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Paper for the House Committee meeting on 27 March 1998

**Report of the Bills Committee on
Land (Compulsory Sale For Redevelopment) Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Land (Compulsory Sale For Redevelopment) Bill.

Background

2. The increasing dilapidation of parts of the urban areas, the need to improve the urban environment, and the slowing down of replacement of ageing buildings have prompted the Government to review the urban renewal strategy. Following public consultation from July to November 1995, the Government issued in June 1996 a Policy Statement on 'Urban Renewal in Hong Kong', setting out a comprehensive package of proposals to deal with the problems of urban renewal in the short and long run. One of the long term proposals is to introduce legislation to enable owners holding a clear majority of the shares in a lot which merits priority redevelopment to sell the whole lot despite failure to acquire the legal interests of the minority owners.

The Bill

3. The major provisions of the Bill are as follows -

- (a) to enable persons who own not less than 90% of the undivided shares in a lot ("the majority owners") to make an application to the Lands Tribunal ("the Tribunal") for an order to sell all the undivided shares in the lot by public auction for the purposes of redevelopment of the lot; and
- (b) to empower the Tribunal to grant an order for sale if certain criteria are met and to make directions in relation to the sale and purchase of the lot, the termination of tenancies including the payment of compensation, the appointment of trustees, the application of sale proceeds and the redevelopment of the lot.

The Bills Committee

4. A Bills Committee to study the Bill was formed at the House Committee on 23 January 1998. Mr Ronald ARCULLI was elected Chairman of the Bills Committee. The Bills Committee held 12 meetings with the Administration, met five organizations and received five written submissions. A membership list of the Bills Committee and the names of the organizations met by the Bills Committee are at Appendices I and II respectively.

Deliberations of the Bills Committee

5. Members support the objects of the Bill to facilitate private sector participation in expediting urban renewal having regard to the slow progress of urban renewal and the difficulties in acquiring interests in ageing and dilapidated properties for redevelopment due to problems such as defective titles, missing or intestacy of owners, and unreasonable high prices demanded by owners. In recognition of the significant implications of the Bill on private property rights, the Bills Committee has thoroughly examined its policy and technical aspects. The deliberations of the Bills Committee on major issues are set out below.

Basic Law and Bill of Rights implications

6. Members note that the protection of the right of private ownership of property in accordance with law and the right of individuals to compensation for lawful deprivation of property are enshrined in Articles 6 and 105 of the Basic Law. Article 14(1) of the Hong Kong Bill of Rights Ordinance (BORO) provides that nobody shall be subjected to arbitrary or unlawful interference with his privacy or home etc. As the Bill will have the effect of compelling private owners to sell their interests in land for private redevelopment purposes, members have questioned its consistency with the relevant provisions in the Basic Law and the BORO. The Administration's explanations are that the Bill should be considered in the wider public interest of expediting the process of urban renewal for environmental improvement. As the Bill has provided for the right of affected parties to raise objections to compulsory sale of their properties and has incorporated provisions for payment of fair and proper compensation to affected persons, the Administration believes that the spirit of Article 105 of the Basic Law has been observed and the Bill is not inconsistent with the BORO. In this regard, members note the absence of any case law on the interpretation of Articles 6 and 105 of the Basic Law concerning encroachment of private property rights for private redevelopment purposes and the view of the Law Society of Hong Kong that the Bill does not contravene the provision of the Basic Law.

Minimum acquisition level

7. The appropriateness of setting the minimum acquisition level at not less than 90% of the undivided shares in a lot has been vigorously debated on by the Bills Committee. Most organizations appearing before the Bills Committee consider the proposed percentage too restrictive notwithstanding the inclusion of a provision in the Bill to empower the Chief Executive in Council to lower, by notice in the Gazette, the percentage to not less than 80% in respect of a class of lots. Members note their concern that even the percentage is reduced to 80%, an owner who has successfully acquired the interests in three out of four units in a building, i.e. 75% of the undivided shares, still falls short of the minimum acquisition threshold to make an application to the Lands Tribunal for a sale order.

8. The Bills Committee has carefully considered a suggestion of reducing the threshold to 75% of the undivided shares in a lot to address the specific type of cases mentioned by the deputations. Some members consider this suggestion agreeable provided that the application of the 75% threshold is confined to 4- storeyed-4-unit buildings where only one minority owner refuses to sell his or her unit. They however have reservations in extending the reduced threshold percentage to other cases as the number of owners holding 25% of undivided shares in a multi-storeyed building who refuse to sell their interests could be numerous. Members note that even for redevelopment projects undertaken by the Land Development Corporation (LDC) in recent years, the LDC has acquired 80 to 90% of the interests of the land in question

before making an request to the Secretary for Planning, Environment and Lands (SPEL) to recommend to the Chief Executive in Council to resume the remaining interests in the land under the Crown Lands Resumption Ordinance (Cap 124). Whilst recognising the public interest in expediting urban redevelopment, members submit that it is of no less importance to respect the property right of individual owners. Taking into account the Administration's advice that the number of 4-unit ageing buildings due for redevelopment is dwindling and small, the Bills Committee considers it inappropriate to revise the threshold limit to cater for one specific situation. In this connection, the Bills Committee has also explored the option of providing in the Bill that a majority owner who has acquired the interests in all but one unit in a building may apply for a sale order. Considering its serious implications on 3- storeyed small houses and 2-unit premises, members are of the view that it is inadvisable to adopt such an approach. Having weighed all the pros and cons, the Bills Committee finally accepts the minimum acquisition threshold as proposed in the Bill. However, in calculating the minimum threshold percentage, members suggest and the Administration agrees that the undivided shares in respect of the common parts of a lot should be disregarded. The Administration will move amendments to the Bill to achieve the effect (clause 3).

Scope of application

9. As the 90% threshold will be applied to a single lot, some members and deputations are concerned about the foreseeable result of the thriving of "pencil" developments which is not ideal from the perspective of comprehensive town planning and urban redevelopment. The Bills Committee has discussed the viability of allowing majority owners holding an average of 90% of aggregate undivided shares in contiguous lots to make an application for compulsory sale of the lots with a view to redeveloping them in a package. Whilst supporting the concept of comprehensive redevelopment, the majority members of the Bills Committee are concerned that should such an approach be adopted, there may be situations in which the applicants have not acquired any undivided shares in one of the lots notwithstanding the holding of 90% of the aggregate undivided shares. In these circumstances, they consider it not justifiable on the sole ground of comprehensive redevelopment to compel all the owners of that lot to dispose of their properties against their will. As the Bill does not prohibit the majority owners holding 90% of the undivided shares in each of the lots to make one application for a sale order in order to redevelop the lots together, the Bills Committee accepts that the minimum acquisition percentage should apply to a lot per se. However, to address the technical problems in respect of buildings connected to one another by a staircase which is intended for common use by their occupiers, the Administration takes on board members' suggestion to provide in the Bill that the minimum acquisition level should be an average of 90% of the undivided shares in the lots on which these buildings respectively stand (clause 3).

Criteria for granting a sale order

10. In making a sale order the Lands Tribunal has to be satisfied that the sale is to enable redevelopment of the lot which is justified due to the age or state of repair of the existing development or other grounds specified by SPEL and that the majority owner has taken all reasonable steps to acquire all the undivided shares, including negotiating for the purchase of those shares on fair and reasonable terms (clause 4). The Administration has assured members that these grounds are not meant to be exhaustive and the Lands Tribunal will consider other factors relevant to the application such as whether compulsory sale of the lot may cause undue

hardship to the minority owners. However, the factors to be considered shall not include hardship on the part of tenants. To remove any uncertainty in this respect, members agree with the Administration's suggestion to provide expressly in the Bill that in determining an application the Lands Tribunal shall not take into account any provisions of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) regarding the right of tenants whose tenancies are terminated or sought to be terminated. Recognising the difficulties in proving the taking of "all" reasonable steps to acquire all the undivided shares and in contacting missing owners for the purpose of negotiation, the majority members of the Bills Committee suggest and the Administration agrees that the taking of reasonable steps to acquire the undivided shares of "known" minority owners will suffice for the purpose. Dr LAW Cheung-kwok has reservations in deleting the word "all" before "reasonable steps".

11. The Bills Committee has accepted suggestions from the depositions that whether or not the majority owners are capable of undertaking redevelopment should not be a factor considered by the Lands Tribunal as persons other than the majority owners may purchase the lot, and that the Lands Tribunal may specify, on application of the purchaser of the lot, a period longer than six years as currently proposed in the Bill for redevelopment of the lot. The Administration will amend the Bill to achieve this effect (clause 4 and Schedule 3). Members note that after the implementation of the Bill, SPEL will consider in the light of experience whether to specify any other grounds, other than the age or state of a building, on which redevelopment of a lot is justified.

Assessment of value of property

12. In making an application to the Lands Tribunal for compulsory sale of the lot, the majority owners are required under the Bill to submit a valuation report setting out the assessed market value of each property on the lot on a vacant possession and existing use basis (clause 3 and Part 2 of Schedule 1). The assessed values of the respective properties on the lot will form the basis in accordance with which the proceeds of sale of the lot will be apportioned to the majority owners and the minority owners (Part 3 of Schedule 1). The Bills Committee holds the view that the assessed value of a property should not take into account its existing use as the usage may be unauthorized and that the minority owners should have the right to dispute before the Lands Tribunal not only the assessed values of their own properties as proposed in the Bill but also those of the majority owners. To further safeguard the interests of the minority owners who cannot be found, the Administration agrees to amend the Bill to the effect that the Lands Tribunal, in determining an application for compulsory sale, has to be satisfied that the assessed values of their properties are not less than fair and reasonable when compared with those of the majority owners (clause 4). Reckoning the rapid changes in the property market, the Administration also agrees to specify in the Bill that the valuation report must be prepared not earlier than three months before the date on which the application is made.

Mode of sale of the lot

13. The Bill restricts the sale of the lot by public auction within three months after the date of the order as the only mode of sale, subject to a reserve price approved by the Lands Tribunal taking into account its redevelopment potential (clause 5 and Schedule 2). Whilst noting the Administration's explanation that the sale of the lot by public auction will ensure transparency and the securing of the highest price, members consider that sale by tender or other means may fetch a better price than by auction in a bearish property market. The Bills Committee proposes and the Administration agrees that subject to the approval of and any conditions specified by the Lands Tribunal, the sale of the lot may be by any other means so agreed by each majority owner and minority owner of the lot. This flexibility, however, will not apply where there are

any missing owners in order to protect their interests and in that case public auction will be the only means of sale of the lot. The Administration has also accepted members' suggestion of empowering the Lands Tribunal to extend, on application, the period from three to six months after the date of the order within which the lot has to be sold. Upon expiry of the three months or any further period as extended by the Lands Tribunal, the sale order will be deemed to be cancelled if the lot is not sold. The Administration will move amendments to the Bill to achieve these effects.

Purchaser of the lot

14. Although the Bill allows the majority owners or the minority owners to be the purchasers of the lot, members note that no provisions have been made to differentiate them from a third party purchaser as far as payment of purchase price and discharge of incumbrance affecting the lot are concerned. Given that a certain percentage of the undivided shares are owned respectively by the majority owners and the minority owners, members consider it unreasonable to require them to pay the full purchase price for all the undivided shares and hence the stamp duty based on the full purchase price should either of them, the majority owners in particular, succeed in purchasing the lot. By the same token, the majority owners or the minority owners should not be required to discharge the incumbrance affecting the lot attributable to them unless they so wish. Taking on board members' suggestion, the Administration agrees to provide in the Bill that where the majority owners or the minority owners are the purchasers of the lot, they are required to pay only the proportion of the purchase price for the undivided shares in the lot not already owned by them (new clause 6). The majority owners or the minority owners, being the purchasers, will also be given the choice as to whether to discharge the incumbrance affecting the lot attributable to them (clause 10).

15. In the event of default on payment of the lot by the purchaser, the Bills Committee agrees that the deposit money shall be forfeited to the trustee for the benefit of the majority owners and the minority owners. The apportionment of the deposit money shall be on a pro rata basis in accordance with the assessed values of the respective properties of the majority owners and the minority owners. With the written consent of all the owners, the trustee may seek remedies for further damages and specific performance of the purchaser's agreement to purchase the lot. The Administration will move amendments to the Bill to achieve the effect (new clause 5 and new clause 9A).

Change of title

16. The existing provisions of the Bill are silent concerning change of title between the period after the filing of an application for a sale order and before the successful sale of the lot. Reckoning that this period may last for months or even years, members consider that as long as the successors in title to the majority owners or the minority owners have knowledge of the application or the sale order as the case may be, the law shall not prevent assignment of interests in the lot. The mere change of title per se should not affect the application nor the sale order. However, any one of the majority owners or their successors in title may refuse to go ahead with the proceedings before the granting of an order for sale and in that case the application shall be deemed to be withdrawn irrespective of the percentage of undivided shares in the lot owned by the other majority owners. To ensure that prospective purchasers of properties are aware of the status of the lot, members suggest that not only the sale order but also the application for a sale order have to be registered under the Land Registration Ordinance (Cap 128). The Administration will move amendments to the Bill to put these arrangements into effect (clauses 2, 3 and 4).

Subsistence right in the lot

17. Whilst agreeing on the need to ensure good title of the lot to protect the purchaser, members consider the present drafting of the Bill inadequate in addressing the issues of adversary titles and third party interests. On the one hand, members are of the view that defective titles of individual owners should not be used as an expedient excuse to frustrate an application for a sale order. They on the other hand consider it important not to deprive the right of any parties who may claim to have an interest in the lot and that existing easements or rights of way in the lot should be preserved. Taking account of the views of deputations, members propose and the Administration agrees that a sale order should not extinguish existing rights subsisting in the lot but third party interests in individual properties should be overreached to the proceeds of sale apportioned to the relevant properties. To this end, the Administration will move amendments to the Bill to empower the Lands Tribunal to order the holding by the trustee part of the proceeds of sale in view of any *lis pendens* affecting the lot registered under the Land Registration Ordinance and the payment of such proceeds to such persons as specified (clause 4). A new provision will also be added to the Bill to the effect that a person claiming to have an interest in the lot shall not be debarred from taking any action or commencing any proceedings in relation to any proceeds of sale of the lot to which the interest relates (clause 10). Members agree that any disputes in title and third parties claims are a matter for separate proceedings outside the context of the Bill.

Termination of tenancies and compensation to tenants

18. The Bill vests in the purchaser a statutory power to terminate any lease of premises on the lot entered into before he becomes the owner of the lot (clause 8). Compensation may be payable by the purchaser, the majority owners or the minority owners to the tenants as is directed by the Lands Tribunal. Noting the complications involved in terminating contractual tenancies and vacating tenants which will be a deterrence to potential purchasers of the lot, members consider that these onus should not be passed onto the purchaser. Taking on board the view of the Bills Committee, the Administration agrees to amend the Bill such that immediately upon the day on which the purchaser becomes the legal owner of the lot, any prior tenancies entered into will be deemed to be terminated and the tenants are required to deliver up vacant possession of the property after the expiration of six months.

19. Since the Bill deals with matters relating to compulsory sale of properties for private redevelopment, members consider it inappropriate to make comparison with public redevelopment projects or redevelopment projects undertaken by the LDC as far as rehousing is concerned. Without the assistance from the Government, it is unrealistic to expect the purchaser of the lot to provide rehousing to affected persons. The Bills Committee submits that compensation to owners, owner-occupiers and tenants should be in monetary terms. Members however have identified loopholes in the provisions of the Bill regarding the payment of compensation to tenants by any relevant parties as is directed by the Lands Tribunal. The possibility of ordering compensation payable by the majority owners or the purchaser may tempt unscrupulous minority owners to create spurious tenancies to maximise benefits. Members have pointed out that the sale proceeds apportioned to the minority owners should suffice to pay compensation to genuine tenants as the amount of compensation payable and the reserve price subject to which the lot shall be sold at public auction are determined by the Lands Tribunal. To plug the loopholes in the existing provisions, members suggest and the Administration agrees that compensation payable to tenants should be paid out of the apportioned share of the proceeds of sale receivable by the landlord owner. In determining the amount of compensation payable to tenants, the Lands Tribunal may make reference to the provisions of the Landlord and Tenant (Consolidation) Ordinance and take into account the

representations of tenants, if any, and any benefit accrued to the tenants for not requiring to deliver up vacant possession until six months after the termination of tenancies. To facilitate delivery of vacant possession of the property to the purchaser, tenants will be paid not more than half of the compensation until after the trustees are satisfied that they have vacated the property. Amendments will be moved by the Administration to achieve the effect (clauses 8 and 10).

Appointment of trustees

20. The Bill provides for appointment of trustees by the Lands Tribunal for application of proceeds of sale and payment of their remuneration out of the sale proceeds (clause 10). The Bills Committee notes that prior to application of proceeds, there are other duties the effective discharge of which necessitates the help of trustees including arranging and completing formalities for the sale of the lot. Moreover, members consider it inequitable to require the minority owners who are compelled to sell their properties to share the charge for the trustees' services with the majority owners who initiate the application for the compulsory sale of the lot. The Administration agrees to amend the Bill to impose heavier responsibilities on trustees and to require the payment of trustees' remuneration by the majority owners whether or not the sale of the lot is successful. In case of doubt or difficulties in discharging the duties imposed under the Bill, the trustees may apply to the Lands Tribunal for directions. To ensure the availability of trustees, the Bills Committee agrees that the trustees shall be nominated by the majority owners for appointment by the Lands Tribunal and SPEL may make regulations to specify matters to be taken into account in the appointment of trustees. The Administration will move relevant amendments to the Bill to achieve the effect (clauses 4 and 12).

Expenses relating to sale of the lot

21. Under the Bill the expenses of the auction for the sale of the lot are deducted from the proceeds of sale (clause 10). This arrangement is considered appropriate by members where the sale of the lot is successful or where the purchaser defaults on payment of the lot and the deposits are forfeited for distribution to the majority owners and the minority owners. However, where there is no purchaser of the lot, members suggest that the responsibility for paying the auction expenses should rest with the majority owners solely. The Administration agrees to amend the Bill to achieve the effect. It has also agreed to stipulate in the Bill that where applicable the basis of apportionment of expenses among the majority owners and the minority owners shall be on a pro rata basis in accordance with the assessed values of their respective properties (new clause 9A).

Application of proceeds of sale

22. The proceeds of sale of the lot are applied under the Bill to discharge any liability due to the Government and any incumbrance affecting the lot before making compensation to tenants and the majority owners and the minority owners (clause 10). The Bills Committee considers the proposed order unfair to owners who do not have any outstanding liability or incumbrance appertaining to their undivided shares in the lot. To rectify the inequity, the Administration will amend the Bill to the effect that the application of sale proceeds to discharge any liability or incumbrance affecting the lot shall be on the basis that the majority owners or the minority owners shall pay only the extent attributable to them.

23. The Bill provides that the proceeds of sale due to missing owners shall be held in trust by the trustees (clause 10). The Bills Committee considers this arrangement unsatisfactory as the trustees will be in service for an indefinite period and will continue to draw remuneration.

The Administration agrees to add provisions to the Bill to stipulate that the trustees shall pay into court any sale proceeds due to missing owners and those set aside by the Lands Tribunal in view of lis pendens. These proceeds shall be paid into the general revenue upon the expiration of three years if the owners have still not been found and/or the lis pendens have not been concluded. Any person who claims to be entitled to those proceeds may make a claim against the Government (clause 10).

Conclusion

(not enclosed) 24. Subject to the Committee stage amendments to be moved by the Administration at Appendix III, the Bills Committee supports the Bill.

Recommendation

25. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 7 April 1998.

Advice sought

26. Members are requested to support the recommendation of the Bills Committee.

Provisional Legislative Council Secretariat
26 March 1998

**Bills Committee on
Land (Compulsory Sale For Redevelopment) Bill**

Membership list

Hon Ronald ARCULLI, JP (Chairman)
Hon WONG Siu-ye
Hon David CHU Yu-lin
Hon HO Sai-chu, JP
Hon Edward HO Sing-tin, JP
Dr Hon Raymond HO Chung-tai, JP
Hon Mrs Peggy LAM, JP
Hon MA Fung-kwok
Hon Kennedy WONG Ying-ho
Hon Howard YOUNG, JP
Dr Hon Charles YEUNG Chun-kam
Hon YEUNG Yiu-chung
Hon IP Kwok-him
Hon Bruce LIU Sing-lee
Hon Ambrose LAU Hon-chuen, JP
Hon KAN Fook-ye
Hon NGAN Kam-chuen
Dr Hon LAW Cheung-kwok
Hon CHOY So-yuk

Total: 19 members

**Organizations received by the Bills Committee on
Land (Compulsory Sale For Redevelopment) Bill**

- (a) The Real Estate Developers Association of Hong Kong
- (b) The Law Society of Hong Kong
- (c) Hong Kong Institute of Planners
- (d) The Hong Kong Institute of Surveyors
- (e) Land Development Corporation