

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

Joint Subcommittee on Amendments to Land Titles Ordinance

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

1. Purpose

The purpose of this paper is to present to members of the captioned Panels the views of The Hong Kong Institute of Surveyors (“HKIS”) on the proposed amendments to Land Titles Ordinance (“LTO”) vide the following two papers prepared by Development Bureau dated December 2008:-

- CONSULTATION ON AMENDMENTS TO LAND TITLES ORDINANCE – Conversion of Existing Land and Property to Land Title Registration System (“Paper I”)
- CONSULTATION ON AMENDMENTS TO LAND TITLES ORDINANCE – Rectification and Indemnity Provisions (“Paper II”)

2. Background

2.1 In enacting LTO in July 2004, the Legislative Council (“LegCo”) requested the Government to carry out a comprehensive review before seeking to bring the new legislation into effect.

2.2 In May 2007, the Government reported to the LegCo’s Panel on Planning, Lands and Works that a substantial amendment of the enacted ordinance would be required.

2.3 In December 2008, the Government reported to the Panel on Development on various remaining issues to be settled before the amendment bill is introduced, which included the two main issues, namely “conversion mechanism” and “rectification and Indemnity provisions”.

2.4 Whilst discussing with different stakeholders like the Law Society of Hong Kong, Hong Kong Bar Association, Real Estate Developers Association of Hong Kong, Heung Yee Kuk and etc, the Government in January 2009 invites views from the public on the aforesaid two major issues vide Paper I and Paper II.

2.5 HKIS, being one of the real estate professional institutes, is pleased to offer its views on these issues.

3. HKIS's Views on the Proposed Conversion Mechanism

3.1 HKIS in principle supports the introduction of the LTO with the belief that it would ease the real estate transactions and reduce the relevant transaction costs.

3.2 The interests of concerned parties shall be duly respected and balanced, namely the registered owners, the purchasers, the Government and persons with unregistered equitable interests over the lands / properties concerned.

3.3 Both the two Conversion approaches proposed in 2004 and 2008 will allow registration of Caveats and Cautions against Conversion. We agree to safeguard those unregistered equitable interests upheld under the existing Common Law System but have the concern that such arrangements may attract unnecessary registrations hindering the normal pace of real estate transactions. A clear and appropriate registration mechanism including but not limited to the criteria for registration should be introduced and put in place before the commencement of LTO to minimize the negative effect so created.

4. HKIS's Views on the Rectification and Indemnity Provisions

4.1 The Government is required to indemnify a person for his loss incurred in certain circumstances under Section 84 of LTO and we recognize the complexity in interpreting the relevant legal provisions under LTO. However, we would expect the Government to duly illustrate the respective rights and extents of such indemnity for the ease of reference by the general public.

4.2 The Government will expose itself to the risk of claims of loss under LTO and relevant costs for litigation. The Government should conduct a detailed research to measure and gauge such risk and revisit the appropriateness of providing indemnity by the Government for fraudulent cases which may unreasonably incur a huge sum of public money.

Prepared by the Hong Kong Institute of Surveyors
12 March 2009