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Report of the Bills Committee on
Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023

Purpose

This paper reports the deliberations of the Bills Committee on Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023 ("the Bills Committee").

Background

2. With a view to encouraging private sector participation in urban renewal, the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) ("the Ordinance") was enacted in June 1999 to facilitate redevelopment of lots by owners of buildings in multiple ownership. The threshold for making a compulsory sale application was first set at no less than 90% of all undivided shares for all classes of lots, and subsequently lowered to no less than 80% of all undivided shares for specified classes of lots [1] through the enactment of the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (Cap. 545A) ("the Notice") in April 2010.

3. Through the efforts of the Urban Renewal Authority ("URA") and the private sector in redevelopment, the number of private buildings

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[1] The three specified classes of lots are as follows: (a) a lot with each of the units on the lot representing more than 10% of all the undivided shares in the lot; (b) a lot with each of the buildings erected on the lot aged at least 50 years; and (c) a lot that is not located within an industrial zone and each of the buildings erected on the lot is an industrial building and aged at least 30 years.

redeveloped from 2013 to 2022 was estimated to be about 1 600 (i.e. 160 per year on average). According to the Buildings Department's record, the number of private buildings [2] aged 50 years or above had increased from 4 500 to 9 600 in the aforesaid decade. The number of such buildings is projected to rise further to 15 800 in 2032 and 22 900 in 2042. Meanwhile, 184 out of the 424 applications made to the Lands Tribunal ("the Tribunal") for an order for compulsory sale had been granted up to June 2023. [3]

4. As the pace of redevelopment of old and dilapidated buildings is unable to catch up with the rapidly ageing building stock in Hong Kong, there is an imminent need to encourage greater private sector participation in redevelopment of old and dilapidated buildings. To that end, the Government embarked on a policy review in late 2021 with a view to coming up with legislative and administrative proposals to update and streamline the compulsory sale regime under the Ordinance.

5. The Chief Executive's 2022 Policy Address proposed to lower the compulsory sale application threshold from no less than 80% of ownership to 60% to 70% with reference to the building age. Subsequently, the Administration had conducted a comprehensive consultation on the relevant proposal from late 2022 to mid-2023. The Chief Executive's 2023 Policy Address further announced that taking into account stakeholders' views, the Government considered that the need for redevelopment of the district should be taken into account apart from the building age in determining the extent of relaxation of the applicable threshold. As a general principle, lower thresholds should be adopted for older buildings in districts with more pressing need for redevelopment. To strike a balance between expediting redevelopment of old buildings and protecting property interests, apart from proposing amendments to the Ordinance, the Administration has formulated administrative measures to strengthen the support for minority owners affected by compulsory sale.

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2 Excluding New Territories Exempted Houses and buildings of the Hong Kong Housing Authority.

3 Statistics on the compulsory sale applications made under the Ordinance are given in Annex G to the LegCo Brief [File Ref.: DEVB (PLUR)70/41/85/15] issued by Development Bureau on 19 December 2023.

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

6. The Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023 ("the Bill") was published in the Gazette on 22 December 2023 and received its First Reading at the Legislative Council ("LegCo") meeting of 10 January 2024. The Bill seeks to amend the Ordinance and its subsidiary legislation, and the Lands Tribunal Rules (Cap. 17 sub. leg. A) to:

(a) lower the thresholds for an application for compulsory sale of a lot;

(b) provide for an application that covers two or more adjoining lots and an application that covers a connected composition of lots belonging to different classes;

(c) streamline the determination of an application by the Tribunal;

(d) enhance support to minority owners who are owner-occupiers;

(e) impose requirements on the purchaser of certain lots in relation to the redevelopment of the lots and to empower the Building Authority to ensure that those requirements are complied with; and

(f) provide for related matters.

7. Details of the major provisions of the Bill are set out in paragraphs 21 to 24 of the LegCo Brief (File Ref: DEVB (PL-UR)70/41/85/15) issued on 19 December 2023, and paragraphs 4 to 12 of the Legal Service Division Report on the Bill (LC Paper No. LS3/2024). The Bill, if passed, will come into operation on the day to be appointed by the Secretary for Development by notice published in the Gazette.

Bills Committee

8. At its meeting on 12 January 2024, the House Committee agreed to form a Bills Committee to study the Bill. Hon Andrew LAM and Hon LAU Kwok-fan were elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix 1**.

9. The Bills Committee has held eight meetings with the Administration, including one meeting to receive public views. A list of the organizations /individuals which/who have given views to the Bills Committee is in **Appendix 2**. At the request of the Bills Committee, the Administration has provided written responses (LC Paper Nos. CB(1)349/2024(01), CB(1)753/2024(02) and CB(1)810/2024(01)) to the submissions [4] received by the Bills Committee and the views raised by deputations/individuals at the aforesaid meeting.

Deliberations of the Bills Committee

10. Members of the Bills Committee generally support the proposals under the Bill as measures to encourage the redevelopment of old and dilapidated buildings by the private sector. However, members are strongly concerned about how to protect the rights and interests of minority owners affected by compulsory sale and whether the minority owners concerned are provided with appropriate support. In addition, members consider that apart from lowering the thresholds for compulsory sale applications, the Administration should formulate an overall long-term strategy to expedite the redevelopment and improvement of old districts, and take a proactive stance in creating favourable conditions for redevelopment to make redevelopment attractive to developers. Members have also suggested enhancing the joint sale service to assist owners in organizing redevelopment projects on their own initiative. The deliberations of the Bills Committee are summarized in the ensuing paragraphs and the main issues discussed include the following:

(a) proposed thresholds for compulsory sale applications (paragraphs 11 to 19);

(b) criteria for delineating the "designated areas" (paragraphs 20 to 24);

(c) compulsory sale applications involving multiple adjoining lots (paragraphs 25 to 34);

(d) application of the streamlined legal process of the compulsory sale regime (paragraphs 35 to 36);

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[4] The submissions from organizations and individuals on the Bill are available on LegCo's website.

(e) protection for minority owners affected by compulsory sale (paragraphs 37 to 49);

(f) redevelopment strategy and building maintenance (paragraphs 50 to 55);

(g) compulsory sale applications involving adverse possession (paragraphs 56 to 58); and

(h) providing practical guidelines to elaborate on the operation and legislative intent of certain provisions (paragraphs 59 to 60).

Proposed thresholds for compulsory sale applications

11. For the purpose of ensuring that older private buildings in districts with more pressing need for redevelopment can proceed with redevelopment expeditiously, Part 3 of the Bill seeks to amend the Notice and lower the thresholds for compulsory sale applications by specifying different percentages (i.e. 80%, 70% and 65%) for different classes of lots specified in section 4 of the Notice. Clause 16 of the Bill proposes to add a new Schedule to the Notice setting out the list of "designated areas" (which include Sai Ying Pun and Sheung Wan, Wan Chai, Yau Ma Tei, Mong Kok, Cheung Sha Wan, Ma Tau Kok, and Tsuen Wan).

12. Members generally agree to lowering the thresholds for compulsory sale applications in "designated areas". Meanwhile, there is a view that the threshold for compulsory sale applications in "non-designated areas" (especially for private buildings aged 60 to 69 years) should remain unchanged (i.e. to remain at 80%) in order to meet the Administration's policy objective of channelling the resources for redevelopment to "designated areas" having a greater concentration of aged buildings, and reduce the number of minority owners affected. On the other hand, regarding the proposed thresholds for compulsory sale applications in respect of private buildings aged 60 to 69 years in "designated areas" and "non-designated areas" (i.e. 65% and 70% respectively), some members have queried whether the mere difference of 5% is effective in achieving the policy objective of encouraging developers to engage in redevelopment in "designated areas".

13. The Administration has advised that ageing of building stock is a common phenomenon across the territory. Although the "non-designated areas" have less pressing need for comprehensive redevelopment compared

to the "designated areas", there is still a need to redevelop the aged and dilapidated buildings in the "non-designated areas". To that end, the Administration has proposed a comprehensive lowering of the thresholds for compulsory sale applications progressively according to the age of the buildings in order to create more favourable conditions for private sector redevelopment, while introducing the concept of setting lower application thresholds for "designated areas" with a view to channelling the limited resources and efforts of the market to areas with a greater concentration of old and dilapidated buildings and more pressing need for redevelopment. Regarding private buildings aged 60 to 69 years, statistics at the end of 2022 revealed that of the over 2 600 private buildings in this age bracket across the territory, 51% (i.e. about 1 350) were situated in "non-designated areas". Having considered the actual situation, the Administration takes the view that in addition to progressively lowering the thresholds for compulsory sale applications in respect of private buildings situated in "designated areas" and aged 50 years or above, it is also necessary to appropriately lower the thresholds for compulsory sale applications in respect of private buildings situated in "non-designated areas" and aged 60 years or above in order to increase the incentive for redeveloping such old buildings. Pursuant to the proposals under the Bill, the approximate numbers of private buildings in "non-designated areas" and "designated areas" that will be subject to a lower application threshold for compulsory sale with reference to their age are 2 100 and 4 400 respectively.

14. The Administration has added that the threshold for compulsory sale applications in respect of private buildings aged 50 years or above is 80% under the existing Ordinance. In the light of the views collected during the consultation, the lowest threshold for compulsory sale applications proposed under the Bill is 65%, which is higher than the originally proposed 60%. Given that different application thresholds are to be set within the range of 15% for buildings belonging to three age brackets and in "non-designated areas" and "designated areas" separately, the small difference between the thresholds applicable to certain groups is inevitable. Although the threshold for compulsory sale applications differs by only 5% between "non-designated areas" and "designated areas" for private buildings aged 60 to 69 years, it has reflected the Government's policy intent to channel limited resources and efforts to the "designated areas" having more pressing need for redevelopment. Furthermore, developers' decisions on acquisition and redevelopment involve a number of factors including their business strategies, the market environment and economic situations, making it implausible to quantify in absolute scientific terms how different thresholds for compulsory sale applications may incentivize acquisition and redevelopment.

15. Some members have suggested that the Administration can set lower thresholds for compulsory sale applications separately to cater for specific building circumstances (e.g. number of units, and urgency for redevelopment), and stipulate under the Bill that private buildings which have had their maintenance works completed within a certain period of time should be excluded from compulsory sale applications. There is also a suggestion that the legislative amendments should take into account the projected overall conditions of private buildings built in different decades to ensure that the amendments have the effect of focusing resources for redevelopment squarely on private buildings in poor structural conditions.

16. The Administration has explained that if more refined criteria are adopted to lower the thresholds for compulsory sale applications in respect of individual private buildings, lots or street areas, the entire regime will become very complicated and each regular review and adjustment will become extremely resource- and time-consuming, which goes against the Government's policy objective of expediting urban renewal. The Administration has also advised that the Tribunal, in determining whether an order for sale is to be made, has to consider if redevelopment of the lot is justified having regard to the "age" and "state of repair" of the buildings on the lot. Such a mechanism has had the latest conditions of the private buildings taken into account when applications for compulsory sale are considered.

17. In response to members' enquiries about the expected effectiveness of a lowered compulsory sale application threshold in expediting the redevelopment work, the Administration has advised that since the pace of private sector redevelopment is affected by different factors, it cannot provide an estimate of the number of private buildings of which redevelopment will be made possible by a lowered compulsory sale application threshold. However, one may refer to the fact that upon the passage of the amendment to the Ordinance last time in 2010 that lowered the application threshold for three specified classes of lots from 90% to 80%, the number of compulsory sale applications had increased from about 6 cases per year before 2010 to about 28 cases per year after 2010. Apart from further lowering the thresholds for compulsory sale applications and allowing flexibility for compulsory sale applications involving multiple adjoining lots through the currently proposed amendments, the Administration has also introduced a number of initiatives and measures on promoting redevelopment of old districts in recent years to encourage developers' participation in redevelopment projects under a multi-pronged approach.

18. Some members have pointed out that given the actual situation of the building stock, large old building clusters reaching the age of 60 years will emerge one after another. In view of this, while the proposed lowering of the compulsory sale application threshold for private buildings aged 60 to 69 years serves partly to increase the chance for aged buildings with fewer property titles to be put up for compulsory sale, it may result in many property owners of large old building clusters in "non-designated areas" being affected by compulsory sale in the near future.

19. The Administration has taken note of members' concerns about the fact that private buildings reaching the age of 60 years have a higher number of flats, and the impact of lowering the compulsory sale application threshold for buildings in the relevant age bracket on minority owners in the future. The Administration has reiterated that redevelopment is not a must for aged buildings. The Tribunal plays an important gate-keeping role in handling compulsory sale applications. Generally speaking, even if the undivided shares owned by the applicant has met the statutory threshold for making a compulsory sale application, the Tribunal will not grant an order for sale under the Ordinance if the buildings concerned are well maintained and redevelopment of the buildings is not justified.

Criteria for delineating the "designated areas"

Delineation approach

20. The Bills Committee has noted that the Administration has adopted a set of uniform criteria in selecting the "designated areas", under which an area should have 300 or more private buildings aged 50 years or above and 200 or more private buildings issued with notices under the Mandatory Building Inspection Scheme ("MBIS") to be regarded as such. [5] In this

[5] For selection of the "designated areas", the Government first takes into account the fact that buildings constructed of reinforced concrete in Hong Kong have a design life of 50 years in general. The conditions of the building may deteriorate rapidly after the expiry of the design life if it is not properly maintained and repaired. Secondly, the Buildings Department currently selects about 600 private buildings each year on a risk basis for issuance of MBIS notices, taking into account such factors as the conditions of building structural elements and whether there are investigation and repair orders that are not complied with. Therefore, the number of buildings in an area that are issued with MBIS notices reflects to a considerable extent the overall repair conditions of buildings and the urgency for redevelopment of the area. Lastly, for the sake of making the policy more target-oriented, the Government takes the view that the "designated areas" should be delineated using the approved outline zoning plans which are formulated on the basis of district planning and cover a smaller area.

connection, members have urged the Administration to explain the reasons for not adopting an area-specific approach, under which the percentage of the relevant types of buildings out of the total number of buildings in the area can be worked out and the area concerned can be specified as a "designated area" if the percentage (not the absolute number) reaches a certain level. In addition, there is a view that if all the areas in a district are considered as the basis for the delineation, it is possible that the total number of aged buildings in the district falls short of the benchmark. Even if the buildings in a certain old area in the district are severely dilapidated, it will not be included as a "designated area". Members have also remarked that the Administration should formulate a plan to handle the situation where a redevelopment project straddles both a "designated area" and a "non-designated area" under the proposed delineation approach of "designated areas".

21. The Administration has advised that it is a more appropriate arrangement for taking forward the urban renewal policy if the "designated areas" are delineated based on the approved outline zoning plans ("OZPs") which are formulated on the basis of district planning. This approach also strikes a proper balance between the considerations of precision and ease of operation. With over 150 OZPs in Hong Kong, there is usually a certain correlation in terms of urban planning and land use among the land parcels in an OZP, and the private buildings in the area it covers are usually similar in their timeline and circumstances of development and share similar conditions. At the operational level, the Tribunal should remain the stringent gate-keeper on whether the redevelopment of a building, lot or street area is justified under the existing compulsory sale regime by determining each compulsory sale application in accordance with the law. The Administration has added that most of the boundaries of OZPs are major roads, so the chance for a redevelopment project straddling both a "designated area" and a "non-designated area" is slim.

Updating the list of "designated areas"

22. Members have enquired whether the Administration will refine the delineation approach of "designated areas" in the future. They have also requested the Administration to provide a timetable for reviewing and updating the list of "designated areas" and expound on the overall planning gain expected for a community should the area concerned be specified as a "designated area".

23. The Administration has responded that to ensure that the delineation of "designated areas" keeps pace with the changes in development, it will regularly review the redevelopment status of old districts and propose amendments to the list in a timely manner. Clauses 15 and 16 of the Bill propose to specify the list of "designated areas" by way of subsidiary legislation (i.e. the proposed new section 5 of and Schedule to the Notice) and to empower the Secretary for Development to introduce into LegCo the proposed amendments to the list through the negative vetting procedure. The Administration has added that for the sake of channelling market resources to areas with more pressing need for redevelopment, the Bill proposes the selection of seven "designated areas", [6] including five for which district planning studies have been/are being conducted [7] Judging from the above, it can be said that the relevant proposal is consistent with and complementary to the Government's directions of providing strategic guidance at the planning level through district planning studies, and offering incentives in the form of new planning tools to motivate private sector participation in urban renewal in older districts. In addition, the Bill proposes measures to facilitate compulsory sale applications for adjoining lots. The measures also aim at encouraging compulsory sale applicants to redevelop larger sites, providing more room for better planning of redevelopment projects, optimizing the land use efficiency and adopting innovative building designs for facilities enhancement, thereby bringing the concept of "planning-led and district-based" to private sector redevelopment projects and facilitating more redevelopment projects that will bring greater gains to the community.

24. The Bills Committee has noted that the Administration may add or remove "designated areas" through proposing amendments to the list of "designated areas" in the future. In this connection, members have enquired whether amendments can be proposed to specify partial areas in an OZP in place of the current stipulation that all areas included in the OZP are to be specified. Members have also expressed concern that amendments to the effect of removing a "designated area" from the list will affect the work of developers which have already made redevelopment plans or initiated the acquisition process in the area concerned. Members have urged the

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6 The seven "designated areas" are Cheung Sha Wan (including Sham Shui Po), Ma Tau Kok (including Kowloon City and To Kwa Wan), Mong Kok, Sai Ying Pun and Sheung Wan (which are covered by the same OZP), Tsuen Wan, Wan Chai, and Yau Ma Tei.

7 Including Ma Tau Kok (including Kowloon City and To Kwa Wan), Yau Ma Tei, Mong Kok, Sham Shui Po (covered by the Cheung Sha Wan OZP) and Tsuen Wan.

Administration to consider measures to avoid derailing redevelopment projects under planning or being implemented as a result of amendments to the list of "designated areas". In response, the Administration has confirmed that partial areas in an OZP can be specified as "designated areas" through proposing amendments to the list of "designated areas". The Administration has also undertaken to take into account the possible impacts on the ongoing acquisition activities conducted by the private sector and consult the relevant LegCo Panel in advance should there be any plan to make amendments to the criteria for or the list of "designated areas" in the future.

Compulsory sale applications involving multiple adjoining lots

Implementation details

25. The Bills Committee has noted that for the sake of facilitating large-scale redevelopment, clause 4 of the Bill proposes to amend section 3(2) of the Ordinance to allow more flexibility for compulsory sale applications involving multiple adjoining lots. In this connection, members have urged the Administration to explain how the relevant measures will protect the interests of minority owners, especially how to prevent developers from deliberately splitting connected lots into several compulsory sale applications and amalgamating the lots for joint development upon successful acquisition, resulting in the reduction of the assessed redevelopment values ("RDVs") during the compulsory sale and the compensation offer for minority owners. Members have also expressed concern that the requirements for and the way of handling compulsory sale applications involving multiple adjoining lots are very complicated, and the Tribunal will have to take even more time to conduct the relevant trials in the future.

26. The Administration has advised that the Bill proposes the weighted averaging arrangement for a compulsory sale applicant to work out the average percentage of the acquired undivided shares in two or more adjoining lots and the average percentage required for meeting the threshold for making a compulsory sale application. The weighted averaging arrangement is useful in a way that even if a compulsory sale applicant owns a lower percentage of undivided shares in one or more lots in a set of adjoining lots, he/she can still include adjoining lots in which he/she owns a higher percentage of undivided shares in the application to increase the chance of meeting the application threshold. This provides a greater incentive for amalgamating adjoining lots under a single compulsory sale application. Generally speaking, amalgamation of lots for redevelopment

enhances land use efficiency, causing the RDVs of the lots as well as the reserve price for the auction (which is determined based on the RDVs) to increase, and thus an increase in the sale proceeds to be apportioned to minority owners after the auction. Meanwhile, the proposed new sections 3(8)(b)(iii) and (iv) of the Ordinance (clause 4 of the Bill) provide that the percentage of undivided shares owned by a compulsory sale applicant in each of the lots under an application involving adjoining lots shall be no less than 65%, and the weighted averaging arrangement is not applicable to lots which are subject to a compulsory sale application threshold of 90% (e.g. lots with buildings erected thereon aged below 50 years), so that the application threshold for such lots will not drop drastically from 90% to 65% as a result of the weighted averaging arrangement. In addition, for lots having low RDVs on their own and offering no hope for residents to improve their living environment through redevelopment otherwise, the measures facilitating the amalgamation of adjoining lots for compulsory sale applications provide the possibility for such lots to be merged into larger sites for redevelopment.

27. The Administration has added that for the sake of supporting the Tribunal's handling of compulsory sale cases which are expected to increase upon the legislative amendment, efforts will be made to secure additional judicial manpower resources for the Tribunal, including the creation of two permanent judicial posts. The Administration will also encourage and provide support for mediation between the compulsory sale applicant and minority owners so that more cases can be resolved through mediation rather than litigation at the early stage of compulsory sale.

Apportionment of the sale proceeds

28. The Bills Committee has noted that according to Part 3 of the proposed amended Schedule 1 to the Ordinance (clause 9 of the Bill), the sale proceeds arising from compulsory sale applications involving multiple lots should first be apportioned to individual lots on a pro-rata basis based on the RDV of each lot on its own. Members have pointed out that the RDV of an individual small lot among the adjoining lots may be lower than its existing use value ("EUV"), resulting in a lower apportionment to the owners concerned under the proposed apportionment method. Such a result of apportionment does not conform to the objective of the legislative amendment, which seeks to enable minority owners to benefit from the higher overall RDV of large-scale redevelopment projects. In this regard, there is a view that under the aforesaid situation, the apportionment approach in the first stage should be modified from apportioning "on a pro-rata basis based on the RDVs of individual lots" to apportioning "on a pro-rata basis

based on the RDVs of individual lots or the total EUVs of individual lots, whichever the higher".

29. The Administration has explained that the proposals under the Bill for facilitating compulsory sale applications involving multiple adjoining lots will give small lots which are not economically viable for redevelopment an opportunity to be redeveloped by amalgamation with adjoining lots. A two-stage approach of apportionment of the sale proceeds is to be adopted, including a first stage in which the joint RDV of multiple lots amalgamated for joint redevelopment is apportioned on a pro-rata basis based on "the RDVs of individual lots on their own", and a second stage in which the sale proceeds apportioned to each lot in the first stage are apportioned on a pro-rata basis based on "the EUVs of individual units". The Administration has advised that in the case of joint redevelopment of multiple lots, given the increased RDV, the RDV apportioned to a small lot during the first stage will be higher than the RDV of the lot on its own. Even in the unlikely circumstance of the lot being apportioned a lower RDV compared with its EUV, the minority owners concerned can still receive higher amounts of sale proceeds than in the case of redevelopment on its own. The Administration considers it an appropriate arrangement since the mechanism proposed under the Bill can ensure a fair apportionment of sale proceeds in the most common scenarios.

30. For compulsory sale applications involving multiple adjoining lots, if the applicant has already owned all the titles of a lot under the application, there is no need to apportion the sale proceeds to the applicant and the minority owners on a pro-rata basis according to the EUVs of the properties on the lot during the second stage of apportionment of sale proceeds. In view of this, members consider that under such situation, the applicant should be exempted from preparing the valuation report on the EUVs of that particular lot. The Administration concurs with the above view and will propose amendments to revise the relevant provisions under the Bill (i.e. clause 9(3)).

31. Regarding the three types of documents (including a Government lease, an instrument effecting a division of land that is registered in the Land Registry, and plans approved under the Buildings Ordinance (Cap. 123)) specified under the proposed new section 3(2C) of the Ordinance (clause 4 of the Bill) which are used for showing the lot area for the purpose of weighted average calculation, some members are of the view that if a compulsory sale applicant is unable to submit the three types of documents mentioned above, he/she should be allowed to submit a survey record plan or land boundary plan prepared by an authorized land surveyor for the

purpose of ascertaining the area or boundary of the lot. Members have urged the Administration to formulate clear guidelines on the technical issues (such as the supporting documents for the area or boundary of lots and the method used for sale proceeds apportionment) in relation to compulsory sale applications involving multiple adjoining lots and streamline the procedures for handling the relevant issues as far as practicable.

32. The Administration has advised that under the Bill, the boundary and area of lots are only used for the weighted average calculation. Even if an applicant is unable to provide the three types of documents set out under the Bill for one (or some) of the lots under an application involving multiple lots due to certain circumstances, it only means that the lot (or those lots) should be excluded from the weighted average calculation. As long as the applicant meets the compulsory sale application threshold for the lot (or those lots) in terms of the undivided shares he/she owns in the lot(s) concerned, the lot (or those lots) can still be included in the same compulsory sale application and this will not affect the Tribunal's consideration of whether to issue an order for sale. The use of the three types of supporting documents as set out under the Bill for ascertaining the boundary and area of lots is a simple arrangement with certainty, thereby helping to avoid complicated and time-consuming disputes. If the applicant is allowed to submit a survey record plan or land boundary plan prepared by an authorized land surveyor as the proof for determining the area/boundary of a lot, under the principle of fairness, the Administration will have to allow the minority owners to submit the survey record plan or land boundary plan prepared by the authorized land surveyor engaged by them as well. As such, the Tribunal will also have to adjudicate on the boundary or area of the lot concerned. This involves not only the interests of the applicant and the minority owners, but also the interests of third parties (e.g. the owner(s) of another/other adjoining lot(s) not included in the compulsory sale application), giving rise to the legal issue as to whether the third parties concerned have the right to raise objection to the survey record plan or land boundary plan concerned and the determination made by the Tribunal. As regards the order of priorities accorded to the aforesaid three types of documents in the Tribunal's consideration, since the documents applicable to the lots covered by each compulsory sale application case may vary, the relevant legal provisions should allow flexibility so that the Tribunal can determine each case on its own merits. In addition, the Judiciary has been invited to consider, upon the passage and enactment of the Bill, administratively codifying the case management practices which have been effective in the past (such as by way of a consolidated set of practical guidelines governing compulsory sale applications) for the reference of both parties in litigation.

Building covenant period

33. The Bills Committee has noted that according to Schedule 3 to the Ordinance, the redevelopment of a lot sold by compulsory sale is subject to a maximum building covenant ("BC") period of six years. The owner of the lot can make an application to the Tribunal for extension of the said time frame should it be necessary. Members are of the view that under the principles of facilitating the amalgamation of adjoining lots for redevelopment projects larger in scale and speeding up the pace of redevelopment, the Administration should make corresponding amendments to the relevant time frame and mechanism to give the Tribunal the leeway to prescribe longer BC periods for redevelopment projects under individual compulsory sale applications that take more time to complete and thus obviate the procedure of owners of lots applying for the extension.

34. The Administration has responded that based on the statistics on 53 cases in which a compulsory sale auction was held in or after 2010 and an occupation permit was issued in or before 2019, over 80% of the cases (i.e. 43 cases) involved joint redevelopment with other lots and the average redevelopment period of them was 4.8 years. For 52% of the cases (i.e. 28 cases) that involved a gross floor area of 10 000 square metres or above upon redevelopment, the redevelopment could be completed within six years in almost all of them. [8] Moreover, it is envisaged that the proposed measures facilitating the redevelopment of adjoining lots under the Bill will favour the emergence of redevelopment projects larger in scale while the scale is still limited by the layout of streets and blocks in old districts. Therefore, developers are expected to be able to complete most of the joint redevelopment projects involving amalgamation of adjoining lots within the six-year BC period. However, under another proposal set out in the Bill, the owner-occupier will be allowed to further occupy the property for not more than six months after the sale of the lot for the sake of arranging relocation. This proposal may have impact on the commencement date and progress of the redevelopment, causing the project to take more than six years to complete. After weighing the aforesaid actual circumstances against the policy objective of speeding up the pace of redevelopment, the Administration agrees that there is room for extending the maximum BC period for compulsory sale applications involving more than one lots from six years under the existing compulsory sale regime to seven years to minimize the chance that a joint redevelopment project as facilitated by the

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[8] According to the Administration, only one case involving joint redevelopment with other lots required 8.5 years to complete.

Bill will have to apply for extension of the period. To that end, relevant amendments will be proposed. Should a longer BC period be required for individual cases, an application for extension can be made to the Tribunal under the existing mechanism provided under the Ordinance.

Application of the streamlined legal process of the compulsory sale regime

35. Clause 5 of the Bill proposes to provide under the proposed new section 4(2A) of the Ordinance for streamlining the legal process for compulsory sale applications meeting specific criteria. If all private buildings on the lot are aged 50 years or above, and all the minority owners have been identified and have no objection to redevelopment, the compulsory sale applicant will be dispensed with the requirement to justify before the Tribunal the redevelopment of the buildings on the lot on the grounds set out under the legislation (i.e. the "age" or "state of repair" of the buildings). In this connection, members have suggested that the Administration should explore ways to handle special situations in which untraceable owners are involved (e.g. the owner is a private limited company which has been dissolved or liquidated) to avoid precluding individual compulsory sale applications from the benefits offered by the streamlined legal process under the amended legislation once there is any minority owner who is untraceable or whose whereabout is unknown.

36. The Administration has advised that for the sake of ensuring the compliance of the provisions on streamlining the trial process under the proposed new section 4(2A) of the Ordinance with the requirement of proportionality or fair balance for protection of private property rights under Articles 6 and 105 of the Basic Law ("BL 6 and BL 105"), each and every minority owner affected by a compulsory sale application should be able to indicate on his/her own initiative without interference that he/she has no objection to dispensing the compulsory sale applicant with the requirement to justify before the Tribunal the redevelopment of the buildings on the lot. The Administration therefore proposes that the notice of no objection should be produced by the minority owner through his/her legal representative. If the above arrangement of streamlined process is applied to situations in which untraceable minority owners are involved, such untraceable owners may unknowingly lose their right to raise objection to the redevelopment of the lot and lose the statutory protection offered to them by the Tribunal as the gate-keeper. Moreover, if a person who has once been regarded as untraceable (including those who cannot be contacted successfully or whose whereabouts are unknown and court documents have been served by substituted service in accordance with a court order) appears again in the course of litigation, such a person may raise objection to the loss of the

aforesaid rights and protection without his/her knowledge. This will complicate the litigation process and even impose undue hardship on the untraceable owners, and may give rise to the question of non-compliance with the requirement of proportionality or fair balance for protection of private property rights under BL 6 and BL 105. In the light of members' suggestion, the Administration will propose amendments to amend clauses 5 and 6 of the Bill, by which provisions will be added to the effect that if a property involved in a compulsory sale application is vested in the Government as bona vacantia, the Government, as a "minority owner" owning the undivided shares of the property under the Ordinance, is deemed to have filed a notice of no objection under the proposed new section 4(2A)(b) of the Ordinance.

Protection for minority owners affected by compulsory sale

Valuation of properties and the sale proceeds

37. Noting that more minority owners may be affected by compulsory sale following the lowering of the thresholds for compulsory sale applications, members are particularly concerned about the rights and interests of such owners. Members have relayed to the Administration that minority owners are, on the one hand, worried that the acquisition price offered by the developer is insufficient for them to buy a suitable replacement property in the same district and, on the other hand, not aware of how to raise objection to the valuation of the property in the process of compulsory sale application. Members have called on the Administration to provide more statutory protection and support services to address the difficulties faced by minority owners in property valuation.

38. The Administration has responded that there are provisions under the Ordinance protecting the rights of minority owners affected by compulsory sale applications in different aspects and at different stages. Among other things, it is provided that the affected minority owners shall have the right to raise objection to the compulsory sale application as well as the valuation of their properties, and the Tribunal is the gate-keeper on whether redevelopment of the lot is justified. In addition to statutory protection, the Administration will introduce administrative measures to support minority owners. One of the measures is to set up under the Development Bureau ("DEVB") a "Dedicated Office of Supporting Services for Minority Owners Under Compulsory Sale" ("the dedicated office") to provide members of the public with information about compulsory sale applications and one-stop enhanced support service for minority owners at different stages of compulsory sale applications. A new company to be set up by URA, which

is tentatively called the "Support Service Centre for Minority Owners under Compulsory Sale" ("the Support Service Centre"), will be commissioned by the dedicated office to provide the related services.

39. The Administration has added that at the very early stage of compulsory sale, the Support Service Centre will deliver assistance to the affected minority owners to enable them to understand their rights under the compulsory sale regime, and encourage them to actively engage in mediation. The Support Service Centre will liaise with and arrange for professionals (such as lawyers and surveyors) to offer preliminary professional advisory service to the affected minority owners, including an overview of the compulsory sale application regime, the statutory rights and interests of minority owners, and the factors considered by the Tribunal in granting an order for sale and determining the reserve price for the sale. The Support Service Centre will also arrange talks on mediation and subsidize part of the mediation fees incurred by eligible minority owners to encourage minority owners to actively engage in mediation. To facilitate mediation, the Support Service Centre will assist in providing an independent third-party valuation report on the EUV of the concerned property and the RDV of the lot for minority owners' reference, thereby enabling them to make a more informed decision on whether to accept the applicant's acquisition offer or to proceed with litigation on the compulsory sale application. Should the affected minority owners decide to proceed with the litigation and object to the compulsory sale application and/or challenge the valuation report prepared by the compulsory sale applicant, the Support Service Centre will provide them with a referral list of professional/expert services required in the litigation. Moreover, after the Tribunal has granted an order for sale in respect of a compulsory sale application, the lot has to be sold within three months and the minority owners concerned have to prepare for delivering up vacant possession of their properties once the lot is sold. The Support Service Centre will provide assistance for minority owners who are in need free of charge to help them identify replacement flats and relocate. Similar relocation assistance will also be provided for tenants who are affected by compulsory sale applications.

40. The Bills Committee is strongly concerned whether minority owners can indeed gain a reasonable share of the RDV of their properties under the compulsory sale mechanism. Moreover, some members have pointed out that amid the downturn of the property market in recent years, if a property with a mortgage in negative equity is sold by compulsory sale, the bank will press the owner for repayment of the mortgage loan on the one hand, and the sale proceeds apportioned to the minority owner may not be sufficient to pay up the mortgage on the other. Given that compulsory sale deprives

minority owners of the right to decide the timing of selling their properties, some members are of the view that the Administration should support such minority owners who are owner-occupiers in addressing the relevant financial difficulties. The Bills Committee has also noted that in about 40% of cases in which an order for sale was issued, minority owners had disputed the RDV valuation submitted by the compulsory sale applicant (i.e. the developer). What is more, a vast majority of selling in compulsory sale cases was concluded without bidding. There are views that such data and circumstances reflect that the compulsory sale regime carries a certain degree of controversy, and the sale of aged buildings by public auction may not offer minority owners a reasonable reward in line with the market situation.

41. The Administration has advised that as at the end of June 2023, in 165 cases in which the properties subject to compulsory sale orders were successfully sold by public auction, the amount of sale proceeds apportioned to each minority owner was on average about 1.83 times the market value of the property owned by such owners, and in most cases probably sufficient for them to purchase a replacement property the same size as their original one but aged 30 years or below in the same district. Furthermore, the sale proceeds received by a minority owner affected by compulsory sale should normally be sufficient to pay off the mortgage of the property concerned. Firstly, the buildings on a lot subject to an order for sale made by the Tribunal are usually aged 50 years or above. It is believed that a considerable proportion of owners have resided in the units for a relatively long period of time and have already paid off all the mortgages. Banks generally impose more restrictions (such as a lower loan-to-value ratio cap) on mortgage lending for aged buildings, including testing the applicant's repayment ability and assessing the market value of the property. Therefore, the Administration believes that the chance of mortgaging an old property at a high loan-to-value ratio is slim. The Administration has also pointed out that the sale and purchase of private properties and the resultant mortgage loans are essentially private financial endeavours. Neither can it be ruled out that some of the property owners applying for mortgage loans are investors. Under the principle of prudent use of public resources and after weighing the potential moral hazard, the Administration considers it inappropriate to provide financial assistance for owner-occupiers who are unable to pay off the mortgage as a result of compulsory sale.

42. The Administration has added to explain that according to the Ordinance, where an order for sale is granted by the Tribunal, the concerned lot shall be sold by public auction. This will ensure transparency of the process and provide reasonable protection for the minority owners. The reserve price for the sale is set by the Tribunal in accordance with the

Ordinance, for which the redevelopment potential of the lot on its own has to be taken into account. When determining the EUV and/or setting the reserve price, the Tribunal (which includes a member who is a qualified surveyor providing professional valuation advice) will study the expert valuation reports submitted by the compulsory sale applicant and the minority owners respectively, and where necessary, pay site visits to the lots and the properties in question in order to make independent valuation assessments. In some cases of compulsory sale application, even if the minority owners do not dispute the RDV valuation submitted by the applicant, the Tribunal may still make necessary adjustments to the RDV valuation submitted by the applicant based on its independent analysis in order to arrive at a reasonable reserve price.

Dedicated loan scheme with government guarantee

43. Members are concerned whether the dedicated loan scheme with government guarantee ("the dedicated scheme") proposed to be introduced by the Administration will encourage minority owners to pursue litigation on the compulsory sale rather than engage in mediation. In addition, members have asked whether consideration has been given to other means to financially support minority owners in compulsory sale litigation, such as setting up a legal aid scheme, and providing a mechanism for claiming reimbursement of specified costs from the Administration.

44. The Administration has responded that as established by the ruling of the Court of Appeal in previous cases, the Tribunal will normally order the compulsory sale applicant to reimburse the reasonable costs incurred by minority owners for engaging professional and other expert services in the compulsory sale application litigation after the conclusion of the proceedings. However, liquidity problem is a principal issue faced by minority owners as they are required to pay those fees upfront in the course of the compulsory sale litigation. In view of this, the Administration has proposed a dedicated loan scheme to address the practical issues faced by minority owners, under which assistance will be given to eligible minority owners in obtaining bank loans for tiding over the liquidity gap arising from engaging legal and other experts to deal with the compulsory sale litigation, and the loans should be repaid after the Tribunal's award of cost orders upon conclusion of the hearings. The Administration intends to consult the Panel on Development on the details of the dedicated loan scheme upon the conclusion of the Bills Committee's scrutiny of the Bill and then submit the funding application to the Finance Committee for establishing the dedicated scheme. The Administration has added that according to the Practice Direction issued by the Tribunal regarding the application of mediation to compulsory sale cases,

the Tribunal may take into account any unreasonable failure of a litigation party to engage in mediation in its consideration of whether to grant an order for sale and in exercising its discretion on costs. Therefore, assistance for the sake of facilitating mediation will still be among the first services provided by the Support Service Centre for minority owners at the early stage of compulsory sale even if the dedicated loan scheme is in place.

Strengthening statutory protection

45. On statutory protection, the Administration has explained that under the existing Ordinance, there are provisions on delivering up vacant possession of properties by tenants not later than six months following the sale of the lot, but no similar provisions concerning minority owners, who may also be residing in the properties concerned. Arguably, an owner-occupier loses the title to the property on the day the lot is sold and no longer has the right to reside in it. However, it is reasonable to take into account the time needed by the owner-occupier to look for a replacement flat and move out. Therefore, clause 6 of the Bill proposes to provide under the proposed new section 4B of the Ordinance that a minority owner meeting specific conditions should be allowed to further reside in the property for a period not more than six months after the compulsory sale (which is in line with the existing buffer period provided for tenants). The minority owner has to pay the owner of the lot for his/her occupation of the property during the period based on the rental value specified under the proposed new section 4B(4) of the Ordinance (i.e. the rateable value of the property, or the market rent arrived at in specified manners in the absence thereof). Members opine that the new term "owner-occupier(自住擁有人)" added to and defined under the proposed amended section 2(1) of the Ordinance (clause 3 of the Bill) for the sake of the new statutory protection mentioned above is unable to reflect accurately the policy intent that occupation of such properties is not necessarily for residential purposes as advised by the Administration. After considering members' views, the Administration agrees to propose amendments to the Bill to revise the term to "owner-occupier(自用擁有人)".

Role of the Support Service Centre

46. As developers generally start contacting owners of the building for price negotiation and ownership acquisition well before applying for compulsory sale, and some buildings are suffering severe deterioration of the environment as a result of large-scale acquisition campaigns, members have urged the Administration to make a commitment to expanding the service scope of the proposed Support Service Centre in order to deliver early intervention and assist those minority owners who are affected by ownership

acquisition or compulsory sale. That includes providing them with guidance and relevant information (including the rights of and the protection for minority owners) either directly or via different channels (e.g. District Councils, and District Services and Community Care Teams) in advance of their receipt of the notice of compulsory sale application to allay their concerns at an early stage. In addition, members have urged the Administration to expound on the support provided for tenants who are affected by compulsory sale.

47. The Administration has responded that apart from rendering support to the minority owners affected by compulsory sale, the Support Service Centre will focus on stepping up publicity and public education at the district level, particularly in old districts and those with more acquisition activities. Proactive efforts will be made to liaise with organizations in the community network to reach out to property owners to understand their needs and enhance their understanding of compulsory sale, their own rights and the legal protection afforded to them. In the light of members' suggestion, the dedicated office will also liaise with the District Councils concerned to arrange for the Support Service Centre to work with designated non-governmental organizations and local organizations or residents' associations (including District Services and Community Care Teams) in organizing appropriate public education and publicity activities for local residents. The Support Service Centre will also produce materials such as webpages, pamphlets and leaflets to provide the public with concise information on the compulsory sale application process and the related support services, while the public can seek relevant information through the telephone enquiry hotline. Regarding tenants who are affected by compulsory sale, the dedicated office will provide them with preliminary advisory service (including keeping them informed of the schedule for moving out after the public auction, and referring them to organizations in the community that provide support services for tenants), emotion counselling and support services such as identifying replacement flats.

48. While URA is responsible for driving public sector redevelopment projects, the dedicated office to be set up under DEVB will provide services through the Support Service Centre to be set up by URA. In this connection, members have asked the Administration to provide information on matters such as the code of practice and guidelines adopted by the dedicated office and the Support Service Centre so as to enable the public to understand how the Support Service Centre will operate independently and garner the trust of minority owners, such that they will not have the misconception that there is conflict of interests between the Centre's work of supporting minority owners and URA's role in driving redevelopment.

49. The Administration has advised that for the sake of ensuring its independence, the Support Service Centre will report to the dedicated office under DEVB and its operation is completely independent from URA. Its staff will only carry out the work of the Support Service Centre, without being involved in the other work of URA. A Memorandum of Understanding will later be signed between DEVB and URA stating clearly that the Support Service Centre is directly accountable to the dedicated office under DEVB, required to regularly report its operation and submit reports on its work to the dedicated office, and supposed to seek instructions from the dedicated office when necessary in order to align with DEVB's policy. On the other hand, the dedicated office will be responsible for drawing up the rules and regulations governing the support services and the code of practice for the operation of the Support Service Centre. Throughout the entire process of compulsory sale, both the dedicated office and the Support Service Centre will only provide information, support and referrals. They will not offer any advice to minority owners on their individual compulsory sale cases.

Redevelopment strategy and building maintenance

Redevelopment strategy

50. Members have pointed out that the infrastructure in many aged local districts is dilapidated and outdated, and there is an urgent need for the complete redevelopment of the entire local district (including the infrastructure and transport support). They consider the Administration's current redevelopment strategy too passive. Members have stressed that lowering of the thresholds for compulsory sale applications should not be the only or the primary means to promote the redevelopment of old districts. Instead, the Administration should formulate an overall long-term strategy to expedite the redevelopment and improvement of old districts, and take a more proactive stance in creating favourable conditions for redevelopment (including relaxing the plot ratio), so that the redeveloped buildings will command a higher value and redevelopment will be attractive to developers. Members have also proposed other means (e.g. sharing the reward of redevelopment with minority owners) to encourage minority owners to participate in redevelopment, and introduction of enhanced measures (e.g. provision of temporary accommodation and loan schemes) to assist minority owners in initiating joint sale and organizing redevelopment projects on their own initiative.

51. The Administration has advised that a policy-led approach under the framework of the Urban Renewal Strategy has all along been adopted to support and encourage urban renewal by both the public and private sectors. On the public sector side, URA adopts a "planning-led" model in restructuring and replanning old districts following the "district-based" approach under the Urban Renewal Strategy. While redeveloping aged buildings, efforts are made to replan local traffic routes, pedestrian and community facilities, green space, etc., to bring about greater benefits to the neighbourhood.

52. The Administration has added that for the sake of encouraging the redevelopment of old and dilapidated buildings by the private sector, in addition to introducing the Bill, the Government has implemented a number of initiatives and measures in recent years to facilitate the redevelopment of old districts. That includes the ongoing effort to follow up with URA on the new planning tools proposed in the District Study for Yau Ma Tei and Mong Kok (e.g. allowing transfer of plot ratio across sites in Mong Kok and Yau Ma Tei) with a view to enhancing the commercial viability of redevelopment projects and attracting private sector participation. The Administration will watch closely the response from the industry and stakeholders. The Administration will review in 2025 the effectiveness of plot ratio transfer in promoting redevelopment in Yau Ma Tei and Mong Kok and introduce the ideas and implementation models that are practical and feasible to other old districts with a view to facilitating urban renewal by adopting more effective and efficient ways. Furthermore, the Government and URA have commenced the district planning studies for Sham Shui Po and Tsuen Wan and the comprehensive urban renewal master plans and restructuring proposals for these two districts are expected to be ready in phases from the second half of 2024. Another study using the new land on Kau Yi Chau Artificial Islands as a scenario is underway to explore the implementation of feasible measures by more ground-breaking policy means (e.g. transfer of plot ratio across districts) and the use of newly developed land for facilitating the implementation of urban renewal projects by the public and private sectors.

53. Regarding strengthening the support for property owners in initiating joint sale, the Administration has advised that URA has been invited to conduct a study after the passage of the Bill to explore ways to enhance its joint sale service. Preliminarily, it is considered that the threshold for applying for the joint sale service and the threshold for triggering the joint sale process in "designated areas" and "non-designated areas" should be lowered in alignment with the lowered thresholds for compulsory sale applications upon the passage of the Bill. Moreover, for the sake of

enhancing the success rate of joint sale, URA will explore the feasibility of including adjoining lots in the joint sale upon receipt of the joint sale application, so as to increase the site area available for sale and enhance the RDV of the joint sale application. The Support Service Centre will also engage Urban Redevelopment Facilitating Services Company Limited, the company responsible for implementing the joint sale service, in its public education and publicity activities to promote and introduce to owners of aged buildings the joint sale service as an alternative to compulsory sale for redevelopment.

Building maintenance

54. Members are of the view that merely promoting compulsory sale applications is no solution to the problem of ageing buildings, and it is equally important to strengthen building maintenance. There is a view that lowering the thresholds for compulsory sale applications may cause some property owners to evade the responsibility to maintain their buildings, so that the state of repair of the building will deteriorate and the chance of the Tribunal granting an order for sale will increase. Meanwhile, members are concerned that activities of "placing nails" (i.e. purchase of aged buildings in the hope of obtaining compensation from their being acquired in the future) may emerge in some buildings, and this may create difficulty for minority owners in maintaining their buildings properly and in turn force them to accept low selling prices due to dilapidation of the building should their properties be sold in the future.

55. The Administration has advised that both rehabilitation and redevelopment, working in parallel, are emphasized in the Government's strategy of arresting urban decay. Under the existing Buildings Ordinance, the Buildings Department may institute prosecution against the owners/owners' corporations ("OCs") failing to comply with MBIS notices without reasonable excuse. Moreover, it is an offence for a person to obstruct the OC in carrying out any inspection or works required for the purpose of complying with the order or notice in respect of the common parts of a building, or to deny the OC's access to or use of the premises concerned (which is reasonably necessary for the carrying out of the works), or to refuse to contribute towards the cost of the works. The Government is in the process of reviewing the Buildings Ordinance and will consider increasing the penalties and lowering the prosecution threshold, so as to encourage owners/OCs to comply promptly with the notices or orders. The proposed legislative amendments will be put forward in 2024.

Compulsory sale applications involving adverse possession

56. Members have pointed out that adversely possessed properties exist in many aged buildings, and some of those buildings may not have a Deed of Mutual Covenant ("DMC") or building plans, or the share of their ownership has not been determined. In this connection, members have suggested giving proactive consideration to stipulating under the legislation as to how issues in compulsory sale applications arising from adverse possession (irrespective of whether the property has undivided shares involved or not) should be handled. In particular, ways should be worked out to avoid the hindrance caused to redevelopment as the compulsory sale applicant/post-compulsory sale lot owner has to take time to reach an agreement on compensation with the adverse possessor of properties not allocated with undivided shares even after the issue of an order for sale by the Tribunal. Members have also requested the Administration to explain its policy on dealing with the aforesaid situation.

57. The Administration has responded that there are no provisions under the Ordinance that stipulate any specified documents for proving the ownership of "undivided shares in a lot". Generally speaking, the DMC is accepted by the market as the basis. A small number of old private buildings in multiple ownership (especially those probably aged more than 60 or 70 years) may not have a DMC. When an individual unit of such buildings is sold, the undivided shares of the unit are normally specified in the Deed of Assignment. Furthermore, in explaining the issues in compulsory sale applications arising from adverse possession, the Administration has added that a person who acquires land through adverse possession only obtains a possessory title, but not the title to the land. As the adverse possessor does not own undivided shares in the lot, he/she does not fall within the meaning of "minority owner" under the Ordinance and shall have no capacity to raise objection to the compulsory sale application and the valuation. However, the adverse possessor can be accepted as a respondent to the compulsory sale application for his/her claims to be dealt with, including by way of directing the trustees appointed under the order for sale to pay to the adverse possessor out of the sale proceeds an amount to discharge the incumbrance on the lot concerned arising from a successful adverse possession claim according to section 11(2)(b) of the Ordinance. [9]

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[9] Section 11(7)(c) of the Ordinance provides that where a person claims to have had an interest in the lot sold pursuant to an order for sale, that person may take any action or commence any proceedings in relation to any proceeds of sale arising from the sale of that part of the lot to which the interest relates.

A person claiming to be in adverse possession but not listed as a respondent may also commence proceedings under the Ordinance to resolve the disputes over compensation. In the case of a lis pendens involving adverse possession, the Tribunal can direct the trustees to hold the part of the sale proceeds of the unit concerned until the court makes a final adjudication on the proceedings in relation to the adverse possession. [10]

58. The Administration has added that previous cases of compulsory sale application indicate that the Tribunal is able to deal with compulsory sale applications involving adverse possession (regardless of whether the adverse possession arises from properties with or without undivided shares). [11] As regards some members' suggestion to amend the Ordinance by empowering the Tribunal to extinguish all adverse possession in relation to a lot at the time when making an order for sale (regardless of whether the adverse possession arises from a property with or without undivided shares), the Administration has emphasized that such a suggestion goes against the Government's policy objective of not recognizing adverse possession by virtue of the new land title registration system as stated in the proposed amendments to the Land Titles Ordinance (Cap. 585). Adverse possession involves property rights to land and complicated legal issues which cannot be resolved simply by amending the Ordinance. According to the legal advice obtained by the Government, should an adverse possessor be required to sell his/her adverse possession in the amount of compensation, in the manner and at the date specified in the Tribunal's order, to ensure compliance with the requirement of proportionality or fair balance for protection of private property rights under BL 6 and BL 105, it is necessary to add explicit provisions to the Ordinance giving the adverse possessor the opportunity to comment on and object to the compulsory extinguishment of his/her adverse possession in relation to the compulsory sale application and the amount of

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[10] Section 4(6)(a)(iii) of the Ordinance empowers the Tribunal to, when making an order for sale, give directions to the trustees appointed under an order for sale in relation to the application of the sale proceeds. That includes, in respect of any lis pendens affecting the lot (i.e. lis pendens as defined in section 1A of the Land Registration Ordinance (Cap. 128) and registered under Cap. 128, including disputes arising from adverse possession), the retention of part of the sale proceeds for the payment of that part of the proceeds to any person(s) specified by the Tribunal upon the occurrence of an event specified by the Tribunal (e.g. after the resolution of a dispute).

[11] *Sino Accord Investment Ltd. v The Personal Representative of the Estate of Shun Kar Fun, deceased* (LDCS 10000/2017); *Group Leader Ltd. & Others v Hui Sun Fat & Others* (LDCS 27000/2011); *Fairbo Investment Ltd. v Leung Chit & Others* (LDCS 23000/2014); and *Winland Property Limited & Others v Chang Sai Ho formerly known as Law Wai Kun & Others* (LDCS 7000/2022).

compensation. A compensation mechanism should also be in place. The Government has advised that even if the Ordinance is amended to introduce provisions dealing with the various disputes and issues mentioned above, the result will only be having more landowners involved in the whole process of compulsory sale application, which is sure to introduce different variables to the application and lengthen its processing time. Therefore, the Administration is of the view that compulsory extinguishment of adverse possession under the Ordinance would give rise to complicated issues, and it is necessary to carry out thorough and extensive discussion, as well as consultation with relevant stakeholders (including the Judiciary), to ensure that the proposed amendments are holistic, fair and reasonable. It would be inappropriate to proceed with the aforesaid legislative amendment exercise with regard to adverse possession in the absence of sufficient consultation. Meanwhile, the Administration will continue to keep in view the judgments made by the Tribunal on this type of compulsory sale applications to see if there is room for improvement in the handling of apportionment of sale proceeds and compensation matters arising from adverse possession.

Providing practical guidelines to elaborate on the operation and legislative intent of certain provisions

59. Members are of the view that while the new measures proposed by the Administration in the legislative amendment exercise for the processing of compulsory sale applications relate to a multitude of circumstances and a number of provisions of the Bill, the current drafting of the Bill may not have spelt out the relevant requirements and principles clearly for readers. In this connection, they have proposed the inclusion of examples or illustrations in the Bill or the issuance of supplementary documents or practical guidelines after the passage of the Bill, so as to explain more clearly the operation of and the legislative intent behind the relevant provisions. If consideration is given to the issuance of such practical guidelines, members have suggested that reference should be drawn from other legislation carrying empowering provisions regarding the issuance of codes of practice to explore the inclusion of similar empowering provisions in the Bill in order to provide a legal backing for the practical guidelines, an arrangement that will also help boost the confidence of minority owners in the compulsory sale regime.

60. The Administration has made a commitment that after the passage of the Bill, explanation on compulsory sale applications involving multiple lots, including staircase-connected lots under the existing Ordinance and adjoining lots, mixed lots and additional lots newly proposed under the Bill, will be given in the form of a "guide", under which hypothetical examples

or illustrations (such as flow charts, formulae and diagrams) will be used to explain the compulsory sale applications and apportionment of sale proceeds in respect of different combinations of lots, complete with brief descriptions of the main provisions of the Ordinance in plain language. The Administration has pointed out that the issuance of such a "guide" will provide more flexibility for future operation and allow the Administration to update and enrich the contents of the practical guidelines at any time with the help of concise tools in the light of the actual implementation of the Ordinance and the latest case law, so as to assist different stakeholders (especially minority owners) in grasping the contents of the provisions and their actual operation. As such, the "guide" proposed above, by its nature and purpose, is purely for the reference of the industry, professionals, the general public, etc., and is not intended to provide any legally binding interpretation of and supplementary information to the Ordinance. The text of the Ordinance itself shall prevail for the interpretation of the relevant legislation. As regards the other existing ordinances that empower the issuance of legally binding guidance, such as the Code of Practice on Procurement of Supplies, Goods and Services and the Code of Practice on Building Management and Safety issued under the Building Management Ordinance (Cap. 344), the Administration takes the view that such an arrangement is not applicable to the operation of the Ordinance. This type of legally binding guidance usually provides detailed elaboration as to how the statutory requirements should be implemented or interpreted by the competent authorities or the enforcement agencies, with a view to assisting the authorities in establishing or negating compliance with the relevant provisions and using it as a basis for possible prosecution or other legal proceedings down the line. The Administration has pointed out that it is the Tribunal, which is vested with jurisdiction, which enforces the Ordinance. For this reason, the Administration has no power to, and should not, issue any guidance or code of practice with legal effect for the enforcement of the Ordinance.

Enquiries raised by the Legal Adviser to the Bills Committee on the contents of the Bill and the Administration's response

61. The Legal Adviser has raised enquiries with the Administration on the legal and drafting aspects of the Bill, to which the Administration has provided its response. The Legal Adviser's enquiries and the Administration's response are set out in LC Paper Nos. CB(1)160/2024(01) and CB(1)386/2024(03). Members have taken note of the contents of the above papers.

Proposed amendments to the Bill

62. Apart from the amendments elaborated in paragraphs 30, 34, 36 and 45 above, the Administration will also propose other amendments to the Bill to the following effect:

(a) refining some provisions related to the streamlining of legal process of the compulsory sale regime and clarifying the practical operation of the provisions, including adding a transitional provision under section 9 of the Ordinance;

(b) amending the presentation of some provisions related to the Tribunal's determination of compulsory sale applications involving adjoining lots to improve the comprehensibility of the provisions;

(c) setting out clearly the actual way in which the owner-occupier shall make payment based on rental value for further occupying the premises for not more than six months after the lot has been sold; and

(d) making textual amendments to the Chinese text of some provisions to ensure the consistency between the Chinese and English texts.

63. The Bills Committee has examined the draft amendments and raised no objection. Neither has the Legal Adviser identified any difficulties relating to the legal and drafting aspects of the draft amendments.

64. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate on the Bill

65. The Bills Committee has completed scrutiny of the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 17 July 2024. The Bills Committee has raised no objection.

Consultation with the House Committee

66. The Bills Committee reported its deliberations to the House Committee on 5 July 2024.

Council Business Divisions
Legislative Council Secretariat
11 July 2024

Appendix 1

Bills Committee on Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023

Membership list

Chairman	Hon Andrew LAM Siu-lo, SBS, JP
Deputy Chairman	Hon LAU Kwok-fan, MH, JP
Members	Dr Hon Starry LEE Wai-king, GBS, JP Hon Paul TSE Wai-chun, JP Ir Dr Hon LO Wai-kwok, GBS, MH, JP Hon Tony TSE Wai-chuen, BBS, JP Hon Doreen KONG Yuk-foon Hon LAM San-keung, JP Hon Dennis LEUNG Tsz-wing, MH Hon Judy CHAN Kapui, MH, JP Hon CHAN Hok-fung, MH, JP Hon TANG Ka-piu, BBS, JP Hon Louis LOONG Hon-biu Hon Carmen KAN Wai-mun, JP Dr Hon SO Cheung-wing, SBS, JP (Total: 15 members)
Clerk	Ms Connie HO
Legal Adviser	Ms Vanessa CHENG

Appendix 2

Bills Committee on Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023

List of organizations/individuals which/who have given views to the Bills Committee

Organizations/individuals which/who attended the meeting on 1 March 2024 to give views

1. Mr Timothy LAU
2. The Hong Kong Institute of Surveyors
3. Ms CHOW Yeuk-yu
4. Mr LEUNG Chun-fung
5. Mr TING Lup-wong
6. Mr SIN On-iun
7. Mr Reuben CHEUNG Kin-ming
8. The Y.Elites Association
9. Mr Peter CHEUNG Bing-keung
10. 放寬強拍門檻關注組
11. Miss TSANG Ching-man
12. 嚴正玲
13. CHFT Advisory and Appraisal Ltd.
14. 反對降低強拍門檻關注組
15. Richfield Realty Limited
16. Ms Judy TONG Kei-yuk
17. Mr LEE Man-pok
18. 關注舊區住屋權益社工聯席
19. Miss CHAN Mei-wai
20. Mr LEUNG Tsz-fung

Organizations/individuals which/who have submitted written views only

21. Soundwill Real Estate Agency Limited
22. Chinese Dream Think Tank
23. Mr Adrian BUT
24. 美景樓強拍租戶被迫遷關注組
25. RICS
26. Knight Frank Petty Limited
27. The Real Estate Developers Association of Hong Kong
28. Savills Valuation and Professional Services Limited
29. K. M. LAI & LI Solicitors & Notaries