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Paper for House Committee

Report of the Subcommittee on Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice

Purpose

This paper reports on the deliberations of the Subcommittee on Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice).

Background

2. According to the Administration, the design working life of an ordinary building in Hong Kong is 50 years. At present, there are about 41 000 buildings in Hong Kong, of which about 4 000 buildings are aged 50 years or above and about 2 600 of them are for residential/composite use. It is estimated that the number of buildings reaching the age of 50 will rise to 9 500 in 2019.

Urban redevelopment in Hong Kong

3. As part of the Government's urban renewal strategy promulgated in the 1996 policy statement "Urban Renewal in Hong Kong", the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545) was enacted in 1998 and came into operation in June 1999 to facilitate owners of buildings in multiple ownership to redevelop the lots under specified conditions. Under the Ordinance, a person (otherwise than as a mortgagee) who owns not less than 90% of undivided shares in a lot may apply to the Lands Tribunal for an order for the compulsory sale of all of the undivided shares in the lot for the purpose of redevelopment. There is also a provision in the Ordinance that provides for the Chief Executive in Council to make a notice for a lower compulsory sale application threshold of no less than 80% in respect of a specified class of lots.

4. The Urban Renewal Authority (URA) established in 2001 has been carrying out redevelopment projects to help arrest urban decay in Hong Kong.

Since its establishment, the URA has demolished/will demolish about 800 old buildings¹ for redevelopment in projects it has commenced. The pace of URA's urban renewal work has been much slower than originally envisaged, and many URA projects have been highly controversial, attracting considerable resistance from affected owners/tenants and concern groups. In view of the anticipated rapid increase in the number of old buildings in Hong Kong in the coming decade and the slow pace of urban renewal work in the past ten years both in the public and private sectors, the Administration considers it necessary to enhance the ability of private property owners in redeveloping their aged and dilapidated buildings to better complement URA's effort and to meet Hong Kong's changing economic needs. At present, the greatest hurdle to private sector redevelopment efforts lies in the difficulty in unifying multiple ownership in a land lot.

Optimizing the use of old industrial buildings

5. As a result of Hong Kong's economic restructuring and the relocation of traditional manufacturing industries, many private flatted factories were left vacant or under-utilized. As at the end of 2008, there were 1 467 private flatted factories in Hong Kong. Among them, about 720 are 30 years or above, of which 580 are situated in non-industrial zones. The Chief Executive has announced in his 2009-2010 Policy Address new measures to optimize the use of old industrial buildings through redevelopment and wholesale conversion. One of the measures is lowering the compulsory sale application threshold for industrial buildings aged 30 years or above situated in non-industrial zones to facilitate their redevelopment.

The Notice

6. The Notice was gazetted on 22 January 2010 and tabled at the Legislative Council meeting on 27 January 2010. Under the Notice, the Administration proposes to specify a lower application threshold of 80% of the undivided shares in the lot for the following three classes of land lot -

- (a) a lot with units each of which accounts for more than 10% of the undivided shares in the lot;
- (b) a lot with all buildings aged 50 years or above; and
- (c) a lot with all industrial buildings aged 30 years or above not located within an industrial zone.

7. The Notice will come into operation on 1 April 2010.

¹ As at end 2009, URA has directly, or through collaboration with the Hong Kong Housing Society (HKHS), commenced 37 redevelopment projects and four preservation projects. URA will have preserved a total of no less than 57 old buildings as well as various historic features, upon completion of the preservation projects and redevelopment projects with preservation elements.

8. The scrutiny period of the Notice has been extended to 17 March 2010 by resolution of the Council on 24 February 2010.

The Subcommittee

9. At the House Committee meeting held on 29 January 2010, Members agreed to form a Subcommittee to study the Notice. Hon CHAN Kam-lam was elected chairman of the Subcommittee, and the membership list of the Subcommittee is in **Appendix I**. The Subcommittee has held seven meetings², including one meeting to receive views from deputations. A total of 50 organizations have provided views to the Subcommittee while 66 submissions have been received. A list of organizations and individuals that have provided views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

10. In examining the subsidiary legislation, members have expressed concerns regarding the operation of the Ordinance and have made a number of suggestions on improving the compulsory land sale mechanism. Some members consider that lowering the threshold for compulsory sale cannot solve the problems encountered in the redevelopment process, and may not be able to safeguard the interests of minority owners. The deliberations of the Subcommittee are summarized in the ensuing paragraphs.

Operation of the Ordinance (Cap 545)

Protection of minority owners' interests

11. Since the coming into operation of Cap 545 on 7 June 1999, the Lands Tribunal has, up to January 2010, received 64 applications for compulsory land sale and issued 21 compulsory sale orders. The Subcommittee has noted that where an order for sale is granted by the Lands Tribunal, the concerned lot shall be sold to the highest bid by public auction, subject to a reserve price approved by the Tribunal. The sale proceeds shall be apportioned among the majority and minority owners on a pro-rata basis according to the assessed existing use value (EUV) of their respective properties as stated in the valuation report attached to the application, or any subsequent amendments to the assessments as approved by the Tribunal.

12. Some members including Hon Mrs Regina IP, Hon James TO and Hon

² The sixth and seventh meetings were chaired by Prof Hon Patrick LAU during the absence of the Chairman.

Audrey EU share the grave concern expressed by some affected minority owners attending the Subcommittee meeting on 19 February 2010 that the reserve price approved by the Lands Tribunal for the auction of the subject lot did not reflect the market values of their properties therein. These deputations claimed that the sale proceeds received were not sufficient for them to purchase a similar flat in the same district. These members are concerned that although minority owners may raise objections over the assessed EUV and/or reserve price of their properties, they have to bear the cost of engaging independent surveyors³ and lawyers to give evidence before the Tribunal unless they choose to speak at the Tribunal themselves, and share the costs of the legal proceedings⁴ if so determined by the Tribunal. Such an arrangement under the current system is considered unreasonable and unfair to the minority owners, particularly the elderly owners and those who are ignorant of the provisions under Cap 545 and do not know their rights and interests under the compulsory sale mechanism.

13. The Administration has explained that in dealing with disputes over the assessed EUV and/or reserve price of the property concerned⁵, the Lands Tribunal, a member of which is a qualified surveyor, will study the expert valuation reports submitted by both sides and where necessary, pay site visit to the area and the property in question. The Administration has also provided a comparison of the EUV and transaction price of the lots in 18 cases with sale orders granted, according to which the transaction price of the lot(s) is on average about 2.5 times the total EUV of the lot(s). The details of the transaction prices in the 18 cases are given in **Appendix III**. Since the minority owners will share the transaction price of the lot on a pro-rata basis in accordance with the EUV assessed of their respective properties and those of the majority owner, the proceeds of sale (where the reserve price is the minimum price which has reflected redevelopment value of the lots as well) apportioned to each individual owner on average accounts for 2.5 times the EUV of their respective unit. The Ordinance also provides that the Lands Tribunal should take into account the redevelopment potential of the lot

³ According to the information provided by the Administration on professional work related to the preparation of valuation reports, preparation for meetings and attendance at the Lands Tribunal hearings, the cost will be in the region of \$500,000 for a building with 50 units (of which \$100,000 to \$150,000 is attributable to the preparation of valuation reports). According to the "Scale of Professional Charges for General Practice Services in Hong Kong" issued by the Hong Kong Institute of Surveyors, the recommended valuation fee on the first \$10 million of value of each property assessed is 0.1% of the assessed value (minimum \$3,000).

⁴ The major cost items involved are remuneration for the appointed trustees and expenses for the auction. The remuneration to the trustees (payable on a time charge basis) shall be paid by the majority owner of the lot. The expenses of the auction will be borne solely by the majority owner if there is no purchaser. Where there is a purchaser, the expenses will be apportioned amongst the majority and minority owners. The auction fee is a percentage fee of the final auction price, a typical of which is in the region between \$300,000 and \$500,000.

⁵ To show how the Tribunal conducts professional and independent assessment regarding each application, the Administration has provided a summary description of how the Tribunal has conducted assessment on the EUV and redevelopment value of the subject lots under compulsory sale in 10 cases with sale orders granted (CB(1)1172/09-10(03)), and an extract from a judgment of a related case to better illustrate the process (Annex IVA and B to CB(1)1229/09-10(02)).

when determining the reserve price. Affected owners may appeal against the judgment of the Lands Tribunal on the ground of a point in law. The Administration assures members that the Lands Tribunal will continue to play a gate-keeping role in considering compulsory sale applications and determining the reserve price under stringent considerations.

14. The Subcommittee has noted that among the 20 compulsory land sale auctions held in the past, there was more than one bidder in two cases. Some members including Hon James To, Hon Albert HO and Hon Audrey EU consider that this reveals a lack of competition at the auctions and the auction results are therefore unfair to the minority owners. As the majority owner would have already acquired 90% of the undivided shares in the lot, the minority owners or new purchaser will be in a disadvantaged position during such auctions if they intend to bid. Hon James TO suggests engaging the Hong Kong Housing Society (HKHS) and URA to participate in these auctions. The Administration has responded that it may not be appropriate to deploy public resources from HKHS and URA in private sector-led redevelopment, and the suggestion will be a matter for the two authorities to consider. Regarding Hon James TO's further suggestion of disposing land under compulsory sale by open tender instead of auction, the Administration has advised that the Notice in question has not changed section 5(1) of Cap 545 which provides that a lot subject to a compulsory sale order can be sold by means other than public auction, if agreed by the majority owner and all the minority owners in writing.

15. According to the Hong Kong Institute of Real Estate Administrators which has given views to the Subcommittee, standalone lots of limited size and low redevelopment value will not be attractive to potential bidders unless these lots will join with contiguous lots to form a composite site for redevelopment. In this connection, members note that the Court of Final Appeal, in its judgment of a relevant case (FACV No 4 of 2005), has commented whether Cap 545, on its true construction, precludes the Lands Tribunal from making an order for sale in respect of composite sites. Some members consider that this may have led to disputes between majority and minority owners over the reserve prices, taking into account the redevelopment potential of the subject lot on its own or the merged value of the contiguous lots.

16. The Subcommittee also note that when the issue was deliberated during the scrutiny of the Land (Compulsory Sale for Redevelopment) Bill in 1998, some members of the Bills Committee supported the concept of comprehensive redevelopment, but they were concerned that should such an approach be adopted, there might be situations in which the applicants had not acquired any undivided shares in one of the lots notwithstanding the holding of 90% of the aggregate undivided shares in respect of all the lots involved. The Administration has advised that it has no intention to change the law as the current framework adopted under Cap 545 represents a carefully considered balance between protection of the interest of all the owners involved in a compulsory land sale and the need for urban renewal in Hong Kong.

17. As regards the concern that minority owners may suffer loss if there is a time gap between the valuation date and transaction date, some members consider it necessary to ascertain the change in plot ratio of the lot(s) in question before and after redevelopment in order to assess whether the transaction price is reasonable and fair. In this connection, the Administration has provided information on the respective dates of valuation and transaction for the 20 compulsory land sale cases (**Appendix III**) and a comparison on the development intensity of the lots before and after compulsory sale (CB(1)1293/09-10(04)) for members' reference. The Administration has advised that pursuant to Schedule 1 of Cap 545, the valuation report for the EUV should be prepared not earlier than 3 months before the date on which the application for compulsory sale is made.

Owner participation

18. Some affected minority owners in private redevelopment projects have given the view that they preferred the mode of redevelopment of Lai Shing Court under which "flat-for-flat" and "shop-for-shop" arrangements were provided.

19. The Subcommittee has noted that according to a study on the urban renewal policies in a number of Asian cities conducted in 2009, owner participation is provided in Tokyo and Taipei. Under the Tokyo model, the developer pays for the construction and planning costs, the local landowners will contribute their land or buildings in return for a new plot of land, building or floor rights after the redevelopment, and the local government provides some subsidies or financial incentives. In the case of Taipei, the developers are required to set up urban renewal companies limited by shares with the participation of landowners. The study also indicated that all these projects were implemented with an increase in the plot ratio upon redevelopment.

20. Some Subcommittee members including Hon Regina IP, Hon Starry LEE, Hon Cyd HO, Hon Miriam LAU and Hon Audrey EU have urged the Administration to consider providing owner participation in private redevelopments to enhance protection of minority owners' interest in the implementation of Cap 545. The Administration has explained that the Ordinance aims to provide a legal framework to facilitate applications for compulsory sale for redevelopment by private property owners who own undivided shares in a lot reaching the specified application threshold. While the Ordinance does not preclude different forms of owner participation arrangements, the compulsory sale is, by nature, a transaction between two private property owners, and it is not appropriate for the Government to impose any other condition on or mandate the form of collaboration for such property transactions. Nonetheless, the feasibility of offering different arrangements for affected owners in redevelopment projects will be studied in the context of the Urban Renewal Strategy Review for public sector-led redevelopment. Despite the Administration's explanation, some members hold a strong view that the Administration should provide for owner participation arrangements in private sector-led redevelopments under the Ordinance.

Establishment of a mediation mechanism

21. Many members support the suggestion of Hon WONG Kwok-hing of establishing a mechanism of mediation with a view to resolving any disputes between property owners before invoking the procedures under Cap 545. Hon WONG Kwok-hing considers that mediation provides an opportunity for discussion between the stakeholders, and enables the Lands Tribunal to consider more thoroughly the concerns and needs of the majority and minority owners in determination of the relevant applications. Hon Audrey EU requests the Administration to consider requiring related parties to undertake mediation as part of the owner participation arrangements, before the Lands Tribunal considers the relevant applications. Hon Mrs Regina IP is of the view that arbitration may better protect the minority owners' interests. Ir Dr Raymond HO suggests that in setting up the mediation mechanism, the Administration should aim at streamlining the procedures and dispense with the requirement for minority owners to engage surveyors and lawyers in order to save owners' costs.

22. A deputation opines that mediation or arbitration may help aggrieved owners save professional and legal costs arising from disputes over assessed property value.

23. According to the Administration's paper, the Department of Justice has advised that the suggestion to introduce a mediation mechanism is agreeable and in line with Recommendation 9 of the Report of the Working Group on Mediation. The Development Bureau has agreed to examine the suggestion in consultation with the Department of Justice, the Judiciary and relevant agencies (such as the Hong Kong Bar Association, The Law Society of Hong Kong, the Hong Kong Mediation Council and the Hong Kong Mediation Centre). The Administration has also advised that to enhance property owners' understanding of the legislative provisions in Cap 545 and the Notice under scrutiny, HKHS will provide, with professional support mainly from the Hong Kong Institute of Surveyors, free information service on the compulsory sale process and other related issues, including the rights of minority owners, valuation of properties, etc. through HKHS's 10 property management advisory centres.

24. As the detailed arrangement of the mediation mechanism will not possibly be available at the time the Notice is to come into effect on 1 April 2010, some members request the Administration to defer the implementation of the Notice until the mediation mechanism has been put in place. The Administration considers that the lowering of the application threshold for the three specified classes of lots and the setting up of the mediation mechanism for such applications can proceed in parallel as mediation is not meant to replace the gate-keeping role of the Lands Tribunal under the Ordinance. In this connection, the Secretary for Development will give an undertaking, when she speaks on the Notice at the Council meeting on 17 March 2010, to study the introduction of a mediation mechanism

25. Some members, including Hon Audrey EU, Hon Mrs Regina IP and Hon Cyd HO, urge the Administration to incorporate the mediation mechanism in the legislation. In this connection, Hon Audrey EU indicates that she would move an amendment requiring the majority owner to prove that he/she has initiated mediation with the minority owner(s) which includes a suggestion to use a title of a unit for the redeveloped building in exchange for a title of the existing unit of the minority owner(s).

Social impacts of private redevelopments

26. Hon Cyd HO and a few deputations have expressed grave concern that private redevelopments have been taken forward in an indiscriminate and uncontrolled manner in built-up districts, thereby giving rise to adverse impacts on the neighborhood and complementary measures and facilities should be provided to meet the anticipated increasing demand. While noting that redevelopments on sites of compulsory land sale will have to comply with the prevailing planning parameters applied to the lots and subject to building plan approval, Hon Cyd HO urges the Administration to strengthen statutory planning requirements so that private redevelopment projects will proceed in a more sustainable manner. The Administration has responded that the Notice does not entail changes to the town planning, land lease and building plan approval policies and processes which will continue to control development projects in Hong Kong.

Compensation to affected tenants

27. The Subcommittee notes that upon the compulsory sale of a lot, each ex-landlord will be responsible for paying the compensation to their ex-tenants if so specified in the order issued by the Lands Tribunal. Hon James TO considers such arrangement unfair if the affected minority owners are the landlords, since the compulsory land sale is not initiated by them or is against their wish. He is of the view that the purchaser who has caused the tenancies to be terminated should pay the compensation to tenants. He requests the Administration to review Cap 545 in respect of compensation to affected tenants.

28. The Administration has pointed out that the issues of whether compensation to tenants may be payable by the purchaser or majority owners, and whether the Lands Tribunal can order the purchaser or majority owners to pay compensation to the tenants of the minority owners had been deliberated by the relevant Bills Committee in 1998. Noting that such a provision in the Bill would run the risk of letting tenants control the entire situation, and that the complications involved in terminating contractual tenancies and vacating tenants would be a deterrence to potential purchasers of the lot, the Bills Committee considered that these onus should not be passed onto the purchaser or the majority owners. The Administration therefore does not consider it necessary to further review the relevant provisions in Cap 545 at this stage.

29. Hon Mrs Regina IP expresses concern about the compensation

arrangement for tenants affected by a compulsory sale order. She points out that tenants affected by redevelopment projects undertaken by URA would be re-housed in a public rental housing flat in the urban area or receive a rehousing compensation of about \$70,000. She is disappointed with the Administration's response that such arrangement is not available to tenants under the compulsory land sale mechanism.

Application threshold for compulsory land sale

Lowering the threshold to 80%

30. A number of members consider implementation of Cap 545 problematic with inadequate protection for minority owners, they urge the Administration to rectify the problems and conduct a thorough review to improve the operation of current mechanism before pursuing to lower the application threshold.

31. Some members, including Hon Mrs Regina IP, Dr Hon Margaret NG and Hon James TO, express strong sentiment against the lowering of the application threshold from 90% to 80%, which they consider may shift interests towards the developers and undermine the bargaining power of minority owners. Hon Mrs IP notes from media reports that subsequent to the collapse of the tenement in Ma Tau Wai Road and the implementation of building safety measures⁶, price negotiation in the acquisition of aged properties has become less difficult and there is an increase in transaction of aged properties with dropping transaction price. As market force has already come into play, she queries whether it is still necessary to intervene the market by lowering the application threshold.

32. The Administration has advised that the compulsory land sale mechanism is meant to balance the interests of all property owners involved and the need for private sector initiated urban renewal. Dr Hon Margaret NG stresses that property right is a fundamental right not subject to balance of interests. Hon Mrs Regina IP considers that the new threshold will upset the balance to the advantage of the developers whose primary aim is to maximize profit, and aggravate polarization of the rich and the poor.

33. Hon Frederick FUNG stresses that the recognition of property right is fundamental to the capitalist society and private ownership should not be infringed by way of majority vote. He strongly objects to further lower the application threshold to 80% as the problem of urban decay can be addressed through proper management and maintenance of old buildings. He stresses that removing these buildings indiscriminately will narrow the housing options for the low-income groups who will be left with no choice but to live in cubicles, bed-spaces or

⁶ These measures include Operation Building Bright, Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme, Minor Works Control System and Builders Maintenance Grant Scheme for Elderly Owners.

partitioned flats. Hon FUNG considers that urban renewal should be taken forward in a people-oriented manner whereby affected owners can continue their way of living and conduct business in the same social network.

34. Hon Abraham SHEK, however, takes the view that urban redevelopment is a matter of public interest. He agrees with the Administration that in view of the slow pace of URA's work and the limited number of compulsory land sale applications under the 90% application threshold, there is a genuine need to expedite the redevelopment pace by lowering the threshold to 80%. People living in aged buildings should be given a chance to improve their living environment through redevelopment. However, he did not agree with the Administration's assessments that the number of lots that can subsequently proceed to compulsory land sale application with the lowered threshold would be limited.

35. The Administration has explained that it has carefully reviewed the existing legislation before coming up with the proposal, taking into account public views and comments received from professional bodies and institutes over the years. Specifying a lower threshold of 80% for a lot with units each of which accounts for more than 10% of the undivided shares in the lot can help address deadlock situation so that aggrieved owners having aggregated 80% of undivided shares of their lot can proceed to compulsory sale application. Hon Mrs Regina IP, however, considers that the lowering of the application threshold will reduce the market value of the properties of these owners and undermine their bargaining power and ultimately their interest.

Lots with each of the units on the lot representing more than 10% of all the undivided shares in the lot

36. Hon James TO expresses concern that owner(s) of the upper floor units of a building holding 80% or more of the undivided shares of the lot may take advantage of the owner of an un-acquired street level shop, of which the property price and its undivided shares in the lot may be out of proportion, by applying for a compulsory sale order of the lot under the Notice if each of them accounts for more than 10% of the undivided shares in the lot. In this connection, he requests the Administration to consider setting the application threshold for the first class of lot at a percentage, say 80%, of the total EUV which should have reflected the market value of the lot.

37. The Administration has advised that it is not feasible to add the reference to the holding of 80% of EUV of a lot to the Notice which is made under section 3(5) of Cap 545 in which the holding of 80% of EUV is not a criterion for a specified class of lot. Noting the Administration's response, Hon James TO indicates that he would move an amendment to the first and second classes of lot, by specifying that the majority owners should own not less than 80% of the assessed market value of the property on the lot as stated in the valuation report prepared in accordance with Part 1 of Schedule 1 to Cap 545.

Lots with all buildings aged 50 years or above

38. The Subcommittee has noted that most of the lots involved in the past compulsory sale cases are located on Hong Kong Island, including Central, Wanchai, Tai Hang and Causeway Bay, and very little of them falls in Sham Shui Po, Yau Tsim Mong and Kowloon City which have greater number of aged buildings⁷ requiring redevelopment. However, a deputation expresses the view that many buildings demolished subsequent to compulsory sale were in fact in good state of repair.

39. Dr Hon Margaret NG queries whether the lowering of the application threshold can genuinely help address the problem of dilapidating buildings in the city as developers will likely choose only those lots with high redevelopment potential for making compulsory land sale applications. Hon James TO considers that among the 4 000 or so old buildings in Hong Kong, some of them can be renewed through proper repair and maintenance and may not warrant redevelopment. However, he notes from the Lands Tribunal judgment of a case (Annex VI to CB(1)1172/09-10(03)) that, despite the owners of the building had completed the essential repair works in 2007 to comply with the Building Order which was subsequently lifted, the Lands Tribunal ruled in 2009 that the building had reached the end of its economic lifespan and become economically unworthy to repair as the cost of repair would substantially exceed the enhancement value after the repair. He expresses grave concern about this and stresses that aged buildings in good state of repair should not indiscriminately be taken to compulsory land sale. He suggests limiting the scope of the second class of lot to those with buildings aged 50 years or above which in the opinion of the Building Authority have been rendered "dangerous" or "liable to become dangerous".

40. The Administration has clarified that the legislative intent behind the enactment of Cap 545 is to facilitate private sector to initiate urban redevelopment under specified conditions. Notwithstanding this, in determination of application, the Lands Tribunal has to be satisfied that the redevelopment of the lot is justified due to the age or state of repair of the existing development on the lot, and the Administration has observed that the Tribunal has taken both age and state of repair into consideration during the process. As such, Cap 545 is indirectly related to building safety by providing a mechanism through which redevelopment of aged and dilapidated buildings by the private property owners can be facilitated. The Administration has further advised that ensuring building safety is one of the main functions of the Buildings Department under the Buildings Ordinance (Cap 123). The declaration of a building as "dangerous" or "liable to become dangerous" under the Buildings Ordinance is based on considerations of a different regime which are not the same considerations as those for "age or state of repair" of a building under Cap 545. As such, the Administration has considered that it will not be in line

⁷ Please refer to Annex I of CB(1)1229/09-10(02) for distribution of the 2 582 residential/composite buildings of 50 years or above by district.

with the policy objectives of Cap 545 to revise the specification of the second class of lot as proposed by members.

41. Noting the Administration's clarification, Dr Hon Margaret NG considers that building age and structural safety are independent considerations since an aged building under proper maintenance can remain structurally safe and sound. It is thus irrelevant to specify the age criterion of 50 years or above for buildings in the second class of lot and this will only lower the market value of the properties therein. In her opinion, Cap 545 and Cap 123 are working against each other, as owners are required to carry out proper maintenance and repairs to ensure compliance with Cap 123, yet they may refrain from doing so if their building meets the age criterion for redevelopment. This will not be conducive to expediting urban renewal. Hon Mrs Regina IP shares this view and points out that a mall in an aged building in Causeway Bay has not been put to proper use and not properly maintained, since the majority owner is awaiting compulsory sale.

42. Some members, including Hon Miriam LAU and Hon Albert HO urge the Administration to amend section 4(2)(a) of Cap 545 such that the Lands Tribunal will determine the application based on the "age and state of repair", rather than "age or state of repair" of the existing developments on the lot(s). Dr Hon Margaret NG and Hon Audrey EU observe that as revealed in the Tribunal's judgment, the "state of repair" of developments is linked to the economic value of the subject lot. The Administration has agreed to consider changing the wording "age or state of repair" to "age and state of repair" to allay the concern at suitable time after the Notice has come into operation.

43. Some members suggest giving priority to designated areas with genuine needs of redevelopment, with reference to the results of the ongoing inspection of all buildings aged 50 or above undertaken by the Administration, as the inspection results will be available around mid-March 2010. The Administration has responded that the suggestion will be considered in the context of the ongoing Urban Renewal Strategy Review which will look into the future direction of urban renewal, including a more district-based approach. The Administration has stressed that the objective of Cap 545 is to enhance the ability of private property owners, in particular those who can not afford the recurrent cost of repair and look forward to redevelopment, to make compulsory land sale application, so as to expedite urban renewal to address building dilapidation.

44. Despite the Administration's response, Hon Audrey EU has indicated that she would move an amendment to the second class of lot by specifying that it must be a lot designated by the Secretary for Development for priority redevelopment for the reason of public interest. Hon James TO also indicates that he would move amendments to both the first and second classes of lot by specifying that all buildings erected on the lot should be at least 50 years old and *either* have received an order issued by the Building Authority under section 26 or 26A of Cap 123 in respect of dangerous or defective buildings *or* even without such an order,

- (a) the Tribunal is satisfied that the redevelopment of the lot is justified due to their state of repair;
- (b) the Tribunal is satisfied that the redevelopment of the lot is justified due to the interests of public safety; or
- (c) the redevelopment of the lot is justified by the Secretary for Development after a reasonable consideration.

45. As regards the proposal of confining the second class of lots to those in districts where the outline zoning plans have been amended for lower development intensity, the Administration has assured members that the development of a lot after compulsory sale will be subject to the prevailing planning parameters, conditions of land lease and building plan approval in the same way as developments on lots not the subject of compulsory sale. As such, private redevelopment of a lot would not be without control even if the review of the outline zoning plan for the district concerned is still underway.

46. The Subcommittee expresses concern whether the new threshold will still be applicable to those lots on which the building(s), though aged 50 or more, no longer exist at the time of application for compulsory land sale. The Administration has referred to the definition of "redevelopment" in relation to a lot under section 2 of Cap 545 which "means the replacement of a building on (or formerly on) the lot.

Lots in non-industrial zone with all industrial buildings aged 30 years or above

47. Some members share the concern expressed by deputations that the lowering of compulsory land sale threshold will not be conducive to the survival of the cultural art practitioners currently operating in the affected industrial building. Hon Mrs Regina IP is very concerned about the potential adverse impact on the tenants/minority owners currently engaging in creative and cultural work and operating in the affected industrial buildings, as they may be forced to seek relocation or to pay higher rents due to limited supply after the new application threshold takes effect. Hon Frederick FUNG urges the Administration to consider implementing the policy measures by stages to avoid drastic reduction in supply of such venues. Hon Cyd HO considers that revitalization of industrial buildings and compulsory sale of these buildings are unrelated policy issues, and the creative industries should be allowed to flourish on their own in the community. Instead of facilitating compulsory sale of industrial buildings on specified lot, the Development Bureau and the Home Affairs Bureau should explore the feasibility of designating more lands for the use of creative industries.

48. On the question of specifying the age criterion for the third class of lot to 30 years of above, the Administration has explained that the Notice aims to facilitate the redevelopment of under-utilized or disused industrial buildings standing on land which, over the years, has been rezoned from industrial to

non-industrial, so as to release the potential of the precious land resources to meet the changing economic needs of Hong Kong. The age criterion is based on the fact that about half of Hong Kong's existing industrial buildings age 30 years or above and less than 5% are older than 50 years. It will not be in the interest of the public to prescribe a higher age limit as it would then cover a tiny portion of industrial buildings, nor a lower age limit as this may include younger buildings in relatively better state of repair that may not justify redevelopment. For the younger industrial buildings, there are other measures to facilitate their change in use through wholesale conversion.

49. Hon James TO expresses concern about the definition of "industrial buildings" as the current drafting may not cover all industrial buildings in the specified lots in non-industrial zone. He considers reference should be made to the current usage specified in the occupation permit. The Administration has been requested to provide further information in this regard.

Public consultation

50. Some members, including Hon James TO, Hon Margaret NG and Hon Audrey EU, queried about the urgency of implementation of the Notice. They asked whether property owners of buildings aged 50 or above have been consulted.

51. The Administration has advised that the proposed lowering of the compulsory sale application threshold to 80% was the subject of public opinion surveys conducted via telephone in 2006 and 2008 respectively. A majority of the respondents of the 2008 survey agreed with the proposal to lower the application threshold to 80% for lots with buildings aged 50 years or above. The findings of the two public consultation have been reported to the Panel on Development (please refer to CB(1)605/07-08(03) and CB(1)1947/08-09(05))

52. Hon James TO considers that as there is no urgency in implementing the Notice, he would move an amendment to defer the implementation date for the first and second classes of lot for one year to 1 April 2011, so as to allow time for the Administration to conduct a review of Cap 545 and improve the legislation in respect of building safety, mediation mechanism and the auction/open tendering process. He may also repeal the parts relating to the first and second classes of lot under section 4(1)(a) and 4(1)(b) of the Notice. Hon Mrs Regina IP also indicates that she would move an amendment to repeal section 4(1)(a) and 4(1)(b).

Motion passed

53. At the meeting held on 1 March 2010, the Subcommittee passed the following motion:

"Given that the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice cannot provide effective protection for minority owners' interests nor resolve building safety issues, and that the

authorities have failed to set up a mediation mechanism promptly, the Subcommittee considers that the authorities should withdraw the Notice."

54. At the meeting on 4 March 2010, the Administration indicated that it would not withdraw the Notice, given that Cap 545 has provided a well-established mechanism to protect the interests of property owners in an appropriate and fair manner, as reflected in the legislative provisions and the past Lands Tribunal judgments. The mechanism has aptly provided an alternative for needy owners in the old districts to improve their living environment by applying for compulsory land sale of their lots for redevelopment under specified conditions. The Administration assures members that it will work proactively with relevant parties towards the setting up of the mediation mechanism in respect of applications under Cap 545, and report the outcome to the Panel on Development as and when appropriate.

55. The Subcommittee has noted that the Secretary for Development has indicated at the Council meeting on 3 March 2010 that the Administration will monitor the implementation of the Notice, if passed, and will initiate a review of Cap 545 on the basis of more cases that have gone through the Lands Tribunal and conduct a legislative amendment exercise based on the review results.

Proposed amendments

56. The Administration has not proposed any amendments to the Notice and the Subcommittee will not move any amendments in its name. Hon Audrey EU, Hon James TO and Hon Mrs Regina IP have tabled their proposed amendments for members' reference. Hon Cyd HO has indicated that she may move an amendment to repeal the Notice.

Advice sought

57. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
10 March 2010

**Subcommittee on Land (Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice**

Membership list

Chairman	Hon CHAN Kam-lam, SBS, JP
Members	Hon Albert HO Chun-yan Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP Dr Hon Margaret NG Hon James TO Kun-sun Hon Miriam LAU Kin-ye, GBS, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Frederick FUNG Kin-kee, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon WONG Kwok-hing, MH Hon Andrew LEUNG Kwan-yuen, SBS, JP Hon CHEUNG Hok-ming, GBS, JP Prof Hon Patrick LAU Sau-shing, SBS, JP Hon Cyd HO Sau-lan Hon Starry LEE Wai-king Hon WONG Kwok-kin, BBS Hon Mrs Regina IP LAU Suk-ye, GBS, JP

(Total: 17 members)

Clerk	Ms Debbie YAU
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Legal Adviser	Mr Kelvin LEE
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Date	9 February 2010
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**Subcommittee on Land (Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice**

**List of organizations/individuals that have provided views
to the Subcommittee**

1. Association of Engineering Professionals in Society
2. Central & Western Concern Group
3. Community Alliance for Urban Planning
4. Democratic Alliance for the Betterment and Progress of Hong Kong
5. Designing Hong Kong Ltd
6. Dr Lawrence POON
7. Federation of Hong Kong Industries
8. Green Sense
9. Hip Shing Hong Group
10. Hong Kong Construction Association
11. Hong Kong Economic & Trade Association
12. Hong Kong Institute of Real Estate Administrators
13. K28 Sport Shoes Street Concern Group
14. Kowloon City District Council
15. Members of the Sham Shui Po District Council
16. Members of the Tsuen Wan District Council
17. Members of the Wan Chai District Council
18. Mr Alvan CHAN
19. Mr Edwin TSANG
20. Mr Jason CHENG
21. Mr Marcus WONG
22. Owner of Haven Street
23. People Planning in Action
24. RICS (Hong Kong)
25. Savills (Hong Kong) Limited
26. Savills Valuation and Professional Services Limited
27. Study Group on Old Building Crisis
28. The Chinese Manufacturers' Association of Hong Kong
29. The Hong Kong Association for the Advancement of Real Estate and Construction Technology Limited
30. The Hong Kong Institute of Architects
31. The Hong Kong Institute of Surveyors
32. The Real Estate Developers Association of Hong Kong
33. Vigers Realty Limited
34. 九龍土瓜灣區業主
35. 大角咀一班小業主
36. 小市民
37. 北角馬寶道黃姓小業主
38. 李大為先生

39. 李太
40. 金國大廈業主
41. 保安及物業管理從業員支持舊區重建關注小組
42. 捍衛基本法大聯盟
43. 茶果嶺區舊樓重建會
44. 高綺華女士
45. 國民大廈黃姓業主
46. 深水埗舊區業主
47. 黃姓業主
48. 薄扶林道小業主羅興章先生
49. 舊樓業主支持修改八成關注小組
50. 關注香港整體發展之陳先生

Comparison of the Existing Use Value (EUV) and Transaction Price with Valuation and Transaction Dates of the Lots in the 21 Cases with Sale Orders Granted (Up to January 2010))

Case No.	Total EUV (\$ million) (a) (Valuation Date)	Transaction Price (\$ million) (b) (Transaction Date)	(b)/(a)
(1) LDCS 1000 of 2000	No readily available information	191	--
(2) LDCS 1000 of 2001	253.05 (May 2001)	310 (May 2002)	1.23
(3) LDCS 2000 of 2001	6.619 (July 2001)	15.79 (June 2006)	2.39
(4) LDCS 1000 of 2003	391 (August 2003)	1,710 (January 2005)	4.37
(5) LDCS 2000 of 2004	35.5 (March 2004)	126 (March 2005)	3.55
(6) LDCS 3000 of 2005	84.82 (November 2005)	508.89 (April 2007)	6
(7) LDCS 6000 of 2005	132.11 (November 2005)	294 (July 2006)	2.23
(8) LDCS 2000 of 2006	257.27 (January 2006)	661 (October 2006)	2.57
(9) LDCS 3000 of 2006	157.9 (March 2006)	358 (March 2007)	2.23
(10) LDCS 6000 of 2006	161.356 (October 2006)	464 (August 2007)	2.88
(11) LDCS 11000 of 2006	637.9 (September 2006)	1421.124 (August 2008)	2.23
(12) LDCS 13000 of 2006	185.49 (September 2006)	491 (May 2008)	2.65
(13) LDCS 5000 of 2007	38.05 (July 2007)	70.5 (April 2009)	1.85
(14) LDCS 6000 of 2007	40.4 (July 2007)	72 (May 2009)	1.78

Case No.	Total EUV (\$ million) (a) (Valuation Date)	Transaction Price (\$ million) (b) (Transaction Date)	(b)/(a)
(15) LDCS 9000 of 2007	182.92 (July 2007)	345 (April 2009)	1.89
(16) LDCS 10000 of 2007	153.7	--	--
(17) LDCS 13000 of 2007	33.44 (October 2007)	100 (March 2009)	2.99
(18) LDCS 14000 of 2007	No readily available information	98	--
(19) LDCS 3000 of 2008	18.35 (February 2008)	26.4 (October 2008)	1.44
(20) LDCS 5000 of 2008	56.69 (May 2008)	55 (April 2009)	0.97
(21) LDCS 10000 of 2008	321.13 (November 2008)	709 (February 2010)	2.21

Source: Information paper provided by the Development Bureau in March 2010 (Annex I to CB(1)1259/09-10(02))