

立法會
Legislative Council

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by the Administration)

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

Joint Subcommittee on Amendments to Land Titles Ordinance

**Minutes of sixth meeting held on
Monday, 7 December 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Dr Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon Alan LEONG Kah-kit, SC

Public officers attending : Ms Gracie FOO Siu-wai, JP
Deputy Secretary for Development
(Planning and Lands) 1

Mr Tommy YUEN Man-chung, JP
Deputy Secretary for Development
(Planning and Lands) 2

Miss Diane WONG Shuk-han
Principal Assistant Secretary for Development
(Planning and Lands) 1

Mr Edward TO Wing-hang
Principal Assistant Secretary for Development
(Planning and Lands) 3

Ms Olivia NIP Sai-lan, JP
Land Registrar

Mrs Maria LAM LEUNG Man-wah
Deputy Principal Solicitor
Land Registry

Mrs Edith TONG CHEUNG Wai-fong
Title Registration Development Manager
Land Registry

Mr WONG Chung-hang
Deputy Director (Survey and Mapping)
Lands Department

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Simon CHEUNG
Senior Council Secretary (1)5

Action

I Election of Chairman (if required)

Members agreed that Dr Margaret NG should continue to serve as Chairman of the Joint Subcommittee.

II Confirmation of minutes and matters arising
(LC Paper No. CB(1)539/09-10 -- Minutes of meeting on
7 October 2009)

2. The minutes of the meeting held on 7 October 2009 were confirmed.

Action

III Meeting with the Administration

- (LC Paper No. CB(1)538/09-10(01) -- Administration's paper on Determination of Land Boundaries -- Progress Report (December 2009)
- LC Paper No. CB(1)538/09-10(02) -- Administration's paper on Land Registrar's Caution against Conversion
- LC Paper No. CB(1)1870/08-09(01) -- Administration's paper on evaluation of options for conversion and rectification arrangements under Land Titles Ordinance)

3. The Joint Subcommittee deliberated (Index of proceeding at **Annex**) and arrived at the following decisions:

- (a) Discussion of the subject of "Determination of Land Boundaries" would be deferred to the next meeting and the Administration would provide a more comprehensive paper on the subject; and
- (b) The Administration would respond to the views and concerns expressed by members and Assistant Legal Advisor 6 on the proposed mechanism of "Land Registrar's caution against conversion" (LRCAC) in a supplementary paper. The Administration would specify the enhanced measures it would introduce to deal with indeterminate ownership prior to invoking LRCAC.

IV Any other business

Date of Next meeting

3. Subject to confirmation of the Administration, the next meeting was tentatively scheduled for Tuesday, 12 January 2010.

4. There being no other business, the meeting ended at 11:48 am.

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

Joint Subcommittee on Amendments to Land Titles Ordinance

**Proceedings of the sixth meeting
held on Monday, 7 December 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000304	Chairman	Election of Chairman (if required)	
000305 – 000315	Chairman	Confirmation of minutes of last meeting	
000316 – 000812	Chairman	<p>Remarks by the Chairman that –</p> <p>(a) subject to members' views, the Joint Subcommittee would not discuss the paper on "Determination of land boundaries - progress report (December 2009)" as the Administration needed to further deliberate/assess various related issues so as to come up with concrete proposals; and</p> <p>(b) as some important points in the paper on the mechanism of "Land Registrar's Caution against Conversion" (LRCAC) needed clarification or further explanation, it would be necessary for the Administration to prepare a supplementary paper. Members and the legal adviser of the Joint Subcommittee might raise their queries at the meeting for the Administration to follow up accordingly</p>	
000813 – 000951	Mr CHEUNG Hok-ming	Remarks by Mr CHEUNG Hok-ming that the Heung Yee Kuk (HYK) had discussed the Administration's proposal on land boundaries and believed that HYK would require more time to study it. Given the history and complexity of the subject, the Chairman's suggestion of deferring the discussion of the subject to the next meeting was supported	

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		Response of the Chairman that HYK and other concerned parties were welcomed to forward their views to the Joint Subcommittee	
000952 – 002053	ALA6 Chairman Administration	<p>Expression of views by ALA6 on LRCAC that:</p> <ul style="list-style-type: none"> (a) the situation for invoking LRCAC under paragraph 12(a) of the Administration's paper was unclear; (b) the effect on the owner concerned of registering a Notice of Intention was similar to that of registering an LRCAC; (c) while the owner concerned was given 60 days to object to the Notice of Intention, there was no specific time-frame for the Land Registrar (LR) to revert to the owner; (d) it was not clear whether an appeal mechanism would be in place; (e) there was no mention of the court procedure for removal of LRCAC through owner's application to the Court of First Instance (Court); and (f) a major concern was that the Notice of Intention and LRCAC would hold up land/property transactions to the detriment of owners' interests <p>Response by the Deputy Secretary for Development (Planning and Lands)2 (DSDEV2) that the Administration would prepare a supplementary paper to respond to the Joint Subcommittee's concerns on LRCAC</p> <p>Response of LR that:</p> <ul style="list-style-type: none"> (a) paragraph 12(a) was for situations where there were more than one register kept in respect of the same lot number. Paragraph 	

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		<p>12(b) applied to situations where more than one register were kept in respect of the same piece of land. Paragraph 12(c) was intended to cover situations where the person whose name appearing in the register as the current owner might not be the true owner;</p> <p>(b) upon identifying the above irregularities, the Land Registry would carry out in-depth investigation work to ascertain whether these known cases of indeterminate ownership could be resolved. The Administration hoped to complete the investigation work within the first half of the 12-year transitional period so that more time would be available to deal with ownership problems before the day of conversion;</p> <p>(c) the Administration would refine the wording to reflect the Administration's intention that the LRCAC mechanism would be circumspect in application;</p> <p>(d) it was in response to the views of stakeholders on the need for transparency and consumer protection that the Administration had revised its proposal to include the registration of Notice of Intention;</p> <p>(e) the 60-day period for any interested parties to raise objection could be extended at the discretion of LR;</p> <p>(f) as mentioned in paragraph 7 in the Annex to the Administration's paper, LR would respond "as soon as reasonably practicable" to any objection to registration of LRCAC submitted;</p> <p>(g) as regards channels for appeal, interested parties could make representation to LR or</p>	

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		<p>seek a Court order to have the LRCAC removed; and</p> <p>(h) the Administration would provide more details of the measures to tackle known cases of indeterminate ownership in the supplementary paper to be provided to the Joint Subcommittee</p>	
002054 – 002716	Ms Miriam LAU Chairman	<p>Expression of views by Ms Miriam LAU that:</p> <p>(a) LRCAC registered under whatever conditions would jeopardise owners' interests;</p> <p>(b) her own experience was that it was not uncommon to find that the land registers contained mistakes and omissions made by the Land Registry or its predecessors; and</p> <p>(c) it would be inadequate and unfair to owners for the Administration to simply restrict the use of LRCAC within the three situations mentioned in paragraph 12(a), 12(b) and 12(c), since owners would still be required to go to the Court at their own expense to seek cancellation of LRCAC</p> <p>Response by the Chairman that:</p> <p>(a) she agreed with Ms Miriam LAU that in invoking LRCAC, the Administration would be shifting the burden of resolving the uncertainties in known cases of indeterminate ownership to the owners; and</p> <p>(b) the situations in paragraph 12 (a), (b) and (c) were not concrete and detailed enough. The Administration should clearly define the situations with concrete examples</p>	
002717 – 003242	Prof Patrick LAU Administration	Expression of view by Prof Patrick LAU that the Administration should endeavour to solve the problem of indeterminate ownership internally	

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	Ms Miriam LAU	<p>before invoking LRCAC</p> <p>Response by LR that:</p> <ul style="list-style-type: none"> (a) the Administration would try its very best to investigate and resolve the uncertainties in known cases of indeterminate ownership. LR would invoke the LRCAC mechanism only if investigation had failed to resolve the uncertainties; and (b) under the Land Registration Ordinance (LRO), LR could not refuse the registration of instruments affecting land. If known cases of indeterminate ownership were not dealt with properly, problems would inevitably arise on the day of conversion <p>Expression of views by Ms Miriam LAU that:</p> <ul style="list-style-type: none"> (a) it was for the Administration to deal with indeterminate ownership prior to conversion, and under no circumstances should it pass the responsibility to the owners by means of LRCAC; (b) the Administration should consider forming an internal working group to actively deal with the problem. If necessary, assistance from owners and their lawyers should be sought; and (c) the Administration should not abuse LRCAC as an expedient means for dealing with indeterminate ownership 	
003243 – 004229	Chairman Ms Miriam LAU	<p>Expression of views by the Chairman that:</p> <ul style="list-style-type: none"> (a) the move to introduce the land title registration system was initiated by the Administration. In mapping out the LRCAC mechanism, the Administration should consider more from the owners' angle. Apart from the related sectors, the 	

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		<p>general public were also major stakeholders;</p> <p>(b) the Administration should specify clearly a detailed work plan to handle cases of indeterminate ownership within the 12-year transitional period including, for instance, the formation of a working group to coordinate the efforts, work, steps and procedures, involvement of affected owners and appeal mechanism etc;</p> <p>(c) it was not until the exhaustion of all in-house measures prior to the day of conversion that the Administration should invoke the LRCAC; and</p> <p>(d) the Administration must show adequate commitment for a drastic move of Hong Kong towards a new land title registration system</p>	
004230 – 005136	ALA6 Administration Chairman	<p>Enquiry raised by ALA6 as to whether the LR had the power under LRO to expunge the registered entries on an identical piece of land which was found to be faulty.</p> <p>Response by LR that:</p> <p>(a) under LRO the LR could not cancel the registration of instruments that had been registered;</p> <p>(b) as an administrative measure, the Land Registry would put down remarks referring to the other register in both registers; and</p> <p>(c) lawyers were expected to check both registers when assisting their clients in the transaction of the relevant properties</p> <p>Response by ALA6 that:</p> <p>(a) at present the Administration did not have</p>	

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		<p>power to rectify irregularities in land registration. The Administration should consider the need to empower LR to cope with the inadequacy; and</p> <p>(b) LRCAC should only be employed as the last resort when all available measures could not resolve the problem</p> <p>Response by LR that as stated earlier in the meeting, the Administration would carry out investigation before invoking the LRCAC mechanism</p> <p>Response by the Chairman that:</p> <p>(a) LR should be aware that the role of the Land Registry was confined to land registration, and the office was currently not empowered by law to rectify faulty entries in the registers;</p> <p>(b) it would be the responsibility of the policy bureau to consider whether LR should be vested with additional power to deal with indeterminate ownership more effectively; and</p> <p>(c) the situation was analogical to a river; the Administration should not count on LRCAC as a "floodgate" to deal with indeterminate ownership without first bringing in measures to clear away refuse at the upper course of the river</p> <p>Response by DSDEV2 that:</p> <p>(a) he agreed that LRCAC should only be deployed as the last resort to deal with known cases of indeterminate ownership;</p> <p>(b) Land Registry and Development Bureau would discuss details of the measures to deal with known cases of indeterminate</p>	

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		<p>ownership, and would involve the owners and parties concerned if necessary; and</p> <p>(c) the Administration believed that cases involving indeterminate ownership only accounted for a very small portion of the properties in the land registers</p>	
005137 – 005949	Chairman Ms Miriam LAU	<p>Expression of views by the Chairman that:</p> <p>(a) a critical review on the role and powers of LR was necessary;</p> <p>(b) the primary role of LR was to uphold the integrity of the land registers;</p> <p>(c) it was the responsibility of Development Bureau to consider whether there should be any change to LR's role and powers and the existing policies; and</p> <p>(d) unless appropriate measures were taken, LR alone would not be able to cope with the problem of indeterminate ownership</p> <p>Enquiry raised by Ms Miriam LAU on whether:</p> <p>(a) the Administration could rectify its errors in case of indeterminate ownership where there were two registers in respect of the same piece of land or where there were more than one chain of land titles in respect of a single register;</p> <p>(b) as for the latter case under (a), she believed that LR could do nothing even if the owner raised an objection to the Notice of Intention;</p> <p>(c) instead of counting on court decisions to repeal LRCAC, the Administration should do more to rectify the land registers; and</p> <p>(d) the Administration should be responsible</p>	

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		<p>for the errors it had made on the existing land registers, instead of asking the owners to do the job</p> <p>Response of the Chairman that:</p> <p>(a) efforts should be made to minimise the number of cases having to go to the court to deal with indeterminate ownership;</p> <p>(b) shifting the burden to the owners to seek verification of land ownership through court proceedings at their own expenses would be unfair to land owners, and might adversely affect the reputation and creditability of the Administration; and</p> <p>(c) the Administration should consider all steps and procedures of its measures thoroughly prior to implementation, and keep members of the public informed of the changes</p>	
005950 – 010208	ALA6 Administration	<p>ALA6 asked the Administration to review whether the prerequisite for a title registration regime that did not recognize any trust had been put in place, namely all beneficiary interests in a trust were monetary only, which had been achieved in UK by the provisions of the Law of Property Act 1925.</p> <p>Response by DSDEV2 that the Administration would respond to ALA6's enquiry at the next meeting</p>	Administration
010209 – 010305	Chairman	Next Meeting	