

**The Hong Kong Bar Association's Comments to the Draft Direction by the
President of the Lands Tribunal in respect of Mediation for Compulsory Sale
Cases under the Land (Compulsory Sale for Redevelopment) Ordinance
(Cap.545)**

A. General

1. The Hong Kong Bar Association ("HKBA") is supportive of the introduction of the Direction by the President of the Lands Tribunal in respect of mediation for compulsory sale cases under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545).
2. The HKBA agrees that disputes raised in compulsory sale cases under the Ordinance are types of disputes amenable to voluntary mediation and believes that, with the Direction implemented, parties can be positively encouraged to use mediation as an alternative dispute resolution procedure to the interests of all.
3. The HKBA notes that a pilot mediation scheme will be commissioned to encourage parties involved in or contemplating applications for compulsory sale for development under the Ordinance to undertake mediation. As such, the HKBA is of the view that it would be helpful if consideration may also be given to assist the dissemination of information on such mediation services to those parties and their legal representatives.

B. Procedures and Forms

4. The HKBA supports the adoption of the procedure and the forms mentioned in paragraphs 8 to 10 of the draft Direction, noting that consistency with other likewise directions on court practices is generally of benefits to users.

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C. **Reasonable Steps to Acquire and Costs Sanction**

5. As one of the requirements to be considered by the Lands Tribunal in an application is that, as required by section 4(2)(b) of the Ordinance, the majority owner has taken reasonable steps to acquire all the undivided shares in the lot (including, in the case of a minority owner whose whereabouts are known, negotiating for the purchase of such of those shares as are owned by that minority owner on terms that are fair and reasonable), the HKBA is of the view that the Lands Tribunal should take proper account of any unreasonable failure of the majority applicant to engage in mediation in considering whether to grant an order, as well as in exercising its discretion on costs. On this basis, the HKBA supports the proposal in paragraphs 13 and 16 of the draft Direction and suggests that consideration may be given to elucidate the reference to “a party” in paragraph 6 of the draft Direction to expressly replicate the meaning of paragraph 13 of the draft Direction in relation to the grant of an order.

D. **Protection by Privilege**

6. The HKBA also welcomes paragraph 17 of the draft Direction, expressly mentioning the protection afforded by privilege to continue.

Hong Kong Bar Association

19th November 2010