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**By fax (2869 6794) and by email**

Clerk to Bills Committee  
Bills Committee on Land  
(Miscellaneous Provisions) (Amendment) Bill 2014  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Attn: Mr. Derek Lo)

Dear Mr. Lo,

**Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2014**  
**Follow-up Actions**

At the meeting on 28 October 2014, members of the Bills Committee on the Land (Miscellaneous Provisions) (Amendment) Bill 2014 requested the Administration to provide supplementary information about the land control and enforcement issues below. Our reply is as follows:

- (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")**

As unlawful occupation of unleased and unallocated Government land ("UUGL") may occur at different times and places throughout the territory involving different persons, LandsD is not in a position to compile an exhaustive account of unlawfully occupied UUGL at a particular point in time.

Given the number of UUGL lots and their widespread dispersion throughout the territory, it would not be practical or cost-effective for LandsD to patrol all UUGLs on a regular basis. LandsD instead adopts a pragmatic approach by promptly arranging inspections and taking follow-up actions as appropriate upon receipt of public complaints/referrals. In case a member of the public becomes aware of a suspected case of unlawful occupation of UUGL, he or she is encouraged to report the case to LandsD in person, by post, email, fax, or through 1823 or the Lands Administration Office Hotlines.

At the same time, LandsD also conducts risk-based patrols that focus on fenced-off and/or black-spot sites which are relatively more vulnerable to unlawful occupation and/or have a frequent history of public complaints.

For members' reference, in the past two calendar years, LandsD received or detected 10,592 cases of suspected unlawful occupation of UUGL in 2012 and 11,016 cases in 2013, largely through complaints/referrals. Among such, 393 and 416 cases were identified through LandsD's risk-based patrols in 2012 and 2013 respectively.

The Administration shares members' views that a robust enforcement regime is instrumental to effective land control. As noted above, LandsD takes appropriate follow-up actions promptly upon receipt of complaints/referrals. In addition, LandsD have been putting in place various measures and arrangements to help enhance its enforcement efforts. These include updating and expanding patrol routes by incorporating vulnerable spots newly identified through patrols or complaints/referrals, increasing the frequency of risk-based patrol, making use of aerial photos to facilitate inspection, and providing training to frontline and investigating officers.

**(b) To set out the work flow 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**

Land control actions against unlawful occupation of UUGL are under the statutory auspice of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the Ordinance"). The time taken for taking enforcement actions in different cases varies depending on the factual background and complexity of each individual case. Individual District Lands Offices

(“DLOs”) may have to prioritize the cases in hand having regard to the nature and scale of issues, potential hazards and nuisances involved and/or caseload at that time.

Upon receipt of a complaint/referral or a report from patrol of suspected unlawful occupation, LandsD conducts site inspection to ascertain if the Government land in question is in fact being unlawfully occupied. If in the affirmative, a notice under section 6(1) of the Ordinance will be posted on site, requiring cessation of the unlawful occupation before a date specified in the notice.

If the occupation has not ceased upon expiry of the notice period and the occupier cannot offer any reasonable excuse, further actions will be carried out by LandsD, including removal/demolition of any properties/structures concerned in accordance with sections 6(2) and (3) of Ordinance with the assistance of the Department’s contractors. Depending on the case specifics (e.g. if the occupier can be identified and evidence is sufficient), LandsD will seek legal advice and consider instigating prosecution under the relevant provisions of the Ordinance as appropriate.

An illustration with reference to a relatively straightforward recent case of unlawful occupation of UUGL is set out in the following table:

<b>Steps</b>	<b>Date</b>	<b>Sequence of events</b>
1. Receipt of complaint/referral/report from patrol	26 Feb	DLO received a public enquiry concerning a case of suspected unlawful occupation of UUGL.
2. Site inspection	4 Mar	Having ascertained the location, DLO conducted site inspection and found that a piece of UUGL was being unlawfully occupied for cultivation. A shelter was also unlawfully erected.
3. Notice under section 6(1) of the Ordinance	5 Mar	The occupier was identified. A notice under Section 6(1) of the Ordinance was posted, requiring the occupier to cease the occupation of the UUGL before 20 Mar.

4. Re-inspection upon expiry of notice	25 Mar	DLO conducted site inspection on the UUGL and found that the shelter had been removed but the cultivation on the UUGL still existed.
5. Taking possession of any properties/ structures on UUGL for removal/demolition under sections 6(2) & (3) of the Ordinance	21 May	DLO took possession of the properties/structures on the UUGL and arranged demolition contractor to clear the land.
6. Collection of evidence	Late May to mid-Sept	As the identity of the occupier had been ascertained, DLO carried out further investigation with a view to collecting sufficient evidence. The case was then considered by departmental prosecutor.
7. Prosecution	11 Sept	After considering the evidence and seeking legal advice, LandsD initiated prosecution against the occupier for not ceasing occupation of UUGL without reasonable excuse before 20 Mar as required by the notice posted on 5 Mar, contravening section 6(4) of the Ordinance.
8. Court Proceedings	8 Oct	The defendant pleaded guilty and was fined \$2,000.

At the meeting on 28 October 2014, members of the Bills Committee enquired about enforcement actions taken by LandsD in respect of private land, which falls outside the ambit of the Ordinance, as such enforcement is governed by the lease conditions of the relevant Government lease and LandsD takes lease enforcement actions in the capacity of a landlord. The relevant information is provided at Annex for members' reference.

- (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**

LandsD's land control actions primarily target at unlawful occupation of UUGL and lease breaches on private land. On occasion, the Department might come across a situation in which the subject land of a land control case involved property transaction(s) between the current owner(s) and the previous owner(s) with Government land involved. Given that LandsD's enforcement focus is on tackling unlawful occupation and rectifying breaches, and that property transactions are dealings between private parties, LandsD is not in a position to intervene into those transactions and has not kept any record or statistics in respect of such cases.

We believe that buyer's awareness is of vital importance. With a view to arousing public awareness, the Administration has recently aired radio and TV Announcements of Public Interest to disseminate the message that "Unauthorised Structures Unlawful Occupation Lead to Serious Consequences", cautioning members of the public not to engage in unlawful occupation of UUGL, and that in case of doubt, prospective buyers of any private properties or lands should seek independent professional advice before formally entering into any transactions.

Yours sincerely,



( LAW Kin-wai )

for Secretary for Development

Encl.

**c.c.:**

Lands Department (Attn: Ms. Olga Lam)

Fax: 2868 4707

Department of Justice (Attn: Miss Cindy Cheuk)

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**Lease Enforcement Actions**  
**against Breaches of Lease Conditions in respect of Private Land**

At the meeting on 28 October 2014, members of the Land (Miscellaneous Provisions) (Amendment) Bill 2014 enquired about enforcement actions taken by LandsD in respect of private land. Such enforcement is governed by the lease conditions of the relevant Government lease and falls outside the auspices of the Ordinance.

Private land is governed by the lease conditions of the relevant Government lease. Acting in the capacity of a landlord, LandsD takes lease enforcement actions against suspected breaches of lease conditions. In general, upon receipt of a complaint/referral/enquiry of suspected breach of lease conditions, LandsD conducts site inspections to establish the breach. If a breach is established, LandsD will, after seeking legal advice, take appropriate lease enforcement actions, including the issue of warning letter to the lessee (i.e. the property owner) concerned requesting rectification of the breach before a reasonable deadline. If the lessee concerned does not rectify the breach by the said deadline, LandsD will normally proceed to register the warning letter in the Land Registry (“LR”) to impose an encumbrance on the private property. Further lease enforcement actions, including re-entry or vesting action under the relevant lease and the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126), may be taken.

The table below sets out an example of a recent lease enforcement case wherein actions had been taken with a view to rectifying the breach as soon as possible.

<b>Steps</b>	<b>Date</b>	<b>Sequence of events</b>
1. Receipt of complaint/referral	13 Feb	DLO received a media complaint concerning a case of suspected unauthorized structures erected on a private agricultural land (“the Lot”) for domestic purpose.
2. Site	13 Feb	Having ascertained the location, DLO conducted site inspection and found that two

inspection		groups of 2-storeyed container-converted structures were erected on the Lot involving more than 20 containers.
3. Issue of warning letter	14 Feb	DLO issued a 28-day warning letter to the registered lot owner requiring him to rectify the breach on or before 14 Mar.
4. Re-inspection upon expiry of the warning letter	18 Mar	DLO conducted site re-inspection and found that the breach persisted on the Lot.
5. Registration of the warning letter in the LR	4 Apr	The warning letter was registered in the LR.
6. Issue of a final warning letter	29 Apr	After obtaining legal advice that it should be lawful for the Government to re-enter the Lot, DLO issued a 14-day final warning letter to the registered lot owner requiring him to rectify the breach on or before 13 May.
7. Re-inspection upon expiry of the final warning letter	14 May	DLO conducted site re-inspection and found that the breach persisted on the Lot.
8. Registration of the Instrument of Re-entry in the LR	23 May	After the completion of internal procedures authorizing the re-entry, the Lot was re-entered by the Government by means of registering the Instrument of Re-entry in the LR.
9. Gazettal of the Notice of Re-entry	30 May	The Notice of Re-entry was published in the Government Gazette.