

香港特別行政區政府
發展局局長



香港中環雪廠街 11 號
中區政府合署西座 8 樓

電話號碼 Telephone : 2810 3961
傳真號碼 Fax : 2151 5303

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SECRETARY FOR DEVELOPMENT

Government of the Hong Kong Special
Administrative Region

8/F, West Wing, Central Government Offices
11 Ice House Street, Central, Hong Kong

26 May 2009

The Hon Margaret Ng, JP
Chairman
Joint Subcommittee on
Amendments to Land Titles Ordinance
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Margaret,

Land Titles Ordinance

Thank you for your letters of 28th April addressed to me and Mr Michael Suen, the Secretary for Education in his former capacity as the Secretary for Housing, Planning and Lands, noting that the Land Titles Ordinance (Cap. 585) (LTO) was a subject under the then Housing, Planning and Lands Bureau before it was transferred to the Development Bureau on 1 July 2007. I have discussed the matter with him and this response reflects his views as well as my own.

Let me assure members of the Joint Subcommittee first of all that it remains the Administration's primary objective to see title registration introduced as soon as possible and on a comprehensive basis. As you pointed out in speaking on the resumption of second reading debate of the Land Titles Bill in July 2004, "the introduction of a statutory land title registration is a significant development of land law in Hong Kong and would have significant implications on members of the public and legal practitioners". Faced with this mammoth and complex

task to devise the legislative framework for land title registration in Hong Kong, both the Administration and the Legislative Council (LegCo) Bills Committee had put in considerable efforts in examining the Land Titles Bill. Nonetheless, because of some fundamental changes to our original proposals recommended by Members and accepted by the Administration in the crux of deliberations, I think it is fair to say that both sides then recognised that more work needed to be done before the enacted LTO could be implemented. Indeed, during the committee stage discussion of the Land Titles Bill, Members sought and the Administration undertook to review the LTO before the new legislation took effect. The Administration was also asked to follow up on a number of outstanding issues and consult the Panel before the commencement notice for the LTO was published.

The post-enactment review of the LTO had taken longer than expected because the opportunity was being taken to review other sections of the LTO not covered in the Report of the Bills Committee on Land Titles Bill. The major issues identified in the review are those covered by the public consultation exercise, i.e. matters of registers with uncertain title, those of possible liabilities assumed with automatic conversion, and complications for the rectification rule arising from surrender, resumption or redevelopment of land prior to detection of fraud. There will be implications arising from these if we commence the legislation exactly as it is. The Development Bureau and Land Registry had carefully examined the matters and devoted much effort during the review to try to deal with those implications within the enacted framework. It is only because we were not able to identify administrative solutions that we have raised the question of making amendments.

Since enactment of the LTO in July 2004, we reported progress to Members on two occasions. In May 2007, the Administration reported to the then Panel on Planning, Lands and Works that the review of the LTO had found that substantial amendments to the LTO were needed to ensure efficient operation of the new system, and an amendment bill would be prepared and submitted to LegCo before the title registration system was commenced. In December 2008, we reported to Members of the Panel on Development that we intended to

consult more widely on the major outstanding matters concerning conversion and rectification to seek views on how best to deal with them. We did so not because we thought there were fundamental flaws that had to be dealt with before the legislation commences but because, after careful review of the papers submitted to the Bills Committee, presentations given to Members and discussions recorded, we considered that these matters had not been clearly identified and deliberated on during earlier discussion. The two consultation papers were clearly framed around the questions of whether, having been appraised of the matters, respondents considered it necessary to make changes and, if so, the extent of any change required. With respect to conversion issues we set out an alternative approach but did not imply that this had to be accepted in preference to the framework adopted in 2004.

The response to the consultation has been clear. There is fairly extensive support for special provisions to enable the Registrar to handle known cases where title is uncertain. There is understanding that it would be a reasonable precaution to have a reserve fund to give greater assurance of stability for the Land Registry Trading Fund and for charges to users if any liabilities arise from undetected cases soon after conversion. However, the overwhelming preference is for any such modifications to be made within the framework of the 2004 "Daylight Conversion" mechanism, rather than consider any alternative based on upgrading of titles after case by case investigation. On rectification, there is support for limited provisions to avoid complications that might otherwise arise with land surrendered, resumed or redeveloped before a fraud is uncovered, but not for any greater protection to purchasers. We have also taken note of the views given by members of the Joint Subcommittee at the meeting on 21st April.

With the benefit of these views, we are now developing proposals for appropriate risk management measures within the framework of the "Daylight Conversion" mechanism enacted in 2004. We will set out how these can address the identified issues, as compared with any feasible alternative. I will present this analysis and will seek Members' views on the way forward when I attend the Joint Subcommittee's next meeting on 16 June 2009.

With respect to the specific questions in the penultimate paragraph of your letter, please be advised that between June 1999, when a team was re-established in the Land Registry to prepare a new Land Titles Bill and July 2004 when the Bill was enacted, around \$10.7 million was spent by the Land Registry on the staff dedicated to the Bill and services required to assist them. We certainly do not consider such expenditure to have been wasted and, as explained above, the nature of amendments now being considered is to ensure the effective implementation of the enacted legislation, not to replace it with something fundamentally different. The matters under consultation have arisen from prudential advice given during the post-enactment review, a review that all parties agreed to undertake before seeking to commence the legislation.

I believe that, having completed the review on the LTO and obtained views from stakeholders on the best way to put in place the title registration regime, we should look forward and focus on doing this, no doubt in full consultation with the LegCo Subcommittee formed for this purpose.

Lastly, in response to the view of some Members that there is a lack of commitment on the part of the Administration to the Land Titles Ordinance, I assure you that this is not so. My predecessor, Mr Suen, and I, on behalf of the Administration, are fully committed to reforming Hong Kong's land registration system. As the Bureau Secretary now responsible for the subject, I will do my utmost to bring the legislation into operation as soon as possible and to ensure that the Registrar has the means to manage the risks in a prudent and effective manner for the benefit of the community.

Yours sincerely,



(Mrs Carrie Lam)
Secretary for Development

cc Secretary for Education (Mr Michael Suen)