

立法會

Legislative Council

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Meeting of the Panel on Planning, Lands and Works on 24 May 2005

Background brief on missing Government leases

Introduction

A number of old Government leases have become missing or illegible during the Second World War or with the passage of time. Under section 13(1) of the Conveyancing and Property Ordinance (CPO) (Cap. 219), a purchaser of land is entitled to require from the vendor the production of the relevant Government lease as proof of title to that land. The problem of missing and illegible leases may therefore hinder smooth property conveyancing. To overcome this problem, Government stated in the 2000 Policy Address its intention to enact a new legislation to reconstitute missing and illegible leases.

Heung Yee Kuk's concerns

2. During the period from 2002-03 Heung Yee Kuk (HYK) Councillors repeatedly raised concern about missing or illegible Government leases at their meetings with Members of Legislative Council (LegCo). They were concerned that, in accordance with CPO, land transactions could not be carried out if land owners could not produce the original copies of government leases and grants. Consequently, the development and use of the land in question would be frozen. The problem was particularly worse when deeds of old scheduled building lots were involved. According to HYK Councillors, some 160 crown leases and more than 10 000 Government leases were missing. It was claimed that the problem of missing Government leases only came to the attention of some solicitors dealing with conveyancing of these properties not long ago. The solicitors concerned would be liable for indemnity in the event that property conveyancing was invalid because of missing leases. Although such compensation would be borne by the indemnity fund of the Law Society of Hong Kong, the cost would ultimately be borne by the community if the fund became insolvent. HYK Councillors called upon LegCo Members to urge the Administration to expedite the introduction of legislation to resolve the problem.

The Panel's deliberation

3. The Panel on Housing followed up the problem of missing leases at its meeting on 14 January 2003. According to the Administration, conveyancing is still possible even if the relevant land lease is missing or illegible. If there is clear and cogent secondary evidence of the contents of a missing or illegible Government lease and of its due execution, the relevant legal requirement for conveyancing is fulfilled and property transaction can take place. Other than this, the Lands Department also deals with missing and illegible Government leases on a case-by-case basis by way of surrender and regrant of land. Under this mechanism, the land owner surrenders all his interests in the lot concerned and Government regrants the same lot to him upon mutually agreed terms and conditions.

4. Members also noted the Administration's clarification that the Law Society has long been aware of the problem of missing leases and missing leases per se would not constitute a cause of action against the solicitors concerned.

The proposed legislation

5. The Administration advised members in February 2003 that it would introduce legislation in 2004-05 to resolve the problem of missing leases. The proposed legislation aims to provide a mechanism to reconstitute the missing and illegible Government leases and related land documents so that the reconstituted leases and related land documents will have the status of the original ones. It is therefore necessary to ensure that the reconstituted terms and conditions of the land leases will be as close to the original as possible. However, the original and reconstituted terms and conditions may not be completely the same. In the event, the proposed legislation needs to provide avenues for those affected to raise objections and appeals or to seek legal redress in order to help safeguard their property interests.

6. The proposed legislation, however, was not introduced in 2004-05 as planned. The reasons given by the Administration in November 2004 were that since the instruments (leases and relevant land documents) involved were of great varieties issued at different times over the years, great care had to be exercised in studying the relevant issues in order that relatively simple, legally feasible, publicly acceptable, and thorough and comprehensive options could be drawn up to resolve the problem of missing leases. As a result, longer time than as originally envisaged had been taken to draw up the relevant proposals, and the initial consultation with major stakeholders had just started. The Administration planned to fine-tune its proposals in the light of the comments received for further consultation with relevant parties. The Administration intended to formulate some proposals by around mid 2005 with a view to taking forward the legislative process in the 2005-06 legislative session.

7. A list of relevant papers with their hyperlinks at the LegCo Website is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
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Missing Government leases

List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Housing	14 January 2003	LC Paper No. CB(1)941/02-03 (http://www.legco.gov.hk/yr02-03/english/panels/hg/minutes/hg030114.pdf) LC Paper No. CB(1)998/02-03 (http://www.legco.gov.hk/yr02-03/english/panels/hg/papers/hg0114cb1-998-e.pdf)
Panel on Planning, Lands and Works	25 November 2003	LC Paper No. CB(1)2482/02-03(02) (http://www.legco.gov.hk/yr02-03/english/panels/plw/papers/plwcb1-2482-2e.pdf)