

立法會
Legislative Council

LC Paper No. CB(1)239/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/14

Bills Committee on Land (Miscellaneous Provisions)
(Amendment) Bill 2014

Minutes of first meeting held on
Tuesday, 28 October 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Tony TSE Wai-chuen, BBS (Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon CHAN Kin-por, BBS, JP
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Dr Hon Kenneth CHAN Ka-lok
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Member absent : Hon CHAN Han-pan, JP

Public Officers attending : Agenda item II
Ms Selene TSOI
Deputy Secretary for Development
(Planning and Lands) 3
Development Bureau

Mr LAW Kin-wai
Principal Assistant Secretary
(Planning and Lands) 6
Development Bureau

Ms Olga LAM, JP
Assistant Director (Estate Management)
Lands Department

Mr LAM Sui-kwong
Chief Land Executive/Control
Lands Department

Mr YUEN Sze-chun
Senior Land Executive/Control
Lands Department

Miss Cindy CHEUK
Government Counsel
Department of Justice

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Raymond SZETO
Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I Election of Chairman

Mr CHAN Hak-kan, the member with the highest precedence in the Council among all members of the Bills Committee present, presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Ir Dr LO Wai-kwok nominated Mr Tony TSE Wai-chuen and the nomination was seconded by Dr Elizabeth QUAT. Mr Tony TSE Wai-chuen accepted the nomination. There being no other nomination, Mr Tony TSE Wai-chuen was elected Chairman of the Bills Committee. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

| | |
|---------------------------------|--|
| (LC Paper No CB(3)798/13-14 | —The Bill |
| File Ref: DEVB(PL-L)30/30/87 | —Legislative Council Brief issued by the Development Bureau |
| LC Paper No. LS76/13-14 | —Legal Service Division Report |
| LC Paper No. CB(1)102/14-15(01) | —Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members) |
| LC Paper No. CB(1)102/14-15(02) | —Assistant Legal Adviser's letter dated 26 September 2014 to the Administration |
| LC Paper No. CB(1)102/14-15(03) | —Administration's reply dated 9 October 2014 to Assistant Legal Adviser's letter dated 26 September 2014 |
| LC Paper No. CB(1)102/14-15(04) | —Paper on Land (Miscellaneous Provisions) (Amendment) Bill 2014 prepared by the Legislative Council Secretariat (background brief) |

3. The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).

4. The Administration was requested to take follow-up actions as set out below –

- (a) to provide details about the current overall situation of unlawful occupation of Government land which may not be fully reflected by the number of complaint/referral cases of unlawful occupation of unleased and unallocated Government land handled by the Lands Department ("LandsD");
- (b) to set out the workflow of enforcement actions taken by LandsD against cases of unlawful occupation of unleased and

unallocated Government land, with reference to typical cases (including the time taken for the applicable actions) for illustration; and

- (c) to provide details of cases, if known to the Government, in which the buyer bought a piece of land without knowing that part of it was Government land.

III Any other business

- 5. There being no other business, the meeting ended at 11:50 am.

Council Business Division 1
Legislative Council Secretariat
17 November 2014

**Proceedings of first meeting of the
Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2014
on Tuesday, 28 October 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
|--|---|--|---|
| Election of Chairman | | | |
| 000136 – 000222 | Mr CHAN Hak-kan | Election of Chairman | |
| Meeting with the Administration | | | |
| 000223 – 001015 | Chairman Administration | On invitation by the Chairman, the Administration briefed members on the key elements of the Land (Miscellaneous Provisions) (Amendment) Bill 2014 ("the Amendment Bill") as set out in the Legislative Council Brief (File Ref: DEVB(PL-L)30/30/87). | |
| 001016 – 001624 | Chairman Ir Dr LO Wai-kwok Administration | <p>Ir Dr LO Wai-kwok supported the proposed amendments to the Land (Miscellaneous Provisions) Ordinance (Cap. 28)("the LMP Ordinance"). Noting that the penalty levels and effective enforcement actions are both essential components of the land control regime, Dr LO enquired about the difficulties that the Lands Department ("LandsD") might be encountering in their enforcement actions.</p> <p>The Administration advised that, in terms of land control actions under the LMP Ordinance, LandsD would first post a notice at the site of unlawful occupation of unleased land, requiring such occupation to cease before a specified date. In most cases, such occupation ceased as rectified by the person(s) concerned, or, if such occupation did not cease as required by the notice, the structure(s) concerned were removed/demolished by LandsD or other relevant departments. Due to the amount of unleased and unallocated Government land throughout the territory, it would be impractical for LandsD to patrol all such land regularly. In general, LandsD would take appropriate land control actions, including site visits, upon receipt of complaint/referral cases.</p> <p>Ir Dr LO expressed concern that the overall situation of unlawful occupation of unleased and unallocated Government land might not be fully reflected by the number of complaint/referral cases handled by LandsD. He requested the Administration to provide further details in relation to unlawful occupation of unleased and unallocated Government</p> | The administration to follow up as per paragraph 4(a) of the minutes. |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|---|--|---|
| | | land in the territory. | |
| 001625 – 002212 | Chairman Mr WU Chi-wai Administration | <p>Citing a case where LandsD had taken a prolonged time in its enforcement actions against the unlawful use of land, Mr WU Chi-wai was concerned about the efficiency of the Administration's existing measures in monitoring the proper use of both unleased and unallocated Government land and privately-owned land.</p> <p>The Administration advised that land control of unlawful occupation of unleased and unallocated Government land was under the statutory requirements of the LMP Ordinance. Notice would be posted to require cessation of the unlawful occupation before the deadline specified in the notice. Upon the expiry of the notice period, if the occupation had not ceased, demolition or removal would be arranged. LandsD would follow up on each complaint/referral case promptly.</p> <p>Mr WU requested the Administration to provide information on the workflow of enforcement actions taken by LandsD against unlawful occupation of unleased and unallocated Government land, with reference to typical cases (including the time taken for the applicable actions) for illustration purposes.</p> | The administration to follow up as per paragraph 4(b) of the minutes. |
| 002213 – 002716 | Chairman Mr CHAN Hak-kan Administration | <p>Mr CHAN Hak-kan sought clarification on the starting day for calculating the proposed fine for each day during which the offence of unlawful occupation of unleased land continued.</p> <p>The Administration advised that the daily fine period in the case of a continuing offence would begin after the offence is committed, i.e. when there was a failure without reasonable excuse to cease the unlawful occupation upon the expiry of the notice period stated in the cessation notice to the occupier requiring cessation of the unlawful occupation of the land.</p> | |
| 002717 – 003238 | Chairman Mr IP Kwok-him Administration | Mr IP Kwok-him expressed support for the amendments proposed in the Amendment Bill. However, he expressed doubt about the effectiveness of merely increasing the level of penalties in the LMP Ordinance, and suggested that the Administration should devise more effective measures that would enhance land control on unlawful occupation of unleased land. He also asked about the law | |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|---|--|---|
| | | <p>enforcement against contraventions involved in more complicated cases in the New Territories.</p> <p>The Administration advised that the penalties in the LMP Ordinance as well as the proposed increase in their levels were essential elements in the Administration's enforcement regime for the offence of unlawful occupation of unleased and unallocated Government land in Hong Kong. The Administration would continue its multi-pronged approach in tackling the problem of unlawful occupation of unleased and unallocated Government land for more effective control and management of Government land in Hong Kong.</p> | |
| 003239 – 003834 | Chairman Ms Cyd HO Administration | <p>Ms Cyd HO noted the difficulties of law enforcement against unlawful occupation of unleased and unallocated Government land faced by the Administration, and urged the Administration to propose new measures, such as the adoption of new technology, to improve law enforcement against contraventions.</p> <p>Referring to the recent publication of the report on adverse possession by the Law Reform Commission in October 2014, Ms HO enquired whether the Administration had any plans to propose amendments to the existing law in the light of the recommendations in the report as well as land boundary problems in the New Territories and cases of adverse possession of Government land.</p> <p>The Administration advised that it was still studying the aforementioned report on adverse possession which had just been published.</p> <p>Ms HO noted that there are cases of land purchase, in which a buyer bought a piece of land without knowing that part of the land was in fact Government land. Ms HO requested the Administration to provide details of such cases, if known to the Government.</p> | The administration to follow up as per paragraph 4(c) of the minutes. |
| 003835 – 004606 | Chairman Mr WU Chi-wai Administration | Mr WU Chi-wai and the Chairman requested the Administration to provide information on its workflow in taking enforcement actions. | The administration to follow up as per paragraph 4(b) of the |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|---|--|-----------------|
| | | | minutes. |
| 004607 – 005224 | Chairman Mr Paul TSE Administration | <p>Mr Paul TSE supported the proposed amendments to the LMP Ordinance. He expressed concern about the relatively low number of prosecution actions over the past five years. In view of the substantial proposed increase in the level of penalties for unlawful occupation of unleased and unallocated Government land, Mr TSE asked whether the Administration would provide to the court certain factors for its consideration in determining the level of penalty for the offender so that greater consistency could be achieved among different judges.</p> <p>The Administration advised that when cases of unlawful occupation of unleased and unallocated Government land were brought to the court, the Administration would furnish relevant facts, including the size of land occupied, whether the occupation involved permanent structure(s), and whether the occupation affected public safety, etc. From past experience, factors that the court had taken into account in determining the level of penalty for an offence varied fairly widely depending on the background of the cases. The Administration considered it more advisable to allow the court sufficient room to determine the level of penalty. Under the proposed amendments, the court's considerations might include whether the relevant case involved a repeated offence or a gain made by the offender out of the occupation. Moreover, by raising the maximum penalties as proposed under the Amendment Bill, the court would have more room to determine the level of penalty taking into account the severity of the case concerned.</p> | |
| 005225 – 010330 | Chairman Mr WU Chi-wai Administration | <p>Referring to some members' concern that an occupier of unleased and unallocated Government land might have committed the offence inadvertently as in the case of a buyer of a piece of land who bought the land without knowing that part of it was Government land, the Chairman enquired about at which point in its enforcement process the Administration would initiate prosecution against such an offender.</p> <p>The Administration advised that prosecution action would not be initiated until a failure without reasonable excuse to cease the unlawful occupation before the deadline as specified in the notice requiring the cessation of the occupation of unleased</p> | |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|----------|---|-----------------|
| | | <p>and unallocated Government land. Land buyers should seek professional advice before purchase of land in order to ascertain the status of the land concerned.</p> <p>In response to the enquiry of Mr WU Chi-wai, the Administration confirmed that a person who did not without reasonable excuse cease to occupy unleased and unallocated Government land after the cessation notice was issued to him would commit an offence and was liable to a fine for the offence and, if the offence continued, to a further fine for each day during which the offence continued. The daily fine would be imposed for each day after the offence was committed, i.e. when there was a failure without reasonable excuse to cease the unlawful occupation upon the expiry of the notice period stated in the cessation notice to the occupier requiring the occupation of the land to cease.</p> <p>The Administration advised that the proposed maximum daily fines of \$50,000 (for the first conviction) and of \$100,000 (for each subsequent conviction) were numerically one-tenth of the maximum fines for the offence, but the actual amount of the daily fine ordered by the court would not necessarily follow this proportion mechanically. The actual fine amount would be determined by the court taking into account specific circumstances of the case concerned.</p> <p>At the Chairman's request, the Administration briefed the meeting on its law enforcement measures, including the manpower and the use of new technology for enforcement.</p> | |
| 010331 – 010530 | Chairman | <p>Closing remarks</p> <p>Date of the next meeting</p> | |