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發展局
規劃地政科



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30 May 2014

Clerk to Panel on Development
Panel on Development
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Ms Sharon Chung)

Dear Ms Chung,

Meeting of Legislative Council Panel on Development on 22 April 2014
Follow-up action

In its meeting of 22 April 2014, Legislative Council Panel on Development discussed the item of "Proposed amendments to Land (Miscellaneous Provisions) Ordinance (Cap. 28)". Panel members requested the Administration to provide supplementary information on the relevant land enforcement and control action matters. In this regard, our reply is as follow:

- (a) **Enforcement actions taken by the Lands Department against unlawful occupation of unleased Government land, in particular, under what circumstances the Department would: (i) take clearance action; (ii) regularize the cases by granting short-term tenancies ("STT") to the original occupiers; (iii) put up the concerned site for STT through public tender; and (iv) initiate prosecution actions;**

According to the Land (Miscellaneous Provisions) Ordinance (Cap. 28) (“the Ordinance”), unleased land (commonly known as “government land”) shall not be occupied by any person unless it is granted by the land authority under a licence or a deed or memorandum of appropriation. Where unlawful occupation of government land is detected, Department of Lands (“LandsD”) will take appropriate land control action under the Ordinance depending on the actual circumstances of the case.

In general, when unlawful occupation of unleased land is detected and confirmed, LandsD will post a notice on the site under the Ordinance, requiring the occupation of the unleased land to cease before a specified date. If the occupation does not cease before the specified date as required by the notice, LandsD will arrange to have the structures/objects occupying the unleased land removed/cleared by contractors. Prosecution will be initiated against the occupier if there is sufficient evidence which warrants so doing. LandsD will consult legal advice in light of circumstances.

Any person should not use the government land by “first occupying the land and then applying for regularisation”. If the party concerned in a particular case submits an application for regularization, LandsD will process it according to the established procedures and criteria. Generally speaking, where the government land can be used independently and has a market value, LandsD will consider putting it for short-term use through open tender if its long-term use is yet to be decided. Yet, if the land concerned cannot be put up for open tender due to geographical or legal factors (e.g. access to the land can only be gained via private land), or if it is unlikely that other members of the public will be interested in bidding the land (e.g. the land is of extremely small size or irregular shape) and the Government has not any plan for the use of the land in the short term, LandsD may then consider regularising the occupation of government land by granting the land directly to the applicant, whom will be required to pay the full market rent for the occupation period before regularisation.

In processing applications for regularisation, LandsD will consider each case in the light of its actual circumstances and follow the

established procedures and the criteria abovementioned. Previous figures show that only a few cases in LandsD's land control actions involve applications for regularisation.

- (b) **Other improvement measures, apart from proposing legislative amendments to increase the level of penalties and introducing a daily fine, taken by the LandsD in response to the recommendations in the reports of the Director of Audit and the Public Accounts Committee on the unlawful occupation of unleased Government land.**

Please refer to Annex for the details on improvement measures implemented by LandsD in response to the relevant recommendations.

- (c) **Details about how the frontline staff of the LandsD conduct site inspections, including the tools and methods applied, to detect cases of unlawful occupation of unleased Government land.**

Unleased and unallocated government land account for nearly 30% of the more than 110 000 hectares of land in Hong Kong. It is impractical for LandsD staff to conduct regular inspection of all the government land. Hence risk-based regular inspection programmes are put in place by LandsD to target primarily at the fenced-off government land and black-spot sites which have been repeatedly unlawfully occupied. Mobile patrol guards are also employed for such inspections. Meanwhile, when LandsD receives public complaints and government department referrals, District Lands Offices ("DLOs") and Squatter Control Offices will promptly arrange inspections and take follow-up actions as appropriate. In general, an interim reply or a substantial reply will be given to the party concerned within 10 or 21 days after receiving the public complaint.

At the same time, the Land Control Information System revamping project is underway. Upon its completion in 2014, the feasibility of using mobile devices in land control work will be examined so that the relevant land information will be immediately available to inspection staff on site, thus enabling more effective land control work.

- (d) **With a breakdown by 18 districts, information (e.g. locations, areas, uses of individual sites) about unleased Government land:**
- (i) that had been held through STT (with the tenancy duration);**
 - (ii) that was available for STT;**
 - (iii) that was suitable for mid-term or long-term development, and the plans for such developments.**

In general, LandsD arranges for the disposal of government land according to the planned long-term use by way of land sales or land grants as appropriate. Land may also be allocated to Government departments for long-term use such as public open space or granted by way of private treaty for long-term use and development in compliance with the town plan. Examples include land for subsidised housing developments, essential public utility services and other community facilities.

Where the long-term use of the land is yet to be determined or is not yet due for implementation, LandsD would try to put the site to appropriate temporary use(s), including temporary uses by other government bureaux/departments or by parties outside the Government through STTs. Depending on the individual circumstances of the case including the long-term development programme of the site, the initial term of STTs generally varies from one to three years. Currently, the total number of STTs in force is over 5 000. The uses of the land include fee-paying car parks, open storage, container storage/handling, workshops for recycling /vehicle repairing/boat building/repairing, concrete production, plant nursery, works areas/sites required for public rental housing/Home Ownership Scheme, and non-profit-making activities by non-profit-making organisations.

Given that the number of sites available for STT may vary from time to time with the changes in the schedule of long-term uses or the availability of new STT sites, LandsD has not compiled a list of all these sites. On average, around 250 STTs were tendered/ granted in each of the past two years.

For unleased or unallocated government land with potential for residential or other long-term developments, we will review and

assess its development feasibility under the established mechanism. Furthermore, when a plot of land is ready for development, we will make appropriate arrangements, such as allocating it for public housing development, including it in the Land Sale Programme, or allocating it for other uses. Some of these unleased or unallocated government sites have been earmarked for housing development or other developments, and others which have potential for development have also been covered by the on-going initiatives being undertaken by the Government to increase land supply, including land use reviews.

For individual government sites which have not been designated for long-term use or not allocated or let out for temporary use, LandsD may consider putting these sites to short-term greenery or community purposes through application. The list is available for public inspection at the offices of the 12 DLOs, District Offices and District Social Welfare Offices. Relevant information is also circulated to the concerned District Councils on a regular basis.

Yours sincerely,



(LAW Kin-wai)
for Secretary for Development

Encl.

Unlawful Occupation of Government Land
Improvement Measures Implemented by the Lands Department in response to
the Recommendations of the Audit Commission

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
1.15	Audit has recommended that the Director of Lands should conduct an overall review of the LandsD's strategy, priority and resource allocation on management of unleased and unallocated government land.	LandsD has adjusted its strategy, priority and resource allocation and implemented the recommendations in the Audit's Report as far as practicable in respect of (a) prevention and detection action; (b) enforcement action; (c) Audit's case studies; (d) Land Control Information System; and (e) performance reporting, with a view to improving the handling of issues relating to unlawful occupation of government land. LandsD also reviews the land control situation from time to time and carries out its land control work in a proactive and pragmatic approach by utilising the available resources and deploying manpower suitably. LandsD has implemented the following improvement measures: (i) In October 2012, the New Territories Action Team of LandsD took over from the District Lands Offices (DLOs) the outstanding land control cases received from July 2007 to December 2009 so as to expedite the processing of land control cases, while DLOs can focus on the handling of the cases received after December 2009; (ii) For government land prone to unlawful occupation, LandsD has requested DLOs to step up regular risk-based inspection

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
		programmes to protect the land against unlawful occupation; (iii) LandsD issued guidelines to DLOs in May 2012 on improving the priorities in the handling of land control cases so as to enhance land control actions; (iv) LandsD has commenced the upgrading of the Land Control Information System to strengthen the monitoring of land control cases. The project is expected to be completed in 2014; (v) LandsD has strengthened inspection procedures of squatter control with the aim of identifying breaches and taking appropriate squatter control actions as early as possible ; and (vi) LandsD has required DLOs to convene case conferences and other special meetings to discuss complicated cases, if necessary, and formulate effective strategies.
2.9	Audit has recommended that the Director of Lands should: (a) strengthen the LandsD's publicity campaigns on prevention of unlawful occupation of government land;	(a) LandsD has produced a publicity pamphlet on land control and prosecution actions against unlawful occupation of government land, and uploaded it together with the enquiry hotlines information onto the LandsD's website to remind the public not to occupy government land unlawfully. LandsD will also continue to convey clear messages to the public that the Government

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
	(b) require the DLOs to periodically submit their inspection programmes to the LandsD Headquarters for monitoring; and (c) require the DLOs to systematically document the results of site inspections and the follow-up action taken.	will take resolute and prompt land control actions against cases of unlawful occupation of government land, including possible prosecution action against the relevant occupiers, with a view to demonstrating the Government's determination to protect government land from against unlawful occupation. (b) and (c) In July 2012, LandsD requested DLOs to systematically document site inspection findings and the follow-up actions taken, and to submit inspection programme records to the LandsD Headquarters periodically for monitoring.
2.15	Audit has recommended that the Director of Lands should take measures to step up the LandsD's monitoring and control of surveyed structures and licensed structures.	In May 2012, LandsD issued a technical memorandum on how to handle cases where squatter structures are enclosed unlawfully by fences/gates or entry for inspection is refused, and on ways to further improve the existing inspection procedures. LandsD also required DLOs to take prompt follow-up action once warning letters against unauthorised building works on government land have been issued, and to take timely action to cancel the Government Land Licence (GLL) found to be in serious breach of the GLL conditions. Furthermore, LandsD will include problematic sites into DLOs' regular risk-based inspection programmes.
3.14	Audit has recommended that the Director of Lands should: (a) require the DLOs to:	(a) and (b)

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
	(i) ascertain the reasons for cases remaining outstanding for a long time and expedite action to rectify them; (ii) take measures to ensure Category I cases meet the four-month target as far as possible; and (iii) document and report the reasons for each Category I case not meeting the four-month target; and (b) take measures to compile periodic exception reports on long outstanding land control cases.	In April and July 2012, LandsD gave instructions to require DLOs to ascertain the reasons for cases remaining outstanding for a long time and expedite action to rectify them, to take measures to ensure Category I cases meet the four-month target as far as possible, to document and report regularly the reasons and progress for each Category I case not meeting the four-month target, and to take measures to compile periodically exception reports on land control cases outstanding for a long time. On the other hand, in October 2012, the New Territories Action Team of LandsD took over from the DLOs the outstanding land control cases received from July 2007 to December 2009, so as to enable the DLOs to expedite the processing of other land control works.
3.30	Audit has recommended that the Director of Lands should: (a) strengthen staff training by implementing regular training programmes on conducting investigation of land control cases and evidence collection, and organising experience-sharing sessions of prosecution cases; (b) require the DLOs to take prompt clearance action for cases of continued unlawful land occupation after court conviction;	(a) LandsD organized seminars to strengthen staff training on land control and prosecution work and to promote experience sharing. LandsD will continue to provide its staff with more training on these aspects. (b) In April 2012, LandsD directed the DLOs to take prompt land control action for cases of continued occupation of government land unlawfully after court conviction.
4.7	Audit has recommended that the Director of Lands should take steps to ensure that the	LandsD has reminded the DLOs that the processing of STT applications should always be

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
	regularisation of unlawful occupation of government land by the granting of STTs is always under strict control to avoid possible abuse.	under strict control to avoid possible abuse. In handling applications for regularisation, DLOs will make clear to the applicants that Government has no obligation to regularise the illegal occupation by means of STT. In addition, upon approval of an STT application, it will be stated clearly in the approval letter that approval of STT is at the sole discretion of LandsD and that the applicant should not have any expectation that future applications would also be approved.
4.13	Audit has recommended that the Director of Lands should: (a) formulate and implement a risk-based inspection programme for detecting unauthorised modifications or re-building of licensed structures; (b) require the Squatter Control Unit to strengthen its inspections of surveyed structures; and (c) require the DLOs to: (i) take prompt follow-up action after the issue of warning letters relating to unauthorised building works on government land; (ii) process applications for changes in land licence conditions in a timely manner; and (iii) take action to cancel land	(a) - (c) Please refer to the response in paragraph 2.15 above.

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
	licences in a timely manner upon detection of serious breaches of licence conditions.	
4.31	Audit has recommended that the Director of Lands should require the DLOs to take more effective enforcement action in cases involving intermittent occupation of government land, including taking prosecution action in warranted cases with sufficient evidence.	In April 2012, LandsD instructed the DLOs to take proper preventive measures (such as erection of fences, bollards and notice boards) against cases involving intermittent unlawful occupation of government land. LandsD will also take prosecution action in warranted cases with sufficient evidence.
4.40	Audit has recommended that the Director of Lands should require the DLOs to consult the GEO before granting temporary government land occupation permits for carrying out site investigations and slope works in future.	LandsD has reminded DLOs to consult GEO before granting temporary land occupation permits for carrying out site investigations and slope works in future to ensure public safety.
4.44	Audit has recommended that the Director of Lands should: (a) conduct a review to identify other long outstanding cases of unlawful government land occupation and take prompt and effective action to rectify and prevent such unlawful occupation; and (b) require the DLOs to take prompt and effective enforcement action on other land control cases.	(a) and (b) In May 2012, LandsD gave instructions to the DLOs advising that except for special reasons, such as safety concern or the need to cope with the actions of other departments, land control actions should be taken against such cases principally according to the order of dates of receipt of the relevant complaints and referrals and the seriousness of the cases. LandsD has also requested the District Review Boards of respective DLOs to regularly review all cases being handled by them, in order to expedite or initiate land control actions according to the circumstances of the cases.
5.17	Audit has recommended that the Director of	

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
	Lands should: (a) take measures to ensure the accuracy and completeness of the LCIS as far as possible; (b) require the DLOs to strengthen their supervisory checks to ensure that accurate data are input into the LCIS in a timely manner; and (c) review the propriety of the existing LandsD arrangement of marking a land control case in the LCIS as "completed" once the occupier has submitted an STT application, and creating a new case if the STT application is subsequently cancelled or not approved.	(a) To ensure the accuracy and integrity of the Land Control Information System (LCIS), LandsD issued a memorandum in February 2012 advising the DLOs to adopt a uniform approach in counting the number of cases and to submit statistical reports in a timely manner. The land control staff has been reminded of the requirements during training courses and seminars. Such requirements are also included in the induction training for newly recruited staff. (b) In May 2012, LandsD issued guidelines requiring the DLOs and the New Territories Action Team to strengthen supervisory checks to ensure that accurate data are input into the LCIS in a timely manner. LandsD also required that quarterly statistical reports and the LCIS case summaries submitted by DLOs would be signed and verified by the responsible officers and reviewing officers to ensure the accuracy and integrity of the data input. (c) In May 2012, LandsD issued a memo to the DLOs and the New Territories Action Team providing guidelines on the arrangement for data input of the LCIS with respect to those cases pending outcome of the STT applications. Generally speaking, land control cases will be marked as "cases suspended" in the LCIS record if suspension of land control action is warranted pending decision on the STT applications. These records will be updated to "cases completed" only if the

Audit's Report Para.	Recommendations	Improvement measures implemented by the Lands Department
		STT applications are accepted with the relevant rents and fees fully paid. Once the STT applications are rejected or withdrawn, timely land control action should be taken and the cases will be marked as “under processing” in the LCIS record.
5.22	Audit has recommended that the Director of Lands should revamp the LCIS as early as possible.	LandsD deployed resources to carry out the LCIS upgrading project in February 2012 and the project is expected to complete in late 2014.
6.9	Audit has recommended that the Director of Lands should, in respect of land control action: (a) publish on the LandsD's website the number of new land control cases in a year and the number of outstanding land control cases at year end; and (b) in publishing performance information, adopt a consistent basis over different time periods and provide explanatory notes for any change in the basis and its impact.	(a) LandsD uploaded the relevant information of 2012 on its website and will update such information on annual basis. (b) LandsD adopted a consistent approach in publishing performance information, and footnotes will be included for explanation where necessary.