

20 May 2003

Clerk to the Bills Committee  
Legislative Council Secretariat  
3/F Citibank Tower  
3 Garden Road  
Central  
Hong Kong

**By Fax**

(Fax no.: 2869-6794)

Dear Sirs,

**Bills Committee on Land Titles Bill**

On behalf of The Hong Kong Institute of Surveyors we write to thank for the opportunity for allowing our representatives to present the Institute comments on the proposed Land Title Bill to the Bills Committee on 12 May 2003. Following the hearing the Institute would like to further respond to some of the points highlighted by the Land Registry representatives at the meeting.

We consider the Land Title Bill denounced the value of boundary survey plans by branding them as indicative only. It also dispelled the need of plans as an integral part of the Land Titles System. On the one hand, the Bill purported to provide proof of good title for land transactions it paid no attention to the land boundary aspect. This philosophy is really self defeating and can hardly achieve its “good title” objective.

In debating on this slanting philosophy, the Government appeared to argue on three points, namely,

- (a) the inclusion of a plan will hold up the conversion exercise;
- (b) many reliable plans are already available and the boundary problem is not that imminent; and
- (c) the cost and time of survey is tremendous thus not warranting the effort at least for the time being.

On these issues, our Institute would like to comment by firstly recapitulating the general problem of the present deed registration system and then discussing the individual points with reference to the general problem.

## **The General Problem**

The crux of the boundary problem is not a technical matter but is the legal and administrative aspects. In the New Territories, for records of the boundary, we still rely on the Demarcation District (DD) sheets as the source of information. As the DD sheets were surveyed one full century ago by graphical survey method for primarily rent assessment and ownership identification objectives, they had been proved to be too crude for nowadays land development and project design purposes.

To serve our present day's need, these boundaries have to be refined by survey to cm accuracy. Meanwhile such a survey are provided only on demand basis. Land lots would be surveyed in a sporadic manner by individual land surveyors. The chances are that two surveyors may be working on adjacent land lots but without knowing each other's survey. The boundary common to both land lots might be defined differently, albeit generally to a small amount (say several cm), but the result would still constitute a conflict. When land development is to take place on either lot, the boundary conflict would surface. The District Lands Officers might hold up decision of approving the development plan until the conflict is resolved. Unfortunately, to rectify boundary conflict is often a difficult, task in the present working system because a plan alone is not a registrable item in the Land Registry and no Land Boundary Authority is available to confer status to any plan. No finalization of boundary is attainable and many boundary problems had become a stalemate.

If the present proposed bill system does not address the issue, development will continue to be affected. Hence, our Institute is suggesting to improve both the ownership and the land particulars in one Bill.

## **The Holding Up of The Conversion Exercise**

As pointed out above, our suggestion is on the legal and administrative aspects. By this we mean to include in the Bill clauses to the effect of accepting surveyed plans of good quality to replace the old substandard ones. Administratively, a systematic survey of the old lots should be introduced so that good quality plans can be produced progressively to support the legal provision. In this way, the time for survey would not be too much. Afterall, transaction of one land lot would involve the sorting out of a great heap of documents which might not be taking less time than the survey of a land lot. Moreover, under the proposed Bill there is no time frame for the conversion and the holding up argument seems not be substantiated. The deficiencies in land particulars would not disappear unless they

are resolved.

### **Availability of Reliable Plans**

It is not disputed that there are many plans of good quality already produced. However, they have often been laid idle because of a lack of legal recognition. Some plans though of good quality as a stand alone document, may however contain minor conflicts with other equally good quality plans when particulars shown on both plans are combined. A lack of mechanism to confer status to them can never make them serviceable. There are every reasons to address the plan issue in the Bill.

### **Cost and Time of Survey**

The survey of the 210,000 number of DD lots is not too great a task. It was recently reported in a newspaper that the Lands and Buildings Bureau was saying the carrying out and completing such survey by the current man-power of the Lands Department would take about 700 years. There could be a misquote somewhere somehow, otherwise mathematics will show that the whole department will take about one day to finish the survey of one land lot.

We reckon that the survey should take less than ten years to complete on a budget of over one billion. This represented a slightly more favourable estimate than what we suggested earlier based on the possible trend of salary reduction and efficiency increase. In any case, this exercise would cost less than many other Government projects such as the demolishing of all illegal structures, the change to electronic identity cards and the drainage work for controlling flooding.

Irrespectively, the key issue is not merely the cost and timing but the commitment that the Government should not try to avoid. Being the sole landowner the Government must be duty bound to provide certainty of land descriptions to the leasees.

One last justification is that the survey will be a once and for all exercise. The survey effort will perpetuate to a long time to come. It is the best value for money and we are happy to discuss more on technical details, if required.

As regards the Administration's paper on "Indemnity" tabled at the meeting, upon perusal of the paper the Institute does not consider it address our concerns and maintains the following views :

- (a) we fail to see any valid reasons for the Administration to apply different treatment for property of higher value; and
- (b) the proposed system should not deprive the existing rights of an innocent owner to recover the property because of fraud. The innocent owners should retain such right whereas the innocent purchasers should claim indemnity payments but subject to no cap in case of fraud.

Please accept our apologies for not being able to reply by 19 May 2003.

Yours faithfully,

*(Signed)*

Tony Tse Wai-chuen  
Senior Vice-President