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28 April 2009

Mrs Carrie LAM CHENG Yuet-ngor, JP
Secretary for Development
Development Bureau
8th Floor, West Wing
Central Government Offices
11 Ice House Street
Central, Hong Kong

Dear Secretary,

Land Titles Ordinance

I am writing as Chairman of the Joint Subcommittee on Amendments to the Land Titles Ordinance which was established in January 2009 under the Panel on the Administration of Justice and Legal Services and the Panel on Development. The main task of the Joint Subcommittee is to monitor the Administration's work in preparing for the anticipated amendment bill to amend the Land Titles Ordinance ("LTO"). The then Secretary for Housing, Planning and Lands was the official who had the carriage of the Land Titles Bill 2002 eventually enacted in July 2004. The LTO is now under your responsibility as Secretary for Development.

In the Joint Subcommittee meetings held on 19 March and 21 April 2009, members were informed by representatives of the Administration that substantial amendments, e.g. to provisions concerning conversion and rectification, are under contemplation and consultation with stakeholders. These, in the judgment of members, are major policy changes, and go far beyond the textual and technical review the Legislative Council requested of the Administration at the time the bill was passed. Members were disturbed to hear that upon revisiting the implications of the implementation of the LTO, the Administration

now believes that there is an "immediate and unquantifiable risk", the avoidance of which would necessitate changing the conversion mechanism as well as other building blocks of the new regime under the LTO.

Members note that the Bills Committee set up to scrutinize the Land Titles Bill had held a total of 39 meetings from March 2003 to June 2004 and examined the Bill in great detail. The factors now enumerated by the Administration and the risks the Administration believes they could give rise to had all been raised in the Bills Committee and discussed at great length. As I recall (I was the Chairman of the Bills Committee) the Government's lack of commitment and the cap on the level of indemnity were seen by members (as well as the Hong Kong Bar Association) as a fundamental flaw which could undermine the new system. Members were assured by the Administration that, notwithstanding their concerns, the proposed LTO was workable. It was on that basis that the Bill was passed by the Legislative Council in 2004. Members are therefore astonished that after all this, the Administration is now having second thoughts. Members are extremely concerned that this would affect the public's confidence in our legislation however solemnly enacted or in the LTO eventually to be implemented.

Members are acutely aware that in the matter of property ownership and transaction, each and every owner and potential owner of property is a stakeholder who stands to lose if the system is flawed. It is imperative that the Government backs the new system it seeks to implement with full confidence and commitment. If LegCo is now advised that it was a mistake to approve the system under the present LTO, then members are duty bound to consider making the necessary correction provided, of course, that we are confident of being correct this time. A member is of the view that the Administration should adhere to the system as passed in the LTO.

In order to place the matter on the right footing, I am requested by members to ask the Administration to give Members a full explanation on (a) what amount of resources, in terms of the amount of time spent and the salaries of officials attending the Bills Committee meetings and working on the Bill etc., has been expended on the part of the Administration and now thrown away; and (b) how did such a serious mistake come about necessitating the radical revision?

As the highest official responsible for the Bill at the time, the former Secretary for Housing, Lands and Works remains accountable to the Legislature, and we expect a full account to be given. We are therefore writing to Mr Michael SUEN simultaneously. As the Secretary for Development who succeeds him in handling this matter and is now proposing the amendments, your views and decision on the way forward is pivotal. By copying these letters to both parties, we hope that coordination and communication are facilitated. To assist members' deliberations, may I invite you to attend the next meeting of the Joint Subcommittee to be held on 16 June 2009.

Yours sincerely,

(Margaret NG)
Chairman
Joint Subcommittee on Amendments to
Land Titles Ordinance

cc Mr Michael SUEN Ming-yeung, GBS, JP
Secretary for Education