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

**Continuation of work of the
Joint Subcommittee on Amendments to Land Titles Ordinance
in the 2010-2011 legislative session**

Purpose

This paper invites members to note the latest progress of work of the Joint Subcommittee on Amendments to Land Titles Ordinance (the Joint Subcommittee) and the need for the Joint Subcommittee to continue its work in the 2010-2011 legislative session.

Background

2. The Joint Subcommittee was appointed by the Panel on Development and the Panel on Administration of Justice and Legal Services (the Panels) in January 2009 to monitor the Administration's work on the preparation of amendments to the Land Titles Ordinance (Cap. 585)¹ (LTO) in a focused manner and provide input in the bill drafting process. In making the decision to appoint the Joint Subcommittee, the Panels had given regard to the then advice of the Administration that the following four substantial matters needed to be finalized before a Land Titles (Amendment) Bill could be brought to the Legislative Council for consideration --

- (a) the relationship between the LTO and other legislation;
- (b) arrangements for updating land boundaries;

¹ The LTO was enacted in July 2004.

- (c) modifications to the conversion mechanism² in the LTO; and
- (d) modifications to the provisions on rectification and indemnity³ in the LTO.

Work of the Joint Subcommittee

3. Under the chairmanship of Dr Hon Margaret NG, the Joint Subcommittee has held eight meetings, five in the 2008-2009 and three in the 2009-2010 legislative sessions. The Joint Subcommittee has studied the following major issues -

- (a) the conversion mechanism provided for under the LTO;
- (b) the mandatory rectification rule⁴ stipulated in the LTO; and
- (c) determination of land boundaries.

At its meetings on 19 March 2009 and 29 April 2010, the Joint Subcommittee received views of depositions from interested parties on the above and other issues related to the LTO.

Conversion mechanism

4. At the meetings held in the 2008-2009 legislation session, the Joint Subcommittee deliberated at length the risks and problems identified by the Administration in relation to the "Daylight Conversion" framework (i.e. automatic conversion 12 years after commencement of the LTO) pursuant to the post-enactment review of the LTO. The Joint Subcommittee noted that after assessment of the options available, the Administration recommended to uphold the spirit of automatic conversion at the end of 12 years and manage those identified risks by proceeding to amend the LTO to modify the "Daylight Conversion" mechanism. To deal with known cases of indeterminate ownership, the Administration proposed to empower the Land Registrar to withhold certain land registered under the Land Registration Ordinance (Cap. 128) (LRO) from conversion

² "Conversion mechanism" refers to the method that will be used to bring existing land and property to which the Land Registration Ordinance (Cap. 128) applies over to the land title register under the LTO.

³ "Rectification" refers to how the land title register is to be put right if found to be in error, while "indemnity" refers to how an innocent party who has relied on the land title register and suffers loss due to an error or fraud is to be compensated.

⁴ Under the LTO enacted in 2004, any innocent owner removed from the register by fraud will be restored as owner provided that an action for recovery is taken within the time allowed by the Limitation Ordinance (Cap. 347), irrespective of any subsequent transactions or developments affecting the land.

to registered land under the LTO, by registering a "Land Registrar's caution against conversion" (LRCAC) against the concerned properties. Moreover, the Administration advised that it would introduce appropriate financial measures to cope with liabilities arising from the automatic conversion mechanism, 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.

5. The Joint Subcommittee discussed the Administration's proposal on the LRCAC mechanism on 7 December 2009 and 29 April 2010. The issues discussed included the measures to deal with problematic cases before invoking LRCAC, criteria for registering LRCAC, and review mechanism. As regards financial measures to cope with liabilities that may arise from the automatic conversion mechanism, the Administration indicated that any proven claims would be met by the LRTF out of its own resources including uncommitted retained earnings. Where necessary, the Administration was prepared to seek the approval of the Finance Committee of the Legislative Council for a stand-by loan facility if the resources available to the LRTF were insufficient to cover proven claims and to finance the smooth operation of the Land Registry.

Rectification and indemnity arrangements

6. Under the mandatory rectification (MR) rule of the LTO, if an innocent former owner lost his title by or as a result of fraud, he will be restored as owner. The innocent purchaser will be protected, in accordance with the provisions in the LTO, through payment of an indemnity out of the self-financing Land Titles Indemnity Fund up to a cap of \$30 million. Following its post-enactment review of the LTO, the Administration proposed, in a public consultation conducted in early 2009, the following three exceptions to the MR rule –

- (a) when the land affected had been surrendered or resumed prior to discovery of the fraud;
- (b) when the land had passed into multiple new ownership prior to discovery of the fraud; and
- (c) when the current owner was a bona fide purchaser who had not dealt with the fraudster.

7. The Administration reported to the Joint Subcommittee on 16 June 2009 that for the first two proposed exceptions, stakeholders generally appreciated 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 the third proposed exception, the overwhelming view was that the MR rule

should be maintained, regardless of the distance of the current registered owner from the fraudulent transaction. The Joint Subcommittee noted that at that time, the Law Society of Hong Kong (the Law Society) had not yet given its views on the issue.

8. At the Joint Subcommittee meeting on 29 April 2010 attended by deputations, the Joint Subcommittee noted the Law Society's strong objection to the MR rule. The Law Society considered that a title registration system with the MR rule would not work at all, and instead advocated "indefeasibility of title" as the appropriate arrangement. Members appreciated the complexity of the issues involved and requested the Administration to duly consider the views from stakeholders and come up with a workable system for the LTO after balancing the interests of the concerned sectors and those of the general public.

9. The Administration reported on 28 June 2010 that the Administration had held an in-depth discussion with stakeholders on the concerns of the Law Society regarding the rectification and indemnity arrangements, and the stakeholders expressed divergent views towards the arrangements. To take the matter forward, the Administration had requested the Law Society to provide further information on the extra steps in conveyancing procedures that would be necessary if the MR rule was adopted. Once the information was received, the Administration would meet with the stakeholders again to discuss the matter. Meanwhile, the Administration was also exploring other possible options for discussion with stakeholders.

Determination of land boundaries

10. The Joint Subcommittee deliberated at its meeting on 7 October 2009 the Administration's proposal to provide an avenue for land owners to apply to the Director of Lands for determination of the boundaries of their lots and registration of the resultant plans in the Land Registry. The Administration's intention is to repeal Section 94 of the LTO and introduce into the Land Survey Ordinance (Cap. 473) (LSO) the relevant provisions modeled on the current provisions in Section 94 of the LTO, to be followed up by way of consequential amendments to be made under the forthcoming Land Titles (Amendment) Bill.

11. Members raised various concerns, including the legal consequences if a new plan as determined by the Director of Lands is different from the old plan kept in the Land Registry or shown on the Government lease, and the legal implications of a "non-consent new plan"⁵ on related conveyancing transactions. Members requested the Administration to provide a policy paper on the subject to set out how

⁵ A "non-consent new plan" refers to a new plan where the relevant owners do not give consent for it to be registered but which will be kept by the Director for public inspection on related conveyancing transactions.

the Director would process applications for determination of land boundaries in practice, issues that might be encountered and suggested solutions.

12. At the meeting on 7 December 2009, the Administration reported on the initial views of the relevant government departments and the Administration's legal advisors on the issues raised by the Joint Subcommittee. The Administration indicated that as the issues had complex legal and policy implications, more time was needed to examine them in detail and carefully.

13. At the meeting on 29 April 2010, the Joint Subcommittee noted the views of the Hong Kong Institute of Surveyors on the matter. The Institute supported the Administration's proposal and further advocated the establishment of a land boundary records system, to be maintained by the Land Survey Authority and made available to the public. In June 2010, the Joint Subcommittee received a submission from the Association of Government Local Land Surveyors. The Association expressed support for the Administration's proposal, but highlighted its concern about the lack of a solid timetable for the proposed legislative work. The Association emphasized that for the new title registration system to operate smoothly, the LTO should never be implemented without the corresponding amendments for determination of land boundaries. The Administration reported at the meeting on 26 June 2010 that it was following up on the Joint Subcommittee's concerns expressed in previous discussions, and would exchange views with relevant stakeholders and keep the Joint Subcommittee abreast of the progress in the due course.

Need for continuation of work

Outstanding issues

14. Given its monitoring role, the Joint Subcommittee's work would tie in with the progress of the Administration's work on the preparation of amendments to the LTO, which is conducted with the objective of ensuring efficient operation of the new land title registration system upon commencement of the Ordinance. Taking into account the scope and complexity of the current outstanding issues, it is anticipated that the Administration will unlikely be able to introduce the Land Titles (Amendment) Bill into the Legislative Council within 2010 as was previously planned by the Administration. The following outstanding matters would need to be followed up by the Joint Subcommittee prior to the introduction of the amendment bill -

- (a) the rectification and indemnity arrangements;

- (b) determination of land boundaries;
- (c) relationship between the LTO and other Ordinances; and
- (d) registration of managers of T'so and T'ong.

The Joint Subcommittee may also need to follow up other policy issues that are required to be addressed before implementation of the LTO.

15. At the meeting on 28 June 2010, the Joint Subcommittee considered and agreed that the Joint Subcommittee should continue its work in the 2010-2011 legislative session.

House Rule 26(c)

16. Members may wish to note that in accordance with House Rule 26(c), a subcommittee appointed by Panels should complete its work within 12 months of its commencement and report to the relevant Panels. If it is necessary for the subcommittee to work beyond that 12 months, the subcommittee should, after obtaining the endorsement of the relevant Panels, report to the House Committee and give justifications for an extension of the 12-month period.

Advice sought

17. Pursuant to Rule 26(c) of the House Rules, members are invited to note the latest progress of work of the Joint Subcommittee and endorse the proposal for the Joint Subcommittee to continue its work in the 2010-2011 session. Upon endorsement by the two Panels, the same proposal will be submitted to the House Committee.

Council Business Division 1
Legislative Council Secretariat
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