

For information

Legislative Council Panel on Development

Pilot Mediation Scheme in Support of Property Owners Affected by Compulsory Sale under the Land (Compulsory Sale for Redevelopment) Ordinance

Purpose

This paper informs Members on the findings of the Consultancy Review on the Pilot Mediation Scheme in Support of Property Owners Affected by Compulsory Sale under the Land (Compulsory Sale for Redevelopment) Ordinance (PMS) carried out by Versitech Limited of the University of Hong Kong (Versitech).

Background

2. In response to the community and Members' call for further support from the Government to the minority owners affected by compulsory sale when the Land (Compulsory Sale for Redevelopment)(Specification of Lower Percentage) Notice was scrutinized by the Legislative Council back in early 2010, the Development Bureau (DEVB) commissioned the Joint Mediation Helpline Office ("JMHO")¹ to launch PMS on 27 January 2011.

¹ JMHO was founded by the Hong Kong Mediation Council, the Hong Kong Bar Association, the Law Society of Hong Kong, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Arbitrators, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Mediation Centre in 2010.

3. The scope of PMS covers, inter alia, the administration and consultancy service for a pilot scheme to facilitate owners in engaging in mediation to settle their disputes arising from compulsory sale, the training of mediators on mediation for compulsory sale, and publicity of mediation for compulsory sale. Under PMS, an eligible elderly owner can also apply for financial support for his share of the mediator fee for up to 15 mediation hours subject to means test.

4. In March 2013, after a pilot run for more than two years, the Bureau commissioned Versitech to conduct a comprehensive review of PMS to ascertain the suitability of the scope of service and its effectiveness, and to recommend the way forward.

Major Findings and Recommendations of the Consultancy Review

5. In June 2014, Versitech submitted its Final Report (**Annex I**) and Working Paper (**Annex II**) to DEVB. The following are the major findings and conclusions of the Consultancy Review –

- (a) Historical mission served – The PMS Scheme has served its historical mission in better informing the public, in particular the affected minority owners, on mediation as an alternative dispute resolution mechanism to hearings at the Lands Tribunal for settling settle disputes in compulsory sale cases.
- (b) PMS is no longer cost-effective due to changing circumstances – The Scheme was introduced at a time when there was an upsurge in compulsory sale applications after the lowering of the compulsory

sale application threshold from 90% ownership to 80% for three specified classes of lots under the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice. Given the change in circumstances since 2011, to carry on the Scheme in its present form might not be cost-effective. Minority owners could now more readily access information on mediation service. Both the information cost and the operational cost of mediation have become lower in recent years as a result of the enactment of the Mediation Ordinance and an increase in the number of mediators trained for handling compulsory sale.

- (c) Mediation helps facilitate negotiation but may not be the most effective means in settling disputes in compulsory sale - Most cases that are withdrawn or discontinued by the majority owners before the Lands Tribunal hearings due to the majority owners' successful negotiation with the minority owners after the submission of compulsory sale applications, likely with revised acquisition price offers.

- (d) Low incentive to engage in mediation - Unlike parties engaged in mediations of other nature, minority owners in a compulsory sale case have no motivation to maintain a continuous relationship with the majority owners. The absence of this social incentive has made successful mediation more difficult. As reflected in the statistics of mediation attempts reported to the Lands Tribunal, only a small percentage of owners had made use of the mediation service under the Scheme. Owners seemed to prefer using mediation service in the open market instead of the Scheme which, over time, has been more competitively priced than that under the PMS.

- (e) JMHO can continue to provide mediation service – JMHO, an umbrella organisation comprising membership of the eight leading mediation service providers in Hong Kong which has been commissioned to operate the scheme administration and consultancy service of PMS since 2011, is capable of continuing the mediation service for compulsory sale cases outside the framework of the Scheme.
- (f) Low utilisation of financial assistance available to eligible elderly minority owners under PMS - The number of affected elderly minority owners who applied for financial assistance for mediation service under PMS in the past three years was small. Some majority owners, including known developers, were found to have provided financial subsidy to the minority owners for engaging in mediation, regardless of their age and means.
- (g) Availability of mediators - With training courses organised over the past three years, there are now 225 mediators listed on the website of PMS who are trained to mediate in compulsory sale cases. This is considered a large enough cohort to handle the caseload in future.
- (h) Focused publicity and public education - The Government has a role to continue to educate minority owners to help them make more informed decisions when faced with compulsory sale. Mediation for compulsory sale, if successful, can shorten the acquisition process and speed up the pace of urban redevelopment. Instead of general publicity, the future publicity and public education should be more focused in identifying and approaching the minority owners.

6. Based on the above findings and conclusions, Versitech has made the following three recommendations -

- (a) Recommendation 1 – Government funding for the provision of (i) administration; (ii) consultancy service; and (iii) financial assistance to the eligible elderly minority owners for mediation service should no longer be necessary.
- (b) Recommendation 2 – Government funding for training and accreditation of mediators for compulsory sale should no longer be necessary.
- (c) Recommendation 3 – Government funding for publicity and public education should be continued and awarded to non-profit-making organisations on a competitive bid basis. Indicators should be devised to monitor the performance of the service provider.

The Government's Response and Way Forward

7. We generally agree with the findings and recommendations of the Consultancy Review. PMS has served its historical mission at a time when there was an upsurge in the number of compulsory sale applications. It provided an important alternative to hearings at the Lands Tribunal in settling disputes in compulsory sale cases. However, due to the change in circumstances, to continue with PMS in its present form may no longer be cost-effective.

8. The number of applications for compulsory sale has dropped since it peaked in April 2012. The number of applications was between zero and three on a monthly basis over the 12 months from June 2013 to June 2014. The number of enquiries received by PMS has also been dwindling since it peaked in June 2012. On a monthly basis, the number of enquiries received by PMS was only between one and four over the 12 months from June 2013 to June 2014. The number of requests for mediation under PMS has also been dwindling since it peaked in May 2011. On a monthly basis, PMS has not received any request for mediation since August 2013 except for one case in December 2013.

9. We have taken stock and set out at **Annex III** a table on its achievements since the introduction of PMS in January 2011 up to end June 2014. Also included in the table is an account of how the services provided by PMS in the past can be taken forward after PMS is discontinued. In gist, the proposed arrangements are as follows-

- (a) provision of free mediation information services for compulsory sale cases – JMHO, in its own right as an umbrella organisation comprising membership of the eight leading mediation service providers in Hong Kong, will continue to provide free enquiry service on mediation for compulsory sale cases;
- (b) nomination and appointment of mediator in cases of request for mediation in compulsory sale - JMHO will continue to make the necessary referrals for engaging qualified mediators for mediation in compulsory sale cases;

- (c) administration of mediation cases including arranging pre-mediation sessions and mediation sessions by the appointed mediator - this will be handled by similar mediation service providers in the open market at a fee (JMHO itself, given its unique background, will likely be the most popular service provider to take over);

- (d) financial assistance for eligible elderly minority owners - while eligible elderly owners can turn to PMS for application to DEVB for reimbursement of their share of the mediator fee now, given the small number of applications in the past (six only, with two approved and the rest withdrawn/rejected), it should be clear that the provision of financial support to elderly owners on their share of the mediator fee is not in great demand. Notwithstanding, we have approached the Senior Citizen Home Safety Association, service provider of the “Outreach Support Service for Elderly Owners” Pilot Scheme also commissioned by DEVB, to take up administration of the financial support applications to DEVB by eligible elderly minority owners for another year for further assessment;

- (e) arranging the training and accreditation of mediators for compulsory sale to be listed on the PMS website - there are already 225 mediators trained on compulsory sale. This is considered a large enough cohort who can be appointed to handle mediation of compulsory sale cases in future. Should any need arise in future, various organisations and institutions in the market will be able to provide similar training on compulsory sale for mediators;

- (f) arranging for the provision of free venue for mediation - in the past three years, mediations under PMS can be conducted at free venues provided by the Hong Kong Housing Society (until it withdrew venue support last year) and the Urban Renewal Authority (URA). URA has agreed to continue to provide venue at a reduced fee for the conduct of mediations related to compulsory sale referred by JMHO in future; and
- (g) publicity and public education – this will be continued as recommended by the Consultancy Review.

Publication

10. The Final Report and the Working Paper of the Consultancy Review on PMS under the Land (Compulsory Sale for Redevelopment) Ordinance have been uploaded and accessible on the website of DEVB (www.devb.gov.hk).

Advice Sought

11. Members are invited to note the recommendations of the Consultancy Review on PMS and the winding down of the Scheme.

Development Bureau
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