

立法會
Legislative Council

LC Paper No. CB(1)411/14-15
(These minutes have been
seen by the Administration)

Ref : CB1/BC/1/14

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

Minutes of second meeting held on
Monday, 24 November 2014, at 4:30 pm
in Conference Room 3 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 WU Chi-wai, MH
Hon CHAN Han-pan, JP
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members absent : Hon Paul TSE Wai-chun, JP
Dr Hon Kenneth CHAN Ka-lok

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 Confirmation of minutes**
(LC Paper No. CB(1)239/14-15 —Minutes of meeting on
28 October 2014)

The minutes of the meeting held on 28 October 2014 were confirmed.

II Meeting with the Administration

- (LC Paper No. CB(1)236/14-15(01) —List of follow-up actions arising from the discussion at the meeting on 28 October 2014
- LC Paper No. CB(1)236/14-15(02) —Administration's response to the issues arising from the discussion at the meeting on 28 October 2014)

Clause-by-clause examination of the Bill

- (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))

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

3. The Chairman concluded that the Bills Committee had completed scrutiny of the Land (Miscellaneous Provisions) (Amendment) Bill 2014 and would submit a report on its deliberations to the House Committee.

III Any other business

Legislative time-table

4. Members noted that the Administration tentatively planned to resume the Second Reading debate on the Bill in January 2015 and would further advise the Bills Committee on the proposed date in due course.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)335/14-15 issued on 8 December 2014 that the Administration had proposed to resume the Second Reading debate on the Bill at the Council meeting of 28 January 2015.)

5. There being no other business, the meeting ended at 5:37 pm.

Council Business Division 1
Legislative Council Secretariat
5 January 2015

**Proceedings of second meeting of the
Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2014
on Monday, 24 November 2014, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes of meeting			
000834 – 000906	Chairman	Confirmation of minutes of meeting on 28 October 2014 (LC Paper No. CB(1)239/14-15)	
Agenda item II – Meeting with the Administration			
000907 – 001448	Chairman Administration	Briefing by the Administration on its response to the follow-up actions arising from the discussion at the meeting on 28 October 2014 (LC Paper No. CB(1)236/14-15(02)).	
001449 – 001909	Chairman Mr CHAN Kin-por Administration	<p>Mr CHAN Kin-por urged the Administration to step up its efforts in educating the public that prospective buyers of land or private properties should be careful in their property transactions in order to avoid buying a piece of land without knowing that part of it was in fact unleased and unallocated Government land ("UUGL").</p> <p>The Administration said that it had taken steps to raise public awareness through Announcements of Public Interest by stressing the importance of seeking professional advice before formally entering into any transactions. The Administration would continue its publicity and public education efforts through different channels, including the Hong Kong Law Society, the Estate Agents Authority, the District Offices and the rural community.</p>	
001910 – 002321	Chairman Administration	<p>The Chairman said that, on occasion, the lot boundary might not be properly demarcated and prospective buyers might have difficulties in ascertaining the exact location and area of the land concerned without seeking professional advice. Separately, with reference to the example illustrating the workflow of enforcement actions against unlawful occupation of UUGL enclosed in LC Paper No. CB(1)236/14-15(02), the Chairman expressed concern that the existing penalty for unlawful occupation of UUGL was insufficient as a deterrent against contraventions.</p> <p>The Administration reiterated that prospective buyers of private properties or land should seek independent professional advice as appropriate (e.g. legal, surveying) before formally entering into any transactions. The</p>	

Time marker	Speaker	Subject(s)	Action required
		Administration would continue its publicity and public education efforts.	
002322 – 003104	Chairman Ir Dr LO Wai-kwok Administration	<p>Ir Dr LO Wai-kwok expressed concern that the statistics quoted by the Administration in LC Paper No. CB(1)236/14-15(02) did not reflect the situation on unlawful occupation of UUGL completely. He also said that the current enforcement regime was inadequate as offenders would simply treat the penalty as a de facto rent for the occupied land. To strengthen the effectiveness of law enforcement, he suggested that the Administration make more effective use of advanced technology in monitoring and identifying unlawful occupation of UUGL, such as aerial imaging of lands at regular time intervals.</p> <p>Ir Dr LO was concerned about the effectiveness of site inspections, as the number of complaints/referral cases far exceeded the number of cases of suspected unlawful occupation of UUGL identified through risk-based patrols of the Lands Department ("LandsD"). The Chairman echoed Ir Dr LO's concern and asked the Administration to reinforce patrols and site inspections.</p> <p>The Administration shared the views of Ir Dr LO that a robust enforcement regime is instrumental to effective land control, and added that advanced technology, such as aerial photos, had already been used to assist and facilitate site inspections conducted by LandsD.</p>	
003105 – 003654	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO asked whether the Administration had assessed the effectiveness of prosecutions since the publication of the Director of Audit's Report No. 58 on unlawful occupation of UUGL and the subsequent follow-up by the Public Accounts Committee in May 2012. Ms HO said that the Administration should provide assistance or redress to buyers who had mistakenly bought a piece of land which was in fact Government land, such as ways to hold the relevant lawyers or surveyors legally accountable.</p> <p>The Administration said that land control actions against unlawful occupation of UUGL under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the Ordinance") targeted current owner(s) or occupant(s). Any party to private transaction involving UUGL might consider suitable means (e.g. civil litigation) to seek redress from negligence or misdeed by other parties as appropriate. Given that LandsD's enforcement focus was on tackling unlawful occupation, and that property</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>transactions were dealings between private parties, LandsD was not in a position to intervene into those transactions.</p> <p>The Chairman urged the Administration to step up its publicity and public education efforts in reminding buyers and relevant professionals to guard against mistakenly buying UUGL as part of a private land or property transaction.</p> <p>In response to Ms HO's enquiry about the Law Reform Commission of Hong Kong's report on adverse possession, the Administration said that it was studying the report.</p>	
<i>Clause-by-clause examination of the Bill</i>			
003655 – 004419	Chairman Administration	<p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Land (Miscellaneous Provisions) Ordinance amended</u></p> <p>Members raised no questions on clauses 1 and 2.</p> <p><u>Clause 3 – Section 6 amended (unlawful occupation of unleased land)</u></p> <p>The Administration introduced the proposed increase in penalty levels and the introduction of daily fine system to sections 6(4) and 6(4A) of the Ordinance.</p> <p>The Chairman asked whether section 6(4A) of the Ordinance which dealt with unlawfully erecting a structure on UUGL also applied to placing objects such as stones on the land or altering the channels of streams flowing through the land. The Administration said that the application of the section depended on the specific circumstances of the unlawful occupation of UUGL on a case-by-case basis.</p>	
004420 – 005129	Chairman Mr IP Kwok-him Administration	<p>Mr IP Kwok-him asked the Administration how it would properly identify unlawful structures that were built on UUGL entirely surrounded by private land which was inaccessible to the enforcement staff of LandsD.</p> <p>The Administration said that LandsD's staff would identify the structures and confirm whether the structures were in fact built on UUGL through visual inspection and/or by suitable aids, such as aerial photography or airborne drones. Verification by a professional surveyor would be sought if necessary.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration confirmed Mr IP's understanding that the posting of a notice at the site of unlawful occupation of UUGL requiring the occupier to cease the occupation was necessary prior to prosecution.</p>	
005130 – 005415	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO enquired how the Administration would post the cessation notice in the vicinity of the UUGL in case physical access was not available to LandsD's staff. The Administration said that for such inaccessible UUGL, the cessation notice would be posted at an accessible location nearest to it.</p> <p>In response to Ms HO's enquiry about the basis of calculating the daily fine in the case of a continuing offence, the Administration said that the daily fine period would begin 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 UUGL to cease.</p>	
005416 – 010830	Chairman Administration	<p>The Administration confirmed the Chairman's understanding that the daily fine period for continuing offence would begin after the offence was committed. Any unlawful occupation by a newly-erected structure thereafter at the same location would be dealt with afresh in accordance with the applicable procedures under the enforcement regime, including posting of a new notice.</p> <p>The Administration explained that the proposed new section 6(6) of the Ordinance empowered the trial court, either on application by the Authority or on the trial court's own initiative, to make an order against the convicted person requiring the payment of the cost mentioned in section 6(5), i.e. any cost incurred in or arising out of the demolition of any property or structure under section 6(2A) or section 6(3) of the Ordinance and the exercise of the powers conferred by section 6 of the Ordinance.</p> <p><u>Clause 4 – Section 7 amended (prohibition of removal of earth, turf or stone from unleased land)</u></p> <p>The Chairman asked whether the Ordinance required the person convicted of unlawful occupation to restore the occupied UUGL to the state before the unlawful occupation.</p> <p>The Administration said that the person convicted would be required to remove structures on the land and the cost</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>would be paid by the person convicted pursuant to section 6(5) of the Ordinance.</p> <p>The Administration confirmed that there was no provision under section 7 of the Ordinance requiring an offender to restore the status quo of the land from which earth, turf or stone was removed. The section only imposed a fine and an imprisonment term as penalties.</p> <p><u>Clause 5 – Schedule amended (designated Authorities)</u></p> <p>Members raised no question on clause 5.</p>	
010831 – 010846	Chairman	Closing remarks	