

### **LEGCO QUESTION NO. 13**

(Written Reply)

Asked by: the Hon Albert Ho

Date of meeting: 29 June 2005

Replied by: Secretary for Housing,  
Planning and Lands

#### **Question**

Under section 7 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126), if owners of lands or tenements default on paying Government rent, the authorized public officer (i.e. Director of Lands) may register a vesting notice in the Land Registry, thereby vesting the ownership of the lands or tenements concerned in The Financial Secretary Incorporated, free from any mortgage, charge or lien. Given that The Financial Secretary Incorporated will not be responsible for the charges and fees such as the building management fees of which the former owners of tenements have defaulted on payment before the vesting of ownership, the owners' corporations or property managers of the buildings in which the tenements concerned are located are unable to recover those defaulted payments following the vesting of the ownership of such tenements and may therefore suffer loss. In this connection, will the Government inform this Council :

- (a) of the number of times in which the Director of Lands exercised in the past three years the power conferred by the Ordinance mentioned above as a result of owners of tenements defaulting on paying Government rent, and the number of such tenements which had entries of encumbrances such as mortgages or charges in their land registration records;
- (b) given that the practice of the Director of Lands to vest ownership in the authorities may result in a third party who has not done anything wrong incurring loss, whether it has assessed if such a practice has contravened Article 105 of the Basic Law which stipulates that "The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons.....to compensation for lawful deprivation of their property"; and

- (c) given that owners' corporations or property managers have tried their best to protect their own interests by registering in the Land Registry charges against those flats the owners of which have defaulted on payments, and in order to prevent owners' corporations or property managers from suffering loss, whether the authorities will consider amending the above Ordinance to allow them to apply to the court for relief against the vesting of ownership?

### Reply

President,

Before replying to the question, I wish to set out the background at the outset. Section 7 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) (“the Ordinance”) provides for the vesting of the relevant interest, i.e. the undivided shares in the lot and the rights and obligations attached, in the Financial Secretary Incorporated (“the FSI”), absolutely and free from any mortgage, charge, lien, payment/repayment with it as security etc., in the event of a breach of a covenant, condition or stipulation in a Government lease or tenancy by the owner or occupier, or upon failure to pay Government rent or premium. Section 8 of the Ordinance provides that, the former owner (including mortgagees etc.) may petition to the Chief Executive, or the Court of First Instance in its equitable jurisdiction, for relief against the vesting.

My reply to the 3-part question is as follows -

- (a) From 1 June 2002 to 30 May 2005, 16 vesting cases were instituted by the Lands Department as a result of default on paying Government rent. Of the 16 cases, 4 had mortgages or legal charges, 5 were with charges relating to outstanding management fees and 2 were with Charging Orders by the Department of Justice. Of the 16 cases, 9 have been de-vested and the other 7 remain vested in the FSI.
- (b) The Government has made an assessment of the relevant practice and sees no sufficient basis for suggesting that the practice of the Director of Lands has contravened Article 105 of the Basic Law having regard to the following -

- (i) At common law, a forfeiture puts an end to the lease and any interest derived out of the lease.
  - (ii) On the basis that the relevant deed of mutual covenant between the owners provides that the owners have to pay management fees, the other owners would still have a contractual right to recover the outstanding management fees from the former owner of the property under the deed of mutual covenant.
- (c) The Lands Department would exercise the vesting only as a last resort, after all means to recover the outstanding Government rent have been exhausted. It is the Lands Department's current practice to inform mortgagees and the Incorporated Owners or the management companies concerned before taking vesting actions against owners.

Outstanding management fees incurred by the former owner prior to the vesting are basically a matter between the former owner and the other owners, and the Government is not a party to it. These are to be resolved among the private parties themselves, and the FSI does not have obligations to pay such private debts out of public funds. The Incorporated Owners and the management companies could seek independent legal advice as to the ways to recover such outstanding sums from the former owner as appropriate.

There is no plan to amend the law to allow those other than the former owners (including mortgagees etc.) as defined in section 2 of the Ordinance to apply for petition for relief.

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