

## **Residential Properties (First-hand Sales) Ordinance**

### **Frequently Asked Questions and Answers (FAQs)**

FAQs are not guidelines. They aim to facilitate the trade to understand how the Sales of First-hand Residential Properties Authority (SRPA) looks at specific provisions of the Residential Properties (First-hand Sales) Ordinance.

Users of the FAQs should not rely on the information in the FAQs as professional legal advice and are strongly advised to seek legal or other professional advice should there be doubts about the application of the Ordinance in individual circumstances. Whilst every effort has been made to ensure the accuracy of the FAQs, the SRPA shall not be responsible for any liability howsoever caused to any person by the use or reliance on the FAQs.

### **Sales Brochure**

**Q108 Are vendors required under the Ordinance to show in the location plan the name of street, or building, facility or structure specified in section 6(4) in Part 1 of Schedule 1 to the Ordinance that is situated within the boundary of a development?**

A108 According to section 19(2)(f) of the Ordinance, the sales brochure for a development must set out a location plan of the development. Section 6(2)(b)(ii) and (iii) in Part 1 of Schedule 1 to the Ordinance requires that the location plan must show the name of every street that is situated within 250 metres from the boundary of the development and every building, facility or structure (if any) specified in section 6(4) in Part 1 of Schedule 1 to the Ordinance that is situated within 250 metres from the boundary of the development.

The Ordinance does not include specific provisions to require the vendor to show in the location plan the name of the street, or building, facility or structure specified in section 6(4) in Part 1 of Schedule 1 to the Ordinance that is situated within the boundary of the development.

That said, if there is any feature within or outside the boundary of a development which is likely to materially affect the enjoyment of any residential property in the development, and such information is not otherwise required to be set out in the sales brochure and is known to the vendor but is not known to the general public, the vendor should provide such information under section 20(1) of the Ordinance (see also FAQ No. 55 and 56 issued on 11 April 2013 regarding “relevant information”).

**Q109 Further to FAQ No. 38 issued on 11 April 2013 on outline zoning plans (OZP) in a sales brochure, what should the vendor do if the location of the development on any of the OZPs falls outside the coverage of the relevant OZP?**

A109 If two or more OZPs are required to be provided in the sales brochure to cover all the areas within 500 metres from the boundary of the development, and if the location of the development on any of these OZPs falls outside the coverage of the relevant OZP, vendors are advised to, for readers’ reference, mark the boundary of the development in the blank area of the OZP concerned so as to indicate, to scale, the distance from the development to those areas shown on that OZP.

**Q110 Is it necessary for vendors to set out the details of the layouts within the residential properties in the development when preparing the layout plan in the sales brochure? In cases where the development is of a large size, can the vendor include in the sales brochure more than one plan that highlights the layout of a particular part of the development?**

A110 According to section 19(2)(i) of the Ordinance, the sales brochure for a development must set out a layout plan of the development in compliance with Part 1 of Schedule 1 to the Ordinance. It is required under section (9)(2)(a) and (b) in Part 1 of Schedule 1 to the Ordinance that the layout plan must have the scale to which it is drawn marked on that plan and must show the location and layouts of the buildings, the open areas, the facilities, and the undeveloped land (with the intended use), within the boundary of the development. The layout plan of a development is not required to set out details of the layouts within the residential properties in the development.

Also, the SRPA takes the view that vendors may, in addition to the layout plan of the development, include in the sales brochure more than one plan that highlights the layout of a particular part of the development as long as all those plans must comply with the requirements as set out under section 9 in Part 1 of Schedule 1 to the Ordinance.

**Q111 Is it necessary to show bedroom doors on floor plans of the residential properties in the development? Should the bedroom doors be installed in unmodified and modified show flats?**

A111 If bedroom doors will be installed and provided upon handover of the residential properties to purchasers, a description of the doors has to be provided under the section for “Fittings, finishes and appliances” in the sales brochure, and the floor plans of the residential properties in the development in the sales brochure should show those doors where they will be installed and

provided. Otherwise, there may be confusion as to where and the number of bedroom doors are to be installed and provided.

Section 40(2) of the Ordinance requires the vendor to provide, among other things, doors in an unmodified show flat in the same way as they will be provided in the residential property as depicted in the sales brochure. Hence, if bedroom doors will be installed and provided upon handover of the residential properties to purchasers, they should be provided in the unmodified show flat in the same way as they will be provided in the properties as depicted in the sales brochure.

For a modified show flat, section 41(2) of the Ordinance requires that, subject to subsection (3), the vendor must provide enclosing walls and boundary walls for, and internal partitions and doors in, the show flat in the same way as they will be provided in the residential property as depicted in the sales brochure for the development. Subsection (3) further stipulates that the vendor is not required to provide an internal partition or a door in a modified show flat if, by virtue of section 41(3) of the Buildings Ordinance (Cap 123), the partition or the door may be removed from the residential property without the approval of the Building Authority. Vendors are reminded that, if a modified show flat shows features which are the outcome of minor works, vendor should consult their building professionals to ensure that the prospective purchasers will not be misled in any way regarding compliance with the Buildings Ordinance and other relevant legislation.

**Q112 Can “private lift lobby” be counted into the “saleable area” of a first-hand residential property?**

**A112** As stated in the answer to FAQ 16 issued on 11 April 2013, whether an item can be considered as part of the saleable area of a residential property will depend on whether it falls within the definition of “saleable area” under section 8 of the Ordinance, which question turns on the particular facts of an individual case.

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.

According to section 8(2) of the Ordinance, for the purposes of the Ordinance, the floor area of a residential property –

- (a) subject to subsection (4), is to be measured from the exterior of the enclosing walls of the residential property;
- (b) includes the area of the internal partitions and columns within the residential property; and
- (c) excludes the area of any common part outside the enclosing walls of the residential property.

Whether a “private lift lobby” can be counted into the “saleable area” of a first-hand residential property should depend on whether the “private lift lobby” is both (i) legally and (ii) physically made for the exclusive use of the owner of the residential property in question.

In general, if a “private lift lobby” is to be counted into the saleable area of a residential property, the provisions of the deed of mutual covenant of the development / phase, the agreement for sale and purchase of the residential property and the assignment of the residential property should clearly provide that

the “private lift lobby” is to be made legally for the exclusive use of the owner of the residential property in question. Therefore, one may ascertain if a “private lift lobby” is for the exclusive use of the owner of a residential property by reviewing the provisions of the relevant deed of mutual covenant, agreement for sale and purchase, and assignment applicable to the residential property.

As to whether a lift lobby is physically made for the exclusive use of the owner of the residential property, it depends on whether the owner of the residential property can assert exclusive physical control of the entrance(s) to the lift lobby (e.g. by keys, access cards or other security system or equipment), in other words, whether the lift lobby can be reasonably secured to prevent any other persons from entering into it whether as of right or accidentally. This is a matter of fact and depends on the physical construction and layout of the lift lobby.

For instance, for a private lift lobby to be counted into the saleable area of a first-hand residential property, the design of the path of the exit route(s) for the other residents of the other parts of the development to escape in the event of a fire should not pass through the lift lobby in question.

**Q113 How can vendors provide information on fittings and finishes (e.g. a bar) in the residential property which are not shown in general building plans and are not permitted to be shown under the section of “Fittings, finishes and appliances” in the sales brochure?**

A113 On the provision of information on fittings, finishes and appliances under section 22 in Part 2 of Schedule 1 to the Ordinance, vendors should provide such information strictly according to the requirements set out therein, i.e. information that is not required to be provided should not be set out under the section on fittings, finishes and appliances.

If a vendor wishes to provide information on some special features of the property in the sales brochure and if the special features can be considered as “furniture” (please refer to FAQ No. 26 issued on 11 April 2013 on the meaning of “furniture”), it can be marked on the floor plan, and section 10(2)(b) in Part 1 of Schedule 1 to the Ordinance should be followed. If the special features cannot be considered as “furniture”, the vendor may wish to provide such information in other publications. However, the vendor should ensure that such publications or promotional materials will not provide false or misleading information.

**Q114 How can vendors provide information which is not required or authorized to be shown in the sales brochure by the Ordinance?**

A114 Section 23(1) of the Ordinance specifies that the sales brochure for the development must not set out any information other than the information required or authorized by the Ordinance. For information that is not required or authorized by the Ordinance, vendors may set out such information in other publications or promotional materials. However, the vendor should ensure that such publications or promotional materials will not provide false or misleading information.

**Q115 Under the section for “Defect liability warranty period” in the sales brochure, should vendors set out information in accordance with section 26 in Part 2 of Schedule 1 to the Ordinance or clause 26 in Part 1 of Schedule 5 to the Ordinance?**

A115 Section 26 in Part 2 of Schedule 1 to the Ordinance requires that the sales brochure must state the duration of the period during which the vendor is liable to make good any defect in the specified residential property, as provided in the agreement for sale and purchase. For the purpose of complying with

section 26 in Part 2 of Schedule 1 to the Ordinance, it is sufficient to state in the sales brochure “within six months after the date of completion of the sale and purchase” as the duration of the period during which the vendor is liable to make good any defect in a specified residential property. That said, if the vendor has set out in the sales brochure information as provided under clause 26 in Part 1 of Schedule 5 to the Ordinance, he is considered as having complied with the requirement under section 26 in Part 2 of Schedule 1 to the Ordinance.

### **Price List**

**Q116 If the specified residential properties in a residential development are offered to be sold by auction or tender, is it necessary to make available price list for those residential properties?**

A116 It is stipulated in section 67 of the Ordinance that if a specified residential property is sold or offered to be sold by way of auction or tender, Division 3 of Part 2 of the Ordinance (i.e. requirements on price list) does not apply.

If all of the specified residential properties in a residential development are to be offered to be sold by auction or tender, there is no need to make available any price list for any of those residential properties for the purposes of Division 3 of Part 2 of the Ordinance.

If some of the specified residential properties in a residential development are sold by auction or tender first, and then the remaining specified residential properties which Division 3 of Part 2 of the Ordinance applies are offered to be sold, the price list for the sale of the remaining specified residential properties does not have to include those specified residential properties which have already been sold by auction or tender.



If some of the specified residential properties in a residential development are offered to be sold by auction or tender, while in parallel the remaining specified residential properties are offered to be sold not by means of auction or tender, the price list does not need to include those properties that are offered to be sold by auction or tender as Division 3 of Part 2 of the Ordinance does not apply to those properties. As it is a question of fact whether and when those properties are offered to be sold by auction or tender, the vendor should be prepared to prove that those properties are already offered to be sold by auction or tender on or before the first day on which the price list is made available under section 32(1) of the Ordinance. Otherwise, the vendor may have contravened section 30 of the Ordinance.

**Q117 Can vendors round up or round down the transaction prices of residential properties after applying a discount as set out in the price list for the development?**

A117 According to section 35(1) of the Ordinance, the owner may only sell, or offer to sell, the specified residential property at the price of that property, as set out in the price list copies of which have been made available under section 32(1), (2) and (3) of the Ordinance; or where that price list has been revised under section 29(4) of the Ordinance to reflect a change of the price of that property, at that price as last revised, as set out in the price list copies of which have been made available under section 32(1), (2) and (3) of the Ordinance.

If there are terms and conditions that may affect the transaction price (e.g. a method of rounding the price after applying a discount), the vendor should set out such terms and conditions in the relevant part of the price list.

**Q118 Is it necessary for vendors to provide in the price list for first-hand residential properties the value of 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?**

A118 Section 31(5)(c) of the Ordinance requires that a price list for the development must set out 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. Vendors are advised to provide an estimated value of the respective gift, financial advantage or benefit in the price list as far as practicable so that prospective purchasers can be aware of the value of these items.

**Q119 Further to FAQ 118 above, should vendors provide the value of the parking space which is offered as a gift to the purchaser in the price list for the residential properties in the development?**

A119 Following the principle of FAQ 118 above, vendors are advised to provide an estimated value of the parking space which is offered as a gift to the purchaser in the price list for the residential properties in the development as far as practicable so that prospective purchasers can be aware of the value of such parking space.

**Q120 Does the Ordinance apply to the sale of first-hand parking space? If not, are there any requirements under the Ordinance for vendors of first-hand residential properties to provide information on parking spaces in the sales brochure, price list and / or Register of Transactions for the development or phase of a development?**

A120 According to section 14(1) of the Ordinance, Divisions 2, 3, 6, 7 and 8 apply if there is a sale by the owner of a specified

residential property in a development. The Ordinance does not apply to the sale of parking space which does not form part of the residential property.

As far as the Ordinance is concerned, vendors are required to provide only the following information on parking spaces:

- (a) the floor plans of parking spaces in the sales brochure of the development (section 19(2)(1) of the Ordinance). Each of the floor plans of the parking spaces must show the location of the parking spaces, and state the number of the parking spaces, and the dimensions and area of each of the parking spaces (section 12(2) in Part 1 of Schedule 1 to the Ordinance); and
- (b) the area of the parking space, to the extent that it forms part of the residential property, in the sales brochure of the development as required under section 11(2)(c) in Part 1 of Schedule 1 to the Ordinance and in a price list as required under section 31(2)(e) of the Ordinance; and
- (c) a description in the Register of Transactions of the parking space that is sold together with a residential property under one single preliminary agreement for sale and purchase or agreement for sale and purchase.

In addition, as explained in FAQs 118 and 119 above, vendors are advised to provide an estimated value of the parking space which is offered as a gift to the purchaser in the price list for the residential properties in the development as far as practicable.

**Q121 For residential developments the pre-sale of which is subject to the consent of the Director of Lands, if there is sale of parking spaces which do not form part of the residential properties, are vendors required to make available a sales brochure for parking space and price list(s) for parking spaces? If in the affirmative, do vendors have to mention in the price list(s) for parking spaces (NOT price lists for residential properties) the prices of those parking spaces which are offered as gift to purchasers of the residential properties?**

A121 Under Lands Department Consent Scheme, vendors are required by the Director of Lands to make available a sales publication entitled “sales brochure for parking space” in English and “車位銷售說明書” in Chinese as well as price list(s) for the sale of parking spaces which do not form part of the residential properties. There is no requirement for the information in relation to the parking spaces to be set out in a price list for parking spaces in a specified form.

If a parking space is offered as a gift to be made available together with the purchase of a specified residential property, it is not necessary to prepare a price list for such parking space if the price list for the specified residential property required under the Ordinance reflects that such parking space is a gift. On the other hand, if such parking space appears in a price list for parking spaces, the vendor may set out in the price list for parking spaces its status that it is offered as a gift together with the purchase of the specified residential property.

## **Sales Arrangements**

**Q122 Can the vendor adopt any registration arrangement before the first day on which the specified residential properties are offered to be sold?**

A122 Section 47(2)(d) of the Ordinance requires a vendor to specify in the document containing the sales arrangements the method to be used to determine the order of priority in which each of the persons interested in purchasing any of those specified residential properties may select the residential property that the person wishes to purchase.

The intention of section 47(2)(d) of the Ordinance is to ensure that the sales arrangements are open and transparent so that prospective purchasers are well aware of the method to be used for determining the order of priority for selecting the specified residential property that a person wishes to purchase. The vendor should provide sufficient details in the document containing the sales arrangements on the method it will adopt.

If there is a registration system, the vendor should provide sufficient details in the document containing the sales arrangements on the registration procedures (including how registration is to be made, the date and time when the registration commences and closes, whether any production of cashier order is required at the time of registration and whether the order of registration will have any impact on the order of priority for selecting the residential property, etc.). This is because the registration arrangement is an important information, and forms part and parcel of the sales arrangements in totality. The registration arrangement affects a prospective purchaser's chance of purchasing any residential property in the development and / or selecting the property he wishes to purchase.

The vendor should also ensure that any registration arrangements in relation to the sales of specified residential properties (whether or not accompanied by a payment of money) which take place

before the first day on which the specified residential properties are offered to be sold will not constitute the vendor's seeking or acceptance of a specific expression of intent, otherwise it will amount to a contravention of section 34(2) of the Ordinance.

**Q123** According to FAQ No. 98 issued on 11 July 2013, if a vendor has issued a revised price list to adjust the price of a specified residential property, the residential property concerned cannot be sold at the revised price unless the revised price has been made available according to the requirements as set out in section 32 of the Ordinance. Does the vendor need to make available a revised document containing the sales arrangement for the specified residential property for which a revised price has been issued?

**A123** According to FAQ No. 98 issued on 11 July 2013, if a vendor has issued a revised price list to adjust the price of a specified residential property, the residential property concerned cannot be sold at the revised price unless the revised price has been made available according to the requirements as set out in section 32 of the Ordinance. That said, before the revised price list takes effect, and on the basis that the requirements that are applicable to the original price list and a document containing the sales arrangements have been complied with, the vendor may sell the residential property concerned at the price on the original price list.

If the sales arrangements applicable to the residential property concerned remain unchanged notwithstanding the adjustment in price, there is no need for the vendor to make available a revised document containing the sales arrangements for selling the residential property concerned at the revised price.

**Q124 According to FAQ No. 102 issued on 11 July 2013, if a vendor wishes to suspend the sale of a development or wishes to reduce the number of properties to be offered for sale, he can do so any time. That said, vendors are advised to, as a matter of transparency, announce the suspension of sale or the reduction of the number of properties to be offered for sale. In what way should vendors announce the suspension of sale or the reduction of the number of properties to be offered for sale?**

A124 According to FAQ No. 102 issued on 11 July 2013, if a vendor wishes to suspend the sale of a development or wishes to reduce the number of properties to be offered for sale, he can do so at any time. That said, vendors are advised to, as a matter of transparency, announce the suspension of sale or the reduction of the number of properties to be offered for sale. He may do so by amending the documents containing the then latest sales arrangements regarding those residential properties to be suspended for sale. The Ordinance does NOT require that the vendor will have to wait for 3 days after making public the decision to suspend sales or reduce the number of properties to be offered for sale before he can do so.

On how to announce a suspension of sale or a reduction of the number of properties to be offered for sale, SRPA suggests that, as an alternative, vendors may make available a document listing out the residential properties which will be suspended for sale and stipulating the date on and from which sales will be suspended. Also, the vendor may mention in the document that the sales arrangements (citing the date of issue of that previous document) are no longer applicable to those residential properties. The vendor may also state in the document that the sales arrangements in respect of those residential properties as set out in the previous document containing the sales arrangements which will not be suspended for sale will remain unchanged.

**Q125 For specified residential properties which have been suspended for sale and will be offered to be sold at a different price and using a different sales method, what actions should the vendor take in order to comply with the Ordinance?**

A125 For those specified residential properties which have been suspended for sale and will be offered to be sold at a different price and using a different sales method, a revised price list and a document containing the new sales arrangements should be made available at least 3 days immediately before a date of sale. In the document containing the new sales arrangement, the vendor should set out the new sales arrangements for those residential properties of which sales will resume (including the date of resumption of sale and the new sales method).

If a vendor wishes to suspend the sale of a development or wishes to reduce the number of properties to be offered for sale and at that time he already has in mind when to resume the sales of those residential properties concerned, he may make available a document containing the sales arrangement which set out the following:

- (i) the residential properties which will be suspended for sale and the date on and from which sales will be suspended;
- (ii) the new sales arrangements for those residential properties concerned (including the date of resumption of sale and the new sales method); and
- (iii) the sales arrangements in respect of those residential properties which will not be suspended for sale as set out in the previous document containing the sales arrangements will remain unchanged.

2 January 2014

Sales of First-hand Residential Properties Authority  
Transport and Housing Bureau