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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**

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 up to the end of the 2009-2010 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) (LTO), which was enacted in July 2004, 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;

- (c) modifications to the conversion mechanism in the LTO¹; and
- (d) modifications to the provisions on rectification and indemnity in the LTO².

The Panels also noted that given its monitoring role, the Joint Subcommittee's work would tie in with the Administration's work plan.

Work of the Joint Subcommittee

3. Under the chairmanship of Dr Hon Margaret NG, the Joint Subcommittee has held six meetings. The Joint Subcommittee has studied the following major issues --

- (a) issues relating to the conversion mechanism provided for under the LTO;
- (b) issues relating to the mandatory rectification rule³ stipulated in the LTO; and
- (c) issues relating to determination of land boundaries.

4. Noting that the Administration had launched a three-month public consultation on proposed modifications to the conversion mechanism and proposed modifications to the rectification and indemnity provisions on 1 January 2009, the Joint Subcommittee invited organizations from various relevant sectors to attend the meeting of the Joint Subcommittee on 19 March 2009 to present views on issues relating to the LTO, including the conversion mechanism and the rectification and indemnity provisions. Nine deputations attended the meeting and three other organizations with no deputations attending the meeting provided written submissions.

¹ 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.

² "Rectification" refers to how the land title register is to be put right if found to be in error, while "indemnity" refers 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.

³ 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.

5. The Joint Subcommittee noted with grave concern at the meetings on 19 March and 21 April 2009 that upon revisiting the implications of the implementation of the LTO, the Administration believed that from the conversion day the Government would be exposed to 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. The Joint Subcommittee also noted that the factors enumerated by the Administration and the risks the Administration believed they could give rise to had all been raised and discussed at great length in the Bills Committee on Land Titles Bill from March 2003 to June 2004, and it was on the basis of the Administration's assurance that the proposed LTO was workable that the Bill was passed by the Legislative Council in July 2004. In order to place the matter on the right footing, the Chairman wrote on behalf of the Joint Subcommittee to the former Secretary for Housing, Planning and Lands and the incumbent Secretary for Development to seek a full explanation on (a) the amount of resources expended on the part of the Administration on the Land Titles Bill 2002⁴; and (b) how the serious "mistake" of approving the system under the LTO came about necessitating radical revision.

6. The Secretary for Development (SDEV) replied on 26 May 2009 and attended the Joint Subcommittee meeting on 16 June 2009. In her reply, SDEV explained that the Administration conducted public consultation from January to March 2009 on the major outstanding matters concerning conversion and rectification not because the Administration thought there were fundamental flaws that had to be dealt with before the legislation commenced but because, after careful review of the papers submitted to the Bills Committee, presentations given to Members and discussions recorded, the Administration considered that these matters had not been clearly identified and deliberated on during earlier discussions. SDEV further advised that having regard to the views received during the consultation exercise, the Administration was developing proposals for appropriate risk management measures within the framework of the "Daylight Conversion" mechanism enacted in 2004. SDEV also assured the Joint Subcommittee that as the Bureau Secretary responsible for the subject, she would do her utmost to bring the legislation into operation as soon as possible and to ensure that the Land Registrar had the means to manage the risks in a prudent and effective manner for the benefit of the community.

7. At the meeting on 16 June 2009, the Administration presented its assessment of the options available for dealing with amendments to the conversion and rectification arrangements in the LTO in light of the responses received during

⁴ Separately, the Legislative Council Secretariat was asked to provide information on the amount of resources spent by the Secretariat on servicing the Bills Committee on Land Titles Bill. The relevant information was subsequently provided vide LC Paper No. CB(1)1826/08-09(02).

the public consultation exercise, and the risks and problems identified by the Administration in implementing the enacted LTO pursuant to the post-enactment review. The Joint Subcommittee welcomed the Administration's commitment to proceed with amendments to the LTO within the 2004 "Daylight Conversion" framework (i.e. automatic conversion 12 years after commencement of the LTO). In this connection, the Administration undertook to revert to the Joint Subcommittee on the following two issues in due course --

- (a) financial measures to cope with liabilities arising from the automatic conversion mechanism, and to back up the Land Registry Trading Fund to ensure that charges to users of the services of the Land Registry would be maintained in an orderly manner; and
- (b) the proposal to provide the Land Registrar with power to register a caution against conversion under the Land Registration Ordinance (Cap.128) for dealing with known cases of indeterminate ownership, i.e. a mechanism known as "Registrar's caution against conversion".

8. 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 was to introduce into the Land Survey Ordinance (Cap. 473) provisions for determination of land boundaries that would apply both to existing land governed by the Land Registration Ordinance (Cap. 128) and to land brought under the LTO. Members raised various concerns, such as the legal consequences if a new plan as determined by the Director 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 the Director would process applications for determination of land boundaries in practice, issues that might be encountered and suggested solutions.

9. The Joint Subcommittee deliberated the Administration's proposal on the mechanism of "Registrar's caution against conversion" at its meeting on 7 December 2009. Members expressed concerns that as presented in the Administration's paper, the situations under which the mechanism might be invoked by the Land Registrar were not concrete and detailed enough, and in invoking the mechanism, the Administration would be shifting the burden of resolving

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.

indeterminate ownership to property owners. Members considered that it was not until the exhaustion of all in-house measures prior to the day of conversion that the Administration should invoke the mechanism, and urged the Administration to formulate a detailed work plan for handling cases of indeterminate ownership within the 12-year transitional period. To facilitate further deliberation of the Joint Subcommittee on the subject, the Administration was requested to provide a supplementary paper to address the concerns/issues raised by members and the legal adviser of the Joint Subcommittee and to set out the details of the Administration's planned measures to deal with indeterminate ownership.

Need for continuation of work

Outstanding issues

10. Based on the past deliberations, the following outstanding matters would need to be followed up by the Joint Subcommittee --

- (a) financial measures to cope with liabilities arising from the automatic conversion mechanism in the LTO, and to back up the Land Registry Trading Fund to ensure that charges to users of the services of the Land Registry would be maintained in an orderly manner;
- (b) the proposed mechanism of "Registrar's caution against conversion";
- (c) the proposed exceptions to the mandatory rectification rule; and
- (d) issues relating to determination of land boundaries.

11. Apart from the above outstanding matters, the Administration has previously undertaken but has yet to provide papers on the following subjects for consideration by the Joint Subcommittee --

- (a) relationship between the LTO and other Ordinances; and
- (b) registration of managers of T'so and T'ong.

12. The Joint Subcommittee may also need to revisit certain provisions in the LTO involving policy issues that are required to be addressed before implementation of the Ordinance.

Legislative timetable

13. The Administration indicated in June 2009 that it aimed to submit the Land Titles (Amendment) Bill to the Legislative Council towards the end of 2010. Taking into account the above outstanding issues and the Administration's intended time frame for its work, it is anticipated that the Joint Subcommittee would need to continue its work for the remainder of the 2009-2010 legislative session.

House Rule 26(c)

14. 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

15. Pursuant to Rule 26(c) of the House Rules, members are invited to note the latest progress of work of the Subcommittee and endorse the proposal for the Joint Subcommittee to continue its work for the remainder of the 2009-2010 session. Upon endorsement by the two Panels, a report will be made to the House Committee on the justifications for continuing the work of the Joint Subcommittee for the remainder of the 2009-2010 legislative session.