

**For information
on 7 October 2009**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT
AND
PANEL ON ADMINISTRATION OF JUSTICE AND LEGAL SERVICES

JOINT SUBCOMMITTEE ON
AMENDMENTS TO LAND TITLES ORDINANCE**

**Administration's Response to
Concerns and Views Expressed by Deputations
at Meeting on 19 March 2009 and
Written Submissions Received Before and After Meeting**

At the meeting on 19 March 2009, Members of the Joint Subcommittee on Amendments to Land Titles Ordinance and the Administration met various deputations who expressed their views on the Administration's proposals to amend the Land Titles Ordinance (Cap. 585) put forward for public consultation. The Administration's response to the deputations' views is at Annex for Members' information.

2. Members are invited to note the Administration's response.

**Development Bureau
September 2009**

**Administration's Response
to Concerns and Views Expressed by Deputations at Meeting on 19 March 2009
and Written Submissions Received Before and After Meeting**

Organisation	Views	Administration's response
I. General views		
Estate Agent Association	<ul style="list-style-type: none">• The Association welcomes the enactment of the Land Titles Ordinance (LTO) in general. The Association supports the conversion mechanism set out in LTO. It is against the alternative scheme, as the scheme will create two classes of properties subject to different rules for transaction and will thus cause confusion to estate agents and other parties concerned.	<ul style="list-style-type: none">• The Administration has noted the objection against changes to the automatic conversion mechanism in the LTO. The Administration now intends to proceed with the Land Titles (Amendment) Bill (LT(A)B) without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before drafting instructions are issued.
	<ul style="list-style-type: none">• To facilitate the work of estate agents, the Association prefers a simple and efficient system for checking property ownership.	<ul style="list-style-type: none">• The Administration has noted the Association's preference of a simple and efficient system for checking property ownership. Transparency and user friendliness will be the prime considerations of the Administration in the design of the new computer systems for the operation of the land title registration system.

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● Estate agents should be well equipped to discharge their duties under the LTO, and the Association is keen to find out the changes to the nature and scope of the work of estate agents with the commencement of the Ordinance. 	<ul style="list-style-type: none"> ● The Administration anticipates that the general duties of the estate agents after commencement of the LTO would remain similar to their current duties.
<p>Hong Kong Chamber of Professional Property Consultants Limited</p>	<ul style="list-style-type: none"> ● The estate agent sector and consumers in general support the direction of LTO, since it will simplify the procedures and help overcome land title defects, and these serve the interests of consumers and estate agents. Given the important impact of LTO, the Government should plan very carefully to avoid causing undue disturbance to the public when the Ordinance comes into operation. 	<ul style="list-style-type: none"> ● The Administration appreciates the support of the Chamber for the direction of the LTO. The Administration will endeavour to avoid causing undue disturbance to the public when the LTO comes into operation.
<p>Estate Agents Authority (EAA)</p>	<ul style="list-style-type: none"> ● EAA believes that it is most important for estate agents to be able to discharge their duties through the records provided by the Land Registry. The land search records must be clear so that the true owner and subsisting encumbrances can be easily identified. 	<ul style="list-style-type: none"> ● The Administration understands the importance of land search records to estate agents. The Administration's objective is to ensure that the law is clear and that the records themselves are maintained and presented to searchers in a clear, consistent and easily accessible form.

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● EAA understands that the LTO does not empower the Land Registrar to withhold conversion of title of the property in relation to cases where it is not clear who the true owner is. This is unsatisfactory because prospective buyers would rely on such conversion records as assurance of true ownership. Hence, EAA agrees that the issues concerning “indeterminate ownership” must be resolved <u>before</u> commencement of LTO. 	<ul style="list-style-type: none"> ● The Administration has noted the support of the Authority for resolution of the problem with indeterminate ownership before commencement of the LTO. The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before drafting instructions are issued.
<p>Society of Hong Kong Real Estate Agents Ltd</p>	<ul style="list-style-type: none"> ● The Society supports the LTO and hopes that the Ordinance will commence as soon as possible. 	<ul style="list-style-type: none"> ● The Administration has noted the position of the Society for early commencement of the LTO.
	<ul style="list-style-type: none"> ● The Society has studied the recent consultation papers and in general agrees with the proposals contained therein. 	<ul style="list-style-type: none"> ● The Society's general agreement with the proposals in the consultation papers is noted. However, the overwhelming response to the consultation paper on conversion is against making any changes to the main conversion mechanism contained in the LTO as enacted in 2004. The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before

Organisation	Views	Administration's response
		<p>drafting instructions are issued. On the consultation paper on rectification and indemnity, the Administration has noted that most responses are in favour of the rule mandating recovery by the former owner. If it is agreed that limitations on indemnity can be removed, the Administration will introduce amendments in the LT(A)B to allow for exceptions to mandatory rectification where land has been resumed or surrendered for public purpose, as well as where land has been redeveloped and then passed into multiple new ownership and it is inequitable to restore the land to the innocent former owner.</p>
II. Conversion Mechanism		
<p>Estate Agents Authority (EAA)</p>	<ul style="list-style-type: none"> Under the newly proposed conversion mechanism, pending conversion of all titles, there will be two different classes of titles in the market. EAA is concerned about the confusion that may be caused. It is difficult for estate agents to understand and make distinctions between the two so as to advise clients properly. Since estate agents rely basically upon the land search records to ascertain ownership and encumbrances, a single and unified register without such complicated and fine distinctions is certainly more desirable. 	<ul style="list-style-type: none"> The Administration has taken note of the Authority's concern about the risk of confusion arising from the alternative conversion mechanism. The Administration appreciates the importance of clarity in land research records to estate agents. Estate agents will be able to obtain property information from the Title Register kept under the LTO. Transparency and user friendliness will be the prime considerations of the Administration in the design of the new computer systems for the operation of the land title registration system.

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● In the event that the newly proposed conversion mechanism is adopted, corresponding legislative amendments to the various prescribed forms under the Estate Agents Ordinance's Practice Regulation may have to be made to cater for the new changes. 	<ul style="list-style-type: none"> ● The Administration now intends to proceed with the LT(A)B without making any change to the automatic conversion enacted in 2004. The intention to retain the automatic conversion mechanism should remove the need for making corresponding legislative amendments to the various prescribed forms under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.
Estate Agents Management Association	<ul style="list-style-type: none"> ● The Association agrees with the views of the Law Society of Hong Kong, and believes that the "<i>Daylight Conversion Mechanism</i>" is preferable to the newly proposed conversion mechanism. 	<ul style="list-style-type: none"> ● The Administration has noted the Association's preference for the automatic conversion mechanism in the LTO. The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before drafting instructions are issued.
Hong Kong Chamber of Professional Property Consultants Limited	<ul style="list-style-type: none"> ● The Chamber disagrees with the alternative scheme because the arrangements are complicated and will easily cause confusion. 	<ul style="list-style-type: none"> ● The Administration has noted the objection against changes to the automatic conversion mechanism in the LTO. The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before drafting instructions are issued.

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● If the Government lacks confidence in enforcing the enacted LTO, it should review carefully the provisions to ensure their clarity and that the relevant authority is conferred with adequate powers. This will enable the Government to have a good grasp of the risks involved. 	<ul style="list-style-type: none"> ● The Administration agrees that any change should be carefully considered and fully justified so as to give assurance to the public. A key objective is to ensure that the Land Registry has the authority and means necessary to deal with the issues that have been identified.
Properties Agencies Association	<ul style="list-style-type: none"> ● The Association is aware that under the proposed alternative scheme, it will not be possible to upgrade properties with uncertain ownership. This would frustrate the work of the estate agents. 	<ul style="list-style-type: none"> ● The Association's concern is noted. The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before drafting instructions are issued.
	<ul style="list-style-type: none"> ● Since upgrading of title is done voluntarily, the Association foresees that the response of owners might not be good in the absence of adequate incentives. Coupled with the problem of indeterminate ownership, the problem of dual system may drag on for a long time. 	<ul style="list-style-type: none"> ● The Association's concern over a long period of dual systems is noted.

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● The Association supports the arrangement that LTO should apply only to new land first if more time is required to examine the conversion mechanism. 	<ul style="list-style-type: none"> ● The Association's view that the LTO should be commenced for new land if other issues remain unresolved is noted.
	<ul style="list-style-type: none"> ● The Association will re-examine the merits of the gradual approach originally proposed in the 2002 Land Titles Bill. 	<ul style="list-style-type: none"> ● The Association's plan is noted.
The Law Society of Hong Kong	<ul style="list-style-type: none"> ● The Law Society has all along supported the "<i>Midnight Conversion Mechanism</i>" and believes that it is the most straight- forward and cost-effective method by which title registration should be implemented in Hong Kong as the "<i>at a stroke</i>" conversion and removal of technical title defects will achieve the dual purpose of simplicity and certainty of the system. 	<ul style="list-style-type: none"> ● The Society's preference for the automatic "midnight conversion mechanism" is noted.
	<ul style="list-style-type: none"> ● At the time of deliberating the 2002 Land Titles Bill, since there were concerns over the risk that substantive unregistered rights would be lost during the conversion process in a "<i>Midnight Conversion Mechanism</i>", the "<i>Daylight Conversion System</i>" was agreed upon by the Law Society as a compromise. 	<ul style="list-style-type: none"> ● The Administration has noted the Society's acceptance of the automatic "daylight conversion mechanism".

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> The Law Society does not think the Administration has made out a case warranting a substantial change to the conversion process. The Law Society believes that the Administration has exaggerated the problems and misconceived the Government's liabilities for errors transferred from the Land Registration Ordinance (LRO) registers. 	<ul style="list-style-type: none"> The Society's view that there is not a case for substantial change to the conversion mechanism is noted. The Administration does not consider that it has exaggerated the problems. Arising from the post-enactment review, the Administration has a responsibility to bring out for public discussion certain known problems that the enacted mechanism does not make provision for, and some uncertainties that need to be managed prudentially to ensure the smooth operation of the conversion mechanism. The Administration is also obliged to give careful consideration to financial liabilities since public funds are at stake.
	<ul style="list-style-type: none"> If the Administration is serious about applying "good holding titles" to Hong Kong, it should be guided by the experience of other jurisdictions. The experience in the United Kingdom and the United States all points to how rarely holding under a title is disturbed. The Administration should release its research in this regard and provide statistics to support its claim on the extent of the problem. 	<ul style="list-style-type: none"> The Administration has examined the approaches to conversion adopted in other jurisdictions but has found none obviously comparable to the "Daylight Conversion Mechanism" from which relevant risk assessments can be derived.
	<ul style="list-style-type: none"> The Law Society does not see the proposed mid-way house conversion mechanism an efficient one to resolve the problems highlighted by the Administration. The alleged benefit of "conversion of LRO land being accelerated" is unreal. 	<ul style="list-style-type: none"> The Society's view is noted.

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● The Law Society could see significant defects with the newly proposed mechanism — <ul style="list-style-type: none"> (a) properties with “upgraded” titles having greater value than those that remain under the old system, causing confusion in the market; (b) additional administration costs for maintaining two systems; (c) an indefinite timetable for upgrading 2.8 million titles with a dual system running; (d) the costs for having a full title registration system in Hong Kong can be considerable (the Government should indicate how such costs will compare to the alleged “<i>liabilities</i>” of the Land Registry under the 2004 system); (e) it is unclear how long the upgrading process will take and how the market will react to, or if there is a market for, titles pending up-grading; (f) the examples of problem registers given by the Administration give rise to concern that the “<i>good holding title</i>” concept will be sensibly applied, and 	<ul style="list-style-type: none"> ● The Administration has noted the concerns raised by the Society over the alternative mechanism. The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will discuss the details of the proposed provisions with the Society.

Organisation	Views	Administration's response
	<p>there will be uncertainty in the market whether the Land Registrar will upgrade a title;</p> <p>(g) the newly proposed mechanism does not provide any constructive proposals as to how the problem titles could be cured or upgraded; and</p> <p>(h) the need to provide a remedy to protect owners' interest against any wrongful exercise of the Registrar's power in the upgrading of titles entails further complication and uncertainty as well as time and costs for the owners.</p>	
	<ul style="list-style-type: none"> ● The Law Society maintains that in the interests of the public, the existing Daylight Conversion Mechanism should be maintained. 	<ul style="list-style-type: none"> ● The Society's view is noted.
	<ul style="list-style-type: none"> ● The Law Society believes that a registered title system is a state-run title insurance system and its success depends implicitly on the commitment on the part of the Government. 	<ul style="list-style-type: none"> ● The Society's view is noted.

Organisation	Views	Administration's response
<p>The Hong Kong Institute of Surveyors (HKIS)</p>	<ul style="list-style-type: none"> • The interests of concerned parties should be duly respected and balanced, namely the registered owners, the purchasers, the Government and persons with unregistered equitable interests over the land/properties concerned. 	<ul style="list-style-type: none"> • The Administration agrees that the interests of all concerned parties should be duly respected and balanced.
	<ul style="list-style-type: none"> • The two conversion approaches proposed in 2004 and 2008 will allow registration of caveats and cautions against conversion. HKIS accepts that there is a need to safeguard those unregistered equitable interests upheld under the existing common law system, but has 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 before the commencement of LTO to minimize the negative effect so created. 	<ul style="list-style-type: none"> • The Administration has noted the concern that the mechanism of caveats and cautions against conversion may attract “unnecessary” registration hindering the normal pace of real estate transactions. Under Schedule 4 to the LTO, provisions for wrongful caveats and wrongful cautions against conversion are added to the LRO together with the provisions for registration of caveats and cautions against conversion. A person who applies for the registration of a caveat or a caution against conversion without reasonable cause shall be liable to pay compensation to the owner of the land concerned and any other person for any damage sustained thereby. Moreover, a person who fails, without reasonable excuse, to apply for withdrawal of a caveat or a caution against conversion within a reasonable period of time after the ground on which it was registered ceases to exist shall be liable to pay compensation.

Organisation	Views	Administration's response
<p>Heung Yee Kuk New Territories (HYK)</p>	<ul style="list-style-type: none"> • The last sentence in paragraph 6 of the consultation paper on “Conversion of Existing Land and Property to Land Title Registration System” reads that “<i>On the other hand, the Heung Yee Kuk continues to be doubtful about automatic compulsory conversion and would prefer a voluntary approach, at least in respect of land covered by Part II of the New Territories Ordinance (Cap. 97)</i>”. HYK finds this sentence unclear and misleading. HYK has never cast doubt on automatic compulsory conversion, though it has expressed considerable views on certain aspects. HYK hopes that the Government can clarify the sentence to avoid misunderstanding. 	<ul style="list-style-type: none"> • The position of HYK in relation to the automatic conversion mechanism is noted. It is regretted that the last sentence of paragraph 6 in the consultation paper did not properly reflect the view of HYK.
	<ul style="list-style-type: none"> • The Government proposes that automatic conversion from LRO register to the land titles register will take place after three years. HYK considers the three-year transitional period not long enough, since many property owners are living overseas. HYK believes that a 12-year period is a more appropriate duration. 	<ul style="list-style-type: none"> • The Administration has noted the concern that, under the proposal for an alternative conversion mechanism, the proposed period of 3 years before conversion might not be sufficient to allow owners to prepare. However, under the proposed alternative conversion mechanism, existing land with converted title (“converted land”) is still subject to subsisting interests. A person claiming subsisting unregistrable interests may register a warning note in respect of his interests against the converted land prior to upgrading. This is not proposed to take place earlier than 12 years from

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● HYK believes that the Government will have to process a huge number of applications for upgrading of title in due course. It is doubtful whether the Government will have sufficient manpower to handle these applications. HYK is also concerned with the time required for title upgrading since lengthy processing time may hinder property transactions. ● In short, HYK finds that the proposed alternative scheme has not given due regard to practical circumstances and the needs of property owners and is highly disturbing. 	<p>the date of conversion. Any such person would, therefore, still have substantial time to act to protect a claimed interest under the proposed modified conversion mechanism.</p> <ul style="list-style-type: none"> ● HYK's concerns are noted. The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before drafting instructions are issued. ● HYK's concern over the impact that the suggested alternative mechanism may have on the public is noted.
<p>The Real Estate Developers Association of Hong Kong (REDA)¹</p>	<p>Day Light Conversion vs. Gradual Conversion</p> <ul style="list-style-type: none"> ● REDA has previously taken the position that it has no in principle objection to the proposed Gradual Conversion Mechanism. 	<ul style="list-style-type: none"> ● The Administration has noted the previous position of REDA.

¹ Submission of the Real Estate Developers Association of Hong Kong dated 11 May 2009

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● However, having considered the submission of the Law Society of Hong Kong of 13 March 2009, in particular the point made in the submission that there appears to be only a limited number of real cases of problematic title, REDA supports the position of the Law Society. <ul style="list-style-type: none"> ● If it is correct that Government's exposure under the Daylight Conversion Mechanism is not as extensive as what thought to be the case when REDA was consulted on the proposal, the Daylight Conversion Mechanism is preferred for the following reasons — <ul style="list-style-type: none"> (a) Upon automatic conversion to registered title under the Daylight Conversion Mechanism, conveyancing transactions would become much simpler and the costs of transactions would be reduced; and (b) whereas under the proposed Gradual Conversion Mechanism, the majority of conveyancing transactions would remain a cumbersome and relatively costly process involving checking of title deeds and this would continue for many years to come with no definite timetable for full conversion. 	<ul style="list-style-type: none"> ● REDA's support of the position of the Law Society is noted. The Administration does not consider that it has exaggerated the problems. There are some known problems that the enacted mechanism does not provide for, and there are uncertainties that need to be prudentially managed to ensure the smooth operation of the conversion mechanism. <ul style="list-style-type: none"> ● The Administration has noted the Association's preference for the "Daylight Conversion Mechanism". The Administration now intends to proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004. New provisions are proposed to be added to withhold certain known problem cases from conversion. The Administration will issue a set of proposals for the new provisions for discussion with interested parties before drafting instructions are issued.

Organisation	Views	Administration's response
III. Rectification and indemnity provisions		
Properties Agencies Association	<ul style="list-style-type: none"> The Association believes in the principle of “returning the property to the original owner”, and this principle should not be forsaken for the sake of enhancing the efficiency of property transactions. There is no necessity to amend the mandatory rectification rule. 	<ul style="list-style-type: none"> The Association's view is noted. There are circumstances in which the property no longer exists in a form to which the former owner can be restored. These need to be addressed.
Society of Hong Kong Real Estate Agents Ltd	<ul style="list-style-type: none"> The Society is against the setting of a cap on the indemnity, given that there are some properties valued over \$30 million. It is only fair that the owners of those properties should be protected by the law like other owners. Consideration may be given to establishing an insurance mechanism to cover claims for indemnity from these properties, if such claims cannot be catered for by the Land Registry or the indemnity fund. 	<ul style="list-style-type: none"> The Society's view is noted. The cap is provided for in the LTO. The Administration is now assessing whether it is acceptable – in terms of managing the risks to the planned indemnity fund and the financial impact on property owners who will finance the indemnity fund through levies on transactions – to remove the cap for an innocent former owner if exceptions to the mandatory rectification rule are to be made where land has been resumed or surrendered for public purpose and where land has been redeveloped and has then passed into multiple new ownership and it is inequitable to restore the land to the innocent former owner.
The Hong Kong Institute of Surveyors (HKIS)	<ul style="list-style-type: none"> The Government is required to indemnify a person for his loss incurred in certain circumstances under section 84 of LTO. While recognizing the complexity in interpreting the relevant legal provisions, HKIS would expect the Government to duly 	<ul style="list-style-type: none"> The Institute's request for clearer illustration of the effects of the provisions is noted. This will be followed up in the preparation of guidance materials.

Organisation	Views	Administration's response
	<p>illustrate the respective rights and extents of such indemnity for the ease of reference by the general public.</p> <ul style="list-style-type: none"> ● Since 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. 	<ul style="list-style-type: none"> ● The Administration has undertaken extensive examination of the nature of risk being taken on in fraud cases and has adopted assumptions that are prudent. Without the possibility of indemnity to a purchaser, however, the new system is unlikely to give the security that the public request.
<p>The Real Estate Developers Association of Hong Kong (REDA)</p>	<ul style="list-style-type: none"> ● The Association used to oppose to the cap on indemnity. It has subsequently accepted the cap, only on the basis that the innocent original owner will be entitled to have his title restored under the “mandatory rectification rule”. ● The important principle upheld by REDA is that deprivation of an innocent owner of his property without full compensation is not only unfair but may also be contrary to the Basic Law. 	<ul style="list-style-type: none"> ● The Administration's proposal is to maintain the mandatory rectification rule as far as possible, making exceptions only in specific cases to tackle the problems that have been identified. ● The Administration has noted REDA's concern about compliance with the Basic Law. The Administration will ensure that all aspects of the LT(A)B are in compliance with the Basic Law.

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● Acknowledging that the Administration is proposing three exceptions to the mandatory rectification rule, REDA considers that the effect of the exceptions is to substantially abrogate the mandatory aspect of the rule and the rights of the innocent owner. REDA does not consider the proposal fair and reasonable, and objects to the exceptions. 	<ul style="list-style-type: none"> ● REDA's view is noted. There are circumstances in which the property no longer exists in a form to which the former owner can be restored. These need to be addressed.
	<ul style="list-style-type: none"> ● In respect of the proposed exception where the registered owner is not the first person registered as owner since the fraud, the exception is very widely drawn. The problem is that under this exception, the innocent original owner stands to lose his property and will not be compensated except to the extent of the indemnity cap, simply because the property has changed hands, over which the innocent original owner does not have any control. 	<ul style="list-style-type: none"> ● REDA's concerns are noted.
	<ul style="list-style-type: none"> ● For the proposed exception where there has been resumption or surrender of the property to the Government since the fraud, REDA has difficulties in understanding why an innocent original owner should stand to lose 	<ul style="list-style-type: none"> ● The Administration has noted REDA's concern. There are circumstances in which it is practically impossible to return the affected property to the innocent former owner. The Administration is now assessing whether it is acceptable – in terms of managing the risks to the planned indemnity fund

Organisation	Views	Administration's response
	<p>his property (at least to the extent not covered by the indemnity cap) in the situation. Where private property rights are involved, Government should be placed in a position no better than that occupied by private citizens. This exception appears to be contrary to Articles 6 and 105 of the Basic Law.</p>	<p>and the financial impact on property owners who will finance the indemnity fund through levies on transactions – to remove the cap for an innocent former owner if exception to the mandatory rectification rule is to be made where land has been resumed or surrendered for public purpose.</p>
	<ul style="list-style-type: none"> ● For the proposed exception where the property has been divided up and sold resulting in multiple ownership of the property, REDA is of the view that — <ul style="list-style-type: none"> (a) The protection of innocent purchasers should not be made at the expense of the innocent original owner whose remedy should not be limited by the indemnity cap; and (b) If this exception were to apply, certain criteria must be set and be satisfied. For example, the exception should not apply unless an appropriate number of bona fide purchasers are involved. 	<ul style="list-style-type: none"> ● REDA's concern that there should be clear criteria is noted. The Administration is now assessing whether it is acceptable – in terms of managing the risks to the planned indemnity fund and the financial impact on property owners who will finance the indemnity fund through levies on transactions – to remove the limitations on indemnity for an innocent former owner if exception to the mandatory rectification rule is to be made where land has been redeveloped and has then passed into multiple new ownership and it is inequitable to restore the land to the innocent former owner.
<p>Heung Yee Kuk New Territories</p>	<ul style="list-style-type: none"> ● HYK feels strongly that it is important to safeguard the interests of the former owner who has suffered the loss of land/property as 	<ul style="list-style-type: none"> ● HYK's stance on protecting the interest of the former owner is noted. The Administration's intention is that where there has been loss of ownership through fraud, wherever

Organisation	Views	Administration's response
(HYK)	<p>a result of fraud. For cases in which, before a claim for rectification is made, the lot or lots affected have been resumed or surrendered to Government, the Government should offer compensation to the former owner according to the resumption price. For other cases involving fraud and where rectification to the former owner is difficult, the Government should offer compensation to the former owner according to the market value of the property concerned. Other than the aforesaid circumstances, the legislation should ensure that the property is returned to the former innocent owner who has suffered the loss of land/property as a result of fraud.</p>	<p>practically possible the property should be returned to the innocent former owner. When it is not practically possible, there should be indemnity for the loss.</p>
The Law Society of Hong Kong ²	<p>Exceptions to Mandatory Rectification Rule</p> <ul style="list-style-type: none"> ● The Law Society shares the concerns of the Government and believes that indefeasibility of title is an important feature of a title registration system. The Law Society supports in principle the introduction of the proposed exceptions to the rule as set out in paragraph 26 of the Consultation Paper 	<ul style="list-style-type: none"> ● The Administration appreciates the support of the Society for the exceptions to the mandatory rectification rule.

² Submission of the Law Society of Hong Kong dated 9 July 2009

Organisation	Views	Administration's response
	<p>subject to review of the legislative provisions and introduction of further legislative changes to the Indemnity Provisions as set out below.</p>	
	<ul style="list-style-type: none"> • The Law Society is of the view that the Mandatory Rectification is an unfortunate political expediency arising out of the Administration's lack of commitment in capping the indemnity payment. The Law Society is strongly of the view that this deferred indefeasibility is the very minimum of any registered title system. The Law Society further believes that the cap on indemnity to the innocent former owner should be lifted in the proposed exceptional scenarios to the mandatory rectification rule. 	<ul style="list-style-type: none"> • The Society's view is noted. However, most responses received are in favour of retaining the rule mandating recovery by the former owner, irrespective of the position of the current registered owner. This was why in the Administration's Paper presented to the Joint Subcommittee on 16 June 2009, we indicated that we did not intend to pursue the exception in relation to "deferred indefeasibility" in the context of the LT(A)B. <p>The Administration is now assessing whether it is acceptable – in terms of managing the risks to the planned indemnity fund and the financial impact on property owners who will finance the indemnity fund through levies on transactions – to remove the cap for an innocent former owner if exceptions to the mandatory rectification rule are to be made where land has been resumed or surrendered for public purpose and where land has been redeveloped and has then passed into multiple new ownership and it is inequitable to restore the land to the innocent former owner.</p>

Organisation	Views	Administration's response
	<ul style="list-style-type: none"> ● As the Administration has rightly pointed out in its Consultation Paper, the exclusion of indemnity for pre-conversion fraud to the innocent former owner under Section 84(4)(c) of the LTO in the proposed exceptional scenarios should also be lifted as otherwise, a former innocent owner may be barred from recovering the property or any indemnity if the fraud that removed him from the register occurred before conversion. 	<ul style="list-style-type: none"> ● The Administration's intention is that where there has been loss of ownership through fraud, wherever practically possible the property should be returned to the innocent former owner. When it is not practically possible, there should be indemnity for the loss.
	<p>Other proposed amendments</p> <ul style="list-style-type: none"> ● The Law Society would like to reserve its overall comments on the Government's other proposed amendments in the Consultation Paper upon sight of the draft legislative provisions. The Law Society would, however, highlight the following observations — <p>(a) Identity of the Person Eligible to Claim Indemnity</p> <p>The Administration was concerned there is some uncertainty over the</p>	<ul style="list-style-type: none"> ● The Administration has noted the Society's other comments on specific provisions for addressing the ambiguities in the operation of the indemnity provisions. It has always been the policy intent of the Administration that in fraud cases, the indemnity fund will compensate persons who suffer loss by or as a result of the fraud which results in the loss of ownership. The term "which affects ownership" is ambiguous as to when indemnity may be given; and the proposed amendment is to clarify the intent. The proposed apportionment of indemnity money amongst multiple claimants does not apply to claims between a chargor and a chargee. It applies to apportionment between an owner and other claimants such as tenants.

Organisation	Views	Administration's response
	<p>meaning of the term “which affects ownership” in section 84(1) of the LTO and proposed to replace it with “which results in the loss of ownership”. The intention is to make clear that the indemnity fund will not be liable for claims in cases where there has not been any loss of ownership due to fraud.</p> <p>The Law Society believes that it is important to ensure all persons suffering loss as a result of fraud will be able to claim indemnity but noted that the section 84(1) has limited such claims to cases where there had been a “loss of ownership”.</p> <p>The Law Society also believes that the proposal should refer to “title” rather than “ownership” and has concern with the proposal as there are occasions or possibilities that someone having an interest in the registered land could suffer loss although the title of the owner has not been lost.</p>	

Organisation	Views	Administration's response
	<p>The Law Society noted with encouragement that similar stance was taken by the Hong Kong Association of Banks and the Consumer Council.</p> <p>(b) Proposed Apportionment where there are Multiple Claimants</p> <p>The Administration noted that where there are multiple claimants and the total value of their claim exceeds the cap, no provision exists now as to how the amount is to be apportioned among the various claimants. The proposal is thus to include a provision to the effect that each claimant would be paid from the cap amount in proportion to the value of their loss.</p> <p>The Law Society believes the proposal on the apportionment of the indemnity amount should be subject to any contrary intention expressed by the parties, particularly when in a Charge situation, the Chargee would probably wish to get everything up to the amount of the outstanding loan.</p>	

Organisation	Views	Administration's response
IV. Other views		
Heung Yee Kuk New Territories (HYK)	<ul style="list-style-type: none"> ● HYK is concerned about the registration arrangements for the managers (司理) of T'so/T'ong (祖堂), and believes that it is sufficient to provide for the registration arrangements in the New Territories Ordinance. 	<ul style="list-style-type: none"> ● The Administration has no intention to regulate the approval of the appointment of manager of a clan, family or t'ong under the LTO. The new provision proposed to be added to the LTO is simply to provide for registration of manager of a clan, family or t'ong in the Title Register after the appointment had been made under section 15 of the New Territories Ordinance (Cap. 97). Without it there would be doubt as to whether the Registrar can register the name of the approved manager. This question was raised by the Assistant Legal Advisor to the Legislative Council who advised that section 15 of the New Territories Ordinance does not by itself empower the Registrar to register a manager under the LTO. The approval of appointment of the managers would remain the duty of the District Offices.
	<ul style="list-style-type: none"> ● HYK is deeply concerned with the listing of “over-riding interests in LTO and believes that a system should be put in place to register all “over-riding interests” so that a prospective purchaser can have a clear picture of the actual land condition. 	<ul style="list-style-type: none"> ● The Administration has noted the concern of HYK on overriding interests. Overriding interests are not a new concept created by the LTO. They are rights that already exist. They are mainly rights that may be ascertained by inspection of property (e.g. short term tenancy) or statutory rights (e.g. right to issue demolition order for illegal structures under the Buildings Ordinance (Cap. 123)).
	<ul style="list-style-type: none"> ● At present, T'so/T'ong (祖堂) may only sell properties. The Government should consider allowing T'so/T'ong (祖堂) to purchase properties to achieve fairness. 	<ul style="list-style-type: none"> ● The issue of a clan, family or t'ong being given the power to purchase properties is a matter that falls outside the consideration of the LTO.