



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023 Submissions by The Real Estate Developers Association of Hong Kong

Background

1. The Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023 ("Bill") was gazetted on 22 October 2023 which seeks to amend the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545) ("Cap 545") and the relevant subsidiary legislations.
2. The submissions of The Real Estate Developers Association of Hong Kong ("REDA") are set out in this Paper.

Ownership threshold

Lowering of threshold to 60% for buildings not less than 70-years old where each unit represents not less than 20% of all undivided shares

3. REDA supports the Administration's initiative in lowering the threshold for compulsory sale to facilitate urban renewal, but notes that the Administration is not persuaded to lower the percentage of ownership threshold to 60%. REDA would however still propose that the Administration consider lowering the threshold to **60%** in the following situation :-
 - (a) The building is at least **70-years old**.
 - (b) Each of the units represents not less than **20%** of all the undivided shares in the lot (typically, very old 5-storey buildings).
4. The adoption of the above would enable a 5-storey building which is at least 70-years old where the majority owner has acquired 3 of the 5 units to be redeveloped.



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Missing owner's shares counted towards threshold

5. REDA also recommends that if the Lands Tribunal (the “Tribunal”) is satisfied that an owner is missing and cannot be found, his undivided shares may be counted towards the threshold.
 - (a) The adoption of the recommendation would go a long way towards facilitating urban renewal, particularly where the threshold cannot be met because of one or more missing owners.
 - (b) There should **not** be any concern arising from protection of property rights under the Basic Law because :-
 - (i) The Tribunal will act as the gatekeeper and must be satisfied that the owner is missing and cannot be found.
 - (ii) The missing owner will still be entitled to the apportioned sale proceeds and will not be deprived of his entitlement.
 - (iii) The measure is proportionate and strikes a fair balance in that there is a clear societal benefit (urban renewal) for adopting the measure, and the intrusion into the property rights of the missing owner is small.

Designated Areas

Additional Designated Areas - Schedule to Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (Cap 545A) ("Cap 545A")

6. REDA suggests that the following be added to the Schedule to Cap 545A on Designated Areas, as there are still a lot of old buildings in these areas that require redevelopment :-
 - (a) Kennedy Town & Mount Davis OZP No. S/H1/24
 - (b) Shau Kei Wan OZP No. S/H9/19
 - (c) Quarry Bay OZP No. S/H21/28
 - (d) Causeway Bay OZP No. S/H6/17
 - (e) Central District OZP No. S/H4/17
 - (f) North Point OZP No. S/H8/27



Application covering multiple lots

Additional lots

7. Clause 4 of the Bill seeks to amend section 3 of Cap 545 by introducing new sections 3(2)(b), (c) and (d), to extend the application of the averaging arrangement to cover not only staircase-connected lots, but also adjoining lots. In that regard, we have the following questions :-
 - (a) Why is it necessary to include a new section 3(2A) for "**additional lot**"? Is the proposed section 3(2)(d) which covers (i) majority lots, (ii) staircase-connected lots and (iii) adjoining lots not sufficient for this purpose? Can the Administration please explain?
 - (b) Why does the additional lot have to cover or adjoin at least one set of staircase-connected lots, as provided under the proposed section 3(2A)(a) and (c)?

Required documents for averaging requirement

8. The proposed section 3(2C) provides that for the purpose of fulfilling the averaging requirement, the application must be accompanied, for each of the lots, by each of the following documents (the "**required documents**"):
 - (a) a Government Lease that shows the area or boundary of the lot;
 - (b) an instrument registered in the Land Registry effecting a division of land that shows the area or boundary of the lot; **and**
 - (c) building plans approved under the Buildings Ordinance ("**Cap 123**") of the existing building or if none, the former building.
9. The proposed section 3(2D) provides that section 3(2C) does not require the required documents to accompany the application, if the Tribunal is satisfied that the required documents are not available for the lot.
10. The proposed section 3(9) supplements section 3(8)(c) (on averaging requirement), 3(2C) and 3(2D) for situations where the applicant is not required to provide the required documents in support of the area or boundary, or where the Tribunal is satisfied that the area cannot be ascertained from the required documents. In such a situation, "**the lot is to be disregarded by the Tribunal in ascertaining the fulfilment of the**



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averaging requirement for the lots the subject of the application." REDA has the following questions :-

- (a) What is intended to be meant by "*to be disregarded by the Tribunal*"?
 - (b) Does it mean that the lot so disregarded (the "*disregarded lot*") cannot be used for averaging purpose, but can still form part of the "adjoining lots" and included in the application, so that if the disregarded lot is in the middle of the adjoining lots (which, if excluded from the application, would have broken up the continuous boundary), averaging is still allowed amongst the remaining lots provided that the disregarded lot meets the applicable ownership threshold?
11. The proposed section 3(2C) requires that **all** the required documents (if applicable) must be submitted. REDA suggests that :-
- (a) The application may be accompanied by **one or more**, instead of all, of the required documents.
 - (b) If none of the minority owners object to the area or boundary of the lot, the Tribunal shall have the power to dispense with the required documents and allow averaging.
12. For pre-war buildings, there are no plans approved under Cap 123. Even for post-war buildings, the record plans approved under Cap 123 may not be available in the archives of the Buildings Department. To address these or other similar situations, the Tribunal should be given the power to dispense with any of the required documents and allow averaging where it is satisfied that the relevant required document is not available and there is acceptable evidence (such as a survey plan from an authorized land surveyor) of the area or boundary.

Registration of notice of application in Land Registry

Amendments to Parts 1 and 3 of Schedule 1 to Cap 545 – on Valuation Report and Basis of Apportionment of the Proceeds of Sale of Lot - registration of notice of application

13. The amendment to the Schedule seeks to amend:-



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- (a) the requirements of the valuation reports to be attached to the application; and
 - (b) the basis of apportionment of the sale proceeds of the subject lots amongst the various lots in the event of a multiple-lot application according to each of their redevelopment value ("RDV").
14. Currently, the valuation report to be attached to the notice of application is only required to set out the existing use value ("EUV") of each property on the lot without taking into account redevelopment potential.
15. The amendment would require the applicant to also include an assessment of the RDV of each of the lot on per deed of mutual covenant basis ("**per DMC basis**"). The per DMC basis RDV assessment will be used in the apportionment of the sale proceeds in the event of a multiple-lot application.
16. Under section 3(3)(b) of Cap 545 and rule 78B(2) of Lands Tribunal Rules, a copy of the notice of application in Form 32 shall be registered in the Land Registry against the lot, but these provisions do not state whether a valuation report attached to the Form 32 must also be submitted to the Land Registry for registration. In order to avoid challenges of non-compliance, practitioners will almost invariably register the Form 32 **together with** the attached EUV valuation report. The EVU valuation is bulky. The per DMC basis RDV valuation reports will be even bulkier.
17. The registration of the Form 32 in the Land Registry serves the purpose of providing notice to the public (in particular persons dealing with the property) that an application has been made under Cap 545. The registration of the attached EUV or per DMC basis RDV valuation reports serves no useful purpose and is environmentally unfriendly.
18. REDA recommends that section 3(3)(b) of Cap 545 and rule 78B(2) of Lands Tribunal Rules be amended to make it clear that **only the notice of application in Form 32 (but not the attachments to the Form) is required to be registered in the Land Registry.**



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Drafting issue of section 2 of Schedule 3 to Cap 545

Drafting issue of conditions to which Purchaser of Lot and Purchaser's Successor in Title shall be Subject - Amendments to Schedule 3 to Cap 545

19. In the proposed section 2 of Schedule 3 to Cap 545 (imposition of building covenant where a new lot is granted in a lot extension or in-situ land exchange), it is provided that section 1 of the Schedule shall extend to the new lot "***and any other lots (if any)***".
20. The words "***any other lots***" are ambiguous and creates uncertainty. REDA suggests that for clarity the last part of section 2 be amended to read "***and any other lots (if any) being the subject matter of the lot extension or in-situ land exchange***".

The Real Estate Developers Association of Hong Kong
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