



Development (Town Planning, Lands and Works) (Miscellaneous Amendments) Bill 2022

The Law Society's Submissions

The Law Society has reviewed the Development (Town Planning, Lands and Works) (Miscellaneous Amendments) Bill 2022 (“2022 Bill”).

Upon review of the 2022 Bill, the Law Society has prepared submissions in response to the two main proposals referred to in the 2022 Bill, i.e. (i) the Resumption Procedure and (ii) Town Planning Procedure and Planning Board Procedure, as well as minor amendments. The submissions are as follow: -

We in principle support the aim of the 2022 Bill to speed up and simplify procedures for land use planning and development in Hong Kong.

It is said that one way to achieve this is to reduce the public participation in the legal and administrative process. While some reduction may be justified, our main concerns are that the role of the public may have been too drastically reduced.

Our comments on various clauses or new sections of the 2022 Bill are as follows. Where we have not made a comment, we have no objection to the relevant clause or new section.

A. AMENDMENTS TO LAND RESUMPTION ORDINANCE (CAP.124) ("LRO")

Clause/New Section	Comments
1(2) S.23	To understand the transitional provisions in the new S.23 at Clause 21, it would be helpful to know in what stages the Bill is intended to be implemented.
4(5) S.2(2)	We recommend that opportunity be taken to state clearly that an environmental purpose (which would include those set out in Clause 70 – the new S.21A(3)) is a public purpose.

Clause/New Section	Comments
S.2A	<p>Should a notice under S.2A be restricted to being made within a certain period before the intended date of resumption? Or, should the notice state the approximate date of the intended resumption?</p> <p>We object to the complete removal of newspaper advertisements in this process. This comment applies to the substitution of website publication for newspaper publication in all the clauses of this Ordinance throughout, e.g. in amendments to the Town Planning Ordinance (Cap.131) (“TPO”) and the others.</p> <p>There is no certainty that those directly affected by these procedures and the public generally will be aware that they should check the websites of the various statutory authorities without some prior warning.</p> <p>If website publication is to replace the use of newspapers, there should at least be a notice published in the usual newspapers drawing attention for the notices published on the websites.</p>
S.2B(1)(b)	<p>Apart from the notorious difficulty of defining “right” in this context (Interest in land? Right over land recognized by law as in various forms of occupation? Other?), this excludes any participation in the process by public interest groups and in the public generally.</p> <p>While such groups have the right to make representations under S.6(1) of the TPO, this should not prevent their objecting to the resumption of land which may have been the subject of their representations under the TPO.</p> <p>This also excludes owners or occupiers of adjoining land which will be affected by the resumption but who may not wish their land to be resumed under the new S.18A.</p> <p>Similar comments apply to the new Ss.2D, 5C.</p>
2C	Should the original notice under S.2A indicate that the website will be the only place where further statutory notices will be found?
2E	We support the exclusion of objections which relate only to compensation issues. However, virtually all objections to a resumption include some element of compensation or

Clause/New Section	Comments
	<p>assistance.</p> <p>Objections on compensation grounds and nothing else should be excluded but those which include objections of a different in nature should be invalidated only in part.</p> <p>Is the period of 14 days in (4) (and in similar provisions throughout the Bill) too short? Should it be 30 days or should the objector be allowed to apply to extend the time?</p>
2F	<p>In addition, should objectors be notified direct?</p>
7 S.3(2)	<p>Should notice of a decision under (2) be gazetted? Notice given to objectors?</p> <p>Notice that no further objection is permitted at this stage.</p>
9 S.5A S. 5G(4) S.5G(6)	<p>Should there be a limit to the extent of the area covered by the adjustment, e.g., similar to Lands Department rules about how big an extension of land can be in proportion to the area of the parent lot?</p> <p>Who decides on what is a “reasonable time”? This is lawyers’ jargon and fruitful of dispute.</p> <p>Should further notice be given of any decision under (6) (see previous comments on new S.3(2)).</p>
14 S.16AA	<p>We object to this proposal. It gives the Government too much flexibility, and in some cases, it could completely change the original purpose of the resumption.</p> <p>Careful advance planning should obviate the need for this to happen.</p> <p>The land should be offered back to the original owner or the change of use should be subject to the same statutory procedures as the original, i.e., notice under new S.2A, objections, etc.</p> <p>It could be argued that the Government has reserved a similar right in Government lease conditions where the lessee is required to provide Government accommodation.</p> <p>This provision in itself is objectionable and should not justify the new statutory proposal.</p>

Clause/New Section	Comments
	<p>However, in the private law context, the Government being the landlord may impose terms on the Land Grant as the Landlord thinks appropriate, but potential bidder has an option whether to submit a tender bid, and if a bidder submits a tender bid, they should have taken into account all development parameters and restrictions (including the provision stated above) and reflect them in the tender price or premium they are willing to offer.</p> <p>Resumption, on the other hand, falls within the public law arena. The landowner can only adopt a rather passive role in the deprivation of his property and that could be the reason why resumption should not take place unless a public purpose is established. The landowner will be offered a compensation reflecting the value of the existing use, and in many cases the compensation is never adequate for landowners, especially when they are holding the land for development, because the “hope value” or development potential is not taken into the account in arriving at the compensation. There should therefore be very careful consideration and thorough deliberations with stakeholders before any interference of property rights.</p> <p>It is to this end that the new S.16AA is not to be agreed, as it leaves an impression that <i>prima facie</i> the Government is entitled to resume a piece of land on its own wishes, and the resumed land can be used for other purposes (permanent or temporary) at the sole discretion of Government administration. It is also worth noting that in the case of temporary change of use under the new S.16AA(1), the temporary use is not limited to “public purpose” and the change does not require the approval of the Chief Executive in Council (cf S.16AA(2) for permanent alternative use).</p> <p>An example to illustrate the interference of property rights of a landowner - eg, a piece of land is currently used as a carpark but is resumed by the Government. Before the established public purpose can be implemented, the Government can continue to operate a carpark for profit on the same piece of land while the original landowner was displaced and thereby the carpark business ceases and was taken up by the Government.</p> <p>Proposal of this nature which affects the rights of the public should go through a formal and wide public</p>

Clause/New Section	Comments
	<p>consultation.</p> <p>“Certain period of time” is too uncertain.</p> <p>In 16AA(1), the authority could be Chief Executive in Council.</p>
19 <i>S.18A</i>	<p>We support this but the owner of the contiguous or adjacent land should be able to apply at any time after the notice under the new S.2A has been published.</p>
20 <i>S.19A</i>	<p>This is appropriate in internal Government guidelines.</p> <p>We surmise that one of the reasons for the new procedures for resumption (notice under S.2A, etc.) is to give owners affected by a proposed resumption longer notice of the resumption and a high degree of certainty. This could unintentionally bring in uncertainty and possibly delays the process.</p> <p>Not only could the resumption not be agreed to be funded but it could be approved on terms which require new statutory notices to be issued. For instance, funding for the project could be refused or granted on conditions that the resumption plan can be changed into one that is so different from the original plan and is equivalent to a new resumption.</p> <p>The stated purpose of new S.19A is noted but it is not clear as to how it would work. There must be some point in the internal Government funding and budget procedures where certainty is reached; the resumption will go ahead and the notice of resumption under S.2A should not be issued until then.</p> <p>The LegCo Brief says that “the Government usually proceeds with land resumption, clearance and compensation only upon obtaining funding approval for the associated capital works” “unless agreed by the relevant Panel of LegCo to advance on a case-by-case basis”. Should such approval be the tipping point?</p> <p>If the purpose of the new S.2A notice procedure is to give owners of land advanced notice and some certainty, and if this is not being achieved, what is the purpose of the new notice procedure?</p>

B. AMENDMENTS TO THE FORESHORE AND SEA-BED (RECLAMATION) ORDINANCE (CAP.127)

Clause/New Section	Comments
23 <i>S.2A(1)</i>	Is this intended to cover cases where a lessee under a Government lease is required to reclaim land and other private contractors? Should its scope be limited?
	This is very wide. It amounts to a general delegation which may be ultra vires. The particular powers, functions and duties should be clearly specified.
29 <i>S.16A</i>	We have no objection to the new minor works provisions matching similar provisions in the Roads (Works, Use and Compensation) Ordinance (Cap.370) (“RWO”) which have worked well for many years.
	Is the scope of minor works as specified in the schedule wider than that allowed under administrative procedures under the old minor works procedure? There has never been a right of objection to minor works in the RWO and we do not propose recommending one here but query should be raised as to whether there should be a right to compensation if a landowner is affected and suffers loss.
<i>S.16C</i>	Same comment as on Clause 20, new S.19A (see above).
32, 38, 39 <i>S.2(2), 11A & 14</i>	Same comment on the same clauses as set out in the amendments to the LRO.
	Does this new S.11A procedure mean that the original resumption had been excessive or unnecessary?

C. AMENDMENTS TO LAND ACQUISITION (POSSESSORY TITLE) ORDINANCE (CAP.130)

Clause/New Section	Comments
32-39	Most of these amendments are in the same terms as those amending the LRO and we make the same comments, mutatis mutandis, on them as we made before.

D. AMENDMENTS TO TOWN PLANNING ORDINANCE (CAP.131) (“TPO”)

Clause/New Section	Comments
40 <i>S.1A(6)(a)</i>	It is not clear what is the effect of this subsection.
43 <i>S.2C(4)</i>	<p>This gives the Board very wide power. It is understood that in order for the Board and its committees to do its work, there must be some restriction on how long representers can speak but the Board’s power should not be unrestricted.</p> <p>Should the Board be required to publish guidelines on how it shall restrict time? Should representers be required to submit in advance a brief note of the points they wish to make, akin to skeleton arguments required in court proceedings?</p> <p>At least consultants or professional planners should be required to submit short skeleton arguments and indicate an estimated time needed.</p>
45 <i>S.5</i>	Town plans affect many more people than resumptions and a wider range of interests both public and private is involved. Few people read the Gazette. Some form of notice in newspapers should be given drawing people’s attention to the publication of the relevant plan on the Board’s website. No other details need to be given.
46 <i>S.5.6(3)</i>	Please refer to the earlier comments on objections to resumptions, including compensation issues, which apply mutatis mutandis to the present clause.
48 <i>S.6B(4)</i>	Why restricts this? Why would not a natural person appoint a lawyer or planning consultant to speak on his

Clause/New Section	Comments
<i>S.6C, 6D & 6E</i>	<p>behalf?</p> <p>We consider that the current procedures set out in these sections be retained but comments substantially repetitive of previous representations be excluded.</p>
<i>53(21) S.72(2)</i>	<p>We suggest that after “publish” the words “and maintain such publication”.</p>
<i>54 S.8</i>	<p>Where a part or parts of a plan are being submitted, this should be only where the rest of the plan would not reasonably be affected by the part of the plan needing further consideration.</p>
<i>58(1) S.12A(1)</i> <i>58(2)</i> <i>58(29) S.12A(25)</i>	<p>For “eligible person” see comment on new S.12A(25).</p> <p>We oppose removal of the right of public scrutiny and comment on these applications.</p> <p>“eligible person” – what is the justification for narrowing the requirements set out in the current S.12A(1)? Has this subsection been abused in the past?</p>
<i>61 S.17(1B)</i>	<p>The applicant should be given notice of intended refusal to enable the ground to be set out if desired.</p>
<i>64 S.19(11) & (12)</i>	<p>Will the Secretary issue Guidelines on what comprises “appropriate” (11) and “exceptional circumstance” (12)?</p>
<i>65-72</i> <i>S.21A</i>	<p>We support these new powers.</p> <p>Should there be provision to enable existing land in exceptional circumstances to be excised from a designated regulated area?</p> <p>Notice of designation of a regulated area should be published in a newspaper circulating in the area and posted up in the District Office and District Lands Office.</p>

E. AMENDMENTS TO ROADS (WORKS, USE AND COMPENSATION) ORDINANCE (CAP.370)

Clause/New Section	Comments
75 <i>S.10(3)</i>	Similar comments here as on similar provisions in the amendments to LRO.
<i>S.10(5)(7)</i>	“14 days” is too short.
76 <i>S.11(1AC)</i>	Similar comments on “appropriate” are “exceptional circumstances” as before.
82 <i>S.37</i>	We object to the removal of the second paragraph in line with a similar objection in the amendments to the LRO.
83 <i>S.37A</i>	Similar comments as in the amendments to the LRO.

F. AMENDMENTS TO RAILWAY ORDINANCE (CAP.519)

Clause/New Section	Comments
91 <i>S.10(3A), (3C)</i>	Similar comments as before.
92 <i>S.11(2B)</i>	Similar comments as before.
99 <i>S.42A</i>	Similar comments as before.

G. PART 8 AMENDMENTS TO OTHER ENACTMENTS

We have no comments on these amendments.

The Law Society of Hong Kong
29 March 2023