

立法會
Legislative Council

LC Paper No. CB(1)1292/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PS/4/08/1

**Panel on Development and
Panel on Administration of Justice and Legal Services**

Joint Subcommittee on Amendments to Land Titles Ordinance

**Minutes of second meeting held on
Thursday, 19 March 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Dr Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Alan LEONG Kah-kit, SC
Hon CHEUNG Hok-ming, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Albert HO Chun-yan

Public officers attending : **Agenda items II and III**

Mr YUEN Man-chung, Tommy, JP
Deputy Secretary for Development
(Planning and Lands) 2

Mr TO Wing-hang, Edward
Principal Assistant Secretary for Development
(Planning and Lands) 3

Mr Kim Anthony SALKELD, JP
Land Registrar

Mrs Maria LAM LEUNG Ma-wah
Deputy Principal Solicitor, Land Registry

Mr MAN Tat-yeung
Assistant Principal Solicitor, Land Registry

Mrs Amy FONG NG Suk-yee
Principal Land Registration Officer, Land Registry

**Attendance by
Invitation : Agenda item III**

Estate Agents Management Association Ltd.

Ms Jacko YU
Member

Properties Agencies Association Ltd.

Mr Tony KWOK Tak-leung
Chairman

Dr Joseph LAU Kwong-yiu
Vice-chairman

Estate Agents Authority

Ms Sandy CHAN Pui-shan
Chief Executive Officer

Ms Margaret CHIU Sai-fong
Director of Regulatory Affairs and General Counsel

The Hong Kong Institute of Surveyors

Dr Conrad TANG
Council member of Land Surveying Division

Mr Tony WAN
Council member of General Practice Division

Heung Yee Kuk New Territories

Mr LAM Kwok-cheong
Ex-officio Executive Councilor

Mr Almon POON Chin-hung
Ex-officio Executive Councilor

Hong Kong Chamber of Professional Property Consultants Ltd.

Mr Stephen OR
Vice President

Estate Agent Association

Mr Evan NG Yuen-hing
Vice Chairman

Mr SHUM Chu-wah
Vice Chairman

The Real Estate Developers Association of Hong Kong

Mr Louis LOONG
Secretary General

The Law Society of Hong Kong

Mr Lester HUANG
President

Mr Andy NGAN
Chairman of Working Party on LTO

Mr John DAVISON
Member of Working Party on LTO

Ms Christine CHU Wing-shuet
Assistant Director of Practitioners Affairs

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Simon CHEUNG
Senior Council Secretary (1)5

Ms Christina SHIU
Legislative Assistant (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)992/08-09 -- Minutes of meeting on
10 February 2009)

The minutes of the meeting held on 10 February 2009 were confirmed.

II Meeting with the Administration

(LC Paper No. -- Administration's paper on
CB(1)1028/08-09(01) Amendments to the Land Titles
Ordinance

LC Paper No. -- Paper on Land Titles Ordinance
CB(1)1028/08-09(02) prepared by the Legislative
Council Secretariat (Background
brief))

2. The Joint Subcommittee deliberated (Index of proceeding at **Annex**).

3. The Administration was requested to prepare a paper to explain the risks and liabilities to public funds and the Land Registry that the Administration envisaged the conversion system currently provided for under the Land Titles Ordinance (Cap. 585) (LTO) would entail and to explain how the proposed modifications to the conversion system would be able to address and manage such risks and how the various other parties would be affected

III Meeting with deputations and the Administration

4. Deputations presented their views, followed by discussion among members, the Administration and deputations.

IV Any other business

Date of next meeting

5. Members agreed that the next two meetings of the Joint Subcommittee would be held in April 2009 and June 2009 respectively. For the April meeting, the Administration would provide a paper mentioned in paragraph 3 above, and if possible, an interim progress report on the consultation work, and brief the Joint Subcommittee on its work on other areas.

6. There being no other business, the meeting ended at 6:33 pm.

Council Business Division 1
Legislative Council Secretariat
17 April 2009

**Panel on Development and
Panel on Administration of Justice and Legal Services**

Joint Subcommittee on Amendments to Land Titles Ordinance

**Proceedings of the second meeting
held on Thursday, 19 March 2009, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000151	Chairman	Opening remarks.	
000639 – 000650	Chairman	Confirmation of minutes of last meeting.	
000651 – 000740	Chairman	Work plan and scheduling of future meetings.	
000741 – 003054	Administration	<p>Briefing by the Administration on the background of the Land Title Ordinance (LTO) and actions taken since its enactment in 2004 -</p> <p>(a) the objectives of LTO were to provide greater security to land title, improve operational efficiency of the Land Registry, simplify conveyancing procedures and hence improve Hong Kong's overall competitiveness;</p> <p>(b) to ensure efficient operation of the new title registration system and to achieve the intended objectives, it was agreed during the scrutiny of the Land Titles Bill that a thorough review should be conducted prior to commencement of LTO;</p> <p>(c) in its paper issued in May 2007, the Administration reported that substantial amendments to LTO were required to improve clarity of the provisions and to modify certain mechanisms provided for in LTO to ensure smooth operation of the</p>	

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		<p>new system; corresponding amendments to various other related ordinances were also required;</p> <p>(d) in its paper issued in December 2008, the Administration reported that two major areas i.e. the conversion and rectification mechanisms provided for in the LTO required detailed study and consultation. A three-month public consultation had been launched on 1 Jan 2009;</p> <p>(e) the Administration hoped that through the consultation, the Administration could clearly explain the relevant issues to stakeholders and the general public and through discussions, consensus on the issues could be reached; the Administration would maintain an open mind and conduct in-depth analyses of the views received and report to the Joint Subcommittee on the Administration's conclusions.</p> <p>Briefing by the Administration on the rectification mechanism that:</p> <p>(a) the Administration's responsibility was to identify the risks and to facilitate the making of a "reasonable judgment" based on these risks;</p> <p>(b) four issues had been identified with respect to the mandatory rectification rule currently provided in the LTO;</p> <p>(c) first, the rule might undermine public confidence in the title register and a prudent purchaser would demand investigation into the title history, thereby defeating the original purpose of LTO;</p> <p>(d) second, there would be complications</p>	

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		<p>where the property had been surrendered to or resumed by the Government before a claim for rectification was made;</p> <p>(e) third, there would be complications due to the split of ownership amongst a number of new owners;</p> <p>(f) fourth, as the LTO contained a provision which barred the payment of indemnity in any case where the fraud took place before the date of conversion, if the mandatory rectification rule was to be retained, any post conversion purchaser could find themselves facing loss of the property without any indemnity due to a pre-conversion fraud. This again undermined public confidence in the title register;</p> <p>(g) against the above issues, there were the considerations that cases of fraud against title were rare in Hong Kong, and such cases usually could be detected before there was a change in the registered owner, and that the safeguards against fraud in Hong Kong compared favourably with other jurisdictions and these safeguards would be maintained under the new title registration system;</p> <p>(h) meanwhile, there was the concern that any modification to the mandatory rectification rule would result in a former owner being left worse off under the new system than under the existing system, given the intended indemnity cap of \$30 million for fraud cases.</p> <p>Briefing by the Administration on the conversion mechanism that:</p> <p>(a) while the consultation paper set out a</p>	

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		<p>number of risks, the main risk was the financial one; upon conversion the Land Registry (LR) would have to be ready to address any liability for errors and omissions for claims that might arise under the enacted LTO.</p> <p>(b) before the 12-year conversion period ended, transactions under the new system covered only new land, which meant that there was no real means to build up a reserve to offset in advance any liabilities on LR that might arise on the conversion date;</p> <p>(c) if large liabilities were realized, LR would have to face large payments on indemnity or litigation cost claims or both. LR would thus need large scale financing to meet the liabilities through registration fees and levies.</p> <p>(d) LR had tried to assess what possible liabilities and costs might be, but the only way to do so was to investigate individual titles. This was impractical given the large number of properties involved, and would be extremely expensive. In short, what the automatic conversion mechanism does was to give an assumption of unquantifiable risk.</p> <p>(e) As such, it was necessary to make a judgment as to whether the risks identified with the automatic conversion mechanism was acceptable, and if not, what mitigation measures should be taken to address the risks;</p> <p>(f) The Law Society of Hong Kong believed that the risks were not large. The experience of other jurisdictions also suggested that the risks were</p>	

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		<p>manageable. However, it should be noted that the comprehensive automatic conversion route provided in the enacted LTO had not been used elsewhere. Hence overseas data could not be relied on to shed light on what the situation would be after automatic conversion. Moreover, even if the cases giving rise to liabilities were few, such cases might still have a major impact on LR fees and charges.</p> <p>(g) While LTO contained a risks management provision by barring indemnity for pre-conversion matters, as mentioned earlier with respect to rectification, the bar would affect public confidence on the land titles register.</p> <p>(h) The aim of the consultation was to try to ascertain whether the concern about the uncertain risk under the current conversion mechanism was sufficient to justify change. The consultation paper had set out an alternative mechanism, whereby the risk was managed by assuming it more gradually. Yet, the alternative mechanism did not reflect a fixed proposal from the Administration; it was meant to facilitate comments.</p> <p>Briefing by the Administration on its work schedule that:</p> <p>(a) a draft bill containing the amendments to be ready in late 2009 for discussion with the Law Society of Hong Kong and other stakeholders; and</p> <p>(b) introduction of the amendment bill to the LegCo before the end of 2010.</p>	
003055- 004449	Chairman Ms Miriam LAU	The Chairman's query that the risks now mentioned should have been considered when	

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	Chairman Administration Mr CHEUNG Hok-ming	<p>the Land Titles Bill was scrutinized by the relevant Bills Committee, and the judgment ought to have been made at the time the LTO was enacted.</p> <p>The Land Registrar's response that having reviewed the records on the advice he and his colleagues had provided during the Bills Committee's deliberations on the Land Titles Bill, he was not fully satisfied that he had brought the nature of the risks and other relevant points to the clear understanding of Members.</p> <p>Ms Miriam LAU's expression of views that:</p> <ul style="list-style-type: none">(a) at the time of enacting LTO in 2004, it was recognized by Members that certain issues had not been fully addressed; and(b) she welcomed the opportunity to re-examine the concerns of major stakeholders and the public on the LTO, and to make the desired amendments, where appropriate. <p>The Chairman's expression of concern that the issues now brought forward by the Administration were fundamental issues pertinent to the new title registration system and her doubt that the problem was basically created by the Administration because of its unwillingness to commit adequate funds to protect the titles in the land titles register.</p> <p>The Chairman's enquiry on whether the Administration had assessed the level of liabilities on the LR if there was no cap on the indemnity, which was set at \$30 million by the Administration.</p> <p>Response of the Administration that:</p>	

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		<p>(a) the Administration held an open attitude and that the cap for indemnity was not meant to be "unchangeable"; and</p> <p>(b) the Administration had tried to assess the risks and found that if the system in the enacted LTO was to be implemented, the risks would be immediate and unquantifiable, and therefore put forward feasible measures and modifications to manage the risks more effectively.</p> <p>The Chairman's request for a paper to clearly explain the modifications that could manage the "immediate and unquantifiable risks" in a more effective way.</p> <p>Mr CHEUNG Hok-ming's expression of concern about the risks to property owners under the land title registration system and his relay of the view of Heung Yee Kuk New Territories (HYK) that the HYK was against the setting of a cap on indemnity.</p>	Admin
004450 – 004835	Chairman Administration	<p>Clarification by the Land Registrar that the cap on indemnity applied to fraud cases only; LR was liable for the accuracy for the land titles register upon conversion. The risks he had to manage were those claims and costs arising from the errors in the register for whatever reasons including fraud.</p> <p>Further explanation by the Land Registrar that:</p> <p>(a) the existing conversion mechanism provided no reasonable way for the LR to check on the accuracy of the existing registers and deal with the problems identified before the conversion date. The Administration had to face the possibility that there might be a large number of</p>	

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		<p>claims for indemnity following the date of conversion. While there might be a loan for the Indemnity Fund to cover the claim payments, the loan had to be repaid through increased fees and charges on the public; and</p> <p>(b) the proposed alternative conversion mechanism would allow the risks to be assumed gradually from the point at which all of the existing properties were converted to the new system. From that point, all transactions of the converted properties would be dealt with under the LTO. Transaction levies for the Indemnity Fund would then be accrued to the Fund. But until upgrading, the extent of risks taken by the Indemnity Fund would be limited because titles were still subject to subsisting interests. Screening of titles needed only to be carried out upon applications for upgrading.</p> <p>(c) the cost of upgrading was a major concern. If for each case of upgrading LR had to investigate each title, the cost would be very high. If alternative system was adopted, the Administration would need to look into how the upgrading could be done in a very straightforward way, with the understanding that there was some risk in that;</p> <p>(d) the choice was between immediate unknown risks to the stability of financing after the conversion date or taking a more gradual approach so that there was less risk of instability in financing; but either way, there was some risks involved; and</p> <p>(e) experiences in other jurisdictions showed that the arrangement worked well. The only place where the title registration</p>	

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		system failed was in Illinois where a pure voluntary scheme was adopted.	
005100 – 005240	Chairman Administration	<p>The Chairman's enquiry about the Administration's position if there were a lot of objections to the proposed modifications, while the current system in the LTO was not acceptable to the Administration.</p> <p>Response of the Administration that:</p> <p>(a) the Administration aimed to draw up a proposal that would have a clear support of the concerned parties; and</p> <p>(b) failing that, the Administration would have to look at the feasibility of other alternatives.</p>	
005241 - 005839	Chairman Administration Chairman	<p>The Chairman's enquiry on the Administration's work plan.</p> <p>Reply of the Administration that:</p> <p>(a) LR would complete analyzing the findings of the consultation exercise and submit a report to the Development Bureau in May 2009;</p> <p>(b) The Administration would revise the draft amendment bill and prepare the draft Indemnity Fund Rules in late 2009 before discussing with the Law Society of Hong Kong and other stakeholders; and</p> <p>(c) the Land Titles (Amendment) Bill would be introduced into LegCo by late 2010.</p> <p>The Chairman's suggestion that the next two meetings be held in late April 2009 and June 2009. For the April meeting, the Administration would provide a paper on the core issue about risks, and if possible, an</p>	Clerk Admin

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		interim progress report on the consultation work and brief the Joint Subcommittee on its work on other areas.	
005840 – 010140	Chairman	The Chairman's introduction of the deputations and welcoming remarks.	
010141 – 010215	Ms Jacko YU Estate Agents Management Association	Presentation of views.	
010216 – 010901	Mr Tony KWOK and Dr Joseph LAU Properties Agencies Association	Presentation of views.	
010902 – 0011409	Ms Sandy CHAN Estate Agents Authority	Presentation of views.	
011410 – 011529	Chairman	The Chairman's response to views of deputations.	
011530 – 012147	Mr Tony WAN Dr Conrad TANG The Hong Kong Institute of Surveyors Chairman	Presentation of views.	
012148 – 012648	Mr LAM Kwok-cheong Mr Almon POON Heung Yee Kuk New Territories	Presentation of views.	
012649 – 012831	Mr Stephen OR Hong Kong Chamber of Professional Property	Presentation of views.	

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	Consultants Ltd		
012832 – 013125	Mr Evan NG Mr SHUM Chu-wah Estates Agent Association	Presentation of views.	
013126 – 013224	Mr Louis LOONG The Real Estate Developers Association of Hong Kong	Presentation of views.	
013225 – 014457	Mr Lester HUANG Mr Andy NGAN The Law Society of Hong Kong	Presentation of views.	
014458 – 014819	Administration	The Administration's general response to views of deputations, and advice that the comments made by the deputations would be analysed and taken into account in its consultation report(s) to be completed in mid 2009.	
014820 – 0015037	Chairman	Recapitulation by the Chairman of the Administration's position about the risks entailed in the current conversion and rectification mechanisms under the LTO, and her invitation of views from deputations on the issues.	
015038 – 015336	Mr Andy NGAN The Law Society of Hong Kong	Expression of views on the risk issue.	
015337 – 015641	Chairman Administration Chairman	The Chairman's query that the Administration lacked commitment to back up LTO and was more concerned with the risks to itself than the risks to the general public. Response of the Administration that: (a) as a responsible Government, it had to	

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		<p>balance all the risks involved, in particular the risks that had to be borne by public funds; and</p> <p>(b) as explained, the LTO as enacted in 2004 would entail "unquantifiable risks" to the LR and public funds. As LR was operated on a trading fund mode, the risks borne by the Land Registry Trading Fund would be ultimately passed onto property owners.</p>	
015642 – 015741	Mr LAM Kwok-cheong Heung Yee Kuk New Territories	Expression of view of HYK regarding the financial implications of the land title registration system on the public coffer.	
015742 – 020244	Administration Chairman	Briefing by the Administration on its work on the education programme to equip concerned parties for commencement of the LTO, and the current publicity about the history of land administration in Hong Kong through a TV programme of the Radio Television Hong Kong.	