

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 tenth meeting held on
Thursday, 16 June 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon LEUNG Kwok-hung

**Public officers
attending** : **Agenda item I**

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

Mr Justin TO Yick-ting
Assistant Secretary for Development (Buildings) 2

Ms Olivia NIP Sai-lan, JP
Land Registrar

Ms Angel LI Yuen-yee
Deputy Principal Solicitor
Land Registry

Mrs Amy FONG NG Suk-yee
Registry Manager
Land Registry

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

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

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Simon CHEUNG
Senior Council Secretary (1)9

Ms Haley CHEUNG
Legislative Assistant (1)5

I Progress of the Administration's work on the preparation of amendments to the Land Titles Ordinance

(LC Paper No. CB(1)2434/10-11(01) -- Paper provided by the Administration)

The Administration briefed the Joint Subcommittee on the progress of its work on the preparation of amendments to the Land Titles Ordinance (LTO).

2. Members deliberated (Index of proceedings at **Appendix**) and agreed that the views of individual members of the Joint Subcommittee should be sought on the Chairman's suggestion of wrapping up the work of the Joint Subcommittee without holding further meetings.

(Post-meeting note: Members were consulted on the Chairman's suggestion vide the Clerk's letter dated 27 June 2011. Having regard to the feedback from members, the Chairman has advised that the Joint Subcommittee will not hold further meetings and will submit a full report on its deliberations to the Panel on Administration of Justice and Legal Services and the Panel on Development in due course.)

II Any other business

3. There being no other business, the meeting ended at 5:25 pm.

Council Business Division 1
Legislative Council Secretariat
2 November 2011

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

Joint Subcommittee on Amendments to Land Titles Ordinance

**Proceedings of the tenth meeting
held on Thursday, 16 June 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
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| 001009 – 001211 | Chairman | Opening remarks of the Chairman | |
| 001212 – 001739 | Administration | <p>The Administration briefed members on the latest development and made the following points –</p> <p>(a) the conversion, rectification and indemnity mechanisms were closely intertwined and modification to any of these core elements of the LTO had to be considered in a holistic manner;</p> <p>(b) having duly considered the views from major stakeholders, the Administration had developed a new option with two stages of automatic conversion and some modifications to the rectification and indemnity arrangements. Initial discussion on the option had been held with the stakeholders at the LTO Steering Committee meeting chaired by the Land Registrar (LR) on 26 May 2011;</p> <p>(c) under the proposed option, a title registration system with immediate indefeasibility would forthwith apply to new land on commencement of the LTO;</p> <p>(d) for Land Registration Ordinance (LRO) land, the proposed conversion process would involve two stages of automatic conversion (Two-Stage Conversion Mechanism). After a lead-in period from the date of operation of LTO on new land, all LRO land would undergo the first stage of conversion (primary conversion) and be</p> | |

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| | | <p>automatically brought under LTO on a designated date;</p> <p>(e) during the 12 years from the primary conversion (incubation period), land with primary title would remain subject to subsisting interests, while new transactions and interests created after primary conversion would be effected in accordance with LTO;</p> <p>(f) meanwhile, the mandatory rectification rule would apply to restore title to an innocent former owner who lost his property as a result of fraud, except where it was not practicable to restore title to the innocent former owner. Indemnity with a cap would be payable to displaced owner of fraud occurring after primary conversion;</p> <p>(g) a registered owner wishing to preserve the mandatory rectification rule could register an opt-out caution against his own property during the incubation period. The registration would serve to exclude the property from automatic full conversion of title, so that the mandatory rectification rule would continue to apply after the end of the incubation period; and</p> <p>(h) by the end of the incubation period, land with primary title would undergo the final stage of conversion (full conversion) and would automatically be converted to become registered land, except where the land was subject to: (i) a warning notice registered by a claimant of an unregistrable subsisting interest; (ii) a LR's Caution against full conversion (LRC) for reason of indeterminate ownership; (iii) an opt-out caution registered by the owner who did not want his title to the property to be fully converted to registered land status; or (iv) a non-consent caution in respect of rectification proceedings</p> | |

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| 001740 – 003216 | Chairman Administration | <p>The Chairman enquired about the number of stages of the proposed conversion mechanism.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"><li data-bbox="552 461 1233 808">(a) for LRO land, the implementation of the proposed conversion mechanism would involve three stages, i.e. (i) a lead-in period lasting for two or three years; (ii) primary conversion followed by a 12-year incubation period; and (iii) full conversion. In other words, full conversion of LRO land would be about 14 to 15 years after the commencement of LTO;<li data-bbox="552 853 1233 1088">(b) after the lead-in period, all eligible LRO land except those subject to stopped deeds would undergo primary conversion on a designated date and the relevant registers kept under LRO would be deemed to be primary titles registers (PTRs);<li data-bbox="552 1133 1233 1357">(c) new individual PTRs would be opened during the incubation period. LR would conduct checking on whether there was any broken chain of title. LR might clean up obsolete entries upon opening of new PTRs;<li data-bbox="552 1402 1233 2089">(d) during the incubation period, land with primary title would still be subject to subsisting interests. In this respect, production of title deeds and documents would continue to follow the practice stipulated in sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), under which it was necessary for a vendor to provide the purchaser with government grant and title deeds of not less than 15 years before the contract of sale, except that documents registered after primary conversion would not be required if entries relating to them were no longer contained in the PTR. This would mean that with the passage of time, documents required to be produced in property transactions would be gradually reduced; | |

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| | | <p>(e) the mandatory rectification rule as provided in section 82(3) of LTO would apply to restore title to an innocent former owner who lost his property as a result of fraud during the incubation period, while indemnity with cap would be payable to a displaced current owner in respect of fraud which occurred after primary conversion. Indemnity would also be payable to the former owner if his title could not be restored due to: (i) property resumed or surrendered for public purpose; or (ii) property redeveloped, sold to multiple new purchasers and it was inequitable to restore title to former registered owner;</p> <p>(f) given that land with primary title would still be subject to subsisting interests and that the purchaser's solicitors should check both the historical LRO register and PTR for approval of title during the 12-year incubation period, the Administration considered that no indemnity should be payable for any mistake or omission in entering entry in PTR relating to instrument registered before primary conversion;</p> <p>(g) during the incubation period, the Court or LR could rectify any mistake or omission of entry in PTR in respect of any instrument registered before primary conversion;</p> <p>(h) the indemnity provisions under section 84 of LTO would be applicable to mistakes or omissions made by LR staff which occurred after primary conversion;</p> <p>(i) factors affecting the eligibility for full conversion would include: (i) a warning notice registered by a claimant of an unregistrable subsisting interest; (ii) a LR's Caution against full conversion (LRC); (iii) an opt-out caution registered by the owner; and (iv) a non-consent caution in respect of rectification proceedings; and</p> | |

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| | | <p>(j) after full conversion, bona fide purchasers in possession and for valuable consideration would enjoy indefeasible title, and this would mean that immediate indefeasibility would be in force.</p> | |
| 003217 – 003451 | Chairman Administration | <p>Enquiry by the Chairman as to whether the Administration was prepared to go for another major revamp of LTO.</p> <p>Response by the Administration that –</p> <p>(a) when the Land Titles Bill was passed by the Legislative Council in 2004, the Administration had undertaken to review LTO prior to its commencement;</p> <p>(b) the post-enactment review and recent developments had made it necessary for the Administration to introduce substantial modifications to the LTO;</p> <p>(c) the Administration aimed to consult the relevant stakeholders with a view to obtaining their support for the newly proposed Two-Stage Conversion Mechanism; and</p> <p>(d) the Administration would explain to the public the reasons for the proposed modifications</p> | |
| 003452 – 003915 | Chairman Administration | <p>Expression of concerns by the Chairman that –</p> <p>(a) whether the present proposal represented a change of the position stated in the letter of the Secretary for Development to the Joint Subcommittee dated 26 May 2009; and</p> <p>(b) she found it difficult and confusing to follow the Administration's paper and changes introduced by the Administration since 2004, and considered it necessary for the Administration to elaborate more on policy developments over the years and the justification for the present proposal.</p> | |

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| | | <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the changes introduced under the proposed new option were mainly related to the implementation arrangements; some basic principles such as automatic conversion and indemnity with cap remained unchanged; (b) the Administration considered that the proposed option should be able to balance the needs and concerns of different stakeholders and could better serve the public interest; (c) it was necessary for relevant stakeholders including all property owners in Hong Kong to have a good understanding of the changes that the Administration was proposing and be engaged in the exercise; (d) discussion with relevant stakeholders would continue and the public would be consulted when a consolidated proposal acceptable to major stakeholders was available. <p>The Chairman enquired whether the proposed new option was acceptable to major stakeholders.</p> <p>The Administration advised that at the meeting of the LTO Steering Committee on 26 May 2011, major stakeholders in general welcomed the proposed new option, and would examine it in further detail within their organizations.</p> | |
| 003916 – 004629 | Ms Audrey EU Administration | <p>Ms Audrey EU commented that –</p> <ul style="list-style-type: none"> (a) given that it was a highly complicated subject, it was not possible for the Joint Subcommittee to provide substantive views on the Administration's new proposal at this meeting; | |

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| | | <p>(b) she envisaged that the consultation with major stakeholders and the general public on the proposed changes would likely be a lengthy and difficult process;</p> <p>(c) she anticipated that the Administration would not be able to introduce the amendment bill of the LTO for completion of the legislative process before the end of the current term of the Legislative Council in 2012;</p> <p>(d) in view of the circumstances, the Joint Subcommittee needed to consider whether it should continue its work in the 2011-2012 legislative session; and</p> <p>(e) she felt sorry that there had been an unsatisfactory progress in the LTO amendment work despite a substantial commitment of time and public resources from the Legislative Council and the Administration.</p> <p>Response of the Administration that –</p> <p>(a) it fully appreciate members' concerns on the progress of LTO amendment work;</p> <p>(b) the Administration aimed to come up with a consolidated proposal that was acceptable to the major stakeholders by the end of 2011, and thereafter consult the public on the proposal during the first and second quarters of 2012; and</p> <p>(c) While the Administration would simultaneously continue with the preparation of the necessary amendments to the LTO, the Administration would only be able to come up with a full package of the necessary amendments after consideration of the views received in the consultation exercise.</p> | |

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| 004630 – 005200 | Chairman Ms Audrey EU | <p>The Chairman remarked that –</p> <ul style="list-style-type: none"> (a) she shared Ms EU's feeling that it was not possible to have any in-depth discussion on the Administration's new proposal at this meeting; (b) it appeared that the Administration's work plan for the coming year would not have to involve the Joint Subcommittee; (c) while she felt upset with the Administration's unsatisfactory progress since 2004 in taking forward the LTO amendment exercise and its swaying policy stance on certain core issues over the years, she could only take what the Administration had said about the need to pursue changes to the implementation arrangements of the LTO at this stage; (d) in view of the circumstances, she suggested that a letter be sent to individual members to update them on the latest development and seek their view on her suggestion of wrapping up the work of the Joint Subcommittee without holding further meetings; (e) a full report on the deliberations of the Joint Subcommittee would be prepared for submission to the Panel on Development and Panel on Administration of Justice and Legal Services and inform the House Committee of the Joint Subcommittee's position; and (f) When the Administration was able to come up with a full package of necessary amendments to the LTO, it would be appropriate for the Administration to report the work progress with relevant proposals to the two Panels. | Clerk |

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| | | The Chairman and Ms Audrey EU remarked that they had to register a deep regret on the Administration's performance since 2004 in taking forward the LTO amendment exercise. End of meeting | |

Council Business Division 1
Legislative Council Secretariat
2 November 2011