

根據《土地（為重新發展而強制售賣）條例》
就強制售賣指明類別地段
調低所須不分割份數的申請門檻的建議

目的

本文件闡述當局擬議根據《土地（為重新發展而強制售賣）條例》第 3（5）及（6）條，指明三個類別的地段可採用不少於 80% 的不分割份數作為強制售賣的申請門檻，以促進重新發展該類地段的工作。

背景

2. 政府致力解決樓宇老化的問題。我們十分重視促進私人參與土地重新發展的工作，作為解決樓宇老化的全面性策略中的一環。

3. 為此，《土地（為重新發展而強制售賣）條例》（下稱《條例》）（第 545 章）在 1998 年制訂，並於 1999 年實施。簡而言之，該《條例》訂明，凡任何人士（以承按人以外的身分）擁有某地段不少於 90% 的不分割份數，可向土地審裁處申請為重新發展而強制售賣該整個地段。截至 2005 年年底，根據該《條例》作出售賣令的申請共有 19 宗，其中 5 宗獲土地審裁處批准，4 宗正在處理中，其餘的則被中止或尚待決定。土地審裁處並無備存有關申請被中止的原因的資料，但據我們了解，部分申請被中止是因為有關申請人已經與餘下單位的業主達成買賣協議。

4. 鑑於私人為重新發展而徵集土地的過程冗長，而結果又難以預計，是他們工作的主要障礙之一，我們認為可進一步利用《條例》的現有機制，以協助他們徵集土地的工作。《條例》第 3（5）及（6）條訂明，行政長官會同行政會議可藉憲報公告指明某些類別的地段可採用不少於 80% 的不分割份數作為較低的強制售賣申請門檻。該憲報公告屬於附屬法例，須經由立法會審議。我們認為可借助這個機制，進一步促進私人參與重新發展工作。相關的法例條文載於附件。

擬議的地段類別

5. 在制訂有關建議時，我們明白有需要在促進私人參與土地重新發展的工作與保障個人私有產權之間，取得審慎而細緻的平衡。就此，基本法第 6 條訂明，私有財產權須依法獲得保護。

6. 基於以上所述，我們建議下列三個類別地段可根據《條例》採用不少於 80%的不分割份數作為強制售賣的申請門檻——

- (i) 地段上只剩餘一個單位未能收購；
- (ii) 地段上的樓宇的樓齡均達 40 年或以上；或
- (iii) 地段上有下落不明／無法聯絡的業主。

地段上只剩餘一個單位未能收購

7. 有意見認為私人重新發展 5 至 9 個單位的樓宇時，一旦僅餘的一名業主基於種種理由而拒絕出售單位，整個重建項目便會裹足不前。這是由於尚餘單位佔這類樓宇總不分割份數的 10%以上。有鑑於此，我們擬議以「地段上只剩餘一個單位未能收購」為指明地段類別，可採用不少於 80%的不分割份數的較低強制售賣的申請門檻。此舉應有助重新發展一些有 5 至 9 個單位的典型舊樓¹。我們並未備有這類樓宇的數目，然而，目前有超過 20 000 幢樓高 9 層或以下的私人樓宇。

地段上的樓宇的樓齡均達 40 年或以上

8. 一般來說，樓宇會隨時間老化，而老化速度則視乎維修保養的情況而定。由於樓宇各個組件均有特定的使用期限，我們認為樓齡是客觀的準則，藉以初步評估重新發展的需要。

9. 本港目前有超過 7 500 幢樓齡達 40 年或以上的私人樓宇（約佔私人樓宇總數的 20%）。屋宇署在 2003 年及 2004 年所發出的法定修葺令²中，約有 40%是發給這些舊樓的。雖然舊樓的實際狀況十分視乎其保養是否妥善，上述法定命令的數字反映破舊失修情況

¹ 對於有超過 9 個單位的樓宇，剩餘的最後一個單位佔樓宇總不分割份數的 10%或以下；對於有少於 5 個單位的樓宇，剩餘的最後一個單位佔樓宇總不分割份數超過 20%（假設剩餘的最後一個單位佔總單位數目的百分比，粗略相等於該單位的不分割份數佔總不分割份數的百分比）。

² 根據《建築物條例》（第 123 章）第 26 及 28 條就危險及破舊樓宇與欠妥排水系統所發出的命令。

在這些舊樓中較為普遍。樓齡達 40 年的樓宇亦往往未能符合現代樓宇的最新標準，無法提供舒適方便的居住環境。

10. 把樓齡達 40 年或以上的樓宇定為指明地段類別，亦有助重新發展那些極可能屬戰前落成而缺乏基本衛生設施的樓宇。由於這些樓宇未能提供最基本的衛生設施，我們認為適宜盡早進行重新發展。至於樓齡達 40 年或以上屬古蹟或暫定古蹟的樓宇，則會根據《古物及古蹟條例》(第 53 章) 予以保護，不會被拆卸。土地審裁處會負責把關，只會在信納重新發展申請具備充分理據及符合其他規定的情況下，才會作出售賣令。

地段上有下落不明／無法聯絡的業主

11. 私人在徵集土地期間所遇到的另一個常見問題，是無法與有關業主取得聯絡。因此，我們建議有下落不明／無法聯絡的業主的樓宇為指明地段類別，可採用不少於 80% 的不分割份數作為強制售賣的申請門檻。

12. 就此，我們認為下落不明／無法聯絡的業主所佔不分割份數應該不可少於 10%，使多數份數擁有人需要繼續透過協商及協議方式盡量收購單位，而不會純粹因為該地段有下落不明／無法聯絡的業主而得益³。

外界就《條例》的其他建議

13. 我們知悉部分人士，特別是業界、專業團體及個別業主，希望當局對《條例》作出更重大的修訂，包括全面調低強制售賣的門檻至不少於 80%，以及把計算門檻的基礎由地段改為「地盤／計劃」。不過，我們對這些建議有所保留，因為立法會在 1998 年經過詳盡及全面的討論後，才就現時以地段為單位的 90% 的不分割份數門檻取得共識。特別是如擬議透過「地盤／計劃」作為基礎，更可能會導致多數份數擁有人雖然擁有該「地盤／計劃」不少於 90% 的總不分割份數，但他在該「地盤／計劃」內的其中一個地段，卻可能根本未能收購任何不分割份數。我們必須在促進重新發展與保護私有產權之間，取得審慎的平衡。

³ 假如下落不明／無法聯絡的業主的單位數目，只佔地段的總不分割份數的 2%，則指明有關地段可採用較低強制售賣門檻（不少於 80% 的不分割份數），便等同協助該地段的多數份數擁有人收購額外 8% 的不分割份數。

14. 此外，亦有意見要求，除了在地段上現有發展的齡期或其維修狀況外，政府應透過訂立規例指明其他理由，讓土地審裁處可基於這些額外理由，決定有關重新發展某地段的申請是否合理。我們認為這些額外的理由需要獲得社會大眾接受，相對客觀及可執行。我們歡迎各界就這方面提出意見。

未來路向

15. 政府期望聽取各界對這些建議的意見，並特別希望專業團體及業界能就對上文第 6 段擬議三類地段的可行性提出意見。我們會透過適當途徑收集公眾意見，包括舉辦公眾論壇，與業主進行小組討論，以及透過互聯網上的「公眾事務論壇」收集中產人士的意見。假如公眾就擬議地段類別取得共識，我們會向立法會提交有關的立法建議。

房屋及規劃地政局
2006 年 3 月

土地(為重新發展而強制售賣)條例(第 545 章)
第 3(5)、3(6) 和 3(7) 條

第 3(5) 條

在符合第(6)款的規定下，行政長官會同行政會議可藉憲報公告就屬於該公告中指明的地段類別的地段，指明一個較第(1)款所述百分比為低的百分比，而在此情況下，對第(1)款及本條例的其他條文的解釋，須猶如第(1)款所述百分比已就屬於該類別的地段而由如此指明的百分比取代一樣。

第 3(6) 條

根據第(5)款指明的百分比不得少於 80%。

第 3(7) 條

現宣布—

- (a) 在不影響“少數份數擁有人”的定義的一般性及第(1)(b)款及第 4(1)(b)(i)條的施行的原則下，就本條而言，在計算某人或某些人士(而不論其是否第(1)款提述的人)在某地段擁有的不分割份數所佔百分比時，不得將純粹是關乎該地段的公用部分的不分割份數計算在內；
- (b) 第(5)款所指的公告是附屬法例。

**Proposals to Lower the Compulsory Sale Threshold
for Specified Classes of Lots under
Land (Compulsory Sale for Redevelopment) Ordinance**

PURPOSE

This paper sets out three proposed classes of lots to be designated under section 3(5) and (6) of the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) to be subject to a compulsory sale threshold of not less than 80% in order to facilitate redevelopment of these classes of lots.

BACKGROUND

2. The Government is committed to arresting building deterioration. As part of the Government's holistic strategy to tackle the problem, we attach great importance to facilitating private sector's redevelopment efforts.

3. In this regard, the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) (Cap. 545) was enacted in 1998 and came into operation in 1999. In a nutshell, the LCSRO provides for a person (other than as a mortgagee) who owns not less than 90% of undivided shares in a lot to apply to the Lands Tribunal for a compulsory sale of the whole lot for the purpose of redevelopment. As at end-2005, there were 19 applications for order for sale under the LCSRO, of which five have been granted by the Lands Tribunal, four are being processed and the others have been discontinued/suspended. The Lands Tribunal does not keep information on the reasons for discontinuation, but our understanding is that some of the cases have been discontinued because agreements for sale of the remaining interests have been reached between the respective owners and the applicants.

4. Noting that a protracted and uncertain acquisition process in redevelopment is one of the major obstacles faced by private developers, we consider there is scope under the existing LCSRO to further facilitate the land assembly process. Section 3(5) and (6) of the LCSRO provides that the Chief Executive in Council may specify by notice in the Gazette certain classes of lots for which a lower threshold of not less than 80% will apply. The Gazette notice is subsidiary legislation and requires the approval of the

Legislative Council. We consider that we could make use of this mechanism to further facilitate redevelopment efforts by the private sector. A copy of the relevant provisions is at the Appendix.

PROPOSED CLASSES OF LOTS

5. In working out our proposals, we are mindful of the need to strike a careful and fine balance between facilitating private redevelopment efforts and protecting individual property rights. In this connection, Article 6 of the Basic Law stipulates that the right of private ownership of property shall be protected in accordance with law.

6. In the light of the above, we have proposed the following classes of lots as possible candidates to be subject to a lower compulsory sale threshold of not less than 80% under the LCSRO –

- (i) a lot with “all units but one” acquired;
- (ii) a lot with building(s) that are aged 40 years or above; or
- (iii) a lot with missing/untraceable owners.

A Lot with “All Units But One” Acquired

7. There have been concerns that private redevelopment of buildings with 5 to 9 units often come to a deadlock when only one remaining owner refuses to sell due to various reasons, as the last unit would account for more than 10% of the total undivided shares of this type of buildings. As such, we propose to designate “a lot with ‘all units but one’ acquired” to enjoy a lower compulsory sale threshold of not less than 80%. This should help the redevelopment of some typical old buildings with 5 to 9 units¹. There is no readily available data on the number of buildings falling under this category. Nonetheless, there are over 20,000 private buildings with 9 storeys or less.

¹ For buildings with more than 9 units, the remaining unit will take up 10% or less of the undivided shares of a building. For buildings with less than 5 units, the remaining unit will take up more than 20% of the undivided shares of a building (this is on the assumption that the percentage of the last unit over the total number of units roughly equals to the percentage of the undivided shares attributable to the last unit over the total number of undivided shares).

A Lot with Building(s) Aged 40 Years or Above

8. In general, the physical conditions of a building will deteriorate with the passage of time although the degree of deterioration depends in turn on the state of maintenance. Given that building components have a definite lifespan, we consider building age an objective starting point for assessing redevelopment need.

9. There are at present over 7,500 private buildings (about 20% of the total number of private buildings) which are aged 40 years or above in Hong Kong. About 40% of the Buildings Department's statutory repair orders² in 2003 and 2004 were issued to these old buildings. While the actual building condition is highly dependent on how well an old building is maintained, the enforcement figures have revealed that dilapidation is more common among these older buildings. It is also likely that 40-year-old buildings fall short of the latest standard of modern buildings in the provision of a comfortable and convenient living environment.

10. Designating buildings aged 40 years or above as a class of lot will also facilitate redevelopment of buildings without basic sanitary facilities as this type of buildings are most likely to be pre-war buildings. Since these buildings fail to provide the most basic hygienic amenity, we consider their early redevelopment to be desirable. Buildings aged 40 years or above which are either monuments or proposed monuments are protected against demolition under the Antiquities and Monuments Ordinance (Cap 53). The Lands Tribunal will play a gatekeeper role and will only make an order for sale if it is satisfied, among other things, that the redevelopment application is justified.

A Lot with Missing/Untraceable Owners

11. Another common difficulty encountered by private developers during land assembly is that the relevant owners cannot be reached. We therefore propose to designate buildings with missing/untraceable owners as a class of lot for a lower compulsory sale threshold of not less than 80%.

² Orders issued under sections 26 and 28 of the Buildings Ordinance (Cap 123) in respect of rectification of dangerous and dilapidated buildings and defective drainage.

12. In this connection, we consider that the minimum percentage of undivided shares involving missing/untraceable owners should be set at 10% so that a majority owner will not be better off just when there happens to be a missing/untraceable owner³ and the majority owner would still need to acquire as many interests as possible through negotiation and agreement.

OTHER SUGGESTIONS RECEIVED REGARDING THE LCSRO

13. We are aware that there are calls, in particular from members of the industry, some professional bodies and individual owners, for more fundamental changes to the LCSRO, including lowering the threshold to not less than 80% across the board and changing the basis for calculation of threshold from a lot basis to a "site/scheme" basis. Nonetheless, we have reservation on these proposed changes given that the Legislative Council came to a consensus on the current 90% threshold on a lot basis in 1998 after very extensive debate. In particular, the proposed "site/scheme" basis may result in undesirable situations where a majority owner is unable to acquire any of the undivided shares in one of the lots in the "site/scheme" notwithstanding his holding of not less than 90% of the aggregate undivided shares. There is a need to strike a careful balance between facilitating redevelopment and protecting private property rights.

14. There are also requests that other than the age or state of repair of the existing development on the lot, the Government should, by way of regulation, specify further grounds on which the Lands Tribunal may take into account when considering whether the redevelopment of a lot under application is justified or not. We believe that such further grounds should be acceptable to the community, relatively objective and practicable. We welcome suggestions in this regard.

WAY FORWARD

15. The Government would like to hear views on the proposals. In particular, we would like to seek the views of the professional bodies and the industry on the practicability of the three proposed classes of lots as set out in

³ If the number of units with missing owners only accounts for, say, 2% of the total undivided shares in a lot, designating such lots for a lower (not less than 80%) compulsory sale threshold will be tantamount to helping a majority owner to acquire an additional 8% of undivided shares.

paragraph 6 above. We will gauge the views of the community through appropriate channels, including holding public forums and group discussions with owners as well as gauging the views of the middle-class through the Government's Public Affairs Forum on the internet. Subject to the community's consensus over the proposed classes of lots, we will proceed with the submission of the necessary legislative proposals to the Legislative Council.

Housing, Planning and Lands Bureau
March 2006

**LAND (COMPULSORY SALE FOR REDEVELOPMENT) ORDINANCE
(Chapter 545)**

Section 3(5), 3(6) and 3(7)

Section 3(5)

Subject to subsection (6), the Chief Executive in Council may, by notice in the Gazette, specify a percentage lower than the percentage mentioned in subsection (1) in respect of a lot belonging to a class of lots specified in the notice and, in any such case, subsection (1) and the other provisions of this Ordinance shall be construed as if, in relation to a lot belonging to that class of lots, that percentage so specified were substituted for the percentage mentioned in subsection (1).

Section 3(6)

No percentage may be specified in a notice under subsection (5) which is less than 80%.

Section 3(7)

It is hereby declared that-

- (a) without prejudice to the generality of the definition of "minority owner" or the operation of subsection (1)(b) or section 4(1)(b)(i), for the purposes of this section, in the calculation of any percentage of undivided shares in a lot owned by a person or persons (and whether or not he is or they are the person or persons referred to in subsection (1)), there shall be disregarded any undivided shares which are undivided shares in respect solely of any common parts of the lot;
- (b) a notice under subsection (5) is subsidiary legislation.