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23 December 2014

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

BY EMAIL & BY POST

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Legislative Council Secretariat
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Dear Mr. Lo,

Land (Miscellaneous Provisions) (Amendment) Bill 2014 ("the Bill")

We refer to the Bill, which has been reviewed by the Property Committee of the Law Society ("the Committee").

Under Clause 3 of the Bill, the penalty for an offence of unlawful erection of a structure on, or unlawfully arranging or directing the erection of a structure on unleased land under **Section 6(4A)** of the Land (Miscellaneous Provisions) Ordinance (**LMO**) is proposed to be amended to an escalating scale of maximum fines:

- if the contravening act is done for the purpose of disposing of the structure for the gain of the offender or another, the penalty is proposed to be increased to a fine of \$2,500,000 for the first conviction and \$5,000,000 for each subsequent conviction, with the existing maximum imprisonment term of one year unchanged for both circumstances;
- If the contravening act is done for any other purpose, the penalty is proposed to be increased to a fine of \$500,000 for the first conviction and \$1,000,000 for each subsequent conviction, with the existing maximum imprisonment term of 6 months unchanged for both circumstances.

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The Committee has the following observation on Section 6(4A):

- (a) the maximum fines for offences under Section 6(4A)(a) and (b) of the Ordinance concerning erection of structure on unleased land is proposed to be increased by 50 times. That is a very significant increase.
- (b) The definition of "structure", which is addressed in Section 6(A), is defined in Section 2 to "include a stilt, platform, fence and any other things erected on or over land." This definition is not disturbed in the Bill, and is in our views a wide definition.
- (c) Section 6(4A) stipulates that "any person" who contravenes that section would attract the stated penalty. Under this section, not only the occupier, but also, e.g. contractor or an employee of a company would be caught.

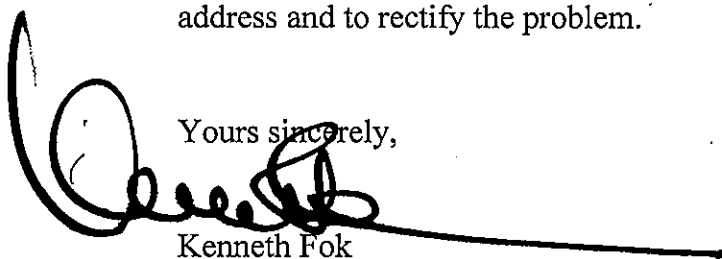
In view of the above, the Committee suggests that, while it in principle supports the bill, a notification mechanism should be provided for offences under Section 6(4A) (a) and (b) of the Ordinance, so that the offending party could be given a reasonable time to remove the erection of the structure in question and/or rectify the situation.

In this connection, the Committee notes that by way of comparison, **Section 6(4) of LMO**, which on the face of it attracts lesser liability, still carries with it a notification requirement; section 6(4) now states that "*any person occupying unleased land... who without reasonable excuse does not cease to occupy the same as required by a notice under subsection (1) shall be guilty of an offence...*" [emphasis supplied].

In the course of the consideration of the above, the Committee has taken into account the fact that the offence created under section 6(4A) are to be tried in a Magistrate Court.

Lastly, the Committee wishes to point out to you the observation of some committee members that the boundaries of some pieces of land could have been changed by the Administration through no fault of the land owners. This happened more often with New Territories lands. The result is that a structure legitimately erected on a piece of land might subsequently be found to have squattered across the boundaries of two pieces of land, or might have "encroached" on a different piece of land. Although this historical problem is not a matter for the Bill, the Committee urges the Administration to consider ways to address and to rectify the problem.

Yours sincerely,



Kenneth Fok
Director of Practitioners Affairs
The Law Society of Hong Kong