

**For discussion
on 7 December 2009**

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

JOINT SUBCOMMITTEE ON
AMENDMENTS TO LAND TITLES ORDINANCE**

**Determination of Land Boundaries
- Progress Report (December 2009)**

The Joint Subcommittee discussed the subject on determination of land boundaries at its last meeting on 7 October 2009. This note reports briefly on the progress of the Administration's deliberation on the issues arising from the meeting.

BACKGROUND

2. By way of recapitulation, when the Land Titles Bill was deliberated at the Bills Committee before its enactment in 2004, the Administration agreed to Members' request for a new provision to be added in a suitable ordinance on determination of land boundaries. The addition should be similar to Section 94 of the Land Titles Ordinance (Cap. 585) (LTO) such that the provisions on determination of land boundaries applicable to land registered under the LTO could be applied to land not yet registered under the LTO.

3. Section 94 of the LTO allows the Director of Lands (the Director) to make a determination of boundaries of a lot. As provided for in Section 94(6) of the LTO, "determination" in relation to a boundary means adding bearings, boundary dimensions and coordinates wherever applicable in the process of updating the boundary. However, under Section 94(4) of the LTO, the Director shall not make such determination if the plan as accepted by the Director or the new plan as resulting from a determination exercise (hereafter referred as "new plan") cause changes to the area, boundaries and measurement of that lot as shown on the land boundary plan already kept in the Land Registry (LR) or on any Government lease (hereafter referred as "old plan").

4. Our proposal is to repeal the entire 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. This will be followed up by way of consequential amendments to be made under the forthcoming Land Titles (Amendment) Bill.

5. Section 94 of the LTO seeks to provide an avenue for land owners to apply to the Director for determination of boundaries regarding their lots and registration of the resultant plans in the LR. Under Section 18(1) of the LTO, a plan referred to in the Title Register or a plan kept in the LR shall be treated as only indicating the approximate situation and the approximate boundaries of the registered land to which the plan relates. Section 18(2) further provides that the fact that a plan is referred to in the Title Register or the fact that a plan is kept in the LR shall not constitute a warranty or a guarantee as to the accuracy of the plan.

MEMBERS' CONCERNS

6. The Administration has, since the enactment of the LTO in 2004, given thoughts as to how certain technical issues should be addressed. At the last Joint Subcommittee meeting, we presented a number of additional modifications to the above-mentioned legislative exercise. Please refer to the Joint Subcommittee paper CB(1)2675/08-09(03) at **Annex** for details of the preliminary ideas.

7. At the last Joint Subcommittee meeting, Members raised various concerns over the additional modifications and the implications of the modifications. Their concerns are summarized as follows -

- (a) when the area description of a subject lot under the new plan as determined by the Director is different from the old plan kept in the LR or shown on the Government lease, and gives rise to changes in the area, what is the legal status of the new plan? What would Government do if the new plan is in conflict with the provisions in the lease? What are the legal consequences?

- (b) for the 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 (hereafter referred as “non-consent new plan”), what is the legal status of such non-consent new plan kept by the Director? What are the legal implications on related conveyancing transactions?
- (c) as regards completing the checking of the land boundary plan in relation to a subdivision of lot before the relevant instrument together with the land boundary plan is delivered to the LR for registration, would this process give rise to delay in the completion of related conveyancing transactions?

CONSULTATION WITH THE RELEVANT DEPARTMENTS

8. On Members’ concerns, the relevant government departments and our legal advisors have been consulted. Their initial views are set out below.

Extent of minor changes

9. Under the proposed mechanism, determination of land boundary may result in minor changes to the boundary description as shown on the land boundary plan, but such minor changes will be within the allowable tolerance to be set out in the Code of Practice issued under the LSO. The extent of such changes that may arise varies.

10. The proposed mechanism is operated on a voluntary basis. It is the owner who makes the application, which shall be accompanied by a written confirmation that the application has the consent of all the owners of the lot concerned. Hence, determination of the boundaries of their lot is subject to the agreement of the owners concerned.

Legal status of the consent new plan and the non-consent new plan

11. There can be a difference in the description of boundary and area as shown in the old plan and the new plan which is consented by the relevant owners for registration (hereafter referred as “consent new plan”). We will consider re-examining whether such consent plan shall have the effect of superseding the old plan kept in the LR.

12. While the non-consent new plan kept by the Director is not intended to have any legal effect nor be construed as a title document, such non-consent new plan will be made available for inspection. The legal implications of this arrangement on conveyancing transactions would need to be carefully assessed.

Requirement to complete checking of the boundary plan in relation to a subdivision of lot before registering the instrument together with the boundary plan in the LR

13. The requirement to complete checking of the boundary plan in relation to a subdivision of land before registering the instrument together with the boundary plan in the LR may affect the critical time-path of individual conveyancing transactions. This is an issue upon which we would carefully deliberate.

Overall

14. The views are concerned with complex legal and policy implications, and the Administration would need to look at them in detail and carefully. We would substantiate our latest thinking at the Joint Subcommittee meeting on 7 December 2009. We would endeavour to give Members our substantive response to these issues at the meeting of the Joint Subcommittee that next follows.

**Development Bureau
December 2009**

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JOINT SUBCOMMITTEE ON
AMENDMENTS TO LAND TITLES ORDINANCE**

Determination of Land Boundaries

PURPOSE

The purpose of this paper is to brief members on the follow-up actions taken by the Administration on the amendments to the Land Survey Ordinance (Cap. 473) (LSO), so as 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 in a manner similar to that provided for in section 94 of the Land Titles Ordinance (Cap. 585) (LTO).

BACKGROUND

2. The LTO was enacted on 7 July 2004. Section 94 allows for the determination of land boundaries by the Director of Lands. It only applies to land that has been brought under the LTO. There will be a 12-year period between commencement of the LTO and the time at which land already granted will come under the LTO. During deliberation on the then Land Titles Bill, the Administration indicated to the Legislative Council (LegCo) that it would give consideration to introducing a similar provision in a suitable Ordinance that would apply to land not yet covered by the LTO.

3. The Administration now intends to introduce into the LSO provisions for determination of land boundaries that would apply both to existing land governed by the Land Registration Ordinance (Cap. 128) (LRO) and to land brought under the LTO. In this connection, section 94 of the LTO will be repealed and replaced by the proposed amendments to be made under the LSO through the enactment of the Land Titles (Amendment) Bill.

DETERMINATION OF LAND BOUNDARIES UNDER LTO

4. Under section 94 of the LTO, the owner of land to which the LTO applies may apply to the Director of Lands for a determination of the boundaries of the lot. In making a determination of the boundaries of the lot, the Director of Lands shall, if there is no existing plan of the lot or the existing plan of the lot is not acceptable to the Director of Lands, either conduct a land boundary survey and prepare a new plan of the lot or advise the land owner to employ an authorized land surveyor to conduct a land boundary survey and deliver a new plan of the lot. If the existing plan or the new plan is acceptable to the Director of Lands, he shall with the consent of the owner of the lot cause the existing plan or new plan to be registered with the Land Registry. Nevertheless, pursuant to section 94(4) of the LTO, the Director of Lands is not allowed to make a determination of the boundaries of a lot if the existing plan or new plan changes the boundaries or area or measurement of that lot as shown on a land boundary plan kept in the Land Registry or on any Government lease. Moreover, the word “determination” is defined with a narrow sense in section 94(6) to mean, in relation to a boundary, adding the bearings, boundary dimensions and coordinates wherever applicable in the process of updating the boundary, whereas boundary determination is concerned with ascertaining the exact boundaries of a lot, not simply “adding” bearings, dimensions and coordinates or “updating” what is outdated.

DEFICIENCIES OF SECTION 94 OF LTO

5. We perceive that sections 94(4) and 94(6) of the LTO will render the Director of Lands unable to entertain many applications for boundary determination of “existing” land, thus limiting the usefulness of the system for boundary determination. Moreover, these provisions are inconsistent with the usual general condition on boundary determination contained in the older leases, which provides that -

“The boundaries of the lot shall be determined by the Director ... (whose decision shall be final) before the issue of the Crown Lease. In the event of any excess or deficiency in area being found to exist as compared with the area specified in the Particulars of the lot the amount to be paid by or refunded to the grantee in respect of such excess or deficiency will be calculated at a rate to be determined by the Director....”

6. In determining the boundaries of a lot, the Director of Lands will use the latest survey technology and survey equipment to make measurements according to present day survey specifications and accuracy standard. However, due to improvements in survey technology, survey equipment and accuracy standard over the years, it is highly probable that the distance between any two boundary points measured today is slightly different (say by a few centimetres) from that measured, say, 50 years ago when old survey technology, crude survey equipment and different coordinate systems were used, albeit the position of the boundary points has remained unchanged.

7. Given that many land boundary plans now kept in the Land Registry and registered under the LRO were prepared several decades ago based on the then existing maps or less accurate survey measurements, or by persons other than professional land surveyors of the Government, it is evident that there would not be many lots for which the Director of Lands can make a boundary determination if he is not allowed to, on the basis of the more accurate measurements, make any minor changes to the land boundary plan in the process of determining the boundaries.

8. In addition, section 94 of the LTO does not exempt the Director of Lands from making a boundary determination due to lack of information (e.g. missing lot cases). Furthermore, there is no provision in section 94 of the LTO stipulating how the existing plan or new plan is to be handled if the Director of Lands is unable to obtain the land owner's consent to cause the existing plan or new plan to be registered in the Land Registry. There is also no provision in section 94 of the LTO requiring the land owner to deliver to the Director of Lands the survey record plan and the report in relation to the land boundary survey conducted by the authorized land surveyor, which are essential to the Director of Lands for deciding whether the land boundary plan prepared by the authorized land surveyor is acceptable.

PROPOSED SYSTEM OF DETERMINATION OF LAND BOUNDARIES UNDER LSO

9. The system of determination of land boundaries to be set up under the LSO will be developed on the basis of section 94 of the LTO and will be applicable to both land governed by the LRO and registered land under the LTO. To rectify the deficiencies mentioned in paragraphs 5 to 7 above, we intend to allow the Director of Lands, on account of the more accurate measurements and information available and on the basis of the acceptance criteria (to be) set out in the code of practice issued under the LSO, to accept an existing plan or a new

plan (which may be prepared by an authorized land surveyor and checked by the Director of Lands or be prepared by the Director of Lands) and, with the consent of the owner of the adjoining lot, cause the existing plan or new plan to be registered in the Land Registry, although the existing plan or new plan will result in minor changes to the bearings, boundary dimensions and coordinates as shown on any land boundary plan of the lot kept in the Land Registry and registered under the LRO or the LTO.

10. We will also add a provision to the effect that an existing plan or new plan of a lot (which may be prepared by an authorized land surveyor and checked by the Director of Lands or be prepared by the Director of Lands) caused to be registered by the Director of Lands upon the determination of land boundaries under the LSO shall supersede any land boundary plan of that lot kept in the Land Registry and registered under the LRO or the LTO, because the boundary determination made by the Director of Lands would otherwise have no useful purpose.

11. Moreover, we will include a new provision to allow the Director of Lands to keep an existing plan or a new plan of a lot acceptable to him and make such plan available for inspection by any person albeit the Director of Lands is unable to obtain the lot owner's consent or, where applicable, the adjoining lot owner's consent to cause that existing plan or new plan to be registered in the Land Registry. Moreover, to facilitate our checking of the new plan prepared by the authorized land surveyor, we will require the land owner to submit the associated survey record plan and the report in relation to the land boundary survey prepared by the authorized land surveyor when he delivers the new plan to the Director of Lands for checking.

12. Furthermore, we will empower the Director of Lands to authorize public officers to enter the adjoining lot for the purpose of checking the new plan of the subject lot prepared by the authorized land surveyor or conducting the necessary land boundary survey of the subject lot. In exercising this power of entry, the Director of Lands will give at least 14 days' advance notice of his intended entry and the notice must describe the purpose of his entry and the work to be carried out within the adjoining lot concerned.

RELATED AMENDMENTS TO LSO

13. In order to ensure that the determination of land boundaries is within the purview of the Director of Lands, we will revise the functions of the Land Survey Authority to include the determination of land boundaries. To maintain

consistency and enhance effectiveness in the control of standard of land boundary surveys, we will amend section 30(4) of the LSO (which provides for the deposit of land boundary plan and survey record plan by an authorized land surveyor with the Land Survey Authority after the relevant instrument effecting a division of land has been delivered to the Land Registry for registration) to accord with the new provision modeled on section 94 of the LTO, so that an authorized land surveyor shall deliver the land boundary plan, survey record plan and the report in relation to the land boundary survey to the Land Survey Authority for checking before the relevant instrument together with the land boundary plan already checked and stamped with words indicating so is delivered to the Land Registry for registration. As the “report in relation to a land boundary survey” described in paragraph 11 (which is essentially the same document as that described in section 30(6)(d) of the LSO) is an important piece of document containing information on the boundary evidence found and the rationale of how the land boundaries are determined in a particular land boundary survey, we will include it as an item within the meaning of “land boundary records” defined under section 2 of the LSO. In the light of the above, we will consider how section 146 in Schedule 3 to the LTO is to be updated accordingly. We will also revise section 31 of the LSO to the effect that the Land Survey Authority may allow any person (instead of just the authorized land surveyors or their employees) to inspect any land boundary record and supply any person (instead of just the authorized land surveyors or their employees) with copies of any land boundary plan, survey record plan and report in relation to a land boundary survey subject to the payment of the prescribed fee. Furthermore, we will expand section 33(1) of the LSO to ensure that no liability shall rest upon the Government or upon any officer by reason of his performance of the functions in respect of determination of land boundaries.

14. The amendments to the LSO will be included as consequential amendments to the Land Titles (Amendment) Bill.

FINANCIAL IMPLICATIONS

15. The Director of Lands will process the applications for determination of land boundaries on a cost recovery basis. For cases where an existing plan is available and is acceptable to the Director of Lands, the land owner will be required to pay a fee to recover the cost incurred by the Director of Lands in searching for the plan, validating the plan and causing the plan to be registered with the Land Registry. For cases where the land owner is required to appoint an authorized land surveyor to conduct a land boundary survey, the Director of

Lands will charge a fee, on a cost recovery basis, for checking the plan prepared by the authorized land surveyor, approving the plan and causing the plan to be registered with the Land Registry. For cases where the land boundary survey is conducted by the Director of Lands, the land owner will be required to pay a fee to recover the cost incurred by the Director of Lands in conducting the land boundary survey, preparing the plan and causing the plan to be registered with the Land Registry. In any event, the land owner will have to bear the fees in connection with registration of the land boundary plan in the Land Registry.

ADVICE SOUGHT

16. Members are invited to note the content of this paper and comment on our initial thinking on the subject.

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