

**President's ruling on proposed resolutions to
amend the Land (Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice proposed by
Hon James TO, Hon Albert HO, Hon LEE Wing-tat and Hon Audrey EU**

Hon James TO, Hon Albert HO, Hon LEE Wing-tat and Hon Audrey EU have given notice to move proposed resolutions to amend the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice ("the Notice") at the meeting of the Legislative Council ("LegCo") of 17 March 2010. In considering whether the proposed resolutions are in order under the Rules of Procedure ("RoP"), I have invited the Administration to comment on them and the Members concerned to respond to the Administration's comments. The Administration's comments and the Members' responses are summarized in the **Appendix**. I have also sought the advice of Counsel to the Legislature.

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

2. Under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) ("the Ordinance"), the person or persons who owns or own, otherwise than as a mortgagee, not less than 90% of the undivided shares in a lot may make an application to the Lands Tribunal for an order for the sale of all the undivided shares in the lot for the purposes of redevelopment of the lot (section 3(1) of the Ordinance). The Lands Tribunal shall not make an order for sale unless the Tribunal is 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 majority owner has taken reasonable steps to acquire all the undivided shares in the lot (section 4(2) of the Ordinance).

3. The Ordinance also provides that the Chief Executive ("CE") in Council may, by notice in the Gazette, specify a lower compulsory sale threshold of no less than 80% in respect of a lot belonging to a class of lot specified in the notice (section 3(5) and (6) of the Ordinance).

4. The Notice was gazetted on 22 January 2010 to specify a lower application threshold of 80% for the following three classes of 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.

5. For the purposes of paragraph 4(a) above, if a unit in a building is sub-divided into two or more units and the sub-division does not involve any alteration to the size of any common area of the building; or any change in a person's liability in relation to the common areas and facilities of the building, those units are regarded as one single unit.

6. The Notice was tabled in LegCo on 27 January 2010 and will come into operation on 1 April 2010.

Proposed resolutions of Hon James TO, Hon Albert HO and Hon LEE Wing-tat

7. The proposed resolutions of Hon James TO, Hon Albert HO and Hon LEE Wing-tat seek to amend section 4(1)(a) and (b) of the Notice. Counsel has advised that in relation to the proposed amendments to section 4(1)(a), all the three Members seek to retain the original section 4(1)(a) as section 4(1)(a)(i) and introduce additional provisions to describe the class of lot in respect of which the lowered threshold of 80% would apply. While the Administration has indicated that it does not see any of the proposed resolutions will have charging effect under Rule 31(1) of RoP¹, it has raised other issues against the admissibility of the proposed resolutions.

Hon James TO's proposed resolutions

Paragraph a(iii) of the first proposed resolution as set out in the Appendix

8. The Administration argues that section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) of the proposed resolution, i.e. "where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report prepared in accordance with Paragraph 1 of Schedule 1 to the Ordinance" does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this paragraph of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires.

9. The second proposed resolution of Mr TO as well as the two proposed resolutions of Hon Albert HO and the four proposed resolutions of Hon LEE Wing-tat also contain a provision identical to paragraph a(iii) of Mr TO's first proposed resolution. The Administration's submissions in respect of such provisions are the same as those as set out in paragraph 8 above.

¹ Rule 31(1) of RoP provides that a motion or amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by CE; or a designated public officer; or a Member, if CE consents in writing to the proposal.

Paragraph a(ii) of the second proposed resolution as set out in the Appendix

10. Regarding paragraph a(ii) of the proposed resolution which reads: “specified by the Secretary for Development for redevelopment on the ground of public safety if no order in writing issued by the Building Authority under section 26 or 26A of the Buildings Ordinance (Cap. 123) has been registered in the Land Registry”, the Administration submits that section 3(5) of the Ordinance empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot. If the Secretary for Development (“SDEV”) were to make the above specification, this may amount to unlawful delegation of the power of CE in Council under section 3(5).

11. The third proposed resolution of Hon LEE Wing-tat also contains a provision identical to paragraph a(ii) of Mr TO’s second proposed resolution. The Administration’s submission in respect of such provision is the same as what is set out in paragraph 10 above.

Hon Albert HO’s proposed resolutions

Paragraph a(ii) of the first proposed resolution as set out in the Appendix

12. Referring to paragraph a(ii) of the proposed resolution which states: “where the [Lands] Tribunal is satisfied that redevelopment of the lot is justified due to the state of repair of each of the existing buildings erected on the lot”, the Administration similarly argues that section 3(5) of the Ordinance empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot. If the Lands Tribunal were to make the specification, this may amount to unlawful delegation of the power of CE in Council under section 3(5).

13. The second proposed resolution of Hon LEE Wing-tat also contains a provision identical to paragraph a(ii) of Mr HO’s first proposed resolution. The Administration’s submission in respect of such provision is the same as what is set out in paragraph 12 above.

Paragraph a(ii) of the second proposed resolution as set out in the Appendix

14. As regards paragraph a(ii) of the proposed resolution which provides: “where the [Lands] Tribunal is satisfied that the redevelopment of the lot is justified due to the interests of public safety”, the Administration again argues that if the Lands Tribunal were to make the specification, this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance.

15. The fourth proposed resolution of Hon LEE Wing-tat also contains a provision identical to paragraph a(ii) of Mr HO's second proposed resolution. The Administration's submission in respect of that provision is the same as what is set out in paragraph 14 above.

Hon LEE Wing-tat's proposed resolutions

Paragraph a(iv) of the first, second, third and fourth proposed resolutions as set out in the Appendix

16. Paragraph a(iv) of each of the four resolutions proposed by Hon LEE Wing-tat is identical. The provision stipulates: "where the majority owner of the lot certifies in writing that mediation between the majority owner and minority owner has been conducted before the relevant date". The Administration similarly submits that the description does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of certain action of the property owners involved. Hence, this paragraph of the proposed resolution does not fit in with section 3(5) of the Ordinance and may be considered as ultra-vires.

Responses of three Members to the Administration's comments

17. The three Members do not agree to the Administration's comments. They point out that "class of lot" is neither defined in the Ordinance nor in any other Ordinance. The definition of "class of lot" can be construed according to its literal and common meaning. According to the Compact Oxford English Dictionary, "class" can be construed as "set or category of things having a common characteristic and differentiated from others by kind or quality." Hence, lots possessing a common attribute based on objective and external facts can be regarded as within one and the same class.

18. The Members also argue that under the Ordinance, that common attribute has to be related to or used in describing lots. Referring to the three classes of lot specified by the Government in the Notice, one of them is a lot with all buildings on it aged 50 years or above. As 50 years is the age of the buildings on the lot, so the building age of 50 years can be regarded as an attribute related to the lot. Similarly, 80% of the market value of the properties to be acquired by the majority owner is a common attribute capable of being confirmed, recognized or identified with objective facts. Lots with this attribute can also be regarded as a class of lot.

19. The Members also consider that similarly, lots for which there are written proof or other objective facts proving that mediation has been conducted between the majority owner and minority owner can be said to possess a common attribute. Therefore, such lots may also be regarded as a class of lot.

20. Further, the Members argue that the proposed resolutions only seek to request CE in Council to devise an objective mechanism for screening classes of lot based on objective facts, and SDEV or the Lands Tribunal is only responsible for its implementation. This does not constitute unlawful delegation of power.

Hon Audrey EU's proposed resolution

21. Hon Audrey EU's proposed resolution seeks to repeal section 4(1)(b) of the Notice and substitute it by -

“(b) a lot -

- (i) designated by the Secretary for Development for priority redevelopment for reason of public interest, with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date; and
- (ii) where mediation between the majority owner and minority owner has been conducted, including the obtaining of the undivided shares of the minority owner in the lot at the relevant date by the majority owner by offering the same number of undivided shares from the lot after its redevelopment;”

22. The Administration has not raised objection to the proposed resolution on the ground of charging effect under Rule 31(1) of RoP. The Administration again submits that if SDEV were to make the specification as described in paragraph b(i), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance. As regards paragraph b(ii) above, the Administration argues that the description therein is only that of a certain action of the property owners involved. Hence, this paragraph of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires.

23. Hon Audrey EU does not agree to the Administration's comments. She submits that her proposal in paragraph b(i) neither affects the power of CE in Council nor amounts to an unlawful delegation of power. It only seeks to add a condition based on objective facts in order to comply with the object of the law. As regards the proposed condition in paragraph b(ii), Ms EU argues that whether mediation between the majority owner and minority owner has been conducted is based on objective facts. The proposed condition is related to the property right of a lot, hence it does not exceed the scope of the Notice.

Ultra-vires issues

24. Counsel advises me that under section 3(5) of the Ordinance, the power of CE in Council is to specify a lower percentage in respect of a lot belonging to a class of lot. Therefore, in determining whether the additional provisions proposed by the Members are in order, it is necessary to consider whether the additional provisions may be properly regarded as specifying a “class of lot”. Counsel points out that the Administration’s objections to a number of proposed amendments are based on its assertion that they “do not relate to an attribute or a particular nature of a class of lot or the buildings on it” and hence do not “fit in with section 3(5) and may be considered as ultra-vires”. However, the Administration has not set out the legal basis for such an assertion.

25. Counsel also points out that “class of lot” is not defined in the Ordinance, and there is no other statutory provision employing the same expression which could be used as a reference. The expression should therefore be given its ordinary and natural meaning. In Black’s Law Dictionary, “class”, as a noun, is defined as “a group of people, things, qualities, or activities that have common characteristics or attributes”. There is no requirement as to what these characteristics or attributes have to be. Counsel considers that for lots to constitute a class, it would suffice if they have in common certain characteristics or attributes which relate to each of these lots. It follows that when making a specification of the class of lot under section 3(5) of the Ordinance, it should suffice if the class of lot is reasonably identifiable by a general or collective formula used in the descriptions as set out in the specification made by CE in Council.

26. The other objection that the Administration has raised is that the provision under which SDEV’s having specified a lot for redevelopment on the ground of public safety if no order in writing issued by the Building Authority under section 26 or 26A of the Buildings Ordinance (Cap. 123) has been registered in the Land Registry may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance. The Administration has offered no legal basis for reaching the conclusion that it may be unlawful delegation of power. In Counsel’s view, since the power in question is to specify a percentage lower than 90% in respect of a lot belonging to a class of lot specified in the notice, including the reference to a decision to be made by SDEV on the redevelopment of the lot as one of the characteristics that the lot should have does not impinge upon the principle against sub-delegation of the power vested on CE in Council under section 3(5) of the Ordinance.

27. The same objection of unlawful delegation of power is also raised by the Administration in respect of the provision that for a lot to come within the class of lot as specified in the Notice, the Lands Tribunal has to be satisfied that the redevelopment of the lot is justified due to the interests of public safety or state of repair. For the same reason as set out above, Counsel is of the view that the Administration has not provided sufficient basis to support their objection.

My opinion

28. As the President, I have to rule whether the proposed resolutions are in order under RoP and the issue before me is whether the amendments proposed by the Members are consistent with the power of CE in Council to make the Notice². I have carefully considered the arguments put forward by the Administration and the four Members as well as the advice of Counsel to the Legislature. I have also studied in detail the provisions made in the Notice and other relevant information.

29. The Administration has put forward two main arguments to object to the proposed resolutions of the four Members. The first argument is that section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. Any proposal which does not relate to an attribute or a particular nature of a class of lot or the buildings on it does not fit in with section 3(5) and may be considered as ultra-vires. The Administration therefore considers the following proposed provisions to be ultra-vires:

- (a) “where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report prepared in accordance with Paragraph 1 of Schedule 1 to the Ordinance”, i.e. paragraph a(iii) of the first and second proposed resolutions of Hon James TO as well as paragraph a(iii) of each of the two proposed resolutions of Hon Albert HO and paragraph a(iii) of the four proposed resolutions of Hon LEE Wing-tat;
- (b) “where the majority owner of the lot certifies in writing that mediation between the majority owner and minority owner has been conducted before the relevant date”, i.e. paragraph a(iv) of each of the four proposed resolutions of Hon LEE Wing-tat; and

² Section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that “Where subsidiary legislation has been laid on the table of the Legislative Council under subsection (1), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held not later than 28 days after the sitting at which it was so laid, provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation”.

- (c) “where mediation between the majority owner and minority owner has been conducted, including the obtaining of the undivided shares of the minority owner in the lot at the relevant date by the majority owner by offering the same number of undivided shares from the lot after its redevelopment”, i.e. paragraph b(ii) of the proposed resolution of Hon Audrey EU.

30. I note that “class of lot” is not defined in the Ordinance or in any other Ordinance. I found the formulation used in section 4(2)(b)(ii) of the Notice helpful for ascertaining the meaning of that expression. Section 4(2)(b)(ii) reads: “any change in a person’s liability in relation to the common areas and facilities of the building under the common law or any enactment”. That sub-paragraph, together with section 4(2)(a) and (b)(i), is added to prevent abuse by owners who choose to sub-divide existing units internally to undermine the proposed relaxation of the compulsory sale threshold to 80%³. My view is that the description in section 4(2)(b)(ii) constitutes a condition which is in nature similar to the provisions proposed by the Members. I am not persuaded by the Administration’s assertion that the proposed provisions listed in paragraph 29 above do not relate to an attribute or a particular nature of a class of lot. I am of the opinion that the amendments proposed by the Members are consistent with the power of CE in Council under section 3(5) of the Ordinance to make the Notice.

31. The second argument submitted by the Administration is that as section 3(5) of the Ordinance empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot, the following proposals made by the four Members of either SDEV making a specification or designation for priority redevelopment and the Lands Tribunal being satisfied that a lot is justified for redevelopment may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance:

- (a) “specified by the Secretary for Development for redevelopment on the ground of public safety if no order in writing issued by the Building Authority under section 26 or 26A of the Buildings Ordinance (Cap. 123) has been registered in the Land Registry”, i.e. paragraph a(ii) of Hon James TO’s second proposed resolution and that of Hon LEE Wing-tat’s third proposed resolution;
- (b) “where the [Lands] Tribunal is satisfied that redevelopment of the lot is justified due to the state of repair of each of the existing buildings erected on the lot”, i.e. paragraph a(ii) of the first proposed resolution of Hon Albert HO and that of the

³ Paragraph 13 of the LegCo Brief on the Notice.

second proposed resolution of Hon LEE Wing-tat;

- (c) “where the [Lands] Tribunal is satisfied that the redevelopment of the lot is justified due to the interest of public safety”, i.e. paragraph a(ii) of the second proposed resolution of Hon Albert HO and that of the fourth proposed resolution of Hon LEE Wing-tat; and
- (d) “designated by the Secretary for Development for priority redevelopment for reason of public interest, with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date”, i.e. paragraph b(i) of Hon Audrey EU’s proposed resolution.

32. It is clear to me that the above proposals relate to characteristics of a lot for it to belong to the class of lot as specified, i.e. SDEV’s specification or designation for redevelopment and the Lands Tribunal being satisfied that a lot is justified for redevelopment. These are facts to be ascertained before the Lands Tribunal is to consider an application for an order for sale under section 4 of the Ordinance. There is nothing in the Administration’s submissions which explains how these provisions would amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance.

Ruling

33. I rule that the proposed resolutions of Hon James TO, Hon Albert HO, Hon LEE Wing-tat and Hon Audrey EU, as set out in the **Appendix**, are in order under RoP.

(Jasper TSANG Yok-sing)
President
Legislative Council

16 March 2010

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

**Summary of Members' proposed resolutions,
the Administration's comments and Members' responses**

Proposed resolutions	Administration's comments	Members' responses
(a) Hon James TO		
<p><u>First proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <p>(i) with each of the units on the lot representing more than 10% of all the undivided shares in the lot;</p> <p>(ii) with each of the buildings erected on the lot –</p> <p>(A) issued with an occupation permit at least 50 years before the relevant date; and</p> <p>(B) against which an order in writing issued by the Building Authority under section 26 or 26A of the Buildings Ordinance (Cap.123) is registered in the Land Registry at the relevant date; and</p> <p>(iii) where the majority owner owns not less than 80% of the market</p>	<p>1. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p>	<p>Section 3(5) empowers CE in Council to specify that the majority owner of certain classes of lot may apply for compulsory sale of the lot with a lower ownership percentage. “Class of lot” is neither defined in the Ordinance nor in any other Ordinance. Therefore, the definition of “class of lot” can be construed according to its literal and common meaning. According to the Compact Oxford English Dictionary, “class” can be construed as “set or category of things having a common characteristic and differentiated from others by kind or quality.” Hence, lots possessing a common attribute based on objective and external facts can be regarded as within one and the same class.</p> <p>Moreover, under the Ordinance, that common attribute has to be related to or used in describing lots. Referring to the three classes of lot specified by the Government in the Notice, one of them is a lot with all buildings on it aged 50 or above. As 50 years is the age of the buildings on the lot, so the building age of 50 years can be regarded</p>

Proposed resolutions	Administration's comments	Members' responses
<p>value of all the properties in the lot according to the valuation report prepared in accordance with Part 1 of Schedule 1 to the Ordinance;</p> <p>(b) a lot which satisfies the requirements specified in subsection (1)(a)(ii) and (iii) are applicable;”.</p> <p><u>Second proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <p>(i) with each of the units on the lot representing more than 10% of all the undivided shares in the lot;</p> <p>(ii) specified by the Secretary for Development for redevelopment on the ground of public safety if no order in writing issued by the Building Authority under section 26 or 26A of the Buildings Ordinance (Cap.123) has been registered in the Land Registry; and</p> <p>(iii) where the majority owner owns not less than 80% of the market value of all the</p>	<p>2. The Administration's observations in respect of paragraph a(iii) are the same as those set out in paragraph 1 above.</p> <p>3. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p> <p>4. Further, section 3(5) empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot; if SDEV were to make the specification as described in paragraph a(ii), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance according to legal advice.</p>	<p>as an attribute related to the lot. Similarly, since 80% of the market value stated in the valuation report on a relevant date is used to describe the value of the properties possessed by the owners on the lot, this can also be regarded as an attribute related to the lot. In the same way as the building age of 50 years, 80% of the market value of the properties to be acquired by the majority owner is a common attribute capable of being confirmed and recognized or identified with objective facts. Lots with this attribute can also be regarded as a class of lot.</p> <p>Similarly, lots for which there are written proof or other objective facts proving that mediation has been conducted between the majority owner and minority owner can be said to possess a common attribute. Therefore, such lots may also be regarded as a class of lot.</p> <p>Section 3(5) empowers CE in Council to specify that the majority owner of certain classes of lot can apply for compulsory sale of the lot with a lower ownership percentage, thus the provisions in the resolutions have not comprehensively, unconditionally and fully delegated the power of CE in Council to another person to make a decision. Therefore, comprehensive delegation of power is not involved in the resolutions. The proposed resolutions only seek to request CE in Council to devise an objective</p>

Proposed resolutions	Administration's comments	Members' responses
<p>properties in the lot according to the valuation report prepared in accordance with Part 1 of Schedule 1 to the Ordinance;</p> <p>(b) a lot -</p> <p>(i) which satisfies the requirements specified in subsection (1)(a)(ii) and (iii); and</p> <p>(ii) with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date;”.</p>	<p>5. The Administration's observations on paragraphs a(ii) and a(iii) are the same as those set out in paragraphs 3 and 4 above.</p>	<p>mechanism for screening classes of lot based on objective facts, and SDEV or the Lands Tribunal is only responsible for its implementation. This does not constitute unlawful delegation of power.</p>
<p>(b) Hon Albert HO</p>		
<p><u>First proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <p>(i) with each of the units on the lot representing more than 10% of all the undivided shares in the lot;</p> <p>(ii) where the Tribunal is satisfied that redevelopment of the lot is justified due to the state of repair of each of the existing buildings erected on the lot;</p>	<p>6. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p> <p>7. Further, section 3(5) empowers CE in</p>	<p>Same as the above.</p>

Proposed resolutions	Administration's comments	Members' responses
<p>and (iii) where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report prepared in accordance with Part 1 of Schedule 1 to the Ordinance;</p> <p>(b) a lot-</p> <p>(i) which satisfies the requirements specified in subsection (1)(a)(ii) and (iii); and</p> <p>(ii) with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date;”.</p> <p><u>Second proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <p>(i) with each of the units on the lot representing more than 10% of all the undivided shares in the lot;</p> <p>(ii) where the Tribunal is satisfied that the redevelopment of the lot is justified due to the</p>	<p>Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot; if the Lands Tribunal were to make the specification as described in paragraph a(ii), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance according to legal advice.</p> <p>8. The Administration's observations on paragraphs a(ii) and a(iii) are the same as those set out in paragraphs 6 and 7 above.</p> <p>9. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p>	

Proposed resolutions	Administration's comments	Members' responses
<p>interests of public safety; and</p> <p>(iii) where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report prepared in accordance with Part 1 of Schedule 1 to the Ordinance;</p> <p>(b) a lot -</p> <p>(i) which satisfies the requirements specified in subsection (1)(a)(ii) and (iii); and</p> <p>(ii) with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date;”.</p>	<p>10. Further, section 3(5) empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot; if the Lands Tribunal were to make the specification as described in paragraph a(ii), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance according to legal advice.</p> <p>11. The Administration's observations on paragraphs a(ii) and a(iii) are the same as those set out in paragraphs 9 and 10 above.</p>	
(c) Hon LEE Wing-tat		
<p><u>First proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <p>(i) with each of the units on the lot representing more than 10% of all the undivided shares in the lot;</p> <p>(ii) with each of the buildings</p>	<p>12. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be</p>	<p>Same as the above.</p>

Proposed resolutions	Administration's comments	Members' responses
<p>erected on the lot –</p> <p>(A) issued with an occupation permit at least 50 years before the relevant date; and</p> <p>(B) against which an order in writing issued by the Building Authority under section 26 or 26A of the Buildings Ordinance (Cap.123) is registered in the Land Registry at the relevant date;</p> <p>(iii) where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report prepared in accordance with Part 1 of Schedule 1 to the Ordinance; and</p> <p>(iv) where the majority owner of the lot certifies in writing that mediation between the majority owner and minority owner has been conducted before the relevant date;</p> <p>(b) a lot which satisfies the requirements specified in subsection (1)(a)(ii), (iii) and (iv) are applicable;”.</p>	<p>considered as ultra-vires according to legal advice. For a similar reason, the description in paragraph a(iv) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of certain action of the property owners involved. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p> <p>13. The Administration's observations in respect of paragraphs a(iii) and a(iv) are the same as those set out in paragraph 12 above.</p>	

Proposed resolutions	Administration's comments	Members' responses
<p><u>Second proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <ul style="list-style-type: none"> (i) with each of the units on the lot representing more than 10% of all the undivided shares in the lot; (ii) where the Tribunal is satisfied that redevelopment of the lot is justified due to the state of repair of each of the existing buildings erected on the lot; (iii) where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report prepared in accordance with Part 1 of Schedule 1 to the Ordinance; and (iv) where the majority owner of the lot certifies in writing that mediation between the majority owner and minority owner has been conducted before the relevant date; <p>(b) a lot -</p> <ul style="list-style-type: none"> (i) which satisfies the 	<p>14. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice. For a similar reason, the description in paragraph a(iv) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of certain action of the property owners involved. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to our legal advice.</p> <p>15. Further, section 3(5) empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot: if the Lands Tribunal were to make a specification as described in paragraph a(ii), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance according to legal advice.</p> <p>16. The Administration's observations on paragraphs a(ii), a(iii) and a(iv) are the same</p>	

Proposed resolutions	Administration’s comments	Members’ responses
<p>requirements specified in subsection (1)(a)(ii), (iii) and (iv);</p> <p>(ii) with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date;”.</p> <p><u>Third proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <p>(i) with each of the units on the lot representing more than 10% of all the undivided shares in the lots;</p> <p>(ii) specified by the Secretary for Development for redevelopment on the ground of public safety if no order in writing issued by the Building Authority under section 26 or 26A of the Buildings Ordinance (Cap. 123) has been registered in the Land Registry;</p> <p>(iii) where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report</p>	<p>as those set out in paragraphs 14 and 15 above.</p> <p>17. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice. For a similar reason, the description in paragraph a(iv) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of certain action of the property owners involved. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p> <p>18. Further, section 3(5) empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a</p>	

Proposed resolutions	Administration’s comments	Members’ responses
<p>prepared in accordance with Part 1 of Schedule 1 to the Ordinance; and</p> <p>(iv) where the majority owner of the lot certifies in writing that mediation between the majority owner and minority owner has been conducted before the relevant date;</p> <p>(b) a lot -</p> <p>(i) which satisfies the requirements specified in subsection (1)(a)(ii), (iii) and (iv); and</p> <p>(ii) with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date;”.</p> <p><u>Fourth proposed resolution</u></p> <p>To repeal section 4(1)(a) and (b) and substitute with –</p> <p>“(a) a lot -</p> <p>(i) with each of the units on the lot representing more than 10% of all the undivided shares in the lot;</p> <p>(ii) where the Tribunal is satisfied that the redevelopment of the lot is justified due to the</p>	<p>specified class of lot; if SDEV were to make a specification as described in paragraph a(ii), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance according to legal advice.</p> <p>19. The Administration’s observations on paragraphs a(ii), a(iii) and a(iv) are the same as those set out in paragraphs 17 and 18 above.</p> <p>20. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph a(iii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of the value of the property owned by the majority owner. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice. For a similar reason, the</p>	

Proposed resolutions	Administration's comments	Members' responses
<p>interests of public safety;</p> <p>(iii) where the majority owner owns not less than 80% of the market value of all the properties in the lot according to the valuation report prepared in accordance with Part 1 of Schedule 1 to the Ordinance; and</p> <p>(iv) where the majority owner of the lot certifies in writing that mediation between the majority owner and minority owner has been conducted before the relevant date;</p> <p>(b) a lot -</p> <p>(i) which satisfies the requirements specified in subsection (1)(a)(ii), (iii) and (iv); and</p> <p>(ii) with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date;”.</p>	<p>description in paragraph a(iv) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of certain action of the property owners involved. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p> <p>21. Further, section 3(5) empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class of lot; if the Lands Tribunal were to make a specification as described in paragraph a(ii), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance according to legal advice.</p> <p>22. The Administration's observations on paragraphs a(ii), a(iii) and a(iv) are the same as those set out in paragraphs 20 and 21 above.</p>	
(d) Hon Audrey EU		
To repeal section 4(1)(b) and substitute with –	23. Section 3(5) empowers CE in Council to specify a lower application percentage in respect of a lot belonging to a specified class	Paragraph b(i) is proposed and based on two principles: public interest and priority redevelopment of the lot. Since the number

Proposed resolutions	Administration’s comments	Members’ responses
<p>“(b) a lot -</p> <p>(i) designated by the Secretary for Development for priority redevelopment for reason of public interest, with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date; and</p> <p>(ii) where mediation between the majority owner and minority owner has been conducted, including the obtaining of the undivided shares of the minority owner in the lot at the relevant date by the majority owner by offering the same number of undivided shares from the lot after its redevelopment;”.</p>	<p>of lot. If SDEV were to make the specification as described in paragraph b(i), this may amount to unlawful delegation of the power of CE in Council under section 3(5) of the Ordinance according to legal advice.</p> <p>24. Section 3(5) of the Ordinance requires classes of lot to be specified in the Notice. The description in paragraph b(ii) does not relate to an attribute or a particular nature of a class of lot or the buildings on it. It is only a description of certain action of the property owners involved. Hence, this part of the proposed resolution does not fit in with section 3(5) and may be considered as ultra-vires according to legal advice.</p>	<p>of buildings aged 50 or above will increase each year, the developer will inevitably consider the lots which can generate more profits instead of those with priority for redevelopment. The provision proposed in the amendment, concerning a lot designated by SDEV “for priority redevelopment for reason of public interest, with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date”, has neither affected the power of CE in Council under section 3(5) of the Ordinance, nor amounted to an unlawful delegation of power. It only seeks to add a condition based on objective facts in order to comply with the object of the law.</p> <p>Paragraph b(ii) seeks to add a condition for the lowering of the application threshold for compulsory sale auctions. Whether mediation between the majority owner and minority owner has been conducted is based on objective facts, which is also related to the property right of a lot. Hence, it does not exceed the scope of the Notice.</p>

Abbreviations

CE in Council
SDEV
the Notice
the Ordinance

Chief Executive in Council
Secretary for Development
Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice
Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)