

## **Basic Law 105 and Backyard Poultry Farming**

This note explains why the recent legislative amendments to prohibit backyard poultry farming are considered to be consistent with the property right guaranteed under Basic Law 105. Basic Law 105 protects, among other things, the “right to compensation for lawful deprivation of ... property”.

2. Basic Law 105 guarantees the right to real value compensation for lawful deprivation of property. It reads as follows:

“The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.

Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay. ...”

3. In the light of local and comparative constitutional jurisprudence, deprivation of property could therefore take place under the following two situations:

- a) where property is formally expropriated, i.e. where there is a transfer of the title to the property; and
- b) where the measure complained of affects the substance of the property to such a degree that there has been a de facto expropriation or where the measure complained of ‘can be assimilated to a deprivation of possessions’.

4. On the concept of de facto deprivation or expropriation, it appears from comparative constitutional jurisprudence (European and US) that a de facto deprivation would not arise unless the property affected is left without any **meaningful alternative use** or the restrictions have denied all **economically viable use** of the property.

## **Formal Deprivation**

5. In the present case, there is no deprivation in the formal sense (para 3(a) above). The legislative amendments do not by themselves effect any transfer of title of the poultry to the SARG. Nor do they extinguish the title of poultry owners to their property.

## **De Facto Deprivation**

6. Applying the test of whether there is any meaningful alternative use of the property in question, it is considered that, for the following reasons, there is no de facto deprivation arising from the statutory prohibition against backyard poultry farming under the legislative amendments.

7. In respect of backyard poultry farming (e.g. the keeping of chickens), the small number of poultry kept by a particular owner could be slaughtered for private consumption (which was in line with the purpose of backyard farming) in anticipation of the commencement of the legislative amendments. (By definition, an owner of poultry in backyard farms would possess no more than 20 poultry in order to qualify under the law before the legislative amendments as an “exempt person”). Given the availability of this option, it is considered that neither -

- a) the voluntary surrender of poultry by owners to the Government prior to the commencement of the legislative amendments; or
- b) the seizure (pursuant to the relevant legislation) of poultry kept by persons reasonably suspected to be in breach of such amendments,

would amount to de facto deprivation.

**Department of Justice**  
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