part of the residential property in square feet and square metres
 - State saleable and floor area are calculated in accordance with s.8
 - State that the area of Schedule 2 Part 1 items are calculated in accordance with Schedule 2 Part 2
 - of Saleable area and floor area are defined in s.8
- Floor plans of parking spaces (Schedule 1 Part 1, s.12)
 - Show location, number, dimensions and area of the parking spaces

II. Contents of Brochure (s.19(2))

Summaries (Schedule 1 Part 1, ss.13 and 14)

- The Preliminary Sale & Purchase Agreement (“PSPA”)
 - 5% preliminary deposit payable upon signing, stakeheld by the Vendor’s solicitors
 - PSPA terminated and preliminary deposit forfeited and the Vendor has no further claim where the Purchaser fails to execute SPA within 5 working days after
- Deed of Mutual Covenant (“DMC”)
 - Uncompleted development: latest draft of every DMC (as of date sales brochure is printed)
 - Completed development: either – DMC, or the latest draft of every DMC, for the specified residential property, or both depending on circumstances
 - Summary of: common parts, term of years of the appointment of the manager, number of undivided shares, basis on which the management expenses are shared and how the management fee deposit is fixed and the area retained by the owner for its own use

II. Contents of Brochure (s.19(2))

Summary

- Land grant (Schedule 1 Part 1, s.15)
 - Lot no., term of years, user restrictions, facilities required by government, grantee's obligations to lay, form or landscape any areas or to construct or maintain structures or facilities such as pedestrian bridge within or outside the land, lease conditions that are onerous to the Purchaser

II. Contents of Brochure (s.19(2))

Information on public or government facilities

(Schedule 1 Part 1, s.16)

- Must describe any facilities required under the land grant to be constructed and provided for the Government or for public use
- Must describe facilities required to be managed, operated or maintained for public use
- Must describe any part of land dedicated to the public for purpose of regulation 22(1) of the Building (Planning) Regulations
- Must contain a plan that shows the facilities and open space and those parts of the land for the purposes aforesaid coloured or shaded as in the land grant or the deed of dedication
- Must set out the provisions in the land grant, the deed of dedication and deed of mutual covenant that concern these facilities and open spaces and parts of the land required for the purposes aforementioned
- State owners responsible for paying for those facilities and open spaces, and general public have the right to use them

III. Contents of Brochure (s.19(3))

S.19(3) – Additional Information Required to be Set Out and Schedule 1 Part 2 information

- Warning to Purchasers – recommended to instruct separate firm of solicitors to act for them in the transaction rather than the developer's (Schedule 1 Part 2, s.17)
 - Separate firm able to give independent advice
 - If conflict of interest arises, firm acting for both may not be able to protect their interests and P may have to instruct a separate firm, upon which the fees may become higher than if P started off with instructing a separate firm
- Cross-section plan of building in development (Schedule 1 Part 2, s.18)
 - In relation to every adjacent street to building
 - Level of every street in relation to known datum as well as to the level of the lowest residential floor of building

III. Contents of Brochure (s.19(3))

Schedule 1 Part 2 information

- Elevation plan (Schedule 1 Part 2, s.19)
 - All elevations
 - In colour
 - Certified by authorised person for development that elevations prepared on basis of approved building plans as of a date specified by that authorised person
 - In accordance generally with development's outward appearance
- Common facilities info – set out area in square feet and square metres of all residents' clubhouse, communal garden or play area and state whether the facility is covered (Schedule 1 Part 2, s.20)

III. Contents of Brochure (s.19(3))

Schedule 1 Part 2 information

- Inspection of plans and deed of mutual covenant (Schedule 1 Part 2, s.21)
 - Must state address of website on which copy of the plan made under the Town Planning Ordinance is available
 - Must state copy of the deed of mutual covenant and / or draft deed of mutual covenant is available for inspection at place of sale of the property free of charge
- Fittings, finishes and appliances info: table showing type and material of fittings, finishes and appliances, and undertaking that if lifts or appliances of a specified brand name or model number are not installed, lifts or appliances of comparable quality will be installed (Schedule 1 Part 2, s.22)

III. Contents of Brochure (s.19(3))

Schedule 1 Part 2 information

- Service Agreements (s.23)
 - Must set out information on agreement with a utility company for providing utility service
- Government rent (s.24)
 - Must state the date up to which the owner is liable for government rent
- Miscellaneous payments by purchaser (s.25)
 - Must state the purchaser on completion of purchase is liable to reimburse owner for deposits of water, electricity and gas
 - Must state whether a debris removal fee is payable
- Defect liability warranty period (s.26)
 - Must state the duration of the defects liability warranty period by the Vendor, as provided in the agreement for sale and purchase

III. Contents of Brochure (s.19(3))

Schedule 1 Part 2 information

- Maintenance of slope (s.27)
 - If land grant requires the owner to maintain any slope at their expenses, must state the terms of the requirement, each owner is obliged to contribute towards the costs of maintenance and set out a plan showing the slope and any retaining wall or related structures
 - Must set out the owner's undertaking to maintain any slope at that owner's cost
 - If under the deed of mutual covenant the manager is authorised to carry out the maintenance, the fact must be stated

III. Contents of Brochure (s.19(3))

Modification (Schedule 1 Part 2, s.28)

- Must state:
 - Nature of modification sought
 - Condition sought to be modified
- For any information required to be set out by ss.19(2) or 19(3) but such information is not applicable to the development, the brochure (s.19(5)):
 - Must include a paragraph with the appropriate heading
 - State in the paragraph that the information is not applicable to the development

Contents of Brochure (s.20)

- Must set out relevant information that is specific to a residential property in the development or specific to the development and the information:
 - Is not otherwise required to be set out, and
 - Is known to the Vendor but not to the general public
- Definition of relevant information:
 - Information likely to materially affect the enjoyment of the residential property or development
- The section does not authorise the sales brochure to set out size or unit price other than by reference to the saleable area
- The website address for the development must be set out

Contents of Brochure – Other Requirements

- S.21(1) requirement
 - Information in application for concession on gross floor area. See Schedule 1 Part 3
- S.21(3) requirement
 - May set out previous aerial photos. See Schedule 1 Part 4
- S.22 requirement
 - Must state the date of printing
 - Must state the date of each examination and the part of the brochure that has been revised

Contents of Brochure

- Accuracy is paramount (s.22)
 - Must be accurate in every material aspect as at date printed or date of last examination
 - Contravention:
 - Fine of HK\$500,000
 - Imprisonment for 12 months
- Must state there may be future changes to development and surrounding areas (s.22)
 - Contravention: fine of HK\$100,000
- Sales brochure must not set out other information (s.23)

Contents of Brochure

Bilingual sales brochure (s.24)

- English text font size
 - Main text: 10 point Times New Roman typeface (or larger)
 - Explanatory note or remark: 8 point Times New Roman typeface (or larger)
 - Explanatory note or remark excludes note / remark qualifying contents of main text
- Chinese text font size
 - Main text: 10 point 新細明體 typeface (or larger)
 - Explanatory note or remark: 8 point 新細明體 typeface (or larger)
- Exemption: text in an image (plan, diagram, map)
- Contravention of bilingual brochure requirement: fine of \$500,000
- Contravention of text font size: fine of \$100,000

Made Available to General Public (s.25)

- At least 7 days immediately before sale and on date of sale
 - Make hard copies of sale brochure available for collection to general public free of charge
 - On date of sale, hard copies for collection at place of sale
 - Contravention: fine of HK\$1 million
- Brochure on website for inspection at least 7 days before sale and on date of sale
 - Contravention: fine of HK\$100,000
- Cannot make available copies to general public any other “Sales Brochure” or “售樓說明書” that are not sales brochure copies as defined in the Ordinance
 - Contravention: fine of HK\$1 million

Made Available to General Public (s.25)

- Provide to the following simultaneously
 - Hard copy to the Authority
 - Electronic copy for electronic database of public officer / delegated person in charge of database
 - The Sales of First-hand Residential Properties Electronic Platform (the “SRPE”) was set up by the Authority and is maintained by the Rating and Valuation Department under the Authority’s commission under s 89(1) of the Ordinance
 - Contravention: fine of HK\$100,000



Price List (Part 2 Division 3)



Price List to be Prepared

- The Vendor must prepare a price list for each specified residential property / phase (s.29)
 - Any change to price must be reflected by a revised price list
 - Price for phase / development must only be set out in one price list at a time
- Contravention
 - Not preparing list or not revising list: fine of HK\$1 million
 - Of one price list at a time rule: fine of HK\$500,000

Number of Properties to be Covered (s.30)

- 30 or fewer residential properties in development: all
- 31 to 99 residential properties: at least 30
- 100 or more residential properties:
 - Whichever is greater: 20% or 50 specified residential properties
 - Each subsequent price list must cover at least 10% of the number of properties in the development
- Contravention: fine of HK\$1 million

Contents of the Price List (s.31)

- S.31(1) requirements:
 - Name and location of development
 - Total number of residential properties
 - Date printed
 - Order that this price list takes among all price lists issued in terms of the date on which the price lists are printed
 - Revisions: state the date on which each revision is made
- S.31(2) requirements:
 - Description of residential property
 - Saleable area
 - Price per square foot and price per square metre of saleable area
 - Floor area of balcony, utility platform and verandah
 - Area of items in Schedule 2 Part 1: air-conditioning plant room, bay window, cockloft, flat roof, garden, parking space, roof, stairhood, terrace, yard
 - State that saleable area is calculated in accordance with s.8 of the Ordinance
 - State that area of items in Schedule 2 Part 1 is calculated in accordance with Schedule 2 Part 2

Contents of the Price List (s.31)

- Must state the contents of:
 - S.52(1): preliminary deposit of 5% payable on signing of provisional sale and purchase agreement ("PSPA")
 - S.53(2): purchaser executes a sale and purchase agreement ("SPA") within 5 working days after date of PSPA and owner must execute SPA within 8 working days after that date
 - S.53(3): if a person does not execute an SPA within 5 working days after date of PSPA, the PSPA is terminated, the deposit is forfeited and the owner does not have any further claim
- Must state a prospective purchaser is advised to refer to the sales brochure for any information
- Price list must set out terms of payment, basis of discount, gift, financial advantage or benefit available
- Must state who pays the solicitors' fees and stamp duty

Contents of the Price List (s.31)

- Must set out any charges payable by a purchaser for execution of any document in relation to the sale and purchase, e.g. a deed of mutual covenant or management agreement
- Must state the website address for the development
- If an estate agent has been appointed by the Vendor, must state the name of the agent and the fact that the purchaser may appoint an estate agent to act but does not need to do so
- No other information except as required by s.31

Made Available to Public (s.32)

- At least 3 days (c.f. 7 days for brochure) immediately before sale and on date of sale
 - Make hard copies of price list available for collection to general public free of charge
 - On the date of sale, hard copies to be made available for collection at place of sale
 - Contravention: fine of HK\$1 million
- Price list on website for inspection at least 3 days (c.f. 7 days for brochure) before sale and on date of sale
 - Contravention: fine of HK\$100,000
- And provide to the following simultaneously
 - Hard copy to the Authority
 - Electronic copy for SRPE
 - Contravention: fine of HK\$100,000

No Expression of Intent before Price List

S.34

- No expression of intent before price list is made available
 - Not only must the Vendor not seek to sell before the price list is made available, he must also reject all offers to buy before that
- An expression of intent may be general or specific
 - General – referring to any residential property in the development without being specific as to which property exactly, e.g.: 'I'd like to buy a property in Waterfall Gardens'
 - Specific – referring to a specific property, e.g.: Flat B, 16/F
- Contravention: fine of \$500,000

S.35

- Specified residential property may only be sold or offered to be sold at price set out in price list or revised price list

Sample Price List (Transport and Housing Bureau's)

Annex to G02/13

價單範本 Template for Price List

第一部份：基本資料 Part 1: Basic Information

| | | | |
|-------------------------------------------------------------------------------------------------------------------|--------------------------------|------------------------------|-----|
| 發展項目名稱 Name of Development | ABC 花園 ABC Garden | 期數(如有) Phase No. (if any) | -- |
| 發展項目位置 Location of Development | XX 街 YY 號 No. YY, XX Street | | |
| 發展項目（或期數）中的住宅物業的總數 The total number of residential properties in the development (or phase of the development) | | | 200 |

| 印製日期 Date of Printing | 價單編號 Number of Price List |
|--------------------------|------------------------------|
| 1 August 2013 | 1 |

修改價單(如有) Revision to Price List (if any)

| 修改日期 Date of Revision | 經修改的價單編號 Numbering of Revised Price List | 如物業價錢經修改，請以「✓」標示 Please use "✓" to indicate changes to prices of residential properties |
|--------------------------|---------------------------------------------|--------------------------------------------------------------------------------------------|
| | | 價錢 Price |
| 14 August 2013 | 1A | ✓ |
| | | |

(範本所顯示的資料僅供說明之用) (Information shown in the template are for illustration only)

Price List No. x

第二部份：面積及售價資料 Part 2: Information on Area and Price

| 物業的描述 * Description of Residential Property * | | | 實用面積 (包括露台、工作平台及陽台 (如有) 平方米(平方呎) Saleable Area (including balcony, utility platform and verandah, if any) sq. metre (sq. ft.) | 售價 (元) Price (\$) | 實用面積 每平方米/呎售價 元, 每平方米 (元, 每平方呎) Unit Rate of Saleable Area \$ per sq. metre (\$ per sq. ft.) # | 其他指明項目的面積 (不計算入實用面積) Area of other specified items (Not included in the Saleable Area) 平方米 (平方呎) sq. metre (sq. ft.) | | | | | | | | | |
|---------------------------------------------------------|-------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------|--------------------|--------------|-------------------------|------------|----------------------|---------------|------------|
| | | | | | | 空調機房 Air- conditioning plant room | 窗台 Bay window | 閣樓 Cock- loft | 平台 Flat roof | 花園 Garden | 停車位 Parking space | 天台 Roof | 梯屋 Stair- hood | 前庭 Terrace | 庭院 Yard |
| 大廈名稱 Block Name | 樓層 Floor | 單位 Unit | | | | | | | | | | | | | |
| [屋號(House number) / 屋名(Name of the house)] | | | | | | | | | | | | | | | |
| 5 | 30 | A | 53.8(579) 露台 Balcony: 2.0 (22); 工作平台 Utility Platform: 1.5 (16) | 6,400,000 | 118,959 (11,054) | 1.1 (12) | 1.1 (12) | -- | -- | -- | -- | -- | -- | -- | -- |
| | | B | | | | | | | | | | | | | |
| | | C | | | | | | | | | | | | | |
| | 29 | A | 53.8(579) 露台 Balcony: 2.0 (22); 工作平台 Utility Platform: 1.5 (16) | 6,200,000 | 115,242 (10,708) | 1.1 (12) | 1.1 (12) | -- | -- | -- | -- | -- | -- | -- | -- |
| | | B | | | | | | | | | | | | | |
| | | C | | | | | | | | | | | | | |

- * 以上住宅物業的描述下的項目為同時包括「多單位建築物」及「獨立屋」而訂。就只包括「多單位建築物」的發展項目，該項目只須提供「大廈名稱」、「樓層」及「單位」的資料；至於只包含「獨立屋」的發展項目，該些項目只須提供「屋號」或「屋名」，視乎何者適用。
Items under "description" of residential property above are for development with both "multi-unit building(s)" and "house". For development with "multi-unit buildings only", information on "block name", "floor" and "unit" should be provided. In the case of a development consisting of houses only, information on "house number" or "name of the house" should be provided as appropriate.

Price List No. x



第三部份：其他資料 Part 3: Other Information

- (1) 準買家應參閱發展項目的售樓說明書，以了解該項目的資料。
Prospective purchasers are advised to refer to the sales brochure for the development for information on the development.

- (2) 根據《一手住宅物業銷售條例》第 52(1)條及第 53(2)及(3)條， -
According to sections 52(1) and 53(2) and (3) of the Residential Properties (First-hand Sales) Ordinance, -

第 52(1)條 / Section 52(1)

在某人就指明住宅物業與擁有人訂立臨時買賣合約時，該人須向擁有人支付售價的 5%的臨時訂金。

A preliminary deposit of 5% of the purchase price is payable by a person to the owner on entering into a preliminary agreement for sale and purchase in respect of the specified residential property with the owner.

第 53(2)條 / Section 53(2)

如某人於某日期訂立臨時買賣合約，並於該日期後的 5 個工作日內，就有關住宅物業簽立買賣合約，則擁有人必須在該日期後的 8 個工作日內，簽立該買賣合約。

If a person executes an agreement for sale and purchase in respect of the residential property within 5 working days after the date on which the person enters into the preliminary agreement for sale and purchase, the owner must execute the agreement for sale and purchase within 8 working days after that date.

第 53(3)條 / Section 53(3)

如某人於某日期訂立臨時買賣合約時，但沒有於該日期後的 5 個工作日內，就有關住宅物業簽立買賣合約，則 - (i) 該臨時合約即告終止；(ii) 有關的臨時訂金即予沒收；及 (iii) 擁有人不得就該人沒有簽立買賣合約而針對該人提出進一步申索。

If a person does not execute an agreement for sale and purchase in respect of the residential property within 5 working days after the date on which the person enters into the preliminary agreement for sale and purchase- (i) the preliminary agreement is terminated;(ii) the preliminary deposit is forfeited; and (iii) the owner does not have any further claim against the person for the failure.

- (3) 實用面積及屬該住宅物業其他指明項目的面積是按《一手住宅物業銷售條例》第8條及附表二第2部的計算得出的。
The saleable area and area of other specified items of the residential property are calculated in accordance with section 8 and Part 2 of Schedule 2 to the Residential Properties (First-hand Sales) Ordinance.

[列載下列資料時，請按發展項目的實際情況提供下述(4)、(5)及(6)項方括號內的資料。]

[When stating the following information, please fill in information required under square brackets of items (4), (5) and (6) below according to the actual circumstances of the development.]

- (4) [請於以下位置或夾附此價單的另一張紙提供下述資料：(i) 支付條款；(ii) 售價獲得折扣的基礎；(iii) 可就購買該項目中的指明住宅物業而連帶獲得的任何贈品、財務優惠或利益；(iv) 誰人負責支付買賣該項目中的指明住宅物業的有關律師費及印花稅；及(v) 買方須為就買賣該項目中的指明住宅物業簽立任何文件而支付的費用。]

[如夾附額外的紙張提供此項目所須的資料，請在此說明]

[The following information should be provided in the space below or on a separate sheet annexed to this price list: (i) the terms of payment; (ii) the basis on which any discount on the price is available; (iii) any gift, or any financial advantage or benefit, to be made available in connection with the purchase of a specified residential property in the development; (iv) who is liable to pay the solicitors' fees and stamp duty in connection with the sale and purchase of a specified residential property in the development; and (v) any charges that are payable by a purchaser for execution of any document in relation to the sale and purchase of a specified residential property in the development.]

[Please indicate if an additional sheet is annexed to provide information required under this item]

- (5) 賣方已委任地產代理在發展項目中的指明住宅物業的出售過程中行事：[該地產代理的名稱或姓名 / 無]。請注意：任何人可委任任何地產代理在購買該項目中的指明住宅物業的過程中行事，但亦可以不委任任何地產代理。

The vendor has appointed estate agents to act in the sale of any specified residential property in the development: [name of the estate agent / NIL]. Please note that a person may appoint any estate agent to act in the purchase of any specified residential property in the development. Also, that person does not necessarily have to appoint any estate agent.

- (6) 賣方就發展項目指定的互聯網網站的網址為：[]。(註：該網址須以對閱讀該價單的人屬合理可見的方式列出。)

The address of the website designated by the vendor for the development is: []. (Note: That address must be set out in such a manner that it is reasonably visible to any person reading the price list.)

Price List No. x



Show Flats (Part 2 Divisions 4 and 5)



Unmodified Show Flat

Definition (s.36)

- Bay windows, air-conditioning plant rooms, balconies, utility platforms and verandahs in show flat are the same, and have the same dimensions, as those in the residential property as depicted in the sales brochure
- Floor-to-ceiling height must not exceed projected height of property
- Show flat dimensions (including internal partitions) and fitting, finish or appliances must be the same as those in the sales brochure
- Dimensions different: permissible if difference due to finishes on walls or partitions, but a notice stating the difference must be displayed in the show flat
- Fitting, finish or appliance different: permissible if quality is comparable, notice stating difference must be displayed in show flat

Modified Show Flat (s.37)

- Compared to an unmodified show flat, a modified show flat is one in which:
 - Internal partitions and fittings, finishes and appliances need not be the same
 - But dimensions of show flat (including dimensions of bay windows, air-conditioning plant rooms, balconies, utility platforms, verandahs as well as floor-to-ceiling height) must be the same
 - Where dimensions are different, this is permissible if the differences are due to finishes on walls or internal partitions, but must show reasonably visible notice stating the difference in the show flat

Viewing of Show Flat (s.38)

- If the Vendor is to make a show flat, the Vendor must make an unmodified show flat (s.38(2))
- If the Vendor makes an unmodified show flat, it may also make a modified show flat (s.38(3))
 - The Vendor is not required to make any show flat (s.38(1))
- Show flat (modified or unmodified) cannot be viewed by prospective purchasers before copies of brochure available to the public under s.25(1) (7 days before sale)
- Contravention: fine of HK\$500,000
- Note: the Vendor here refers to both or either one of the owner or the person the owner engages to help, instead of simply both of them as is the norm throughout the Ordinance

Unmodified Show Flat

- Other requirements (s.39)
 - Balcony, utility platform or verandah must be provided with boundary walls or parapets
 - Plan must be displayed in show flat showing dimensions of the show flat, internal partitions and other add-ons
 - Escape passageway or door (in case of fire) must be indicated by notice stating no such passageway / door in the property
 - Solid line showing position and thickness of enclosing or boundary wall
 - Contravention of any of the above points: fine of HK\$500,000
 - Floor-to-ceiling height less than corresponding projected height of residential property: notice must be displayed stating difference
 - Contravention: fine of HK\$100,000
 - Enclosing and boundary walls as well as internal partitions and doors must be provided according to sales brochure depictions (s.40)
 - Contravention: fine of HK\$500,000
- Notices must be reasonably visible (ss.36, 39)

Modified Show Flat: Additional Requirements

- Internal partitions and doors need not be provided if they may be removed without the Building Authority's approval (s.41)
 - Where partition is not provided, a solid line on the floor showing the position and thickness of the partition must be drawn
 - A plan must be displayed in the show flat showing layout, orientation and thickness of internal partitions
 - Contravention: fine of HK\$500,000
 - Notice must be displayed in the show flat showing which fittings, finishes and appliances in show flat will be included in residential property, and which will not
 - Contravention: fine of HK\$100,000

Measurements and Photographs in Show Flat

S.42

- The Vendor must not restrict persons viewing the show flat from taking measurements
 - Applies to both unmodified and modified show flats
- Additional requirements for unmodified show flat:
 - The Vendor must not restrict persons from taking photographs or from making video recordings of the show flat
- Exception: reasonable restriction for ensuring safety of persons viewing show flat
- Contravention: fine of HK\$100,000

Sales Arrangements and Other Information (Part 2 Division 6)

Sales Arrangements

- Make hard copies of the sales arrangement document available for collection by the general public free of charge (s.47(1)(a))
- Provide information on sales arrangements on the website of the development for inspection(s.47(1)(b))
- Time requirements (s.47(1)):
 - At least 3 days before the date of sale; and
 - On the date of sale
- Information required (s.47(2))
 - Date, time and place of sale
 - Number of properties to be offered for sale
 - Description of the properties
 - Method to determine the priority to select the properties
 - Method to determine the priority when 2 or more persons are interested in purchasing the same property

Plans and Documents

- Make the following plans and documents available for inspection by the general public free of charge at the place of sale (s.48(1))
 - Outline zoning plan or development permission area plan
 - Approved building plans
 - Latest draft DMC (for uncompleted development)
 - DMC or latest draft DMC (for completed development)
 - Land grant
 - Aerial photograph of the development
- DMC, latest draft of DMC and aerial photograph also need to be provided on the website of the development (s.49(1))
- Time requirement: on the date of sale (s.48(1) and s.49(1))

Floor Plan

- Floor plan is not a mandatory requirement
- But if the Vendor has provided a floor plan, the floor plan must (s.50(1))
 - State the scale on that plan; and
 - Show the dimensions of the furniture (if any) on that plan
- Floor plan contained in the sales brochure is excluded from the above requirements (s.50(2))

Provisional Sale & Purchase Agreements (Part 2 Division 7)

Provisional Sale and Purchase Agreement (“PSPA”)

Mandatory Provisions

- Preliminary deposit of 5% of purchase price on entering PSPA (s.52)
 - If PSPA provision is different, the statutory provision prevails
- Execution of Sale & Purchase Agreement (“SPA”) (s.53)
 - If a person has signed a PSPA
 - The same person then executes an SPA within 5 working days after having entered PSPA, the owner must execute the SPA within 8 working days after that date
 - Contravention: fine of HK\$1 million
 - If the person does not execute the SPA within 5 working days:
 - PSPA is terminated
 - Preliminary deposit forfeited
 - Owner has no further claim against that person
 - Common law or equitable rights all abrogated
 - owner may not sue the other person for damages, or claim for specific performance

Mandatory Provisions in a PSPA (s.54, Schedule 4)

- Schedule 4 sets out the mandatory provisions
 - (1) Definitions in Preliminary Agreement
 - (2) Purchase price
 - (3) Preliminary deposit – state the exact sum, and the fact that this sum represents 5% of the purchase price
 - Held by the Vendor’s solicitors as stakeholder
 - (4) Superseded by SPA
 - To be signed by the Purchaser on [date] (5th working day after date PSPA signed)
 - By the Vendor on [date] (8th working day after date PSPA signed)
 - (5) Stamp duties – who pays (ad valorem, special and buyer’s stamp duties)
 - Note: BSD not mentioned in the Ordinance
 - (6) Consequences if the Purchaser fails to execute the SPA
 - Termination and forfeiture of preliminary deposit
 - The Vendor has no further claim

Mandatory Provisions in a PSPA (s.54)

(7) Measurements of the Property

- Saleable area
 - Square metres and square feet
 - Including balcony, utility platform, verandah
 - Other measurements of other spaces
 - Car parking space, bay window, cockloft, terrace, yard

(8) Fittings, finishes, appliances included in the sale and purchase

(9) Acknowledgement by purchaser of receipt of Warning to Purchasers (contents of which are similar to Schedule 1 Part 2 as explored under “Sales Brochure” earlier)

Register of Transactions (Part 2 Division 8)

Register of Transactions

- Registers of transactions of the development and each phase of the development are to be kept by the Vendor (s.58)
- Contravention: fine of HK\$500,000 (s.58)
- Contents (s.59)
 - Description of the residential property and the parking lot sold together with it under one PSPA / SPA
 - Date of the PSPA / SPA
 - Price
 - Revision of price (under s.35(2)) – state details and date of any revision
 - Terms of payment
 - Date that the PSPA / SPA was terminated
 - Whether the purchaser is a related party to the Vendor

Register of Transactions

Contents of transaction entries in Register (continued)

- Where the Vendor is a corporation, purchaser is related to the Vendor if he is (s.59(7)):
 - Director of the Vendor or parent, spouse or child of such director
 - Manager of the Vendor
 - Private company of which director, parent, spouse, child or manager is director or shareholder of the Vendor
 - Associate corporation or holding company of the Vendor
 - Director of associate corporation or holding company, or parent, spouse or child of director
 - Manager of associate corporation or holding company
 - Where the Vendor is a partnership: partner of the Vendor, or parent, spouse or child of such partner
 - Private company of which such partner, parent, spouse, child is director or shareholder

Register of Transactions

Contents of transaction entries in Register (continued)

- Where the Vendor is an individual, purchaser is related if he is (s.59(7)):
 - A parent, spouse or child of the Vendor
 - A private company of which such parent, spouse or child is a director or shareholder
- Note: the Vendor here refers to each one of the owner and the person whom the owner engages to help, instead of both as is the norm in the Ordinance

Timing for Entering Transaction in Register (s.59)

- PSPA – within 24 hours after entering
 - Containing all contents
- SPA – within 1 working day after entering
 - If PSPA has been entered prior: State date of the SPA and revise the particulars of the transaction if there are any changes
 - If no PSPA: all contents
- Where prospective purchaser signed PSPA but not SPA after 5 working days:
 - 6th working day: the Vendor must indicate that in Register
- Revision of price – 1 working day after:
 - Enter details and date of any revision to the PSPA / SPA
- SPA terminated: within 1 working day after termination
- Contravention: fine of HK\$500,000

Made Available to General Public (s.60)

- Register to be made available to general public on a date of sale of specified residential properties free of charge at the place of sales
 - Contravention: fine of HK\$500,000
- From that date until the day of the first assignment, the Vendor must make an electronic copy of the Register of Transactions available for inspection on the website designated for the development
 - Contravention: fine of HK\$100,000
- And provide an electronic copy of the Register to the SRPE
 - Contravention: fine of HK\$100,000

Sample Register of Transactions (The Transport and Housing Bureau's)

Annex to G04/13

範本/Template

根據《一手住宅物業銷售條例》第 60 條所備存的成交記錄冊

Register of Transactions kept for the purpose of section 60 of the Residential Properties (First-hand Sales) Ordinance

| (A) | (B) | (C) | (D) * | | | | (E) | (F) | (G) | (H) |
|------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------|-----------------------------------------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------|
| 臨時買賣合約的日期 (日-月-年) Date of PASP (DD-MM-YYYY) | 買賣合約的日期 (日-月-年) Date of ASP (DD-MM-YYYY) | 終止買賣合約的日期 (如適用) (日-月-年) Date of termination of ASP (if applicable) (DD-MM-YYYY) | 住宅物業的描述 (如包括車位，請一併提供有關車位的資料) Description of Residential Property (if parking space is included, please also provide details of the parking space) | | | | 成交金額 Transaction Price | 售價修改的細節及日期 (日-月-年) Details and date (DD-MM-YYYY) of any revision of price | 支付條款 Terms of Payment | 買方是賣方的有關連人士 The purchaser is a related party to the vendor |
| | | | 大廈名稱 Block Name | 樓層 Floor | 單位 Unit | 車位(如有) Car-parking space (if any) | | | | |
| | | | 屋號(House number) / 屋名(Name of the house) | | | | | | | |
| 2-10-2013 | 簽訂臨時買賣合約後交易再未有進展 The PASP has not proceeded further | | 2 | 10 | A | | \$4,000,000 | | | √ |
| 3-10-2013 | 8-10-2013 | | 2 | 10 | B | No.13 | \$4,500,000 | 在 5-10-2013，基於法例第 35(2)(a)條所容許的原因，售價更改為\$4,502,000 On 5-10-2013, the price adjusted to \$4,502,000 due to the reason allowed under section 35(2)(a) of the Ordinance | | |
| 3-10-2013 | 8-10-2013 | | House No. 5 | | | | \$8,500,000 | | | |

(範本所顯示的資料僅供說明之用) (Information shown in the template are for illustration only)

* 就只包括「多單位建築物」的發展項目，只須提供「大廈名稱」、「樓層」及「單位」的資料；至於只包含「獨立屋」的發展項目，只須提供有關「屋號」或「屋名」的資料，視乎何者適用。

For development with "multi-unit buildings only, information on "block name", "floor" and "unit" should be provided. In the case of a development consisting of houses only, information on "house number" or "name of the house" should be provided as appropriate.



Advertisements (Part 3)



Advertisement – Must and Must Not

| Must | Must not |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 1. Must state that the advertisement is published by or with the consent of the Vendor (s.71(1)) | 1. Must not contain false or misleading information (s.70) |
| 2. Must state the estimated material dates for uncompleted development or phase, or completed development or phase pending compliance (ss.71(2) and (3)) | 2. Must not give information on size or unit price otherwise than by reference to the saleable area (s.71(4)) |
| 3. Must contain statement about sales brochure (s.72) | |

Advertisement – Published by or with Consent of the Vendor

- State in an advertisement that the advertisement is published by the Vendor, or with the consent of the Vendor (s.71(1))
- The Vendor means either:
 - The owner (ie. usually the developer); or
 - A person engaged to coordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development
- Rationale: higher reliability and trustworthiness of an advertisement published by the Vendor
- Penalty: fine at level 6 (ie. HK\$100,000)

Advertisement – False or Misleading Information

- A person commits an offence if:
 - He publishes an advertisement containing false or misleading information in a material particular; and
 - He knows, or is reckless as to whether, the information is false or misleading (s.70)
- In determining whether a statement is materially misleading, the questions are (ASC v McLeod (2000) 22 WAR 255):
 - Whether the statement had a tendency to convey a meaning inconsistent with the true state of affairs?
 - Whether the natural and probable result of the statement would be to induce the reader to act in belief that is inconsistent with the true state of affairs?
- “Know”
 - Actual knowledge
 - Deliberate non-inquiry into matters which would be unfavourable

Advertisement – False or Misleading Information

- Test of recklessness in *Sin Kam Wah & Another v HKSAR* (2005) 8 HKCFAR 1994
 - On a subjective test whether the person is aware of a risk which, in all the circumstances known to him, is unreasonable to be taken
 - The statement maker would not be regarded as reckless, if due to his age or personal characteristics, he genuinely did not appreciate or foresee the risks.
- Penalty:
 - Indictment: fine of \$5,000,000 and imprisonment for 7 years
 - Summary: fine of \$1,000,000 and imprisonment for 3 years

Advertisement – Additional Requirements for Printed Advertisement

- Printed advertisement (s.73(1))
 - Newspaper
 - Display of posters, notices, signs, labels, showcards or goods
 - Distribution of circulars, brochures or catalogues
- A printed advertisement must state the following information:
 - District, street and street number (s.73(2))
 - Names of the Vendor and its holding companies, the authorized person and his firm, the building contractor, the firm of solicitor, the authorized institution providing finance (eg. bank), other persons providing finance (s.73(3))
 - Website address (s.73(5))
 - Printing date (s.73(6))
 - Statement regarding the artist's impression of the pictures (s.73(7))
- For ss.73(2), (5) and (7), note the font type and size (s.73(8))

• • • • •

[illegible]

Advertisement – Example (1) The Graces

- An advertisement must not give information on the size or unit price otherwise than by reference to the saleable area (s.71(4))
- Therefore, the reference to gross floor area is **not** allowed

**海鑽銀幕式海景露台
山光水色美態盡收**

「海鑽」得天獨厚，坐擁逾180度超廣角環迴式淳美景致，除飽覽吐露港頂級風光外，更可遠眺延綿起伏的八仙嶺，放眼悠悠水色的船灣淡水湖、赤門海峽，以至遙望翠綠的名峰峻嶺。項目僅提供185戶分層單位，8座獨立洋房，純大戶設計，戶戶皆為珍藏典宅。分層單位為三房、四房大宅間隔，絕大部分單位可享吐露港奪目景致。秉承國際級建築師事務所Foster + Partners的高瞻設計，每戶均配特大銀幕式露台，尊貴非凡。

逾50呎銀幕式海景



第三座9樓A室
建築面積：2,841呎
實用面積：2,251呎

Advertisement – Example (1) The Graces

- If the completed phase is still pending compliance, the advertisement must state the estimated material date (s.71(3)(b))

天賦海灣第一期正式落成 臨海社區魅力初綻

天賦海灣第一期於2013年第一季度已正式落成，作為吐露港畔嶄新高尚社區的首期發展率先登場。現在已可親臨實地感受周邊醉人美景，欣賞銀白建築中的大型會所流水園林盛景，別具匠心的設計與附近自然景致互相呼應，體驗香港罕有的臨海低密度生活。

Advertisement – Example (1) The Graces

「海鑽」現樓示範單位現已開放，歡迎預約參觀，另設展覽廳於奧海城二期商場1樓105B (✱ 港鐵奧運站D3出口)

示範單位開放時間：11AM - 6PM 查詢專線：8106 6886 發展商：南豐集團 NAN FUNG GROUP 信和置業 Sino Land 永泰亞洲 WINGTAI ASIA

s.73(2) 發展項目郵寄地址：新界大埔科進路9號 地區：白石角 (東部)

s.73(5) 網址：www.thegraces.hk

s.73(7) 本廣告/宣傳資料內載列的相片、圖像、繪圖或素描顯示純屬畫家對有關發展項目之想象。有關相片、圖像、繪圖或素描並非按照比例繪畫及/或可能經過電腦修飾處理。準買家如欲了解發展項目的詳情，請參閱售樓說明書。賣方亦建議準買家到有關發展地盤作實地考察，以對該發展地盤、其周邊地區環境及附近的公共設施有較佳了解。*載有售樓說明書、價單及成交紀錄冊電子版本的網址。

s.73(3) 賣方/發展商：尚賢有限公司 賣方之母公司/控股公司*：Wisekey Investment Limited *Wisekey Investment Limited的股東為南豐發展有限公司、南豐資源有限公司、會連發展有限公司及飛廣有限公司。會連發展有限公司及飛廣有限公司的控股公司分別為信和置業有限公司和永泰地產有限公司。賣方代表律師：貝克·麥堅時律師事務所及施文律師行 認可人士：胡周黃建築設計 (國際) 有限公司之Mr. Will Barry Fegan 項目建築師：胡周黃建築設計 (國際) 有限公司 上蓋建築總承建商：寶登建築有限公司 承諾提供建築經費融資以完成建築之銀行：香港上海滙豐銀行有限公司 提供貸款作物業發展項目建築經費之融資人：會連發展有限公司、南豐發展有限公司、南豐資源有限公司及飛廣有限公司 「海鑽·天賦海灣」包括9座住宅及8幢洋房共193個住宅單位。本廣告由「海鑽·天賦海灣」賣方/發展商發布 建議準買方參考有關售樓說明書，以了解發展項目的資料 上述所有資料及預計的時間僅供參考之用，並不構成任何明示或隱含的邀約、承諾或保證。

s.71(1) **s.72(4)** **s.73(6)**

印製日期：2013年4月3日

| Section | Requirement | Satisfied? |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| s.71(1) | Advertisement published by the Vendor | Yes |
| s.72(4) | Refer prospective buyer to the sales brochure | Yes |
| s.73(2) | District, street and street number | Yes |
| s.73(3) | Names of (a) the Vendor and every holding company; (b) authorized person and his firm; (c) building contractor; (d) firm of solicitor; (e) authorized institution (eg. bank) providing finance; (f) other persons making a loan | Yes |
| s.73(5) | Website address | Yes |
| s.73(6) | Printing date | Yes |
| s.73(7) | Statement regarding the artist's impression of the pictures | Yes |
| s.73(8) | Font type: Times New Roman, 新細明體; Font size: at least 12 (for ss.72(2), (5) and (7)) | Yes |

Advertisement – Example (2) One West Kowloon

A5 星島日報 二〇一三年四月四日 星期六

一號 西九龍

ONE WEST KOWLOON

即供吸價 \$8,021 起
4房大宅僅最後6間

平均售價逾11% 緊售近9成單位

西九鑽中鑽地段

地利·價值·市區獨有

「一號·西九龍」傲據西九市區鑽中鑽地段，地利價值遠勝新界偏遠地區。物業更擁策略性高麗地利，鄰近龐大鐵路網絡，幹線，成就「一步港九，跨步國際」的新態度，印證無比身價。

舊日高鐵路網 繁榮國內經濟脈膊

預計以669億港元投資興建的高鐵香港段，經西九鐵路總樞，國內步步直達廣東。『一號·西九龍』獨家高麗地利，緊扣國內經濟脈膊，把握一時間兩利機遇。

- 14分鐘 → 深圳福田
- 48分鐘 → 廣州新客站
- 6小時 → 上海
- 19小時 → 北京

龐大鐵路網絡 四通八達

「一號·西九龍」坐落完善的港鐵網絡，僅19分鐘直達中環金鐘商務區，22分鐘直達九龍東「新中環」，更一步之遙，僅需十分鐘即可抵達香港主要土地地區，近東區、東區及維多利亞港，直達國際機場，通達全球，賦予物業先天地利優勢。

幹線縱橫 擁握樞紐點

「一號·西九龍」坐落港九主要幹線樞紐，掌握交通樞紐，造就可與全港通達之萬里。

- 近兩條港九龍主要幹線及3條幹線密佈通達港島
- 5號及7號幹線直達九龍東「新中環」
- 5號及9號幹線直達新界東北
- 東沙公路及尖沙咀區主要幹線及新界東

加上鄰近昂洲大橋及海濱大樓，極速通達中環全港，無遠弗屆。

長江實業地產發展有限公司 長江實業(集團)有限公司 網址: www.ONEWESTKOWLOON.COM/HK

查詢熱線: 2126 8833

Advertisement – Example (2) One West Kowloon

- An advertisement must not give information on the size or unit price otherwise than by reference to the saleable area (s.71(4))
- Unit price: price of property per square foot or per square meters (s.71(7))
- Therefore, the reference to the price per square foot calculated based on gross floor area is not allowed



* 以即供建築面積呎價計算(包括10%樓價扣減、3.75%印花稅及1%提早還款現金回贈)



Advertisement – Example (2) One West Kowloon

s.73(5)

s.73(2)

s.73(3)

s.73(7)

策劃興建及售樓代理：  長江實業地產發展有限公司 賣方之控股公司：  長江實業(集團)有限公司 網址#：WWW.ONEWESTKOWLOON.COM.HK

發展項目郵寄地址：九龍荔枝角道873號 | 地區：荔枝角 | 豪華示範單位及售樓處：尖沙咀廣東道188號港景匯商場一樓(上午11時至晚上9時開放) 查詢熱線：2126 8833

賣方：德隆投資有限公司，賣方之控股公司：長江實業(集團)有限公司，認可人士：馬家建築師事務所(香港)有限公司之梁世雄先生，梁世雄先生為馬家建築師事務所(香港)有限公司之董事，註冊一般建築師，順利工程有限公司，賣方律師：高李葉律師行，承諾為發展項目的建設提供融資的銀行：香港上海滙豐銀行有限公司，為發展項目的建設提供貸款的公司：Cheung Kong Development Company Limited，根據買賣合約訂定之物業估計完成日期：2013年12月31日，「一號」，西九龍，共286個單位，本廣告所列的資料由「一號」，西九龍，賣方提供，建議潛在買方參閱有關售樓說明書以了解發展項目的資料。認可人士可根據買賣合約中所訂明之情況下延長該日期。載有售樓說明書、價目表及買賣合約記錄電子版本的網址：*以供建築商模範價目表(包括10%樓價扣減、3.75%印花稅及1%提早還款現金回贈)詳情請參閱價目表及/或向售樓處索取查詢。

本廣告/宣傳資料內載列的相片、圖像、繪圖或素描顯示純屬畫家對有關發展項目之想像。有關相片、圖像、繪圖或素描並非按照比例繪畫及/或可能經過電腦修飾處理。準買家如欲了解發展項目的詳情，請參閱售樓說明書。賣方亦建議準買家到有關發展地盤作實地考察，以對該發展地盤、其周邊地區環境及附近的公共設施有較佳了解。

s.71(2)

s.71(1)

s.72(4)

s.73(6)

| Section | Requirement | Satisfied? |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| s.71(1) | Advertisement published by the Vendor | Yes |
| s.71(2) | Estimated material date for the development | Yes |
| s.72(4) | Refer prospective buyer to the sales brochure | Yes |
| s.73(2) | District, street and street number | Yes |
| s.73(3) | Names of (a) the Vendor and every holding company; (b) authorized person and his firm; (c) building contractor; (d) firm of solicitor; (e) authorized institution (eg. bank) providing finance; (f) other persons making a loan | Yes |
| s.73(5) | Website address | Yes |
| s.73(6) | Printing date | Yes |
| s.73(7) | Statement regarding the artist's impression of the pictures | Yes |
| s.73(8) | Font type: Times New Roman, 新細明體; Font size: at least 12 (for ss.72(2), (5) and (7)) | Yes |

Advertisement – Example (3) Eugene Terrace

B12 星島日報 二〇一三年四月四日 星期日

全權獨家銷售代理 權威豪宅 Superior Home 香港置業 HONG KONG PROPERTY

耀爵臺 Eugene Terrace

地址：九龍九龍橋道2A
 發展商：光華投資有限公司
 單位數目：14個單位，包括兩層式頂層天台
 單位面積：6-20樓 981(實用面積)
 1,604(建築面積)
 22樓複式 1,989(實用面積)
 3,298(建築面積)
 樓層數目：20層，不包括天台及頂層天台
 (不設4樓、13樓、及14樓)
 主要設施：停車場及住客會所
 住客會所：休憩區、兒童遊樂區、燒烤區及健身設施
 入伙紙發出日期：2010年11月10日
 滿意紙發出日期：2011年4月27日

樓址：光華投資有限公司發展商耀爵臺已存於香港地產局，
 請向受託人支付所需的費用後可獲副本。

悅目盛景 菁英搖籃
 耀爵臺位於九龍橋道2A，鄰近九龍公園、九龍機場、
 交通方便，購物、休閒、娛樂、
 環境優美，空氣清新。
 譽滿天下，風光明媚。
 著名律師樓、豪華豪華酒店、
 鄰近名校、購物、休閒、娛樂、
 環境優美，空氣清新。
 譽滿天下，風光明媚。

香港置業向來銷售業績卓越，榮獲光華投資有限公司委任為九龍橋道2A「耀爵臺」之全權獨家銷售代理。光華投資有限公司目前正積極在四
 與香港置業高級執行董事伍卓榮(右四)、行政總裁李卓庭(右二)、高級策劃董事陳南(右五)、策劃董事黃永明(右六)及區域策劃董事陳文浩(右一)合照。
 預祝「耀爵臺」熱銷全港。

本廣告內載列的照片、圖像、繪圖或素描圖顯示的時屬畫家對該發展地盤之想像畫，有關圖片並非按照比例繪畫/及可能經過電腦圖像修飾處理。準買家如欲了解本發展
 項目的詳情，請參閱有關說明書。該說明書建議買方親臨發展地盤作實地考察，以獲取對該發展地盤及其周圍地區的公共設施及環境較佳的了解。
 凡屬廣告內之照片、圖像、繪圖或素描圖，均屬版權所有，未經本公司書面許可，不得复制或轉載。

耀爵臺銷售熱線：2338 6382 • 2926 7788 • 2926 8188 • 2928 8828
 2926 8388 • 2926 7700 • 2712 1555 • 2926 4567 • 2202 4140

香港置業 www.hkp.com.hk 加照熱線：8123 4567
 客戶服務熱線：2801 7822

Advertisement – Example (3) Eugene Terrace

- An advertisement must not give information on the size or unit price otherwise than by reference to the saleable area (s.71(4))
- Therefore, the reference to gross floor area is not allowed

耀爵臺 Eugene Terrace

地址：九龍九龍塘伯爵街2A
發展商：光萬投資有限公司
單位數目：14個單位, 包括1個複式頂層天台
單位面積：6 - 20樓 981'(實用面積)
1,604'(建築面積) ←
22樓複式 1,989'(實用面積)
3,298'(建築面積) ←
樓層數目：20層, 不包括天台及頂層天台
(不設4樓、13樓、及14樓)
主要設施：停車場及住客會所
住客會所：休憩區、兒童遊樂區、燒烤區及健身設施
入伙紙發出日期：2010年11月10日
滿意紙發出日期：2011年4月27日
備註：大廈公共契約及政府租契副本已存放於售樓處以供參閱，
買方更可於支付所需的費用後複印副本

Advertisement – Example (3) Eugene Terrace

本廣告內載列的相片、圖像、繪圖或素描顯示的純屬畫家對該發展地盤之想像感覺，有關圖片並非按照比例繪畫/及可能經過電腦圖像修飾處理。準買家如欲了解本發展項目的詳情，請參閱售樓說明書。發展商亦建議買方到該發展地盤作實地考察，以獲取對該發展地盤以及其周圍地區的公共設施及環境較佳的了解。

*此廣告內之所有資料，僅供參考，一切以發展商公布之資料為準。有關對上述物業有興趣之人士應行親臨及核實。

| Section | Requirement | Satisfied? |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| s.71(1) | Advertisement published by the Vendor | No / NA |
| s.72(4) | Refer prospective buyer to the sales brochure | No |
| s.73(2) | District, street and street number | No (only street and street number) |
| s.73(3) | Names of (a) the Vendor and every holding company; (b) authorized person and his firm; (c) building contractor; (d) firm of solicitor; (e) authorized institution (eg. bank) providing finance; (f) other persons making a loan | No (only name of vendor) |
| s.73(5) | Website address | No |
| s.73(6) | Printing date | No |
| s.73(7) | Statement regarding the artist's impression of the pictures | Yes |
| s.73(8) | Font type: Times New Roman, 新細明體; Font size: at least 12 (for ss.72(2), (5) and (7)) | No |

耀爵臺 Eugene Terrace

地址：九龍九龍塘伯爵街2A
 發展商：光萬投資有限公司
 單位數目：14個單位, 包括1個複式頂層天台
 單位面積：6 - 20樓 981'(實用面積)
 1,604'(建築面積)
 22樓複式 1,989'(實用面積)
 3,298'(建築面積)
 樓層數目：20層, 不包括天台及頂層天台
 (不設4樓、13樓、及14樓)
 主要設施：停車場及住客會所
 住客會所：休憩區、兒童遊樂區、燒烤區及健身設施
 入伙紙發出日期：2010年11月10日
 滿意紙發出日期：2011年4月27日

備註：大廈公共契約及政府租契副本已存放於售樓處以供參閱。
 買方可於支付所需的費用後複印副本

Misrepresentation and Dissemination of False or Misleading Information (Part 4)

Misrepresentation

- To establish misrepresentation, there must be a statement which is false, misleading or deceptive (s.75)
- Whether the misrepresentation is fraudulent or reckless will depend on the subjective state of mind of the statement-maker
 - Knowledge or intentional omission of a material fact → fraudulent misrepresentation
 - Recklessness or reckless omission of a material fact → reckless misrepresentation
- The test of recklessness is the same in Sin Kam Wah
 - Subject test
 - Whether the person is aware of a risk which, in all the circumstances known to him, is unreasonable to be taken

Misrepresentation – Liability

- Criminal liability (s.76)
 - Where a person makes a fraudulent or reckless misrepresentation for the purpose of inducing another person to purchase a residential property
 - It is worth noting that the wordings here are “for the purpose of inducing” which does not require the purchaser to be actually induced
 - Indictment: fine of \$5,000,000 and imprisonment for 7 years
 - Summary: fine of \$1,000,000 and imprisonment for 3 years
- Civil liability (s.77)
 - If a person makes a fraudulent or reckless misrepresentation by which another person is induced to purchase a residential property, the person is liable to pay damages to the purchaser
 - Contrary to criminal liability, the purchaser has to be actually induced into a sale and purchase agreement before he can claim damages

Misrepresentation – Illustration

Santani Limited v Shum Shuk Fong HCA 310/2011

Background

- The plaintiff purchased a flat from the defendant at \$8.18 million (the “Flat”). Adjacent to the Flat was a garden owned by the Hong Kong government leased to the defendant (the “Garden”).
- It is agreed that the true value of the Flat was only around \$6 million at the time of the purchase. The plaintiff agreed to buy the Flat at \$8.18 million because the defendant had misled her that she could enjoy the Garden in the same way.
- The plaintiff sought damages of around \$2 million being the difference between the true value of the Flat and the purchase price paid.

Misrepresentation – Illustration (Continued)

Legal principles

- To establish fraudulent misrepresentation, the plaintiff has to prove:
 1. The defendant made a representation;
 2. The representation was false;
 3. The defendant knew the representation was false, or was reckless as to its truth; and
 4. The plaintiff was induced to enter into the contract

Misrepresentation – Illustration (Continued)

The misrepresentation

- When the plaintiff asked whether she could enjoy the Garden in the same way as the defendant did, the defendant said to the plaintiff that ***“as long as you make no alterations and no additions there would be no problem at all”***.
- The representation was in fact false and the defendant was aware of it. Before the transaction, the District Land Office had required the defendant to remove certain unauthorized structures in the Garden and a demolition order was made in 2007. However, the defendant did not disclose any of these.
- The Garden was a critical factor that attracted the plaintiff to buy the Flat at \$8.18 million.
- Misrepresentation established and damages awarded.

Dissemination of False or Misleading Information

- A person commits an offence if:
 - He disseminates, circulates or discloses;
 - False or misleading information as to a material fact or through the omission of such material fact;
 - Which is likely to induce another person to purchase a residential property; and
 - He knows, or is reckless as to whether, the information is false or misleading (s.78(1))
- Penalty
 - Indictment: fine of \$5,000,000 and imprisonment for 7 years (s.78(2)(a))
 - Summary: fine of \$1,000,000 and imprisonment for 3 years (s.78(2)(b))

Personal Liability of Officers (s.84)

- An officer will have personal liability if:
 - A corporation commits an offence under the Ordinance; and
 - The commission of the offence was aided, abetted, counselled, procured or induced by the officer or with the consent or connivance of the officer (ss.84(1) and (2))
- Officer: director, secretary or manager (s.84(3))
- Proceedings may be brought within 3 years after the commission of the offence (s.85)



Defence (Part 5)



Defence – Reasonable Precautions and Due Diligence (s.79)

- For offences under Part 2 (i.e. Sales Practice) and Part 3 (i.e. Advertisement), except s.70 on false or misleading information in an advertisement, it is a defence to prove that
 - All reasonable precautions have been taken and
 - All due diligence has been exercised

Defence – Passive Dissemination (ss.80-83)

- For offences in relation to false or misleading information either under s.70 or s.78(1), defences exist for passive dissemination of such false or misleading information
- 3 situations of passive dissemination:
 - Issue or reproduction of the information;
 - Re-transmission of the information; or
 - Live broadcast of the information
- In each of the 3 situations, it is a defence to prove that
 - The dissemination of false or misleading information was in the ordinary course of business;
 - The person did not devise, select or exercise control over the contents of the information; and
 - The person did not know the information was false or misleading, or where the person knew, it could not reasonably be expected to prevent the dissemination

Authority (Part 6)

Sales of First-hand Residential Properties Authority (“SRPA”)

Functions:

- Administer and supervise compliance of the Ordinance
- Educate the public
- SRPA may issue guidelines
 - Guidelines on Sales Brochure
 - Guidelines on Price List
 - Guidelines on Sales Arrangement and Other Information
 - Guidelines on Registrar of Transactions
 - Guidelines on Submission of Documents to the SRPA
 - Guidelines on Submission of Documents to the SRPE (defined below)
- SRPA may establish and maintain an electronic database
 - Sales of First-hand Residential Properties Electronic Platform (“SRPE”)
 - Sales brochures, price lists, registers of transactions of first-hand residential properties
- Investigation powers
 - Require production of any record or document
 - Require attendance before the SRPA to answer any questions
 - Require response to any written questions

Thank You

WARNING:

While every care has been taken in the preparation of this material, ONC Lawyers cannot be responsible for any error or omission and the material cannot be taken as legal advice of the relevant law.

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