

Press Release
For Immediate Release
22 June 2022

Policy Review of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)

The Chief Executive of the Hong Kong Special Administrative Region proposed in her 2021 Policy Address to lower the compulsory sale application threshold under the Land (Compulsory Sale for Redevelopment) Ordinance (“the Ordinance”).

The Hong Kong Institute of Surveyors (“HKIS”) formed a working group (“WG”) to conduct a policy review of the Ordinance and identify areas for improvement to expedite urban renewal with due regards given to protecting minority owners’ interests and upholding building safety.

The WG completed its policy review and made six suggestions to the Government. The WG consulted stakeholders to solicit their views on regulations governing the compulsory land sale regime. Stakeholders include the Real Estate Developers Association of Hong Kong (REDA), professional members of the HKIS General Practice Division and Building Surveying Division and a community outreach organization. The WG also carried out the following research, among others:

(1) Replacement Flat Test: By analyzing sample past Lands Tribunal (“LT”) cases, the research indicated that flat owners were able to acquire replacement flats of similar size within the same district with better attributes in most cases. However, in cases whereby the Redevelopment Value (“RDV”) was not significantly higher than the respective Existing Use Value (“EUV”), replacement flat options of better quality were limited in respective districts.

(2) Final Offers vs Apportioned Reserve Prices: The apportioned reserve prices determined by LT are affected by several factors including location, redevelopment potential, ownership apportionment, nature of valuation disputes etc. Since every case is unique in their own judging criteria, the research showed

總辦事處 Head Office

香港上環干諾道中111號永安中心12樓1205室
Room 1205, 12/F Wing On Centre,
111 Connaught Road Central, Sheung Wan, Hong Kong
Telephone: 2526 3679 Facsimile: 2868 4612
E-mail: info@hkis.org.hk Web Site: www.hkis.org.hk

北京辦事處 Beijing Office

中國北京市海澱區高樑橋斜街59號院1號樓
中坤大廈6層616室 (郵編: 100044)
Room 616, 6/F, Zhongkun Plaza, No.59 Gaoliangqiao Xiejie,
No.1 yard, Haidian District, Beijing, China, 100044
Telephone: 86 (10) 8219 1069 Facsimile: 86 (10) 8219 1050
E-mail: info-bjo@hkis.org.hk Web Site: www.hkis.org.hk

that the apportioned reserve prices eventually determined by LT were not necessarily higher than the applicant's final offer prices. The variance could range up to $\pm 20\%$ in some cases. The Redevelopment Value is subject to market fluctuation, which directly impacts the final reserve prices.

Over half (54%) of the cases disposed by the LT in 2020 and 2021 were settled without resorting to litigation. Therefore, it would be in the interest of affected owners to seek valuation advice at the earliest opportunity.

(3) **Objection to Compulsory Land Sale:** According to cases from 2020 to 2021, the WG has found that 28 out of 41 applications (68%) to LT were objected by respondents on purely valuation grounds. This could indicate that a large proportion of owners held no objection to the land sale if compensation was deemed reasonable, and that the building age and condition of their flats justified redevelopment.

Based on the research results and views of from various stakeholders, the HKIS have put forward the following six suggestions concerning the compulsory sale regime:

(1) Lower the Compulsory Sale Threshold

The HKIS supports the Government's proposal to lower the threshold for compulsory sale application. The HKIS suggested a 66-percent threshold for "three-nil buildings" or buildings that are 60 years old or above to address pressing problems arising from the lack of building management and maintenance, especially those with obsolete sewerage systems and outdated means of escape, which pose fire hazard.

HKIS believes the revised threshold would enable the market to address urban decay issues more effectively and efficiently in view of the increasing number of aged or dilapidated buildings. A lowered threshold would not reduce the compensation received by owners but instead would enable existing resident owners of aged buildings to relocate to better living environments.

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Room 616, 6/F, Zhongkun Plaza, No.59 Gaoliangqiao Xiejie,
No.1 yard, Haidian District, Beijing, China, 100044
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(2) Review the Restriction on Lot Application

Under the current regime, the average percentage can be taken for determining whether the threshold has been achieved only if buildings on the lots are “connected by a common staircase”. This requirement is too restrictive for lot applications and often inhibits site amalgamation. Instead of requiring buildings to be connected by a common staircase, the Government could consider requiring buildings to be developed under the same development scheme by making reference to the buildings’ Deed of Mutual Covenant or approved building plans. A larger merged site provides incentive for developers to acquire and also for the minority owners to sell at higher apportioned reserve prices.

(3) Establish an Appeal Mechanism and Allocate Additional Resources to LT

To HKIS’s understanding, appeals against a judgment, order or decision of LT are limited to grounds whereby a judgment, order or decision is erroneous in point of law. In order to better protect the interests of both minority and majority owners, the HKIS suggested establishing an appeal mechanism that allows appeal on valuation grounds.

Currently, there are only two LT Members who handle a wide range of land and compensation disputes, the HKIS suggested that more human resources be allocated to LT to ensure LT duties are more efficiently discharged. If the LT finds that trials are intentionally prolonged due to the abuse of the judicial process, the offender should be ordered to pay a punitive court fee.

(4) Establish Reasonable Vacant Possession Delivery Requirements and Minimize the Impact of Missing Owners

The HKIS suggested that the Government consider amending the Ordinance so that an order for sale granted by the Lands Tribunal under the Ordinance is binding on all persons having interests in the lot including any adverse possessor or any person claiming to be an adverse possessor. Adverse possessors should be given 6 months to deliver up vacant possession after the auction sale is completed.

Similarly, self-occupied former minority owners should also be given 3 months to deliver up vacant possession after the sale is completed. This would ensure that

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No.1 yard, Haidian District, Beijing, China, 100044
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displaced owner-occupiers have sufficient time and cash liquidity to identify and acquire replacement flats.

Also, the HKIS suggested that the Government consider amending the Ordinance so that the established missing owners' undivided share(s) can be deemed acquired when calculating the ownership threshold during application. This would minimize the impact of missing owners and ensure that LT applications can be filed in a timely manner.

(5) Provide Financial Assistance to Minority Owners to Protect their Interests

The HKIS suggested the Government to consider the altering the eligibility criteria of legal aid for affected minority owners. The subject property under compulsory sale should be exempted from the list of capital asset during the means test (經濟審查) of a legal aid application. This way minority owners can obtain professional advice and legal aid as early as possible. Reasonably incurred costs and expenses should ultimately be borne by the compulsory sale applicant (majority owner). At the end of legal proceedings, the applicant (majority owner) should repay all professional disbursements to the Legal Aid Department. Relevant government departments should examine the implementation of the proposed financial arrangement.

The Government can also consider establishing a mechanism to finance respondents to cover upfront surveyors' fee so that their rights and interests are adequately protected at early stages of a compulsory sale application.

Minority owners should be funded to obtain professional valuation advice to evaluate the reasonableness of applicants' acquisition offer prices. This would promote early settlement and potentially save time and costs for all parties.

Owners of different property types in the same building may have conflicting interests. Under the current regime, each respondent is allowed to hire a separate legal representative, whilst all respondents are often required to jointly appoint one surveyor for valuation irrespective of property types. LT should allow separate valuation experts to represent and advise owners of different property types to avoid conflict of interest.

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In May 2022, the HKIS published the 3rd edition of the *Overview of the Land (Compulsory Sale for Redevelopment) Ordinance* (the “Overview”) to help public members gain a deeper understanding of the compulsory sale regime. The Overview outlines the basic framework, procedures and frequently asked questions of land compulsory sale in Hong Kong.

By educating the public on the regime, it is hoped that unnecessary disputes can be reduced and Hong Kong’s urban renewal can be expedited. In addition, the WG has also prepared an executive summary of the Overview. The booklet discusses compulsory sale cases in a question-and-answer format, it explains the compulsory sale framework and procedures, as well as property rights from the perspective of an affected minority owner. The overview and summary have been uploaded to the HKIS website and are available for download.

(6) Enhance the Role of Surveyors

Affected owners may not fully understand the established acquisition price formula and tend to adopt a ‘flat-for-flat’ mindset to evaluate the reasonableness of the acquisition offer. The HKIS believes that surveyors could play a leading advisory role to assist minority owners from the beginning of the compulsory sale proceedings.

The Government should make available a list of surveyors with expertise and experience in compulsory sale cases, so that minority owners may seek valuation advice from surveyors at the earliest opportunity.

Also, the HKIS believes the Government should also allocate more resources to various non-governmental organizations (“NGO”) and professional institutions to provide more educational seminars to affected owners. By raising the public’s understanding of the regime as well as the role of surveyors in compulsory sale cases, the interests of both majority and minority owners can be better protected.

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About The Hong Kong Institute of Surveyors

Established in 1984, The Hong Kong Institute of Surveyors (HKIS) is the only surveying professional body incorporated by ordinance in Hong Kong. As of 7 April 2022, the number of members reached 10591, of which 7487 were corporate members, 64 were associate members and 3040 were probationers and students. HKIS work includes setting standards for professional services and performance, establishing codes of ethics, determining requirements for admission as professional surveyors, and encouraging members to upgrade skills through continuing professional development. The Institute has an important consultative role in government policy making and on issues affecting the profession. We have advised the government on issues such as building safety and unauthorized building works, problems of property management, town planning and development strategies, construction quality and housing problems. We have also issued guidance notes on floor area measurement, real estates valuation and land boundary survey, etc.

HKIS official website: <http://www.hkis.org.hk>

Facebook Page: <https://www.facebook.com/hkisofficial>

For media enquiry, please contact:

The Hong Kong Institute of Surveyors
Corporate Communication Department
Ms Eugena Lam / Ms Karen Tam
電話：2526 3679 / 9780 9962
傳真：2868 4612
電郵：media@hkis.org.hk

Red Asia Communications Limited
Ms Carol Lee
電話：2696 2969 / 9277 5272
電郵：carol@redasia.com.hk

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