

## **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**

**Q91 Does the Residential Properties (First-hand Sales) Ordinance specify where vendors should make available hard copies of the sales brochure on a 24 hour basis during the period of at least seven days immediately before a date of sale?**

A91 According to section 25(1) of the Ordinance, during a period of at least 7 days immediately before a date of sale mentioned in section 14(1) of the Ordinance, the vendor must make hard copies of the sales brochure for the development available for collection by the general public free of charge. A similar requirement is imposed on the vendor under section 25(3) of the Ordinance to make a copy of the sales brochure available for inspection on the website designated by the vendor for the development. The provisions require the vendor to be able to comply with both requirements at all times during the 7-day period. They are not administrative measures imposed by the SRPA.

The Ordinance does not specify the location where the vendor must make available hard copies of the sales brochure for the development for collection by the general public during the aforementioned period. Vendors have the discretion to decide suitable locations for the purposes of complying with section 25(1) of the Ordinance.

**Q92 Can company logo of the vendor or any of its holding companies or the sales hotline be shown in a sales brochure?**

A92 According to section 23(1) of the Ordinance, the sales brochure for the development must not set out any information other than the information required or authorized by this Ordinance. There is no provision in the Ordinance which requires or authorizes the provision of company logo or sales hotline in a sales brochure.

**Q93 If a vendor has a chain of holding companies, does the vendor have to state the names of every holding company in relation to the “information on vendor and others involved in the development” in a sales brochure?**

A93 For the purpose of section 2(2)(a) in Part 1 of Schedule 1 to the Ordinance, “every holding company of that vendor” means each and every company in the chain of holding companies at the bottom of which is the vendor. This is also applicable to section 73(3)(a) of the Ordinance in stating the name of every holding company of the vendor in printed advertisement.

**Q94 According to section 9(2)(c) in Part 1 of Schedule 1 to the Ordinance, the layout plan of a development must state the estimated date of completion of those buildings or facilities which are not yet completed as provided by the authorized person (AP) for the development. In estimating the date of completion of those buildings or facilities, what is the definition of “completion” of those buildings or facilities?**

A94 In estimating the date of completion of those buildings or facilities, the AP for the development should work on the basis of the estimated date for issue of Occupation Permit for the building or facility concerned. Vendors should set out the date as provided by the AP for the development in the layout plan to comply with section 9(2)(c) in Part 1 of Schedule 1 to the Ordinance.

**Q95 Vendors are required under Section 15(2)(e) in Part 1 of Schedule 1 to the Ordinance to provide information on the grantee’s obligation to lay, form or landscape any areas, or to construct or maintain any structures or facilities, within or outside the land. If the building covenant applicable to the building(s) previously erected on that land (and such building(s) have been demolished for redevelopment) is still contained in the land grant, should such expired building covenant be set out in the sales brochure?**

A95 Where the building covenant which has been complied with or spent of effect upon issue of the Occupation Permit in respect of the building(s) previously erected on the land is still contained in the land grant, the expired building covenant should still be set out in the sales brochure, but an explanatory note or remark should be included to explain that the expired building covenant is not applicable to the new development.

**Q96 Vendors are required under Section 15(2)(d) in Part 1 of Schedule 1 to the Ordinance to provide information on the facilities that are required to be constructed and provided for the Government, or for public use. Should the vendor set out the relevant conditions in the land grant in relation to those facilities provided for the previous development(s) which have been demolished for the new development?**

A96 If the land grant requires construction and provision of facilities for the Government or for public use upon development or redevelopment of the land, so long as the relevant condition is subsisting and applies to redevelopment, a summary thereof, which relates to the facilities so provided within the redevelopment and not the development previously erected, should be included in the sales brochure for the redevelopment as required under section 15(2)(d) in Part 1 of Schedule 1 to the Ordinance.

### **Vendor's Information Form**

**Q97 When does a vendor have to make available a Vendor's Information Form?**

A97 As provided under section 68(1) of the Ordinance, if a specified residential property in a completed development, or a completed phase of a development, is offered to be sold to a person, the vendor must, as soon as practicable after the offer is made, provide to the person a Vendor's Information Form (VIF) printed within the previous 3 months. According to section 68(5) of the Ordinance, the requirements under section 68 of the Ordinance are in addition to any other requirements that apply by virtue of Division 2, 3, 5, 6, 7 or 8 of the Ordinance.

Also, as provided under section 66 of the Ordinance, where a specified residential property is offered to be sold to a sitting tenant who has held the property under a tenancy for a continuous period of at least one year, the vendor must, as soon

as practicable after the property is offered to be sold to that person, provide that person with a VIF printed within the previous 3 months. It is provided under section 66(3) of the Ordinance that Division 2 does not apply in the situation if that person agrees in writing that Division 2 does not apply.

### **Price List**

**Q98 If the vendor has issued a revised price list for a specified residential property, can he still sell the specified residential property at the price shown on the original price list before the revised price list comes into effect?**

A98 Section 29(3) of the Ordinance stipulates that the price of a specified residential property in a development/phase may only be set out in any one price list for the development/phase. Section 29(4) of the Ordinance stipulates that if the price of a specified residential property is set out in a price list, any change to that price must be reflected in the price list by a revision to the price list.

Once the price list is issued, adjustments to the prices (regardless of whether prices are to be adjusted upwards or downwards) should only be made through issuing a revised price list. The residential property concerned cannot be sold at the revised price unless the revised price list has been made available according to the requirements as set out in section 32 of the Ordinance. The date on which the specified residential property will be offered to be sold has to be set out in a document containing the sales arrangements for that specified residential property, and the document has to be made available for a period of at least 3 days immediately before the date of sale and on such a date in accordance with section 47 of the Ordinance.

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 shown on the original price list. If the sales arrangements applicable to the residential property concerned remain unchanged, there is no need for the vendor to amend or revise the sales arrangement.

### **Agreement for Sale and Purchase**

**Q99 Is there any requirement that the Provisional Agreement for Sale and Purchase (PASP) for a specified residential property must be signed at the sales office during its business hours?**

A99 Under section 47(2)(a) of the Ordinance, the date and time when, and the place where, the specified residential properties will be offered to be sold, should be set out in the document containing the sales arrangements. The objective of section 47(2) of the Ordinance is to let the general public and prospective purchasers in general know where and when the specified residential properties are offered to be sold. It does not mean that a PASP must be physically signed at the sales office during its business hours.

However, vendors must ensure that this will not be in conflict with the methods to be used to determine the order of priority among prospective purchasers as set out in the document containing the sales arrangements for the development in accordance with sections 47(2)(d) and 47(2)(e) of the Ordinance. Vendors must also ensure that they comply with section 47(4) of the Ordinance which states that the specified residential property must not be sold, or offered to be sold, before the date and time set out in the document containing the sales arrangements.

**Q100 What should the vendor do if the PASP for a specified residential property has not proceeded further and the vendor wishes to offer to sell the specified residential property again?**

A100 According to section 59(2)(c) of the Ordinance, if the purchaser has not entered into an agreement for sale and purchase with the owner in respect of the specified residential property within 5 working days after the date on which the PASP is entered into, the vendor must, on the 6<sup>th</sup> working day after that date, indicate that fact in the Register of Transactions for the development in relation to the residential property. If the information that the PASP for a specified residential property has not proceeded further has been recorded in the Register of Transactions, and the price list and sales arrangements applicable to the residential property concerned have remain unchanged and have been made available, there is no need for the vendor to wait for 3 days before he can offer to sell the residential property concerned again.

### **Sales Arrangements**

**Q101 Can vendors offer to sell or sell first-hand residential properties outside the business hours of the sales office as set out in the document containing the sales arrangements?**

A101 Under section 47(2)(a) of the Ordinance, the date and time when, and the place where, the specified residential properties will be offered to be sold, should be set out in the document containing the sales arrangements.

Section 47(4) of the Ordinance stipulates that the specified residential properties must NOT be sold, or offered to be sold, before the date and time published in the document containing the sales arrangements.

If the vendor wishes to change the business hours of the sales office, he should make available the new business hours by making available a revised document containing the sales

arrangements or a new sales arrangements reflecting the revised business hours of the sales office, and comply with section 47(1) of the Ordinance.

Notwithstanding the above, there may be occasions where prospective purchasers, who have selected properties, are still waiting for the signing of the Preliminary Agreement for Sale and Purchase (PASP) upon the closing time of the sales office on a particularly busy day. Having considered the issue from the perspective of practicability and consumer expectation, we consider that vendors may, on an ad hoc and one-off basis, continue to open the sales office beyond the prescribed business hour on that day until those who have been waiting for the signing of PASP before the scheduled closing time of the sales office have completed the signing of the PASP.

**Q102 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?**

A102 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 he will have to wait for three 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.



**Q103 When resuming sale of specified residential properties following suspension, will the vendor have to comply with the 7 day and 3 day requirement in making available the sales brochure, price list and document containing the sales arrangements?**

**A103** When resuming sale following suspension, the vendor will have to comply with the 7 day and 3 day requirement in making available the sales brochure, price list and document containing the sales arrangements. Also, the sales brochure will have to be printed, examined and/or revised within the previous 3 months.

**Q104 How should the vendor state the information in the document containing the sales arrangements for specified residential property that will be offered to be sold by way of tender or auction?**

**A104** Sale by Tender

For the date and time of sale, the vendor should fill in the commencement date and closing date of the tender, and the office hours of the agent handling the tender (e.g. solicitors' firm or surveying firm).

For the place where the sale will take place, the vendor should fill in the address of the handling agent for the tender.

For the method to be used to determine the order of priority, the vendor should fill in "sale by tender – see details and particulars in the tender notice".

Under section 47(1)(a) of the Ordinance, the vendor should make available hard copies of the document containing information on the sales arrangement for collection by the general public during a period of at least 3 days immediately before a date of the sale and on such a date of sale.

The vendor should provide hard copies of the document containing information on the sales arrangements at least 3 days before the first day on which tender is accepted and from the first day on which tender is accepted up to and including the tender closing date. The vendor should also follow the abovementioned dates in making the document containing the sales arrangements available for inspection on the designated website as required under section 47(1)(b) of the Ordinance.

The vendor should make available documents referred in section 48(1)(a) to (e) of the Ordinance at the place where the tender will be submitted (e.g. the agent handling the tender) from the first day on which tender is accepted up to and including the tender closing date.

#### Sale by Auction

For the date and time of sale, the vendor should fill in the auction date and time.

For the place where the sale will take place, the vendor should fill in the address at which the auction will take place.

For the method to be used to determine the order of priority, the vendor should fill in “sale by auction – see details and particulars of the auction”.

The vendor should provide hard copies of the document containing information on the sales arrangements at least 3 days before the day on which the auction is to take place and on that day. The vendor should also follow the abovementioned date in making the document containing the sales arrangements available for inspection on the designated website as required under section 47(1)(b) of the Ordinance.

The vendor should make available documents referred in section 48(1)(a) to (e) of the Ordinance at the place where the auction will take place on each of the auction date.

## **Advertisement**

**Q105 Do the following items fall within the requirements of advertisement under Part 3 of the Ordinance, viz. (a) website designated by the vendor for the development; (b) physical model of the development; (c) a pen bearing the name and logo of the development for distribution to the general public?**

A105 Section 69 of the Ordinance stipulates that Part 3 of the Ordinance applies to an advertisement purporting to promote the sale of any specified residential property. The term “advertisement” is not defined in the Ordinance, hence its ordinary meaning is to be considered in interpreting the relevant provisions. Whether something is an advertisement purporting to promote the sale of any specified residential property would depend on the facts of the case and have to be considered on a case-by-case basis.

Whether a website designated by a vendor for a development is subject to the requirements under Part 3 of the Ordinance depends on whether it constitutes an advertisement purporting to promote the sale of the specified residential properties. The contents of the website would be relevant in determining the question. If there are documents (e.g. in PDF format) posted on the website designated by the vendor for the development, such document may, depend on its content, be regarded as printed advertisement and subject to the additional requirements in section 73 of the Ordinance.

Whether a 3-dimensional physical model of a development is subject to the requirements under Part 3 of the Ordinance depends on whether it constitutes an advertisement purporting to promote the sale of specified residential properties, which is a question to be determined according to the facts of the individual case. Different factors should be taken into account, such as where the model is placed and whether there is any promotional statement placed alongside the model. Similarly, whether a pen is subject to the requirements under Part 3 of the Ordinance depends on whether it constitutes an advertisement purporting to promote the sale of specified residential properties. Relevant factors include the circumstances under which the pen is distributed.

**Q106 Will hoarding be regarded as an advertisement under the Ordinance?**

A106 According to Regulation 66 of the Building (Planning) Regulations (Cap 123F), no advertisement other than a description of the building and the names of any persons concerned in its construction shall be displayed on any hoarding.

**Q107 Can the vendor publish advertisement for the sale of a specified residential property by tender or auction?**

A107 If a vendor wishes to publish advertisement for the sale of a specified residential property by tender or auction, the requirements under Part 3 of the Ordinance should be followed. Besides, the vendor should ensure that the advertisement will not provide false or misleading information.

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