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電話 TELEPHONE : 3919 3508
電郵 EMAIL : vkfcheng@legco.gov.hk

By email (fionachau@devb.gov.hk)

1 February 2024

Miss Fiona CHAU
Principal Assistant Secretary
(Planning and Lands)4
Development Bureau
Planning and Lands Branch
17/F, West Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss CHAU,

Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. We should be grateful if you could clarify the following issues.

Clause 4

1. We refer to clause 4 of the Bill, which seeks to amend section 3 of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) to allow more flexibility for multiple adjoining lot applications by expanding the application of averaging arrangement to cover not only lots on which buildings connected by a common staircase are erected. In that regard, we have the following enquiries:

- (a) the proposed new sections 3(2)(d), 3(2A)(c) and (d) and 3(8)(b)(i) and (ii) of Cap. 545 refer to cluster of lots bound by a “continuous boundary” and lots that adjoin each other along a “common boundary”. Please illustrate with examples what would constitute such “continuous boundary” and “common boundary”, please also consider if definitions for “common boundary” and “continuous

boundary” should be provided in the Bill to aid users to better understand the proposed scheme and if not, the reason for not doing so; and

- (b) for the purpose of ascertaining whether the lots adjoin each other along a common boundary and the lots are adjoined to form a cluster of lots bound by a continuous boundary as provided for in the proposed new sections 3(2)(d), 3(2A)(c) and (d) and 3(8)(b)(i) and (ii) of Cap. 545, please clarify whether it is necessary for applicant(s) in a compulsory sale application to produce e.g. a Government lease (with plans) demonstrating the boundary of the individual lot, or a land boundary plan as defined in section 2 of the Land Survey Ordinance (Cap. 473) (i.e. a plan showing and delineating the land boundary of a parcel of land certified by an authorized land surveyor). If so, please consider expressly providing for that in the Bill.

2. Regarding the proposed new sections 3(2C), 3(2D) and 3(9) of Cap. 545, please clarify the following:

- (a) whether for the Lands Tribunal (“Tribunal”) to take into account a lot to ascertain the fulfillment of the averaging requirement in relation to an application for compulsory sale, the application must be accompanied (for each of the lots) by each of the documents referred to in subparagraphs (a) to (c) of the proposed new section 3(2C) (despite the proposed new section 3(2D), which appears to provide that an application would not be required to be accompanied by a specified document under the proposed new section 3(2C) if the Tribunal is satisfied that it is not available for the lot) and if so, in the absence of such document(s), whether by virtue of the proposed new section 3(9)(a) the lot would be disregarded by the Tribunal in ascertaining the fulfillment of the averaging requirement for the lots under the application;
- (b) subject to your answer to (a) above, if one of the documents referred to in the proposed new section 3(2C) is not available, please clarify whether the lot would be disregarded by the Tribunal in ascertaining the fulfillment of the averaging requirement pursuant to the proposed new section 3(9)(a) even if the area or boundary of the relevant lot could be ascertained from other available documents mentioned in the proposed new section 3(2C); and
- (c) if the Tribunal is satisfied that the area of the lot cannot be ascertained from the documents mentioned in the proposed new section 3(2C) accompanying the application, please clarify whether the lot would be disregarded by the Tribunal in ascertaining the fulfillment of the

averaging requirement pursuant to the proposed new section 3(9)(b) even if the area of the relevant lot could be ascertained from other documents not referred to in the proposed new section 3(2C).

Clause 5

3. Please clarify the considerations that would be taken into account by the Tribunal pursuant to the proposed new section 4(2C)(b) of Cap. 545 in order for it to take the view that if it could determine the application “as if a relevant lot were no longer the subject of the application”, then it would not be required by section 4(2) not to make an order for sale.

Clause 6

4. Please consider providing for a definition of “in-situ land exchange application” as referred to in the proposed new section 4C(4)(a) of and the proposed new section 2 of Schedule 3 to Cap. 545.

5. Under the proposed new section 4C(6) of Cap. 545, the Building Authority (“BA”)’s power to e.g. refuse to give approval to a plan under the proposed new section 4C(5) is not exercisable in relation to the relevant works unless BA has advised the person who intends to carry out the works of BA’s opinion that the works do not comply with the requirement under the proposed new section 4C(2) and the reasons for the opinion.

Please clarify:

- (a) whether “the person who intends to carry out the works” refers to the purchaser(s) (including successor(s) in title of the purchaser(s)) of the lots or an authorized person (i.e. an architect, an engineer or a surveyor), a registered structural engineer, a registered geotechnical engineer or a registered general building contractor appointed by the purchaser under sections 4 and 9 of the Buildings Ordinance (Cap. 123) to carry out the building works. Please consider expressly providing for that in the Bill;
- (b) whether a reasonable opportunity would be given to the person who intends to carry out the works to make representations before BA exercises its powers under the proposed new section 4C(5), and if not, the reason(s) for not providing for that; and
- (c) whether an appeal or review mechanism would be provided for a person aggrieved by any decision of BA under the proposed new section 4C(5) to appeal against or review that decision and if not, the reason(s) for not providing for that.

Clause 7

6. In the English version of the proposed new section 8(1)(c) under clause 7(3) of the Bill, it is stated that an owner-occupier is required to deliver up, and the purchaser is entitled to, vacant possession of the property immediately on the expiry of the period of occupation. It appears that the Chinese text does not contain any reference to “immediately”. Please consider whether the Chinese and English texts are consistent with each other and if not, whether it would be necessary to amend the drafting in order to ensure consistency.

Clause 10

7. In determining the reserve price for auction of the lot under the proposed amended section 2 of Schedule 2 to Cap. 545, please clarify whether the Tribunal has the discretion to consider other matters apart from the redevelopment potential of the lot on its own (for an order for sale of one lot) or the joint redevelopment potential of the lots on their own (for an order for sale of two or more lots) and if so, please consider providing for that in the Bill.

Clauses 13 and 14

8. Regarding clauses 13 and 14 of the Bill, which seek to amend the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (Cap. 545A) to lower the application thresholds by specifying different percentages for different classes of lots specified in section 4 of Cap. 545A, please clarify:

- (a) the factors that have been taken into account for setting the different minimum application thresholds for private buildings and industrial buildings aged 30 or above as specified in clauses 13 and 14 of the Bill. In this regard, please advise whether the Administration has made references to any similar legislation of other jurisdictions in setting the minimum application thresholds for different classes of lots specified in clauses 13 and 14 of the Bill. If so, please provide the relevant information for Members’ reference; and
- (b) whether for the purpose of identification of designated areas, there is justification(s) to only take into account (i) the number of buildings aged at least 50 years in the area; and (ii) the number of buildings in the area issued with notices under the Mandatory Building Inspection Scheme as set out in paragraph 8 of the Legislative Council Brief (File Ref: DEVB (PL-UR)70/41/85/15) issued by the Development Bureau on 19 December 2023. Further, please consider whether it is necessary to set out the criteria for specification of designated areas in the Bill.

Clause 19

9. Regarding the proposed new rule 78CA(3)(c) of the Lands Tribunal Rules (“Cap. 17A”), the notice of no objection filed by the minority owner cannot be withdrawn despite rule 27(1). Rule 27(1) of Cap. 17A provides that a party may, without leave of the Tribunal, discontinue the proceedings or withdraw any part thereof by serving a notice to that effect on the other party.

Please clarify:

- (a) the reason(s) for not allowing the notice of no objection to be withdrawn by a minority owner of the lot under the proposed new rule 78CA(3)(c); and
- (b) whether it is necessary to allow a minority owner of the lot to withdraw the notice of no objection where e.g. the notice is filed by mistake, or there are other circumstances that justify the withdrawal of the notice and if so, please consider providing for that in the Bill.

Clause 22

10. Please clarify the types of documents that would be required to be accompanied with the notice of occupation for showing that the owner-occupier has occupied the property for not less than three months immediately before the date of filing of the notice of occupation under the proposed new rule 78FA(3) of Cap. 17A and consider providing for that in the Bill.

We look forward to receiving your reply in both English and Chinese as soon as practicable.

Yours sincerely,



(Vanessa CHENG)
Assistant Legal Adviser

c.c. Department of Justice

(Attn: Ms Karmen KWOK, Sr Assistant Law Draftsman (Laws Publication))

(By email: karmenkwok@doj.gov.hk)

(Attn: Mr Michael CHOI, Sr Government Counsel)

(By email: michaelchoi@doj.gov.hk)

Legal Adviser

Senior Assistant Legal Adviser 2

Clerk to the Bills Committee