

LEGISLATIVE COUNCIL BRIEF

Land (Compulsory Sale for Redevelopment) Ordinance (Chapter 545)

LAND (COMPULSORY SALE FOR REDEVELOPMENT) (SPECIFICATION OF LOWER PERCENTAGE) NOTICE

INTRODUCTION

At the meeting of the Executive Council on 12 January 2010, the Council ADVISED and the Chief Executive ORDERED that, pursuant to section 3(5) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545) (“Ordinance”), the Land (Compulsory Sale for Redevelopment)(Specification of Lower Percentage) Notice (“Notice”) at **Annex** should be made to specify an application threshold of 80% in respect of the lots specified in the Notice to substitute the application threshold of 90% now stipulated in the Ordinance.

JUSTIFICATIONS

Urban Redevelopment in Hong Kong

2. The design working life of an ordinary building in Hong Kong is 50 years. At present, there are some 3 300 buildings aged 50 years or above. We estimate that over the next ten years, approximately another 500 buildings per annum will reach the end of their design working life. The scale of urban decay will grow much faster in the coming decade. As in many other jurisdictions, both the public sector and the private sector in Hong Kong have been carrying out urban renewal.

3. The Urban Renewal Authority (“URA”), established in 2001 to replace the former Land Development Corporation, has been carrying out redevelopment projects to help arrest urban decay in Hong Kong. As at the end of the 2008-09 financial year, the URA had commenced only 35 redevelopment projects and four preservation projects. The pace at which the URA has been carrying out urban renewal 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. This is in spite of a pretty generous compensation package for acquisition of affected properties (for example an eligible owner-occupier of a domestic property will receive an acquisition price that is comparable to the value of a seven-year-old flat of similar size in a similar locality) and rehousing arrangements for affected tenants. In addition, under the Urban Renewal Authority Ordinance (Cap 563) (“URAO”), the URA may request for land resumption under the Lands Resumption Ordinance (Cap 124). In practice, the URA will normally work towards achieving an average voluntary acquisition rate of 80% or more before applying for resumption.

4. In view of the difficulties that the URA is facing, we need to enhance the ability of private property owners in redeveloping their buildings to better complement the URA’s effort to help tackle building deterioration and 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. Since the commencement of the Ordinance in 1999 and up till end October 2009, the Lands Tribunal had received only 63 applications for compulsory sale, of which 20 had resulted in compulsory sale orders; one had been rejected as the applicant had failed to satisfy the Lands Tribunal on the redevelopment need of the lot; 33 had been cancelled or suspended; and another nine were under processing.

5. The Administration has received repeated requests from owners of old buildings for action to help expedite the redevelopment process through lowering the compulsory sale application threshold. Based on the findings of a study on the experience of urban renewal in six Asian cities commissioned in 2009, we note that while there may be different owner participation arrangements in some of these cities, the level of consent required for private sector-led redevelopment in Hong Kong at 90% is by far the highest. In Taipei, it ranges from 50% to two-thirds, depending on the priority of the redevelopment. In Tokyo, the level is two-thirds while in Singapore it is 80% for buildings aged 10 years or above and 90% for buildings younger than 10 years of age.

Changing Economic Needs of Hong Kong

6. Having regard to the fact that the bulk of Hong Kong’s manufacturing activities have been relocated to the Mainland¹ and that Hong Kong still has a total stock of 17 million square metres floor space in private flatted factory buildings built mostly in the 1970’s to 1980’s, we have also considered further how we may facilitate the redevelopment of old industrial buildings to release the potential of the precious land resources to meet the economic needs of Hong Kong. To tackle the problem of surplus industrial premises, the Planning

¹ In 1980, the contribution of the manufacturing sector to the GDP of Hong Kong then was 22.8%. In 2007, the manufacturing sector only accounted for 2.5% of our GDP.

Department has, since 1991, rezoned about 500 hectares of industrial land for non-industrial use, including “Other Specified Use (Business)”, “Residential (Group E)” and “Comprehensive Development Area”. There are over 1 450 private industrial buildings in Hong Kong’s metro and new town areas now, and the majority (about 70%) of them is located in non-industrial zones. Despite the large-scale rezoning, the hurdle of unifying multiple ownership of flatted factory buildings has hindered large scale redevelopment of the older industrial buildings in non-industrial zones.

7. To put the existing industrial buildings situated in non-industrial zones to their best economic use, the Chief Executive announced in his 2009-10 Policy Address a package of measures to facilitate releasing the potential of these over 1 000 industrial buildings. The lowering of the compulsory sale application threshold for the redevelopment of industrial buildings of 30 years of age or above is one of the three measures mentioned (the other two are: the payment of premium based on a “pay for what you build” principle and payment of premium by instalments for lease modification or land exchange required in the redevelopment of industrial buildings in non-industrial zones; and, subject to certain criteria being met and if the application is approved, exemption of waiver fee for change of use of the entire existing old industrial building.) The package of measures was presented in the Legislative Council (“LegCo”) Brief on “Optimising the Use of Industrial Buildings to Meet Hong Kong’s Changing Economic and Social Needs” issued by the Development Bureau on 15 October 2009.

BACKGROUND

8. As part of the Government’s urban renewal strategy promulgated in the 1996 policy statement “Urban Renewal in Hong Kong”, we have enacted the Ordinance to facilitate owners of buildings in multiple ownership to redevelop their lots. Under the Ordinance, persons who own a specified majority of the undivided shares in a lot (not less than 90%) may make an application to the Lands Tribunal for an order for the sale of all of the undivided shares in the lot for the purpose of redevelopment. The Lands Tribunal will make such an order if it is satisfied that redevelopment is justified and that the majority owner making the proposal has taken reasonable steps to acquire all the shares of the lot. In determining any application, the Lands Tribunal shall first hear and determine any dispute on the assessed value of any property under the application. If the Tribunal agrees to make an order, it will approve the reserve price for the auction of the lot. This is to ensure transparency and protection of the minority owners. The reserve price will take into account the redevelopment value of the lot. Any person, including the minority owners, is free to bid at the auction of the lot.

9. At the Resumption of Second Reading Debate of the Land (Compulsory Sale for Redevelopment) Bill, the then Secretary for Planning,

Environment and Lands, when making reference to the 90% compulsory sale threshold and the power of the Chief Executive in Council to specify a lower percentage, mentioned that there were suggestions in the representations made to the Bills Committee that the 90% threshold should be lowered. The Administration adopted the 90% threshold in order to strike a balance between facilitating urban redevelopment and protecting individual owner's rights. The fact that there is a provision in the Ordinance that provides for the Chief Executive in Council to make a notice for a lower compulsory sale threshold of no less than 80% in respect of specified classes of lot serves to demonstrate that it was recognized when the bill was passed that the 90% application threshold should be reviewed should the circumstances change and the need arise.

THE PROPOSAL

Three Classes of Lot

10. We propose to specify a lower application threshold of 80% 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.

(a) A Lot with Units Each of Which Accounts for More Than 10% of the Undivided Shares in the Lot

11. The policy objective behind this proposal is to address deadlock situations where the majority owner(s) cannot proceed to a compulsory sale application despite the acquisition of all units but one in the lot when the remaining one un-acquired unit accounts for more than 10% of the undivided shares in the lot.

12. In defining this class of lot, we have taken care to prevent abuse by the owner of the un-acquired “last but one” unit who sub-divides his unit into smaller units which will then each account for less than 10% of the undivided shares of the lot, thus relegating the lot outside the definition of this class of lot. We cannot simply exclude all sub-divided units registered with the Land Registry after the commencement of the Notice from this class of lot because there are genuine sub-division of units that will continue to take place after the commencement of the Notice and these genuinely sub-divided units should be considered units in their own right for the purpose of this class of lot. The most common genuine sub-divisions happen with commercial premises such as arcades. An investor may purchase a whole floor of commercial premises or an

arcade and arrange the sub-division over time. This kind of genuine sub-division will continue to take place after the commencement of the Notice. This is very different from the internal sub-divisions which we would like to exclude. To prevent abuse without inadvertently affecting cases of genuine sub-divisions as described above, we will rely on the modern day property management framework to differentiate genuine sub-divided units from those that are internally sub-divided. We understand that for the substantial majority of all multiple ownership buildings completed in recent years, they have a Deed or Sub-deed of Mutual Covenant that governs responsibility for the management of common areas and apportions payment of charges for these common areas to individual units according to the number of undivided shares held. If a sub-divided unit does not take responsibility for its share of the management of common areas of the building, which will be the case with those internally sub-divided units, then this unit will not be considered a genuine unit for the purpose of this class of lot. In some cases of genuine sub-division, the sub-division will also cause alteration to the size of common areas of the building. This will not happen with internal sub-divisions. Thus, these two tests are provided for in the Notice for determining if the sub-division is genuine.

13. While we aim to prevent abuse by owners who choose to sub-divide existing units internally to undermine the proposed relaxation, we take the view that those sub-divided units that are already in the records of the Land Registry before the commencement of the Notice should be recognized for the purpose of application under this class of lot. As these sub-divided units pre-date the Notice, there must be a genuine reason for the sub-division. Hence, it is not equitable to exclude them from this class of lot.

14. In our proposed definition of “unit”, we also try to address the concern expressed by members of the LegCo Panel on Development in January 2008 that we should also protect the rights of the owners of the areas of ancillary use such as car-parking spaces, rooftop, external wall, etc., and that we should not therefore exclude these ancillary uses from the definition of “unit” under this class of lot. In our proposal, car-parking space, rooftop, external wall, etc. will all be units in their own right for the purpose of application under this class of lot.

(b) A Lot with All Buildings Aged 50 Years or Above

15. According to the records of the Buildings Department, building repair orders served on buildings aged 50 years or above in Hong Kong (representing about 8% of all existing buildings) account for 19% of all building repair orders that the Department has served during the past five years. This illustrates the real state of dilapidation amongst the older buildings. Furthermore, according to an opinion survey we conducted in April 2008, the proportion of respondents who supported or strongly supported the proposed lowering of the application

threshold increased considerably when the age of the buildings in the proposal was raised from 40 years or above to 50 years or above. We have therefore included in the Notice this class of lot with all buildings aged 50 years or above.

(c) *A Lot with All Industrial Buildings Aged 30 Years or Above Not Located Within an Industrial Zone*

16. To address the changing economic needs of Hong Kong, we propose to specify lots on which all the industrial buildings stand are aged 30 years or above, and that are not located within an industrial zone to be subject to the lower application threshold. This will facilitate the redevelopment of under-utilised or disused industrial buildings standing on land which, over the years, has been rezoned from industrial to non-industrial. As of today, we estimate that there are around 580 industrial buildings of age 30 years or above located within non-industrial zones. According to available statistics, amongst those over 1 000 private industrial buildings on non-industrial zones, only about 5% are 50 years of age or more, 18% are between 40 and 49 years of age; and 34% are between 30 and 39 years of age, with some 44% being under 30 years of age.

Further Protection for Minority Owners

17. Over the past two years, we have encouraged the professional institutes to help educate the public by giving them a better understanding of the Ordinance, including their rights as minority owners in a compulsory sale, the procedures of a compulsory sale and the valuation of their properties. This has resulted in the publication by the Hong Kong Institute of Surveyors (HKIS) of a layman's guide to compulsory sale in April 2009.

18. At the meeting of the LegCo Panel on Development in June 2009, some members registered their concern over the need for further protection for minority owners in compulsory sale situations. We have since obtained the agreement of the Hong Kong Housing Society (HKHS) to provide, with professional support from the HKIS, free over-the-counter information service to minority owners as well as interested members of the public on the compulsory sale process under the Ordinance. HKHS will be providing the service through their ten Property Management Advisory Centres. It will refer enquiries requiring professional input to the HKIS for further assistance. HKHS will put in place the advisory service in April 2010 to tie in with the commencement of the Notice.

THE NOTICE

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

19. The Notice at **Annex** specifies –
- (a) in section 1, the commencement date of the Notice being 1 April 2010;
 - (b) in section 2, the definition of the following terms referred to in the specification of the three classes of lot, namely, “industrial building”, “industrial zone”, “occupation permit”, “relevant date” and “unit”;
 - (c) in section 3, the applicable lower compulsory sale threshold of 80%; and
 - (d) in section 4, the three classes of lot.
20. Under section 4(1)(b) and 4(1)(c), the year in which the occupation permit for a building on a lot is issued is adopted as the yardstick for counting the age of the building. Under section 4(2), those units of a building that are sub-divided after the commencement of the Notice and which sub-division does not affect the size of any common area of the building and does not change a person’s liability in relation to the common areas and facilities of the building under the common law or any enactment will not be recognized as separate units but will be regarded as one single unit.

LEGISLATIVE TIMETABLE

21. The legislative timetable for the Notice is as follows –

Publication in the Gazette	22 January 2010
Tabling in the Legislative Council	27 January 2010
Commencement Date of the Notice	1 April 2010 – to tie in with the commencement date of the rest of the package of measures to facilitate the redevelopment and conversion of industrial buildings as announced in the Policy Address

IMPLICATIONS OF THE PROPOSAL

22. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the existing provisions of the Ordinance. It has no productivity implications.

Financial and Civil Service Implications

23. As it is not possible to estimate the likely increase in applications for compulsory sale arising from the proposed lowering of the application threshold, we are not able to assess the financial and staffing implications at this stage. Application for compulsory sale is at a fee and there will be additional revenue arising from an expected increase in the number of applications. There will be additional workload for the Judiciary with an expected increase in the number of compulsory sale applications to the Lands Tribunal. The Judiciary will absorb the additional resource requirements from within their existing allocations as far as possible. If additional resources are necessary when the actual increase in workload is clear, the resources will be sought through the established procedures.

Economic Implications

24. The proposal will facilitate private sector-initiated redevelopment of the lots covered, thereby releasing the development potential of valuable land resources. The lowering of the compulsory sale application threshold for lots with all industrial buildings aged 30 years or above in non-industrial zones, together with the rest of the package of measures to facilitate the redevelopment and conversion of industrial buildings announced in the Policy Address, will help address the needs of changing economic development, enable owners to revitalise and add value to their industrial buildings, create jobs and provide new momentum for economic growth.

Environmental Implications

25. Construction and demolition works at sites under redevelopment may pose some potential impacts to the environment (such as noise and demolition waste). These activities will be subject to relevant environmental regulations and have to meet all applicable requirements and standards.

Sustainability Implications

26. The lowering of the application threshold for certain classes of lot under the Notice does not have significant sustainability implications, but will help expedite urban redevelopment by the private sector and in turn make better use of valuable land resources. In redevelopment of old buildings, the broad target set out in the document titled “A First Sustainable Development Strategy for Hong Kong” published by the Government in 2005 to regenerate older urban districts by taking full account of the need for economic viability whilst emphasising the importance of open space provision and retaining local socio-cultural characteristics should be observed.

PUBLIC CONSULTATION

27. Since the Ordinance came into effect in 1999, there have been divided views over the further relaxation of the threshold for compulsory sale. In 2006, we launched a public consultation to gather public views on whether the compulsory sale application threshold should be lowered for lots with “all units but one acquired”, lots with all buildings aged 40 years or above and lots with missing or untraceable owners. While there was general support for the direction to lower the application threshold for certain classes of lot, many respondents expressed concern over the proposed class of lot with missing or untraceable owners for fear that owners could be erroneously regarded as missing or untraceable. In January 2008, we dropped the class of lot with missing or untraceable owners and proposed to LegCo that only the following two classes of lot should be designated for a lower application threshold, namely, lots with “all units but one” acquired and “lots with all buildings aged 40 years or above”. For lots with all units but one acquired, some LegCo members expressed concern that if the Administration were to exclude the ancillary use of buildings such as car-parking spaces, roof-top areas and external walls from the definition of “unit” so as not to unnecessarily constrain the application of this class of lot, the protection of the rights of owners of these areas of ancillary use in the building would be called into question. For lots with all buildings aged 40 years or above, some LegCo members expressed concern over the need to protect the private property rights of minority owners in general with the lowering of the application threshold. In the submission to LegCo in 2008, we pointed out that the proposal to lower the application threshold for lots with all buildings aged 40 years or above would also help expedite the redevelopment of old and run-down industrial buildings to suit the changing economic needs of Hong Kong. In April 2008, we commissioned another opinion survey to further gauge public views and noted from the results that when the proposed age of buildings was raised from 40 years to 50 years, the proportion of respondents against or strongly against the proposal for lowering the compulsory sale threshold decreased from 34% to 17% and the proportion in support or strongly in support increased from 42% to 60%.

PUBLICITY

28. A press release will be issued. A spokesman will be available to answer media enquiries.

ENQUIRY

29. Enquiries on this brief may be directed to Ms Winnie So, Principal Assistant Secretary for Development (Planning and Lands) 4, on 2848 2656.

Development Bureau

January 2010

**LAND (COMPULSORY SALE FOR
REDEVELOPMENT) (SPECIFICATION OF LOWER
PERCENTAGE) NOTICE**

(Made by the Chief Executive in Council under section 3(5) of the Land
(Compulsory Sale for Redevelopment) Ordinance (Cap. 545))

1. Commencement

This Notice comes into operation on 1 April 2010.

2. Interpretation

In this Notice –

“industrial building” (工業建築物) means a building the whole or any part of which is approved by the Building Authority for any of the following uses under a plan approved under the Buildings Ordinance (Cap. 123) –

- (a) godown;
- (b) any industry in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed;

“industrial zone” (工業地帶) means a zone that is set apart for industrial use in a draft plan prepared by the Town Planning Board or approved by the Chief Executive in Council under the Town Planning Ordinance (Cap. 131);

“occupation permit” (佔用許可證) means an occupation permit issued by the Building Authority under section 21(2) of the Buildings Ordinance (Cap. 123);

“relevant date” (有關日期), in relation to a lot in respect of which an application is made under section 3(1) of the Ordinance, means the date of the application;

“unit” (單位) means any premises that are described by reference to a specified number of undivided shares in a lot in any instrument registered in the Land Registry.

3. Specification of percentage

80% is specified as the percentage required for the purposes of section 3(1) of the Ordinance in respect of a lot that belongs to any class of lot specified in section 4.

4. Specification of classes of lot

(1) The following classes of lot are specified for the purposes of section 3 –

- (a) a lot with each of the units on the lot representing more than 10% of all the undivided shares in the lot;
- (b) a lot with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date;
- (c) a lot that is not located within an industrial zone and each of the buildings erected on the lot –
 - (i) is an industrial building; and
 - (ii) was issued with an occupation permit at least 30 years before the relevant date.

(2) For the purposes of the class of lot referred to in subsection (1)(a), if –

- (a) a unit in a building is subdivided into 2 or more units on or after 1 April 2010; and
- (b) the subdivision does not involve –
 - (i) any alteration to the size of any common area of the building; or

- (ii) 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,

those units are regarded as one single unit.

Clerk to the Executive Council

COUNCIL CHAMBER

2010

Explanatory Note

Under section 3(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) ("Ordinance"), a person must own not less than 90% of the undivided shares in a lot before the person may make an application for an order to sell all the undivided shares in the lot.

2. Section 3(5) of the Ordinance enables the Chief Executive in Council to specify by notice in the Gazette a lower percentage for the purposes of section 3(1) of the Ordinance in respect of any specified class of lot. This Notice specifies 80% as the percentage required in respect of any class of lot set out in the Notice.