

立法會
Legislative Council

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Panel on Development

Meeting on 22 April 2014

**Background brief on proposed amendments
to the Land (Miscellaneous Provisions) Ordinance**

Purpose

This paper provides background information on the proposed amendments to the Land (Miscellaneous Provision) Ordinance (Cap. 28) ("the LMP Ordinance") relating to unlawful occupation of unleased Government land as well as summarizes the views and concerns expressed by Members at meetings of the Legislative Council and its committees, in particular the Public Accounts Committee ("PAC"), since the 2010-2011 legislative session.

Background

2. The Lands Department ("LandsD") is responsible for managing unleased and unallocated Government land to protect such land from being unlawfully occupied. LandsD will also take land control action against unauthorised structures on government land or unlawful occupation of Government land under the LMP Ordinance.

3. At the Council meeting of 18 April 2012, the Director of Audit tabled Report No. 58¹ on the results of value-for-money audits completed between October 2011 and February 2012 ("the Audit Report") which had examined, among others, the unlawful occupation of Government land. PAC subsequently made a detailed enquiry on this subject. The finding was presented in the PAC Report No. 58 which was tabled at the Council meeting of 4 July 2012.

¹ The relevant chapter can be downloaded at the following link: http://www.aud.gov.hk/pdf_e/e58ch07.pdf.

4. In the Audit Report, the Audit Commission conducted a review of the management of Government land, covering LandsD's action to prevent, detect and rectify unlawful occupation of Government land. The review focused on the following areas --

- (a) prevention and detection action;
- (b) enforcement action;
- (c) case studies;
- (d) land control information system; and
- (e) performance reporting.

Penalties for unlawful occupation of unleased Government land

5. Under Section 6(4) of the LMP Ordinance, any person occupying unleased land, otherwise than under a licence or a deed or memorandum of appropriation, who, without reasonable excuse, does not cease to occupy the same as required by a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

6. PAC noted that the level of penalties had not been revised since 1972 and expressed doubt on whether the existing level of penalties (including fine and imprisonment) could produce adequate deterrent effect. As stated in the Audit Report, of the 21 convicted cases from 2008 to 2011, the total amount of fines imposed was only \$81,900, and only one unlawful occupier was sentenced to three-month imprisonment in 2008 with suspension for three years. The maximum fine of \$10,000 under the LMP Ordinance was imposed in only two cases. PAC urged the Administration to promptly initiate legislative amendments to increase the level of penalties and consider introducing a system of daily fine to ensure that the penalty for unlawful occupation of Government land would be adequate for achieving a deterrent effect. By way of illustration and for the purpose of benchmarking, the Audit Report cited that under the Buildings Ordinance (Cap. 123), any person who, without reasonable excuse, fails to comply with a demolition order for unauthorized building works served on him under section 24(1) of the Buildings Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of \$200,000 and to imprisonment for one year, and further

to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

7. PAC noted that the Director of Lands had mentioned at the meeting of the Panel on Planning, Lands and Works ("PLW Panel") (now renamed as the "Panel on Development") on 24 February 2004 that the existing levels of penalty for offences of unlawful occupation of land did not have an adequate deterrent effect given the high value of land in the territory. In response to PAC's enquiry about why the Administration had not taken the initiative to amend the LMP Ordinance in respect of the penalty level, the Administration explained that since the PLW Panel meeting in February 2004, LandsD had followed up with the policy bureau on the need for making legislative amendments to enhance the deterrent effect. In about 2007, the bureau took the stance that making legislative amendment was time-consuming and complicated, and requested LandsD to improve the situation through other means that did not require amendments to the law. LandsD had since taken other measures, such as redeployment of staff and convening case conferences to discuss difficult cases, to address the issue.

8. Responding to PAC's enquiry, the then Secretary for Development said it was inappropriate that the level of penalties under the LMP Ordinance had not been reviewed for a long time. She undertook to direct the Development Bureau ("DEVB") and LandsD to conduct a review, with a view to putting up a proposal to amend the LMP Ordinance for consultation with the Panel on Development ("DEV Panel").

9. The Administration tabled the Government Minute in response to PAC Report No. 58 at the Council meeting of 24 October 2012. According to the Minute, DEVB and LandsD were reviewing the penalties against unlawful occupation of Government land, including the possible introduction of a system of daily fine, with a view to achieving greater deterrent effects against such offence. DEVB and LandsD were formulating proposals to amend the LMP Ordinance and aimed to consult DEV Panel and other relevant stakeholders as soon as possible.

Questions raised at Council meetings

10. Members have all along been closely monitoring the issue of unlawful occupation of Government land. Through raising questions at Council meetings, they have expressed concerns on the effectiveness of the enforcement action against and the penalties for such illegal act. Details of

the relevant Council questions raised in the last four legislative sessions are hyperlinked in the **Appendix** for ease of reference.

Latest development

11. The Administration will brief DEV Panel at the meeting on 22 April 2014 its proposal to increase the deterrent effects against offences relating to unlawful occupation of unleased land through increasing the relevant penalties and introducing a system of daily fine under the LMP Ordinance.

Relevant papers

12. A list of relevant papers with their hyperlinks is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
11 April 2014

Appendix

Proposed amendments to the Land (Miscellaneous Provisions) Ordinance

List of relevant papers

Date	Meeting/Event	References
24 February 2004	Panel on Planning, Lands and Works	<p>Administration's paper on Management of Unleased Government Land and Lease Enforcement (LC Paper No. CB(1)1024/03-04(04)) http://www.legco.gov.hk/yr03-04/english/panels/plw/papers/plw0224cb1-1024-4e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1314/03-04) http://www.legco.gov.hk/yr03-04/english/panels/plw/minutes/pl040224.pdf</p>
30 March 2011	Legislative Council meeting -- a written question on illegal occupation of public places	<p>Official Record of Proceedings (Page 8264 to 8267) http://www.legco.gov.hk/yr10-11/english/commtg/hansard/cm0330-translate-e.pdf</p>
4 July 2012	Legislative Council meeting	<p>Report of the Public Accounts Committee on the Report No. 58 of the Director of Audit on the Results of Value for Money Audits (July 2012) (Chapter 2) http://www.legco.gov.hk/yr11-12/english/pac/reports/58/m_4b.pdf</p>
24 October 2012	Legislative Council meeting	<p>The Government Minute in response to the Report of the Public Accounts Committee No. 58 http://www.legco.gov.hk/yr11-12/english/pac/minutes/pac_gm_58-e.pdf</p>

Date	Meeting/Event	References
24 April 2013	Legislative Council meeting -- a written question on law-enforcement work against illegal tree-felling, fly-tipping, illegal occupation of government Land and unauthorized developments on land	Official Record of Proceedings (Page 8628 to 8634) http://www.legco.gov.hk/yr12-13/english/coinmtg/hansard/cm0424-translate-e.pdf
26 June 2013	Legislative Council meeting -- a written question on rezoning 13 sites in green Belt areas and illegal occupation/fly-tipping in Green Belt Areas	Official Record of Proceedings (Page 14466 to 14470) http://www.legco.gov.hk/yr12-13/english/coinmtg/hansard/cm0626-translate-e.pdf
9 October 2013	Legislative Council meeting -- a written question on Government lands in Northwest New Territories	Official Record of Proceedings (Page 128 to 131) http://www.legco.gov.hk/yr13-14/english/coinmtg/hansard/cm1009-translate-e.pdf