

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1871/08-09  
(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 third meeting held on  
Tuesday, 21 April 2009, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan  
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
- Members absent** : Hon CHEUNG Hok-ming, SBS, JP  
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Public officers attending** : **Agenda item II**
- Mr Edward TO Wing-hang  
Acting Deputy Secretary for Development  
(Planning and Lands) 2
- Mr Kim Anthony SALKELD, JP  
Land Registrar
- Mrs Maria LAM LEUNG Man-wah  
Deputy Principal Solicitor  
Land Registry

Mr MAN Tat-yeung  
Assistant Principal Solicitor  
Land Registry

Mrs Edith TONG CHEUNG Wai-fong  
Title Registration Development Manager  
Land Registry

**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

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Action

**I Confirmation of minutes**  
(LC Paper No. CB(1)1292/08-09 -- Minutes of meeting on  
19 March 2009)

The minutes of the meeting held on 19 March 2009 were confirmed.

**II Meeting with the Administration**  
(LC Paper No. CB(1)1291/08-09(01) -- Administration's paper on  
risks and liabilities  
LC Paper No. CB(1)1028/08-09(01) -- Administration's paper on  
Amendments to the Land  
Titles Ordinance)

2. The Joint Subcommittee deliberated (Index of proceedings at **Annex**)  
and arrived at the following decisions:

- (a) The Clerk to Joint Subcommittee and the Administration were  
requested to provide information on the amount of resources, in  
terms of the amount of time spent and the salaries of  
officials/staff attending the meetings of the Bills Committee on

the Land Titles Bill 2002 and working on the Bill etc., that had been expended on the part of the Legislative Council (LegCo) Secretariat and the Administration respectively;

- (b) The Chairman was requested to write on behalf of the Joint Subcommittee to the then responsible Director of Bureau to ask for a full explanation as to whether it had been a mistake to approve the system under the present Land Titles Ordinance (LTO) in 2004 and how such a serious mistake had come about; and
- (c) The Secretary for Development (SDEV) would be invited to attend the next meeting of the Joint Subcommittee to advise on the Administration's policy stand as well as the future direction.

### **III Any other business**

#### Date of next meeting

3. The Chairman requested the Clerk to consult the Development Bureau on the date of the next meeting in June 2009.

*(Post-meeting note: The next meeting of the Joint Subcommittee was subsequently scheduled for **Tuesday, 16 June 2009 at 2:30 pm.**)*

4. There being no other business, the meeting ended at 4:04 pm.

Council Business Division 1  
Legislative Council Secretariat  
10 June 2009

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

**Joint Subcommittee on Amendments to Land Titles Ordinance**

**Proceedings of the third meeting  
held on Tuesday, 21 April 2009, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000934	Chairman	Confirmation of minutes	
000935 – 001100	Chairman	Opening remarks	
001101 – 002857	Administration	<p>Introduction by the Administration that:</p> <p>(a) the post-enactment review of the LTO had brought to light that the 2004 conversion mechanism, together with the rectification and indemnity mechanisms, would give rise to risks and liabilities which might place undue strain on public funds and the Land Registry Trading Fund (LRTF). It was hence necessary to modify the 2004 conversion mechanism;</p> <p>(b) the Administration had received views from 26 organizations and individuals during the three-month public consultation ending 31 March 2009. Most of them were not in favour of any extensive modifications to the 2004 conversion mechanism;</p> <p>(c) adopting an open mind, the Administration was currently analyzing the views received to see whether alternative options should be formulated; and</p> <p>(d) the Administration aimed to work out a feasible mechanism that was agreeable to major stakeholders and LegCo Members.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>Briefing by the Land Registrar on the risks and liabilities arising from the 2004 conversion mechanism as detailed in LC Paper CB(1)1291/08-09(01):</p> <ul style="list-style-type: none"><li>(a) the main problem with the 2004 conversion mechanism was that the Administration would be uncertain about the extent of the risks and the liabilities following the conversion date;</li><li>(b) the funding mechanism provided under LTO would not allow the Land Registry to set aside reserve funds to cater for possible liabilities. This might create instability in LRTF and cause adverse consequences to the public;</li><li>(c) uncertainty coupled with no reserve in early years after commencement of LTO meant that the LR could not confidently say that the LRTF could cope with liabilities;</li><li>(d) if confronted with a large number of liabilities after the conversion date, there could be significant increases in the fees and charges on the public;</li><li>(e) there was no indication that there was a large number of problems. The Registry knew so far of 484 problematic cases detected in the existing registers. But, the only reliable way to confirm that there were no more such cases would be to investigate title on a case-by-case basis. This would be prohibitively costly;</li><li>(f) there were four risks under the 2004 conversion mechanism. The first risk was that the existing LRO registers kept under the Land Registration Ordinance (LRO) might contain mistakes or omissions as there was no assurance as to the completeness or the</li></ul>	

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		<p>validity of the documents registered under the LRO. The Administration was uncertain as to the full range of possible risks and omissions, and there was no practical means under the 2004 conversion mechanism available to the Land Registrar to deal with the problematic cases;</p> <p>(g) the second risk was related to the resilience of the LRTF. On commencement of title registration, there would be a levy on registration of transfers to build up an indemnity fund to meet liabilities arising from fraud cases. The best estimate was that by the 12<sup>th</sup> year after commencement of LTO, only around 15% of the dealings involved new land. This meant that the amount of levy collected prior to conversion would be too small to build up a reserve to deal with possible liabilities;</p> <p>(h) the third risk was that section 84(4)(b) and (c) of the enacted LTO sought to limit liability by excluding payment of indemnity for fraud, mistakes or omissions that occurred before the date of conversion. The consequences might lead to litigations outside the LTO, imposing costs on the litigants, including the Land Registry;</p> <p>(i) all the three issues mentioned in (f), (g) and (h) above were financial in nature. There was a need for the Administration to maintain a balance between the income and expenditure of the LRTF to ensure its viability;</p> <p>(j) the fourth risk was related to users' trust in the LTO system. The exclusion of liability for fraud, mistakes or omissions that occurred before the date of conversion under section 84(4) would reduce the confidence that the owners and purchasers could place in the Title Register, leading to pressure to</p>	

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		<p>investigate the chain of title behind the Title Register. This in turn might undermine the efficiency and security for conveyancing that LTO aimed to provide; and</p> <p>(k) no other jurisdiction had gone through similar conversion arrangements. Hence, there was no relevant external experience to guide the Administration.</p>	
002858 – 003415	Mr Albert HO Administration Chairman	<p>Expression of views by Mr Albert HO that all issues relating to the conversion mechanism as mentioned by the Administration at this meeting had been thoroughly discussed by the Bills Committee on the Land Titles Bill 2002 and settled. It would be a waste of time if these issues had to be revisited again.</p> <p>Response of the Administration that as a common wish of Members and the Administration, it was agreed at that time that due to the impending end of the 2000-2004 LegCo term, the LTO should first be enacted in July 2004 after lengthy deliberations by the Bills Committee. At that time, the Administration was asked to conduct a thorough review of the ordinance prior to its commencement.</p> <p>Response of the Chairman that:</p> <p>(a) the Bills Committee had spent a lot of time on examining various options for the conversion mechanism, leading to the present “daylight conversion” in the enacted LTO;</p> <p>(b) in 2004 during the enactment process, the Administration was expected to come back with some minor amendments after a review instead of an overhaul of what had been agreed on; and</p> <p>(c) it was wrong to assume that the legal or implementation details as well as the policy</p>	

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		<p>implications had not been adequately looked at by the Bills Committee in 2003 and 2004.</p> <p>Response of the Administration that:</p> <ul style="list-style-type: none"> <li>(a) given that LTO had far-reaching impacts on society, the Administration aimed at ensuring that the new land title registration system could be implemented smoothly;</li> <li>(b) it was through the post-enactment review that the Administration found it necessary to amend the 2004 LTO, and to address the risks and liabilities that might arise from the conversion mechanism; and</li> <li>(c) the Administration would adopt an open mind towards the views and concerns of Members.</li> </ul>	
003416 – 003613	Mr Albert HO Administration	<p>Response of Mr Albert HO that:</p> <ul style="list-style-type: none"> <li>(a) all possible options relating to the conversion mechanism including their limitations had been duly considered by the Bills Committee back in 2003 and 2004;</li> <li>(b) as for the post-enactment review, Members expected only minor amendments to the 2004 LTO, not a departure from the spirit of the enacted legislation or a re-start of the consultation afresh;</li> <li>(c) the modifications presently proposed by the Administration were based on political considerations; and</li> <li>(d) it was questionable whether there were new circumstances or factors that warranted the proposed modifications to the 2004 conversion mechanism.</li> </ul> <p>Response of the Administration that the risks and</p>	



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		<p>liabilities to public funds arising from the 2004 conversion mechanism were what the Administration had identified following the review. The Administration was of the view that amendments had to be made to address the issues so identified.</p>	
003614 – 005911	<p>Chairman Administration Mr Albert HO</p>	<p>The Chairman’s enquiry about:</p> <ul style="list-style-type: none"> <li>(a) details of the 484 problematic cases which had prompted the Administration to conduct another round of consultation, and whether these cases had been brought up for discussion with the Law Society of Hong Kong;</li> <li>(b) whether the Administration could share with the Joint Subcommittee the findings of an actuarial study conducted recently ; and</li> <li>(c) the intended fee for application for upgrading of title under the proposed modified mechanism and the likely processing time for upgrading.</li> </ul> <p>Response of the Administration that:</p> <ul style="list-style-type: none"> <li>(a) there were two types of problematic cases set out in the Administration's previous submission to the then Panel on Housing, Planning and Lands in 2007. The first type was identified by computer screening i.e. existence of two registers in respect of one lot. Cases of this kind were easy to detect; and</li> <li>(b) the second type was cases in which within a single register there were different documents registered that appeared to convey different chains of title for different ownership. These were difficult to detect. On the day of conversion, the Land Registrar would have to decide on the ownership of</li> </ul>	

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		<p>these properties.</p> <p>Response of the Chairman that the Administration should take the initiative to sort out these cases with the Law Society and her enquiry about the fees and time required to process an upgrading application.</p> <p>Response of the Administration that:</p> <ul style="list-style-type: none"><li>(a) discussion on some of these cases had been held with the Law Society, in parallel with the Land Registry's own investigation;</li><li>(b) the Administration's biggest concern was that it was not sure about the number of problematic cases of multiple chains of a title within a single register without a full investigation into all the registers;</li><li>(c) the actuarial study was on the estimated risks in relation to fraud cases, and the study findings were similar to previous projections. It could not assess the position with the problematic registers as there was too little data;</li><li>(d) there were no similar experiences in other jurisdictions that could be drawn as reference; and</li><li>(e) the cost of upgrading was expected to be comparable to the current cost of investigation of title during conveyancing under the LRO. The LR had not undertaken a more detailed consideration of costs pending an indication as to whether an approach such as the 2008 modification was considered necessary.</li></ul> <p>Response of the Chairman that the Administration's consultation would not be complete with the absence of a projection on the</p>	

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		<p>fee and processing time involved in the upgrading of title.</p> <p>Response of the Administration that it would be willing to make the assessment if decision was taken to adopt the approach recommended in the consultation paper. In this regard, the Ontario experience might be used as a reference.</p> <p>Comments of Mr Albert HO that:</p> <ul style="list-style-type: none"> <li>(a) the Administration should decide whether there would be a charge for upgrading;</li> <li>(b) whether it would outsource the scrutiny work of upgrading to solicitors in private practice;</li> <li>(c) whether insurance should be taken out to protect interests of the concerned parties; and</li> <li>(d) depending on the model selected for the title upgrading, costs could vary substantially. There were too many options open.</li> </ul> <p>Response of the Administration that:</p> <ul style="list-style-type: none"> <li>(a) on conversion, there were mainly two options open for title upgrading i.e. to scrutinize each title, which would be time-consuming and prohibitively costly, or to get upgrading in a more straightforward and less costly way by taking some risks; and</li> <li>(b) the 2004 mechanism would take on the maximum “unknown” risk, and any other options between it and a mechanism with full title scrutiny would involve risks at different levels.</li> </ul>	
005912 – 010339	Mr Alan LEONG Administration	Expression of views by Mr Alan LEONG that:	

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		<p>(a) LTO was originally meant to clear risks of property owners and make conveyancing easier and more straightforward;</p> <p>(b) he was astonished to hear all these issues including the alleged “unquantifiable risk”, which he believed should have been looked into and fully dealt with when the 2002 Land Titles Bill was deliberated; and</p> <p>(c) in order to put the matter on the right footing, the Administration should explain whether it had made a mistake for omitting some points which they should have pointed out in 2004, and now it was necessary to return to LegCo for a policy revisit.</p> <p>Response of the Administration that it had undertaken in 2004 to conduct a comprehensive review on the LTO. During the review, some areas of LTO in need of further improvements were identified.</p>	
010340 – 011007	Chairman Ms Audrey EU Yuet-mee Chairman	<p>Remarks of the Chairman that:</p> <p>(a) whenever a Bills Committee vetted a bill, it was always the threshold that the fundamental policy must not be left unsettled; and</p> <p>(b) in the case of LTO, the Administration was only asked to supplement certain details, and not to come back to revise the fundamental policy.</p> <p>Ms Audrey EU’s expression of views that:</p> <p>(a) to ascertain the amount of resources that had</p>	Clerk

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		<p>(b) the Administration should provide information on the amount of resources used on their part and advise how the serious mistake had come about; and</p> <p>(c) the then responsible Director of Bureau should remain accountable to LegCo for the enacted LTO, and the Chairman should write to him on behalf of members to ask for a full explanation.</p> <p>Response of the Chairman that:</p> <p>(a) she supported the suggestions of Ms Audrey EU;</p> <p>(b) copy of the Bills Committee report should be circulated to members for reference; and</p> <p>(c) if the Administration had made a mistake for failing to foresee the policy implications of the LTO, then it would be better to admit such a mistake and give a formal explanation to the general public and re-start the work again.</p>	Clerk
011008 – 011205	Administration Assistant Legal Advisor 6	<p>Response of the Administration that:</p> <p>(a) it remained open as to how the 2004 LTO should be amended; and</p> <p>(b) if the proposed modifications were not accepted by most stakeholders, a possible option would be for the Administration to revisit the 2004 daylight conversion mechanism and propose suitable amendments. The fundamental principles and provisions in the 2004 LTO would remain.</p> <p>Comment of Assistant Legal Advisor 6 that:</p>	

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		<p>(a) the problematic cases as quoted by the Administration were rare and should not have happened under the existing system; and</p> <p>(b) the Administration should make an effort to find out the reasons causing these problematic cases, and then make a precise assessment of how common such cases could be.</p>	
011206 – 011507	Ms Miriam LAU Administration	<p>Expression of views by Ms Miriam LAU that:</p> <p>(a) she accepted the 2004 LTO mainly on consideration that the Law Society had endorsed it;</p> <p>(b) in comparison with the 2004 LTO, the 2008 modifications were seemingly far worse and did not get the support of major stakeholders including the Law Society; and</p> <p>(c) the 2004 conversion mechanism was the result of hard work after lengthy and in-depth deliberations, and it was regrettable that the Administration sought to change it and start work all over again. To her, the revised mechanism was aimed to relieve the financial pressure on LRTE.</p> <p>Response of the Administration that:</p> <p>(a) the 2008 modifications were only a proposal prepared by the Administration for stakeholders' discussion during the consultation;</p> <p>(b) the Administration was aware of the views and concerns of major stakeholders on the proposed modifications;</p> <p>(c) the Administration aimed at a sound piece of legislation acceptable to stakeholders</p>	

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		<p>and users; and</p> <p>(d) the Administration would not exclude any option at the present stage.</p>	
011508 – 011924	Mr Albert HO Mr Alan LEONG Chairman	<p>Expression of views by Mr Albert HO that:</p> <p>(a) the Administration should have fixed its policy stand which was something fundamental in 2004;</p> <p>(b) it would present a great problem to all concerned parties if the Administration kept on revising its policy stand; and</p> <p>(c) the Administration should admit having made a mistake before the work on LTO could be resumed.</p> <p>Expression of views by Mr Alan LEONG that:</p> <p>(a) enactment of legislation was a serious and solemn act;</p> <p>(b) he saw that the crux of the problem was the reluctance of the Administration to shoulder the possible financial burden arising from claims for indemnities. Yet, it was disappointing that the Administration had chosen to package a major change of policy stand to appear as technical adjustments. This was not a desirable behaviour of a responsible government.</p>	
011925 –012229	Chairman Administration	<p>Response of the Chairman that:</p> <p>(a) representatives of the Administration at the meeting should relay members' concerns to SDEV;</p> <p>(b) LTO being a piece of legislation with far-reaching implications affecting every property owner, there was a need for the</p>	

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		<p>Administration to face the general public and be prepared to respond to queries raised. In this connection, admitting that a mistake had been made would be necessary; and</p> <p>(c) LTO could not be successfully implemented without a firm commitment from the Chief Executive and the Administration. Public confidence would be vital to the success of LTO.</p> <p>Response of the Administration that it had listened to members' views, and would consider, amongst other things, the risk level that could be borne by the Administration.</p>	
012230 – 012455	Mr Albert HO Chun-yan Chairman	<p>Mr Albert HO's expression of views that since further deliberation would inevitably involve change of the Administration's policy stand, SDEV should be invited to come to the next meeting.</p> <p>Response of the Chairman that:</p> <p>(a) SDEV should be invited to attend the next meeting; and</p> <p>(b) ALA6 was preparing a note with his comments on the follow-up actions taken by the Administration since the enactment of LTO and other points raised by the Administration. The note when ready would be passed to members and the Administration.</p>	Clerk  ALA6
012456 – 012608	Chairman Administration	<p>The Chairman's query whether other subjects such as the land boundaries should be discussed at the meeting.</p> <p>Suggestion of the Administration that the subject should be discussed in next meeting.</p>	
012609 – 013244	Ms Miriam LAU Kin-yee	Ms Miriam LAU's expression of views that:	



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	Chairman Administration	<p>(a) her personal view was that since it would induce a lot of confusion, the Administration should scrap the proposed 2008 conversion mechanism;</p> <p>(b) if the Administration decided to switch back to the 2004 conversion mechanism, it should give a very clear explanation on every amendment it would make on it; and</p> <p>(c) all changes should be based on public interest, and major stakeholders should be thoroughly consulted on these changes.</p> <p>Comments of the Chairman that public confidence in the LTO would not be established if the Administration simply abandoned the 2008 modifications due to adverse feedback, and switched back to the 2004 conversion mechanism without adequate assessment.</p> <p>Response of the Administration that it would carefully analyze the responses to the various proposed modifications, and see what amendments could be made to the 2004 conversion mechanism before coming back to the LegCo with a revised proposal. The Administration would also look at the conversion mechanism in the light of the rectification provisions. A fundamental aim would be to give the public the greatest assurance that the land title registration system would work smoothly in practice with reasonable stability in financing.</p>	
013245 – 013421	Chairman Clerk	Date of next meeting	

10 June 2009