

Executive Summary

Direct Investigation into Lands Department's System of Regularisation of Illegal Occupation of Government Land and Breach of Lease Conditions

Background

The Lands Department (“Lands D”) is responsible for taking enforcement actions against illegal occupation of Government land and breach of lease conditions. Generally speaking, when illegal occupation of Government land is found, Lands D can take land control actions pursuant to the Land (Miscellaneous Provisions) Ordinance, such as taking possession of any property or structure remaining on the land after the expiry of the period stipulated for the occupier to make rectification. In case of breach of lease conditions by a landowner, Lands D can take lease enforcement actions, including re-entry of the lot if the irregularities persist.

2. Nevertheless, in practice, Lands D has all along allowed illegal occupiers of Government land and landowners in breach of the lease conditions to apply for regularisation of such irregularities by way of short-term tenancy and short-term waiver of lease conditions respectively.

3. We notice that Lands D often takes more than a year to complete processing regularisation applications. Moreover, when an application is being processed, Lands D would normally suspend its enforcement actions, resulting in possible prolonged nuisance or inconvenience caused to nearby residents as the irregularities persist. Accordingly, The Ombudsman conducted this direct investigation to probe inadequacies in the existing system of regularisation.

Procedures for Processing Regularisation Applications

4. On receipt of an application for regularisation of illegal occupation of Government land by way of short-term tenancy (“STT”), the District Lands Office (“DLO”) will scrutinise whether the application meets the requirements, for example, that the Government land in question is such that it cannot be leased out separately to any people other than the applicant, and that there is no objection from Government departments and local residents.

5. Once the STT application is approved, the DLO will require the applicant to pay rent and an administrative fee. In general, charging of rent will take retrospective effect from the date when the illegal occupation first came to the DLO's attention.

6. According to the working guidelines, the DLO should complete processing simple applications within 24 weeks, counting from the start of considering the application to issuing an offer letter setting out the basic terms of the STT.

7. On receipt of an application for regularisation of breach of lease conditions by way of short-term waiver (“STW”), the DLO will scrutinise whether the application meets the requirements, for example, that the application is in compliance with the requirements of the Outline Zoning Plan and other legislation (such as fire safety provisions), and that there is no objection from Government departments and local residents.

8. Upon approval of the STW application, the DLO will charge the applicant a waiver fee and an administrative fee. In general, the waiver fee will take retrospective effect from the date when the breach of lease conditions first came to the DLO’s attention.

9. With regard to applications for STW for putting industrial premises to commercial use, which are relatively large in number, Lands D has drawn up particular guidelines on the handling procedures and timeframes. According to the guidelines, after the applicant has obtained the permission from the Town Planning Board and paid the administrative fee to Lands D, the DLO should issue within 4 months a notification letter specifying the basic terms (including the amount of waiver fee) of the STW.

Our Findings and Comments

10. Our investigation has found clear inadequacies in Lands D’s enforcement policy against illegal occupation of Government land and breach of lease conditions, as well as in its system of regularisation of such breaches.

11. For years, citing resource constraints as reason, Lands D has not proactively conducted regular inspections to detect illegal occupation of Government land and breach of lease conditions. Normally, Lands D will conduct inspections only upon receipt of public complaints or referrals from other departments. Even so, Lands D allows those who have committed breaches to apply for regularisation. This amounts to encouraging and conniving at cases of people first committing breaches and then applying for regularisation or not applying for regularisation at all, thus aggravating the problem of illegal occupation and breach of lease conditions.

12. In recent years, the general public and commentators have criticised Lands D for its failure to detect longstanding breaches, and for its recurring delays in taking enforcement actions. We consider that Lands D should as soon as possible discontinue its enforcement policy of not conducting self-initiated inspections.

Design and Implementation of the Existing Regularisation System

13. Deficiencies are found in the following four aspects of Lands D's system for regularising illegal occupation of Government land and breach of lease conditions:

- (1) Applications for regularisation of breaches are at "zero cost". Furthermore, when an application is being processed, the applicant can have the "benefit" of continuing with the breaches during the period. This amounts to encouraging those caught having committed breaches to stall Lands D's enforcement actions by simply applying for regularisation. We consider that Land D should introduce the concept of "paying a price for breaches" into the regularisation system. For example, Lands D should require the applicants to pay a "forbearance fee" to deter them from abusing the regularisation system.
- (2) There were often delays on the part of DLOs in processing regularisation applications. Some applications were even left idle for years. Such delays resulted in deferred enforcement actions, thus condoning breaches. They also led to decrease in (and in some cases, even non-collection of) revenue in respect of rent or waiver fees.
- (3) Some cases show that even though public complaints had already been received about the premises in question or related Government departments had already raised concerns about the regularisation applications, the DLOs still suspended enforcement actions.
- (4) Lands D does not maintain statistics on STTs granted for regularisation of illegal occupation of Government land. In other words, the Department has no way of grasping the overall situation with respect to those STTs, such as the area and distribution of the land involved, and the amount of revenue generated.

Lands D's Response to Our Comments

14. Lands D reiterated that with limited resources, the Department found it hard to proactively conduct regular inspections. Nevertheless, in the last two years, the Department has strategically conducted self-initiated inspections and stepped up enforcement actions in targeted areas. For example, it has stepped up enforcement actions against structures on private agricultural land that are in breach of lease conditions; it has also made risk-based enforcement measures against industrial buildings that are in breach of lease conditions.

15. After considering our comments on the existing regularisation system, at long last Lands D agreed to make improvement, i.e. to tighten up the practice of suspending enforcement actions during DLOs' processing of regularisation applications. Unless

there are “special reasons” for suspending enforcement actions, the DLOs will no longer suspend enforcement actions even if those having committed the breaches have applied for regularisation. “Special reasons” include situations where enforcement action would:

- (1) contradict a policy direction of the Government; or
- (2) have an adverse impact on people’s livelihood; or
- (3) pose a safety risk.

16. Lands D also indicated that it would consider charging regularisation applicants a “forbearance fee” in cases where enforcement actions have to be suspended. It will also strengthen its monitoring of the progress of processing such cases.

17. Apart from that, Lands D will consider requiring all applicants for regularisation by way of STT or STW to pay the administrative fee as soon as the DLO starts processing their applications. The Department will also enhance its database on short-term tenancies by adding a new field of data to record whether the short-term tenancies are for regularisation.

Our Views on Lands D’s Response

18. We note that in recent years, Lands D has stepped up inspections and enforcement actions in response to major incidents revealed by the media. However, such reactive actions could at best cope with those specific cases only. We do not think that the Department can deter illegal occupation of Government land or breach of lease conditions by conducting inspections only when it has learnt about the breaches from public complaints, referrals from other departments, or media reports. The reasons are as follows.

- (1) Ordinary citizens may not know what amounts to breaches. They only make complaints when they find themselves subject to nuisance or their safety under threat.
- (2) By the time a problem gets reported in the media, the situation is likely to have become so serious and widespread that the problem can hardly be resolved.

19. We welcome Lands D’s positive move: to abandon its practice of generally suspending enforcement actions during DLOs’ processing of regularisation applications. However, the Department must implement the new measure strictly, otherwise its purpose could not be achieved. The Department should not conveniently invoke the “special reasons” to avoid taking enforcement actions. We consider that Lands D should devise clear and specific guidelines on “special reasons” and restrict the authority to suspend enforcement actions to high-ranking officers (for example, directorate officers) only.

Recommendations

20. In the light of the above, The Ombudsman urges Lands D to:
- (1) re-deploy its resources to set up a mechanism for proactive inspections to detect illegal occupation of Government land and breach of lease conditions, and enhance its enforcement efficiency, so as to deter irregularities more effectively;
 - (2) tighten up, as soon as possible, its practice of suspending enforcement actions while processing regularisation applications (including introduction of “forbearance fee”), devise clear, specific guidelines on “special reasons” for suspension of enforcement actions, and restrict the authority to suspend enforcement actions to high-ranking officers of the Department only;
 - (3) set a timeframe for processing cases where enforcement actions have not been suspended, and closely monitor and timely escalate the enforcement actions to ensure that the breaches can be rectified as soon as possible;
 - (4) implement, as quickly as possible, the new measure of requiring applicants for regularisation by way of STT or STW to pay the administrative fee as soon as the DLO starts processing their applications; and
 - (5) add, as soon as possible, a category of regularisation to the database on short-term tenancies, and by phases record all old and new STTs under that category.

**Office of The Ombudsman
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