

**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 seventh meeting held on  
Thursday, 29 April 2010, at 4:30 pm  
in the Chamber of the Legislative Council Building**

**Members present** : Dr Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan  
Hon Audrey EU Yuet-mee, SC, JP  
Prof Hon Patrick LAU Sau-shing, SBS, JP

**Members absent** : Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon CHEUNG Hok-ming, GBS, JP

**Public officers attending** : **Agenda item I**  
  
Mr Edward TO Wing-hang  
Acting Deputy Secretary for Development (Planning  
and Lands) 2  
  
Miss Diane WONG Shuk-han  
Principal Assistant Secretary for Development  
(Planning and Lands) 1  
  
Ms Olivia NIP Sai-lan, JP  
Land Registrar

Ms Angel LI Yuen-yee  
Deputy Principal Solicitor  
Land Registry

Mrs Amy FONG NG Suk-yee  
Principal Land Registration Officer / Title Registration  
Land Registry

Mr Alfred LEE Koon-yan  
Assistant Secretary (Policy)  
Land Registry

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

**Attendance by Invitation : Agenda item I**

The Hong Kong Institute of Surveyors

Dr Conrad TANG  
Council Member of Land Surveying Division

Mr Tony WAN  
Honorary Secretary of General Practice Division

The Law Society of Hong Kong

Mr Andy NGAN  
Chairman of the Working Party on LTO

Ms Judith SIHOMBING  
Member of the Working Party on LTO

Ms Christine CHU Wing-shuet  
Assistant Director of Practitioners Affairs

Heung Yee Kuk New Territories

Mr LAM Kwok-cheong  
Ex-officio Executive Councillor

**Clerk in attendance :** Ms Anita SIT  
Chief Council Secretary (1)5

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

Mr Simon CHEUNG  
Council Secretary (1)7

Ms Haley CHEUNG  
Legislative Assistant (1)8

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Action

**I Meeting with the Administration and deputations**

Meeting with the Administration

(LC Paper No. CB(1)1715/09-10(01) -- Administration's paper on amendments to Land Titles Ordinance)

Meeting with deputations

(LC Paper No. CB(1)1737/09-10(01) -- Submission from The Hong Kong Institute of Surveyors  
LC Paper No. CB(1)1737/09-10(02) -- Submission from The Law Society of Hong Kong)

Submissions from individuals/organizations not attending the meeting

(LC Paper No. CB(1)1737/09-10(03) -- Submission from The Real Estate Developers Association of Hong Kong)

Relevant papers previously issued

(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  
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)639/09-10(01) -- Submission on determination of land boundaries from the Land Surveying Division of The Hong Kong Institute of Surveyors dated 1 December 2009 (English version only)
- LC Paper No. CB(1)639/09-10(02) -- Submission on determination of land boundaries from Mr LEUNG shou-chun, Fellow Member of The Hong Kong Institute of Surveyors received on 7 December 2009 (English version only)
- LC Paper No. CB(1)1296/09-10(01) -- Letter from The Law Society of Hong Kong Consultation on Land Titles (Amendments) Bill – Rectification and Indemnity Provisions (English version only))

The Administration reported on the latest progress on its work on Land Titles Ordinance (LTO), followed by presentation of views by deputations and discussion on different issues with the Joint Committee.

2. The Joint Subcommittee deliberated (Index of proceeding at **Annex**). Appreciating the complexity of various outstanding issues, members agreed that it might take the Administration some time to sort them out with relevant stakeholders. Even so, members still hoped that the Administration could report progress of its work to the Joint Subcommittee in two months' time.

## **II Any other business**

### Date of next meeting

3. It was agreed that the Joint Subcommittee should meet again in late June 2010.

4. There being no other business, the meeting ended at 6:17 pm.

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

**Joint Subcommittee on Amendments to Land Titles Ordinance**

**Proceedings of the seventh meeting  
held on Thursday, 29 April 2010, at 4:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 – 001408	Chairman	The Chairman remarked that although the Administration's discussion with major stakeholders on various outstanding issues was underway, it was considered necessary for the Administration to brief the Joint Subcommittee on the progress of its work, in view of a long lapse of time since last Joint Subcommittee meeting on 7 December 2009.	
001409 – 002210	Administration	<p>The Administration reported on the latest development of various outstanding issues, highlighting the following -</p> <ul style="list-style-type: none"> <li>(a) to allow more time for concerned parties to resolve the problem of indeterminate ownership, the Notice of Intention would be registered only if the ownership problem could not be resolved by the end of the tenth year after the commencement of LTO;</li> <li>(b) an interested party aggrieved by the decision of the Land Registrar (LR) to register the Land Registrar's Caution Against Conversion (LRCAC) or refuse to remove an LRCAC might seek review of LR's decision within 60 days;</li> <li>(c) a set of criteria for invoking LRCAC had been drawn up by the Administration for comments;</li> <li>(d) retaining the automatic conversion mechanism under the LTO would mean that the Land Registry Trading Fund would be</li> </ul>	

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		<p>subject to potential financial risks. In this regard, the Administration suggested that, when necessary, it might have to approach the Legislative Council (LegCo) for a stand-by loan facility if resources available were insufficient to cover the proven claims and finance the smooth operation of the Land Registry;</p> <p>(e) contrary to most stakeholders' views, the Law Society of Hong Kong (Law Society) did not support the mandatory rectification rule. The Administration would continue to address the differences over the mandatory rectification rule with Law Society and major stakeholders through the Land Titles Ordinance Steering Committee (Steering Committee);</p> <p>(f) the Administration was consolidating its thoughts after examining the complex legal and policy implications involved in the determination of land boundaries;</p> <p>(g) with the assistance of concerned policy bureaux and departments, the Administration was examining the relationship between LTO and other ordinances; and</p> <p>(h) the Administration proposed that appropriate provisions should be added to LTO to provide for the registration of managers of t'sos and t'ongs, and to recognize their status in dealing with the lands of t'so or t'ong. The Administration acknowledged the view of Heung Yee Kuk that the wording of these provisions should follow section 15 of the New Territories Ordinance (NTO) as far as possible.</p>	
002211 – 002449	Chairman Administration	The Chairman enquired about the composition of the Review Committee and the arrangements within the 12-year incubation period.	

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		<p>The Administration responded that the proposed Review Committee would be chaired by a legally qualified person with members from different fields. After reviewing each case, a recommendation would be forwarded to LR for consideration. LR would then make the final decision whether the LRCAC should be removed. The Administration would use the first six years of the 12-year incubation period to investigate the problem of indeterminate ownership. Notice of Intention would not be registered in the first ten years.</p>	
002450 – 003440	Dr Conrad TANG The Hong Kong Institute of Surveyors (HKIS) Chairman	<p>Dr TANG presented the views of HKIS, highlighted the following -</p> <ul style="list-style-type: none"> <li>(a) the Institute supported the proposal to move section 94 of LTO to Land Survey Ordinance (LSO) for suitable amendments, as this would help resolve a longstanding problem in Hong Kong in the long run;</li> <li>(b) Hong Kong being a rare exception, legislation of land boundary determination had been implemented in most jurisdictions including the Mainland and Macao. At present, land boundary plans prepared by authorized land surveyors had no legal status in Hong Kong. The Administration should set up a statutory framework for determination of land boundaries under LSO;</li> <li>(c) a major benefit of having a legal framework for determination of land boundaries was that it would lay the foundation for effective land administration which was vital to an efficient land market;</li> <li>(d) determination of land boundaries should apply to all lands in Hong Kong, not just those covered by LTO;</li> <li>(e) HKIS had considerable reservations on section 94(2)(a) of LTO which excluded</li> </ul>	

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		<p>"subdivided lots" from determination of land boundaries, given that a large number of old, pre-war lots badly in need of land boundary verification fell within this category;</p> <p>(f) section 28(4) of LSO stated that "an authorized land surveyor shall be personally responsible for the accuracy and completeness of every land boundary plan signed and certified by him". HKIS saw no reasons why land surveyors should be denied the responsibility of determining land boundaries under LTO. A land boundary plan produced by an authorized land surveyor through detailed surveying process with due regard to all evidence available should carry legal effects and be taken as prima facie evidence for ascertaining the extent of land parcel as described in the lease;</p> <p>(g) the Administration should maintain a land boundary records system under the Land Survey Authority, and to share these records with the public; and</p> <p>(h) to ensure their accuracy and reliability, all land boundary plans should be checked thoroughly by the Administration prior to formal registration.</p> <p>The Chairman asked if HKIS was suggesting that a land titles system would not be a complete one without a land boundary plan registration system.</p> <p>Dr Conrad TANG responded in his personal capacity that a land titles system could not be considered as "normal" in the absence of a system to register land boundary plans.</p>	
003441 – 005027	Mr Andy NGAN The Law Society of Hong Kong (Law	Mr NGAN presented the views of the Law Society, highlighting the following -	

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	Society) Chairman	<p>(a) the Law Society intended to express views on the rectification and indemnity provisions in a cautious manner since these provisions would have a significant impact on the most valuable asset of many families;</p> <p>(b) LTO was not perfect, and its enactment in 2004 was subject to a number of factors, including the time constraint caused by the impending end of LegCo term in the 2004 summer, and the Administration's promise that a post-enactment review would be conducted within two years;</p> <p>(c) the saying in the Administration's paper of 29 April 2010 that Law Society's stand in respect of mandatory rectification contradicted with its previous stand in the consensus reached in 2004 was an unfair accusation. Law Society only sought to uphold what it considered to be right in the light of the Administration's consultation papers of December 2008 on mandatory rectification and automatic conversion;</p> <p>(d) the Administration should note that a number of stakeholders had already indicated that they had to re-examine the issues arising from mandatory rectification in the light of the feedbacks of Law Society;</p> <p>(e) Law Society considered that the Administration had failed to lead stakeholders to consider the far-reaching implications of mandatory rectification on the implementation of LTO at sufficient depth;</p> <p>(f) if the mandatory rectification was retained, the new LTO would be rendered meaningless, since all land purchasers would ask their lawyers to look up all previous deeds of land transactions to ascertain land ownership, in a way similar to the system under the Land Registration Ordinance</p>	

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		<p>(LRO);</p> <p>(g) Law Society supported the LTO, but had strong reservation about the mandatory rectification rule, since it would defeat the original purpose of LTO to improve the efficiency of registration of land titles and facilitate land transactions;</p> <p>(h) it should be noted that even without the mandatory rectification rule, there were already provisions within the 2004 LTO to rectify problematic land titles. Law Society urged the Administration and stakeholders to think carefully of the consequences of retaining mandatory rectification before making a decision on it;</p> <p>(i) land titles registration as a mature system had been in smooth operation for over 150 years in most mature jurisdictions;</p> <p>(j) at present, there were two major principles guarding against rectification, one being "immediate infeasibility" and the other being "deferred indefeasibility". "Immediate infeasibility" protected land titles in an absolute sense, i.e. a bona fide purchaser who relied on the register in dealing with the registered owner and registered a transfer, obtained a valid title, even though the transfer instrument he relied on was void for fraud or forged, except in the case of fraud by the purchaser himself. "Deferred indefeasibility" suggested that where a purchaser became the registered owner of land through documents that were void for fraud or forgery, such registration could be defeated by the previous registered owner;</p> <p>(k) Law Society supported the "immediate infeasibility" principle, and reckoned that if necessary, as a compromise, Hong Kong could draw reference from UK's Land Registration Act 2002 in that the "certainty</p>	

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		<p>of title" was upheld while the purchaser would be held responsible for his own fraud or lack of care i.e. a case close to "deferred indefeasibility";</p> <p>(l) Law Society hoped that the Administration could be far-sighted in bringing LTO forward, and refrain from maintaining the mandatory rectification rule, since fraudulent acts only accounted for a negligibly small portion of all land transactions. In this regard, the Administration should make reference to Canada's British Columbia for its safeguards against frauds in land transactions by requiring frontline workers such as estate agents to follow and observe specific guidelines in verifying clients' identities;</p> <p>(m) Law Society understood and respected the stance of Heung Yee Kuk New Territories (HYK) with regard to mandatory rectification. As a way out for the impasse, a possible move was to leave lands held by indigenous villagers out at the initial stage; and</p> <p>(n) Law Society believed that the very purposes of the new title registration system were to bring certainty to title and simplify the cumbersome conveyancing process under LRO</p> <p>In reply to the enquiry by the Chairman on Law Society's stance on the indemnity cap, Mr NGAN responded that to uphold public confidence in LTO, the Administration should lift the indemnity cap to demonstrate its commitment to the land title registration system.</p>	
005028 – 005659	Mr LAM Kwok-cheong, HYK	<p>Mr LAM presented the views of HYK that:</p> <p>(a) HYK was supportive of automatic conversion and the LRCAC mechanism;</p> <p>(b) HYK had expressed views on the</p>	

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		<p>registration of managers of t'sos and t'ongs in that HYK considered that the wording in respect of the registration of these managers in the LTO should follow section 15 of NTO;</p> <p>(c) determination of land boundaries was a highly complicated subject and had been under discussion between HYK and the Administration for a few decades. HYK believed that land boundaries should be dealt with separately outside LTO, in order not to hold up its implementation;</p> <p>(d) regarding Law Society's stance on mandatory rectification, HYK was still studying a letter of mid-April 2010 from Law Society which included a proposal to exclude lands of indigenous villagers from LTO at the initial stage;</p> <p>(e) subscribing to the principle of "back to the original owner", HYK believed that land title obtained through fraud and dishonest means should be restored to the original owner. With the provision offering indemnity for land purchasers suffering from frauds already in place, HYK could not understand why the mandatory rectification rule could not be incorporated into LTO;</p> <p>(f) it was not advisable for the Administration to repeal the mandatory rectification rule; and</p> <p>(g) in so far as LTO was concerned, HYK's main concern was the protection of the titles of land owners. The lands in the New Territories could value more than \$30 million, and in any event indigenous villages tended to prefer land ownership to any form of compensation.</p>	
005700 – 005759	Chairman Administration	In reply to the Chairman's enquiry, the Administration responded that researches showed that the indemnity cap amount of \$30 million	

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		would be able to cover about 99% of all properties in Hong Kong.	
005800 – 010730	Chairman Administration	<p>The Administration gave response to the views and concerns of deputations, as follow -</p> <p>(a) in view of the narrow scope of section 94 of LTO, the Administration was considering the option of amending LSO to deal with land boundary issues of land registered under LTO as well as that under LRO. Consultations with relevant stakeholders would continue;</p> <p>(b) respecting the views of Law Society and other stakeholders as well as the consensus reached in respect of LTO 2004, the Administration would exercise due care in dealing with the issues on mandatory rectification through the Steering Committee; and</p> <p>(c) the Administration was willing to look into Law Society's concerns and various pieces of advice over mandatory rectification and the cap on indemnity with all stakeholders. While the Administration would look into measures of different countries in combating frauds and deceptions, it should be noted no preventive measures could be perfectly safe.</p>	
010731 – 012517	Ms Audrey EU Chairman Administration	<p>Ms Audrey EU expression the views that:</p> <p>(a) given that the indemnity cap of \$30 million covered some 99% of the properties in Hong Kong, the remaining 1% would not be too big a problem for the Administration to tackle; and</p> <p>(b) the Administration should map out specific precautionary measures in-house involving government employees to eliminate risks arising from land transactions involving properties valued in excess of \$30 million value.</p>	

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		<p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) it should be noted that there was no cap for indemnity for cases in which mistakes were committed by the Government;</li> <li>(b) in future, LTO would be supported by a self-financing indemnity fund based on contributions of service users. Removal of the cap might lead to substantial increase of the levies on various applications under LTO;</li> <li>(c) as regards Ms Audrey EU's suggestion for the Administration to take up all cases of properties exceeding \$30 million, the Administration had to consider the appropriateness for it to be involved in the vetting of private property transactions against frauds, and the use of public funds for meeting the indemnities;</li> <li>(d) experiences of overseas jurisdictions showed that crime syndicates might target indemnity funds as a means for grabbing compensations;</li> <li>(e) as proposed previously at the Bills Committee, landowners or purchasers of valuable properties exceeding \$30 million might consider taking out insurance policies to guard themselves against possible frauds; and</li> <li>(f) the cap for indemnity could be reviewed from time to time, as long as service users' contributions could be kept at a reasonable level.</li> </ul> <p>The Chairman enquired about the setting of indemnity cap and automatic conversion in other jurisdictions.</p> <p>The Administration responded that:</p>	

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		<p>(a) for countries such as Australia, Canada and UK, there was no cap on indemnity. For Singapore, there was no indemnity in respect of fraud cases and the government would only offer compensation to those who had suffered as a result of mistakes made by the government;</p> <p>(b) unlike Hong Kong which adopted automatic conversion to be effected on a particular date for all lands/properties, conversion to the land title systems in most countries was done on a case by case basis at the time of transaction or on application; and</p> <p>(c) under automatic conversion, there would be no mechanism for the Land Registry to inspect each and every land title prior to registration under LTO. As a result, the concerns for possible liabilities arose and there was hence a need to set a cap for indemnity.</p>	
012518 – 013947	Prof Patrick LAU Administration Dr Conrad TANG of HKIS	<p>Prof Patrick LAU enquired about the timetable for the Administration's work, and how it would deal with changes of land boundaries as a result of re-newed land surveying</p> <p>The Administration advised that:</p> <p>(a) there were a wide spectrum of issues for the Administration to attend to in the past few months through discussions internally and with stakeholders. As it now stood, the Administration would continue to sort out major issues with the stakeholders in the near future;</p> <p>(b) while progress had been achieved in certain areas such as the registration of managers of t'sos and t'ongs and the relationship between LTO and other ordinances, mandatory rectification being a highly complicated and fundamental issue would require detailed</p>	

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		<p>discussions with stakeholders through the Steering Committee. A meeting of the Steering Committee had been lined up for 11 May 2010;</p> <p>(c) for land boundaries, section 94 of LTO stipulated that the determination of land boundaries was subject to the terms and conditions of the concerned government lease. This implied that interests of land owners would be protected by the lease;</p> <p>(d) although the Administration had started to digitize all the land boundary plans since 1989, it might still take some years to establish a land boundary records system allowing public access through the Internet as suggested by HKIS; and</p> <p>(e) the Administration had been keeping land boundary records prepared by itself and private surveyors. The Administration noted that HKIS suggested that what remained to be done was a statutory framework to give some legal status to these land boundary plans, and asked Administration to move along in this direction.</p> <p>HKIS expressed the views that:</p> <p>(a) surveying should be regarded as a means to accurately reflect what had been laid down in the government lease of a particular land parcel;</p> <p>(b) Hong Kong was behind many countries in setting up a legal framework for proper registration of land boundary plans; and</p> <p>(c) how to deal with discrepancies between the government lease and land boundaries plan was a land administration issue to be dealt with by the Administration.</p> <p>The Administration responded that further to the</p>	

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		<p>paper on determination of land boundaries presented to the Joint Subcommittee on 7 October 2009, the Administration was in the course of examining the legal and other implications of the concerned issues raised by Members. As mentioned earlier, a possible option would be to delink the amendment of LSO on determination of land boundary from LTO.</p>	
013948 – 014138	Mr Andy NGAN Law Society	<p>The Law Society supplemented that:</p> <p>(a) it sounded a bit ridiculous that when many stakeholders found it necessary to review the mandatory rectification provisions again, Law Society had been regarded as the only party taking an opposite stand against the Administration over mandatory rectification. It should be noted that it was the Administration who initiated the idea of providing exceptions to mandatory rectification in December 2008, and Law Society had indicated support at the time; and</p> <p>(b) it was contradictory for the Administration to state that Law Society was departing from the 2004 consensus, while its paper in December 2008 stated that what was being proposed in respect of mandatory rectification and indemnity should be taken as part of a long committed comprehensive post-enactment review.</p>	
014139 – 014248	Dr Conrad TANG HKIS	<p>HKIS supplemented that it wished to share with the Joint Subcommittee and the Administration Singapore's experiences in dealing with minor alterations as a result of new land surveying results. While the Singapore government would register new land boundaries plans, the lease terms and conditions of the concerned land parcel would remain unchanged.</p>	
014249 – 014929	Chairman Administration	<p>Conclusion by the Chairman that:</p>	

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	Ms Audrey EU	<p>(a) the Joint Subcommittee was a means for members to have a better understanding of the far-reaching impacts of LTO in different aspects so as to better prepare them for the forthcoming amendment Bill;</p> <p>(b) the concerns of Law Society over mandatory rectification were valid, reasonable and not unnecessary, since rectification of land ownership, if allowed, would upset the reliability and simplicity of the title registration system under LTO; and</p> <p>(c) the Administration should regard the stakeholders such as Law Society, HYK and HKIS etc. as bodies rendering advice to it on LTO. The Administration should respect all views from stakeholders and duly consider them, no matter when these views or concerns came to light. Nonetheless, these views did not mean to be final, and at the end of the day, it would still be necessary for the Administration to draw up appropriate legislative proposals for LegCo to consider.</p> <p>The Administration responded that it welcomed the views of Law Society and other stakeholders and would consider their concerns carefully.</p> <p>The Chairman further commented that:</p> <p>(a) she had to offer a serious warning to the Administration that since LTO would deeply affect all sectors of the community, notwithstanding the inputs from major stakeholders, it was still be necessary for the Administration to come to a workable system for LTO after balancing the interests of the concerned sectors and those of the general public; and</p> <p>(b) she appreciated that the issues regarding the implementation of LTO had increased in numbers and complexity, and might take some time to resolve. Even if no substantive</p>	

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		<p>progress had been made, she would expect the Administration to report its work and problems encountered to the Joint Subcommittee at roughly two months' intervals.</p> <p>Ms Audrey EU suggested that the Joint Subcommittee should meet again in late June or early July 2010. The Chairman concluded that the Joint Subcommittee would meet again in late June 2010.</p>	

Council Business Division 1  
Legislative Council Secretariat  
23 June 2010