

立法會
Legislative Council

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

Joint Subcommittee on Amendments to Land Titles Ordinance

**Minutes of fourth meeting held on
Tuesday, 16 June 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 Audrey EU Yuet-mee, SC, JP
Hon Alan LEONG Kah-kit, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon CHEUNG Hok-ming, SBS, JP

**Public officers
attending** : **Agenda item II**

Mrs Carrie LAM CHENG Yuet-ngor, JP
Secretary for Development

Mr Tommy YUEN Man-chung, JP
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

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

Action

I Confirmation of minutes and matters arising
(LC Paper No. CB(1)1871/08-09 -- Minutes of meeting on
21 April 2009)

The minutes of the meeting held on 21 April 2009 were confirmed.

II Meeting with the Administration
(LC Paper No. CB(1)1870/08-09(01) -- Administration's paper on
evaluation of options for
conversion and rectification
arrangements under Land
Titles Ordinance

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

- (a) The Joint Subcommittee agreed with the Administration that it should proceed with amendments to the Land Titles Ordinance (LTO) (Cap. 585) within the 2004 daylight conversion framework;
- (b) The Administration undertook to take appropriate financial measures to cope with liabilities arising from automatic conversion mechanism in the LTO, and to back up the Land Registry Trading Fund (LRTF) to ensure that charges to users of the services of the Land Registry would be maintained in an orderly manner;
- (c) The Joint Subcommittee would meet in September 2009 to discuss the Administration's proposal on the "Registrar's caution against conversion" and other matters that the Administration was ready to report on; and

Action

- (d) The Administration undertook to prepare discussion papers on the following subjects for scrutiny by the Joint Subcommittee in due course:
- (i) determination of land boundaries;
 - (ii) relationship between LTO and other Ordinances;
 - (iii) registration of managers of T'so and T'ong;
 - (iv) compatibility of LTO with the Conveyancing and Property Ordinance (CPO) (Cap. 219);
 - (v) definition of "deed of mutual covenant"; and
 - (vi) implied covenant for title.

III Any other business

3. There being no other business, the meeting ended at 4:18 pm.

Council Business Division 1
Legislative Council Secretariat
3 September 2009

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

Joint Subcommittee on Amendments to Land Titles Ordinance

**Proceedings of the fourth meeting
held on Tuesday, 16 June 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000355	Chairman	Confirmation of minutes of last meeting.	
000356 – 000535	Chairman	Opening remarks by the Chairman.	
000536 – 001610	Administration	<p>Briefing by the Secretary for Development (SDEV) that:</p> <p>(a) the Administration had a firm commitment to bring in the land title registration system and would work closely with the Legislative Council (LegCo) to this end;</p> <p>(b) given the complexity of LTO and its far-reaching effects, when LTO was enacted in 2004, it was a shared view that while it was an appropriate time to enact the LTO, it was necessary to conduct a thorough post-enactment review to ensure smooth operation of the new regime;</p> <p>(c) the considerable time and resources spent by the Administration and the Bills Committee on the Land Titles Bill introduced in December 2002 were not wasted as the enacted LTO provided a sound framework for the land title registration system;</p> <p>(d) the post-enactment review had identified a number of issues for which no</p>	

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		<p>administrative solutions were available. Major issues included registers with indeterminate titles, possible liabilities of the Government arising from automatic conversion, complications of the mandatory rectification rule arising from surrender, resumption or redevelopment of land prior to detection of fraud;</p> <p>(e) the Administration believed that given the automatic conversion mechanism, "immediate and unquantifiable risks" could arise after the conversion date. This had led to the public consultation conducted from January to March 2009 during which the Administration sought views on the proposed measures to effectively manage the risks. On reflection, the Administration's 2008 alternative proposal might be too conservative;</p> <p>(f) most stakeholders did not support the 2008 alternative proposal because they believed that the proposal was at odds with the simplicity of the automatic conversion mechanism and the mandatory rectification rule. Even so, stakeholders agreed that there were certain issues in the 2004 daylight conversion mechanism which must be addressed. With certain adjustments, Administration would take LTO forward within the 2004 daylight conversion framework;</p> <p>(g) SDEV had met with the outgoing and incoming Chairmen of the Law Society of Hong Kong (Law Society) and obtained their support for the present revised proposal. The Land Registrar (LR) would work with the Law Society's Working Party on LTO in preparing the required amendments. A Steering</p>	

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		<p>Committee chaired by LR with representatives from Law Society, Heung Yee Kuk and Consumer Council, etc., would continue to oversee the legislative exercise;</p> <p>(h) the paper prepared by the Administration for the present meeting contained proposed modifications targeting at the automatic conversion mechanism and the mandatory rectification rule. Other technical issues raised by members and the legal advisor to the Joint Subcommittee would also be dealt with in other future papers;</p> <p>(i) the Administration aimed to submit the amendment bill to LegCo towards the end of 2010; and</p> <p>(j) the Administration would take measures, appropriate to liabilities arising from the conversion to the land title registration system, to ensure that such liabilities would be suitably met and that the charges of the Land Registry's services could be managed in an orderly manner, and the Joint Subcommittee would be consulted further on such measures later.</p>	
001611 – 001641	Chairman	Response of the Chairman that the Administration's commitment to meet liabilities arising from conversion to the land title registration system was crucial in taking the LTO forward.	
001642 – 002918	Administration	<p>Briefing by the Land Registrar (LR) that:</p> <p>(a) the Administration proposed a new provision to enable LR to register a "Registrar's caution against conversion" to deal with known cases of indeterminate titles. Once such a caution was registered, the affected property</p>	

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		<p>would not be converted on the date set for automatic conversion. The caution could not be removed unless LR was satisfied with the land ownership, or when there was an order from court ordering its removal. There were about 480 known problematic cases of indeterminate titles at present. The second change the Administration proposed was related to the setting of priorities of interests protected by caveats registered under the Land Registration Ordinance (LRO);</p> <p>(b) the Administration believed that the fundamental objection to the 2008 alternative proposal was the process of scrutiny prior to upgrading of titles. Removal of this proposed process would turn the whole system into an automatic upgrading scheme. Such a move implied that it would then be necessary to address the issues of indeterminate titles and Government's exposure to liabilities arising from automatic conversion;</p> <p>(c) to address the financial risks, the Administration had committed that it would take appropriate measures so that liabilities arising from conversion to the land title registration system would be suitably met, and that the fees and charges of the Land Registry's services would be managed in an orderly manner;</p> <p>(d) three exceptions to the mandatory rectification rule were included in the 2008 alternative proposal, i.e.:</p> <p>(i) where the land had been surrendered to or resumed by the Government prior to discovery of a fraud;</p>	

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		<p>(ii) where the property had been divided up and sold to multiple new owners prior to discovery of a fraud; and</p> <p>(iii) where the bona fide registered owner at the time of discovery of the fraud was not the first person to have been registered as owner since the fraud.</p> <p>(e) for exceptions (i) and (ii), stakeholders could appreciate the complexity of the related issues, and yet felt strongly that the indemnity cap should be removed to protect an innocent former owner failing to recover the property. As for exception (iii), the overwhelming view was that the mandatory rectification rule should be maintained, regardless of the distance of the current registered owner from the fraudulent transaction. The Administration noted that the Law Society had not yet given its views in this regard;</p> <p>(f) in consultation with the Law Society , the Administration would draw up provisions for "Registrar's caution against conversion" under LRO, and prepare draft amendments for exceptions (i) and (ii); and</p> <p>(g) in addition to papers on determination of land boundaries and relationship between LTO and other Ordinances, the Administration had decided to draw up four more papers to address the following issues for scrutiny by the Joint Subcommittee:</p> <p>(i) registration of managers of T'so and T'ong;</p>	

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		<ul style="list-style-type: none"> (ii) compatibility of LTO with the CPO; (iii) definition of deed of mutual covenant; and (iv) implied covenant for title. 	
002919 – 004148	Ms Audrey EU Administration Chairman	<p>Expression of views by Ms Audrey EU that:</p> <ul style="list-style-type: none"> (a) she was pleased to learn of the Administration's decision to give up the 2008 alternative proposal; and (b) she would like to be briefed further on details of the "Registrar's caution against conversion". As for exceptions to the mandatory rectification rule, she asked why a land which had been resumed by and surrendered to the Government through a fraudster could not be returned to the original owner. <p>Response of LR that:</p> <ul style="list-style-type: none"> (a) it was necessary to bring in the "Registrar's caution against conversion" to deal with indeterminate titles which could not proceed under the automatic conversion mechanism; (b) he could assure members that the "Registrar's caution against conversion" would not be used unless the Administration had exhausted all possible ways to resolve the ownership problem; (c) the Administration's plan was to complete investigation of problematic registers within first half of the 12-year pre-conversion period. Property owners affected by the "Registrar's caution against conversion" might take the initiative to resolve the land title problem 	

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		<p>prior to the conversion date. The caution would have no expiry time and could not be removed except under the two conditions mentioned earlier. Unless the Registrar's caution was removed, the property would still be under the terms of LRO; and</p> <p>(d) land surrendered to or resumed by the Government for "public purposes" as a result of fraud would not be returned to original owner. The Administration would provide a paper setting out the conditions under which the exception to the mandatory rectification rule would apply.</p> <p>Comment of Ms Audrey EU that the exception to the mandatory rectification rule should not apply to private land involved in land exchange which had been surrendered by a fraudster to the Government for re-grant; the Administration should specify the scope for registering the "Registrar's caution against conversion".</p> <p>Advice of Mrs Maria LAM, Deputy Principal Solicitor (DPS) that:</p> <p>(a) in most cases, land was resumed by the Government for public purposes. Under the existing law, once a land was resumed, title of the land would be extinguished; and</p> <p>(b) the Administration believed that same treatment should be given to resumed and surrendered land, whether the concerned land was used for private or public purposes.</p> <p>Supplement by SDEV that:</p>	

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		<p>(a) the Administration had no intention to give extra protection to the Government under the LTO;</p> <p>(b) the Administration would further explain why it was not possible to return the resumed/surrendered land to the original owner; and</p> <p>(c) for the sake of fairness, whether the land was resumed or surrendered for public or private reasons should be subject to the same treatment.</p>	
004149 – 010044	Ms Miriam LAU Administration Chairman	<p>Expression of views by Ms Miriam LAU that:</p> <p>(a) exception to the mandatory rectification rule should not apply to private properties surrendered for the purpose of re-grant if the land had not been re-developed;</p> <p>(b) there was a danger that fraudster might get away if the mechanism of surrender and re-grant or resumption were used as the basis for the exception to the mandatory rectification rule; and</p> <p>(c) she could not understand why the Land Registry had allowed problematic registers to exist, and why the Administration failed to mention these cases during LTO enactment in 2004.</p> <p>Response by LR that:</p> <p>(a) the Administration was not aware of the problem in 2004, and it was not the duty of the Land Registry to deal with such cases under the LRO. Once converted to LTO, the Government would have the duty to make sure that the particulars in the registers were accurate; and</p>	

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		<p>(b) those 480 problematic cases were the ones the Administration knew of for the time being, and the Administration did not anticipate that a large number of indeterminate titles would be detected between now and the conversion date.</p> <p>Supplement by DPS that the original proposal under the Land Titles Bill 2002 was for solicitors to verify whether the titles were good for conversion to the land title system by signing a certificate of good title. Such an arrangement was later scrapped due to oppositions from stakeholders.</p> <p>Clarification by the Chairman that:</p> <p>(a) the earliest proposal was a "midnight conversion" mechanism which did not provide a 12-year pre-conversion period; and</p> <p>(b) it was agreed later that a 12-year pre-conversion period should be provided so that LR might have time to look into the registers.</p> <p>Response of Ms Miriam LAU that:</p> <p>(a) an earlier proposed arrangement was that with the solicitor signing a certificate of good title, the title would be converted immediately prior to the conversion date. The remaining titles would have to wait until the end of the 12-year period to become good titles automatically under LTO in one go. Since truly problem-free titles were rare, few solicitors were willing to sign off certificate of good title;</p> <p>(b) she was worried that the Administration might abuse the "Registrar's caution against conversion", thereby creating undesirable burden for property owners to</p>	

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		<p>prove that their titles were good; and</p> <p>(c) she enquired about the Administration's remedies for problematic registers caused by the faults of Government officials.</p> <p>Response by the LR that:</p> <p>(a) the Administration would investigate identified problematic titles and endeavour to resolve the ownership problem;</p> <p>(b) "Registrar's caution against conversion" would only be used as a last resort when LR was unable to determine the ownership on the face of available evidence;</p> <p>(c) as for the faults made by Government officials, the Administration would try its very best to investigate and rectify, if the case involved no third party; for cases involving a third party, the Administration would not turn to "Registrar's caution against conversion" and would deal with them separately; and</p> <p>(d) the Administration would discuss with the Law Society on how to deal with these cases.</p> <p>Comments by the Chairman that:</p> <p>(a) the Administration should draw up a paper on the "Registrar's caution against conversion" providing concrete details and viable proposals for Joint Subcommittee to consider on a firm ground. Meanwhile, the Administration should listen to the views of concerned parties in working out the details of the proposal; and</p>	<p>Administration</p> <p>Clerk</p>

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		(b) representatives from the Law Society should be invited to participate in the discussion of this subject.	
010045 – 011330	Mr Albert HO Administration ALA6 Chairman	<p>Enquiry by Mr Albert HO on whether it was possible to shorten the 12-year pre-conversion period.</p> <p>Response by SDEV that the 12-year period was an important part of the agreed framework, and she had strong reservations on re-opening the issue.</p> <p>Response by LR that:</p> <p>(a) the 12-year pre-conversion period had been laid down in LTO; and</p> <p>(b) the 12-year duration was to cater for good preparation and sound public education for conversion.</p> <p>Advice by ALA6 that the 12-year pre-conversion period was laid down in Schedule 1 to LTO. Nevertheless, the period could be amended, if necessary.</p> <p>Advice by the Chairman that:</p> <p>(a) when LTO was enacted, the 12-year duration was generally regarded as a reasonable length to deal with "unregisterable interests" and other unforeseeable circumstances; and</p> <p>(b) section 103 of LTO provided that the Secretary for Development might amend the 12-year period, with the approval of the Legislative Council, by notice published in the Gazette.</p> <p>Enquiry by Mr Albert HO on whether the Administration was able to quantify its funding commitment against possible</p>	

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		<p>liabilities arising from the conversion.</p> <p>Response by SDEV that:</p> <p>(a) the Administration was unable to quantify its funding commitment against possible liabilities; and</p> <p>(b) the Administration required time for internal discussion to work out appropriate measures.</p>	
011331 – 012817	Mr Alan LEONG Chairman Administration	<p>Concern expressed by Mr Alan LEONG that the "Registrar's caution against conversion" might become a means of the Administration to minimize its LTO-related liabilities, and his enquiry about the Administration's policy considerations.</p> <p>Enquiry by the Chairman on the criteria for issuing the "Registrar's caution against conversion" and the estimated proportion of titles to be registered with the caution.</p> <p>Response by LR that:</p> <p>(a) the Administration would not investigate the 2.8 million titles within the existing registers because it was prohibitively expensive to do so;</p> <p>(b) given that the LR was unable to investigate all the titles, it had to prepare for the consequence, and the Administration had given the assurance that it would back up the LR through appropriate measures;</p> <p>(c) the "Registrar's caution against conversion" was a separate measure and it would only apply to cases of problematic titles which were known today or cases brought to LR's attention for good reasons; and</p>	

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		<p>(d) the ultimate aim was the smooth operation of LTO and that an overwhelming portion of the titles was good.</p> <p>Supplement by SDEV that:</p> <p>(a) the Administration had found it unrealistic to visit each and every of the 2.8 million land titles;</p> <p>(b) the Financial Secretary had agreed to back up LTO financially; and</p> <p>(c) time was required to work out appropriate financial measures through internal discussion within the Administration.</p>	
012818 – 013353	ALA6 Administration Chairman	<p>Enquiry by ALA6 on:</p> <p>(a) whether the Administration believed that it would be exposed to unquantifiable risks because of the automatic conversion mechanism; and</p> <p>(b) his doubt that this was the case as section 84 of LTO stipulated that the Administration would not indemnify against frauds and mistakes or omissions in the title registers that occurred before the conversion date.</p> <p>Response by LR that section 84 might not be adequate to cope with liabilities arising from the conversion.</p> <p>Comments by the Chairman that:</p> <p>(a) after the conversion date, all titles would be guaranteed by the Administration under LTO as good titles. Hence, liabilities were bound to arise for properties with problematic titles. For</p>	

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		<p>known cases, it would be appropriate for the Administration to deal with them through an appropriate mechanism, such as the "Registrar's caution against conversion" presently proposed; and</p> <p>(b) if liabilities did pose a financial risk to the Government, it would be reasonable for the Administration to propose new provisions to deal with these risks.</p>	
013354 – 013626	Prof Patrick LAU Administration	<p>Enquiry by Prof Patrick LAU on whether the Administration had already started work to address problematic cases of indeterminate titles and whether it had encountered difficulties in resolving the problem.</p> <p>Response by LR that:</p> <p>(a) the Administration had been working on the known cases, and aimed to complete the exercise as soon as possible; and</p> <p>(b) while there were cases which were relatively easy to rectify, a pilot study on the problematic cases had led the Administration to believe that some problem cases would be difficult to resolve. A mechanism i.e. "Registrar's caution against conversion" was thus required to address them.</p>	
013627 – 014334	Ms Miriam LAU Chairman Administration	<p>Expression of views by Ms Miriam LAU that:</p> <p>(a) the use of the "Registrar's caution against conversion" would only be reasonable for circumstances mentioned in paragraph 3 (a) of the Administration's paper, since issues relating to land titles were highly complicated and should not be dealt with in an unconstrained way by the "Registrar's caution against conversion";</p>	

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		<p>(b) by devising the "Registrar's caution against conversion", the Administration was seemingly shifting the burden of proving good title to the property owners;</p> <p>(c) it was of vital importance for the Administration to discuss with the Law Society to set out clear criteria and circumstances for the use of the "Registrar's caution against conversion". Given that it was hard to locate flawless titles in particular those on aged properties, LR had to be realistic and refrain from abusing the use of the caution; and</p> <p>(d) it was a shared aspiration of all concerned parties that all titles would become good titles, and that the disputes about good and bad and marketable titles could lapse with the implementation of LTO in one go.</p> <p>Response by the Chairman that:</p> <p>(a) the Law Society had reminded the Joint Subcommittee in a previous meeting that LTO had a curative effect on land titles i.e. upon conversion, all bad titles would cease to be bad titles;</p> <p>(b) she agreed with Ms Miriam LAU that it was necessary for the Administration to clearly specify the scope of application of the "Registrar's caution against conversion"; and</p> <p>(c) the Administration should study the issue thoroughly with the Law Society.</p> <p>Response of LR that:</p>	

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		<p>(a) it was the Administration's intention to work out specific grounds for the use of the "Registrar's caution against conversion";</p> <p>(b) the circumstances mentioned in paragraph 3(a) were the only areas which the Administration believed were suitable for applying the "Registrar's caution against conversion"; and</p> <p>(c) the Administration aimed to get rid of "bad titles" by means of implementation of LTO.</p>	
014335 – 014614	Chairman	<p>Summing up of discussion by the Chairman that:</p> <p>(a) the Administration had given a clear indication that it would proceed to amend the LTO within the framework of the 2004 conversion mechanism;</p> <p>(b) the Administration had committed to make appropriate financial arrangements to ensure that, notwithstanding various risk management measures in place, liabilities arising from conversion to the land title registration system would be suitably met;</p> <p>(c) the new LTO was expected to be a simple, efficient and cost-saving tool addressing defects and inadequacies of the existing system operating under the LRO; and</p> <p>(d) The Administration should commit to the public that it was ready to hold itself responsible for all consequences of LTO, good or bad.</p>	
014615 – 015103	Chairman Administration	Enquiry by the Chairman on when the Administration was able to come up with a	

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		<p>proposal on the financial arrangements, and to provide discussion papers on other matters including the "Registrar's caution against conversion".</p> <p>Response by SDEV and LR that:</p> <ul style="list-style-type: none">(a) it was necessary to consult the concerned bureaux on financial measures before submitting a proposal to the Joint Subcommittee. She aimed to complete the work within 2009; and(b) the Administration required time to discuss with the Law Society on a number of issues including the "Registrar's caution against conversion". <p>Ending remarks by the Chairman that the Joint Subcommittee should aim to hold a meeting in September 2009 with the Administration to discuss the proposal on "Registrar's caution against conversion" and other matters that the Administration was ready to report on.</p>	