

**For discussion  
on 28 June 2010**

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

**JOINT SUBCOMMITTEE ON  
AMENDMENTS TO LAND TITLES ORDINANCE**

**Amendments to Land Titles Ordinance**

**Purpose**

This paper reports on progress made since the last meeting on issues relating to the preparation of the amendments to the Land Titles Ordinance (Cap. 585) (LTO).

**Background**

2. At the meeting of the Joint Subcommittee held on 29 April 2010, Members considered the Administration's report<sup>1</sup> and deputations' views on the amendments to the LTO. Members took note of the latest concerns of the Law Society of Hong Kong (Law Society) and the complexity of the issues involved. The Administration was requested to consider how to resolve the outstanding issues and to report progress in about two months' time. In this paper, we set out the latest position in respect of the issue concerning rectification and indemnity arrangements.

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<sup>1</sup> The written report (LC paper No. CB(1)1715/09-10(01) discussed at the Joint Subcommittee meeting of 29 April 2010 covered the following issues : (i) proposed Land Registrar's Caution Against Conversion mechanism; (ii) financial measures to cope with liabilities arising from the automatic conversion mechanism under the LTO and to back up the Land Registry Trading Fund; (iii) the mandatory rectification rule; (iv) determination of land boundaries; (v) relationship between the LTO and other Ordinances; and (vi) registration of managers of t'sos and t'ongs.

## **Rectification and Indemnity Arrangements**

3. To recapitulate, under the mandatory rectification rule in section 82(3) of the LTO, if an innocent former owner lost his title by or as a result of fraud and the relevant entry in the Title Register was procured by a void instrument or a false entry, he will be restored as owner. The innocent purchaser will be protected through payment of an indemnity out of the self-financing Land Titles Indemnity Fund, up to a cap of \$30 million for post-conversion fraud. In their letter of 1 March 2010 to the Joint Subcommittee, however, the Law Society opposed to the mandatory rectification rule as they considered that the certainty of title provided by title registration system would be compromised. In particular, they considered that the mandatory rectification rule might encourage a purchaser to go behind the title register to investigate previous transactions in order to obtain greater assurance that he will not be at risk. This, in their view, would work against the benefits of simplifying conveyancing practices that a title registration system should seek to achieve. The Law Society instead advocated “indefeasibility of title” as the appropriate arrangement under the title registration system, and further suggested that both the cap on indemnity and the bar on indemnity for pre-conversion fraud be lifted.

4. The initial response of stakeholders to the above-mentioned views of the Law Society was reported to the Joint Subcommittee in April 2010 (LC paper No. CB(1)1715/09-10(01)). Subsequently, a meeting of the Land Titles Ordinance Steering Committee (LTOSC) chaired by the Land Registrar was convened on 11 May 2010 to further consider the matter with stakeholders. To sum up the views which have been put forward so far –

- (a) the Heung Yee Kuk considers that any changes to the mandatory rectification rule will have serious implications on the protection of private property rights. The Kuk is adamant that the mandatory rectification rule should be retained. Nevertheless, the Kuk would be willing to explore any possible way out with due regard to the stance of the Law Society;
- (b) although the formal views of the Hong Kong Bar Association are still awaited, its representative expressed doubts at the LTOSC meeting on the Law Society’s claim that the retention of the mandatory rectification rule would require in-depth investigations into previous transactions in order to identify fraud and thereby

minimise risks;

- (c) the Consumer Council considers indefeasibility of title to be the cornerstone of a title registration system, which would bring certainty of title. The Council further considers that the bar on indemnity for pre-conversion fraud should be lifted. On the other hand, the Council has no objection to the cap on indemnity payment, as it should be able to cover most of the property transactions undertaken by the general public;
- (d) the Estate Agents Authority considers that the mandatory rectification rule and the cap on indemnity are unlikely to have any implications for estate agents and hence does not have any comments on the Law Society's position;
- (e) the Hong Kong Association of Banks endorses the views of the Law Society. If the mandatory rectification rule is to be retained, the Association considers it preferable to provide for the exceptions previously proposed by the Administration;
- (f) the Real Estate Developers Association of Hong Kong indicates its preference for a system of indefeasible titles without any mandatory rectification rule or cap on indemnity. If the cap is to be preserved, however, the mandatory rectification rule should be maintained; and
- (g) the Hong Kong Mortgage Corporation has yet to offer its written views. At the meeting of the LTOSC, its representative considered that we should introduce a title registration system that would provide certainty, transparency and clarity as early as practicable, in order to bring Hong Kong on par with the best practice of other advanced economies. In that connection, the mandatory rectification rule might undermine the certainty of title.

5. As can be seen, stakeholders hold divergent views on the rectification and indemnity arrangements under the LTO. To take the matter forward, the LTOSC has agreed that the Law Society should be invited to provide further information on the additional conveyancing procedures and steps envisaged that

would need to be undertaken by solicitors acting for purchasers if the mandatory rectification rule is adopted, and how the procedures and steps would assist in identifying fraud. We have accordingly written to the Law Society and are awaiting their reply. We will convene the LTOSC to further consider the issue when we receive the information from the Law Society. Meanwhile, we are also exploring other possible options for discussion with stakeholders.

### **Advice Sought**

6. Members are invited to comment on the contents of the paper.

**Development Bureau**  
**June 2010**