

立法會
Legislative Council

LC Paper No. CB(1)431/14-15

Ref.: CB1/BC/1/14

Paper for the House Committee meeting on 16 January 2015

**Report of the Bills Committee on Land (Miscellaneous Provisions)
(Amendment) Bill 2014**

Purpose

This paper reports on the deliberations of the Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2014 ("the Bills Committee").

Background

2. Under Section 6(4) of the Land (Miscellaneous Provision) Ordinance (Cap. 28) ("the Ordinance"), any person occupying unleased land, otherwise than under a licence or a deed or memorandum of appropriation, 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 and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months. The level of penalty has not been revised since 1972.

3. In deliberating the findings of Report No. 58 of the Director of Audit concerning the management of Government land¹ in May 2012, the Public Accounts Committee ("PAC") of the Legislative Council ("LegCo") opined that the fines for convicted cases of the offence under section 6(4) of the Ordinance were too lenient to have an adequate deterrent effect. PAC strongly urged the Government to promptly initiate legislative amendments to increase the relevant level of penalties and consider introducing a system of daily fine to reinforce the deterrent effect.

¹ The findings covered, inter alia, the actions of the Lands Department to prevent, detect and rectify unlawful occupation of Government land and the suggestion that the level of penalty for the offence under section 6(4) of the Ordinance should be reviewed with a view to providing an effective deterrence.

4. Against this background, the Administration has introduced the Land (Miscellaneous Provisions) (Amendment) Bill 2014 ("the Bill") into LegCo to increase the penalties for offences relating to unlawful occupation of unleased Government land for the purpose of enhancing the deterrent effect against the relevant offences.

The Bill

5. The Bill seeks to –

- (a) increase the penalty for an offence relating to unlawful occupation of unleased land under section 6(4) of the Ordinance from a fine of \$10,000 to maximum fines of \$500,000 for the first conviction and of \$1,000,000 for each subsequent conviction, with the existing maximum imprisonment term of six months unchanged for both circumstances;
- (b) introduce an additional fine of \$50,000 (for the first conviction) and of \$100,000 (for each subsequent conviction) for each day during which the offence under section 6(4) of the Ordinance continues;
- (c) corresponding to the proposed amendment in (a) above, increase the maximum fines for offences under section 6(4A)(a) and (b) of the Ordinance concerning erection of structure on unleased land by 50 times, i.e. from \$50,000 to \$2,500,000 [for sub-paragraph (i) below] and from \$10,000 to \$500,000 [for sub-paragraph (ii) below] and introduce an escalating scale of maximum fines, i.e.
 - (i) where the offender has been engaged in any way in, or has arranged or directed the erection of the structure for the purpose of disposing of the structure for gain for the offender or another, the maximum fines shall be \$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; and
 - (ii) in any other cases, the maximum fines shall be \$500,000 for the first conviction and \$1,000,000 for each

subsequent conviction, with the existing maximum imprisonment term of six months unchanged for both circumstances;

- (d) corresponding to the proposed amendment in (a) above, increase by 50 times the maximum fine for an offence relating to removal of earth, turf or stone from unleased land without a removal permit under section 7(4) of the Ordinance, i.e. from \$5,000 to \$250,000, with the existing maximum imprisonment term of 6 months unchanged; and
- (e) introduce new sections 6(6) and 6(7) to state clearly that, if a person is convicted of an offence under section 6(4) or section 6(4A) of the Ordinance, the court may, either on application by the Authority or on the court's own initiative, order the convicted person to pay the Authority 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 on the Authority by section 6 of the Ordinance, in addition to any penalty imposed for the offences under section 6(4) or section 6(4A) of the Ordinance.

The Bills Committee

6. At the House Committee meeting on 10 October 2014, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in the **Appendix**. Under the chairmanship of Hon Tony TSE Wai-chuen, the Bills Committee has held two meetings with the Administration to study the Bill.

Deliberations of the Bills Committee

7. The Bills Committee in general supports the legislative amendments as detailed in the Bill to increase the level of penalties for the relevant offences relating to unlawful occupation of unleased and unallocated Government land ("UUGL") in order to strengthen their deterrent effect. During the scrutiny of the Bill, the Bills Committee has taken the opportunity to examine various issues concerning the existing enforcement actions undertaken by the Lands Department ("LandsD"), including ways to enhance the effectiveness and efficiency of the enforcement actions and possible measures to help prospective buyers of land or private properties

better avoid inadvertently committing the offence of unlawfully occupying Government land.

Factors for determining the level of penalty

8. In view of the substantial increases in the level of penalties as proposed in the Bill, Mr Paul TSE has enquired whether the Administration will 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.

9. The Administration has advised that when cases of unlawful occupation of UUGL are brought to the court, the Administration will 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 has taken into account in determining the level of penalty for an offence vary fairly widely depending on the circumstances of the cases. The Administration considers it more advisable to allow the court sufficient room to determine the level of penalty. The court's considerations may include whether the relevant case involved a repeated offence or a gain made by the offender out of the occupation. Moreover, with the increases in the maximum penalties as proposed under the Bill, the court will have more room to determine the level of penalty taking into account the severity of the case concerned.

Daily fine system (clause 3(2) of the Bill)

10. Regarding the proposed introduction of a daily fine system under proposed new section 6(4AA) of the Ordinance for the continuing offence of unlawful occupation of UUGL (paragraph 5(b) above refers), members, including Mr CHAN Hak-kan and Mr WU Chi-wai, have sought clarification on the starting day for calculating the fine for each day during which the offence of unlawful occupation of UUGL continues.

11. The Administration has advised that the daily fine period in the case of a continuing offence of unlawful occupation of UUGL will begin after the offence is committed, i.e. when there is 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.

Enforcement actions against unlawful occupation of UUGL

Detection of cases of unlawful occupation

12. Members note from the information provided by the Administration that in the past two calendar years, LandsD received or detected 10 592 and 11 016 cases of suspected unlawful occupation of UUGL in 2012 and 2013 respectively, largely through complaints or referrals. Among such cases, 393 and 416 cases were identified in 2012 and 2013 respectively through LandsD's risk-based patrols. Some members, including Ir Dr LO Wai-kwok, have expressed concern that the overall situation of unlawful occupation of UUGL may not be fully reflected by the number of complaint/referral cases handled by LandsD and requested the Administration to provide detailed information about the current overall situation of unlawful occupation of UUGL in the territory.

13. The Administration has advised that as unlawful occupation of 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 area of UUGL and their widespread dispersion throughout the territory, it would not be practical or cost-effective for LandsD to patrol all UUGL 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.

14. Mr IP Kwok-him has expressed doubt about the effectiveness of merely increasing the level of penalties in the Ordinance for land control, and urged the Administration to devise more effective enforcement measures against unlawful occupation of UUGL. The Chairman considers that the Administration should step up patrols and site inspections. To strengthen the effectiveness of law enforcement, Ir Dr LO Wai-kwok and Ms Cyd HO have suggested that the Administration should 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.

15. Sharing members' view that a robust enforcement regime is instrumental to effective land control, the Administration has advised that LandsD takes appropriate follow-up actions promptly upon receipt of complaints/referrals or report from patrol of suspected cases. In addition, LandsD has 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 patrols, making use of aerial photos to facilitate inspection, and providing training to frontline and investigating officers.

Promptness and timeliness of enforcement actions

16. The Bills Committee has studied the workflow of enforcement actions taken by LandsD against unlawful occupation of UUGL. Some members, including Mr WU Chi-wai, have pointed out that in some cases, LandsD has taken a prolonged time in its enforcement actions against the unlawful use of land. These members have expressed concern about the efficiency of the Administration's existing measures in monitoring the proper use of UUGL.

17. The Administration has advised that the time taken for taking enforcement actions in different cases varies depending on the factual background and complexity of individual cases. Individual District Lands Offices 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 it is, 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 LandsD'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.

Unlawful structures on UUGL that is inaccessible to enforcement staff

18. Some members, including Mr IP Kwok-him and Ms Cyd HO, have expressed concern about how the Administration will be able to properly identify unlawful structures that are built on UUGL surrounded by private land which is inaccessible to the enforcement staff of LandsD and how the cessation notice will be posted if physical access is not available to LandsD's staff.

19. The Administration has advised that LandsD's staff will identify the structures and confirm whether the structures are 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 will be sought if necessary. For inaccessible UUGL, the cessation notice will be posted at an accessible location in the near vicinity.

Prospective buyers of land or private properties inadvertently committing the offence of unlawfully occupying UUGL

20. Some members, including Mr CHAN Kin-po and Ms Cyd HO, have expressed concern that there have been cases of land purchase, in which a buyer bought a piece of land without knowing that part of the land is in fact UUGL. In such cases, the buyer may inadvertently commit the offence of unlawfully occupying UUGL. Mr CHAN Kin-por has 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 to avoid buying a piece of land without knowing that part of it is in fact UUGL. Furthermore, Ms Cyd HO has suggested that the Administration should provide assistance or redress to buyers who have mistakenly bought a piece of land which is in fact Government land, such as ways to hold the relevant lawyers or surveyors legally accountable.

21. The Administration considers that the 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. The Administration has further advised that it 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.

22. The Administration further advises that LandsD's land control actions primarily target at unlawful occupation of UUGL and lease breaches on private land. On occasion, LandsD 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 UUGL 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. Any party to private transaction involving UUGL may consider suitable means (e.g. civil litigation) to seek redress for negligence or misdeeds of other parties as appropriate.

Committee Stage amendments

23. The Bills Committee and the Administration will not propose any Committee Stage amendments to the Bill.

Resumption of Second Reading debate on the Bill

24. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill.

Advice sought

25. Members are invited to note the deliberations of the Bills Committee as set out above.

Council Business Division 1
Legislative Council Secretariat
13 January 2015

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

Membership List

Chairman Hon Tony TSE Wai-chuen, BBS

Members 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
Hon CHAN Han-pan, JP
Dr Hon Kenneth CHAN Ka-lok
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

(Total: 12 Members)

Clerk Mr Derek LO

Legal Adviser Miss Winnie LO