

**HPLB/LTB Paper 52/03**

**Bills Committee on Land Titles Bill**

**Part 11 – Miscellaneous Provisions  
Supplementary Paper**

**Purpose**

This paper addresses some of the issues on Part 11 of the Bill raised by the Bills Committee in the 17<sup>th</sup> Meeting and provides information supplementary to Part 11 - Miscellaneous Provisions Paper (LC No. CB(1) 274/03-04(07)).

**Background**

2. Members requested the Administration -
  - (a) to set out the policy intent, views of the concerned parties (such as surveyors) and the Administration's response to these views on Clause 92 (determination of lot boundaries).
  - (b) in respect of Clause 95
    - (i) to provide the background and justifications for the expanded scope of Clause 95, including -
      - (A) the justifications for the application of Clause 95 to “a person interested in registered land, a registered charge or a registered long-term lease” instead of “a vendor or purchaser of land” as provided for in Section 12 of the Conveyancing and Property Ordinance;
      - (B) the justifications for the application of Clause 95 to “any question relating to the title to the land, charge or lease or an interest in the land, charge or lease” instead of “any question arising out of or connected with any contract for the sale or exchange of land” as

provided for in section 12 of the Conveyancing and Property Ordinance; and

- (C) the views of the Law Society of Hong Kong in this regard.
  - (ii) to clarify who will be regarded as “a person interested in registered land” in Clause 95.
  - (iii) to consider the need to amend Section 12 of the Conveyancing and Property Ordinance for improving the existing procedure.
  - (iv) to make rules on the procedures under Clause 95.
- (c) to improve the drafting of the Chinese version of Clause 96(1) to address members’ view that the Chinese words “尋求將” are redundant.
- (d) in respect of Clause 100
- (i) noting that Clause 100(1)(zi) provides that the Land Registrar may be empowered by regulations to manage, borrow and invest the moneys of the indemnity fund, to consider whether it is appropriate to empower the Registrar to borrow moneys of the indemnity fund and amend the subclause accordingly.
  - (ii) noting that Clause 100(1)(zm) provides that the Secretary for Housing, Planning and Lands (SHPL) may make regulations for procedures for instituting court proceedings for claiming indemnity, to clarify and provide justifications for this provision.
  - (iii) to explain the reasons for empowering SHPL under Clause 100(3)(a) to grant exemptions from the regulations .
  - (iv) to provide explanations for other provisions in Clause 100 where necessary.

## **Determination of lot boundaries**

3. The Administration intends to provide a statutory mechanism for the owners of registered land to determine their lot boundaries. After registration of the approved lot boundary plans in the Land Registry, they will provide land records for future survey or other purposes.

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4. The views of the organizations consulted and the Administration's response are set out in the **Annex**.

## **Application to the Court of First Instance by person other than the Registrar**

5. Clause 95 provides that a person interested in registered land, a registered charge or a registered long-term lease may apply to the Court of First Instance by petition or originating summons in respect of any question relating to the title or an interest in the land, charge or lease. The scope of this clause is wider than the existing Section 12 of the Conveyancing and Property Ordinance. As the owner's title will be recognized by law under the new system subject to certain overriding interests, a procedure is provided to resolve questions on law affecting registered titles.

6. The applicant may be any person interested in registered land, a registered charge or a registered long-term lease. Examples are a purchaser, a person claiming overriding interests, a cautioner, a chargee or a lessee.

7. The application to the Court can be made in respect of any question relating to the title to the land, charge or lease or any interest therein. In view of the wide scope of application to a great variety of interests and matters under the Land Titles Bill, this coverage is considered appropriate so that the legal issues in dispute can be resolved expeditiously.

8. This clause was contained in the gazetted Bill on its first introduction into the Legislative Council in 1994. The Law Society agreed to this clause and did not raise any comments.

9. The Administration is not in a position to comment on whether

there is any necessity to amend Section 12 of the Conveyancing and Property Ordinance to improve the existing procedures. The rules on the procedures under Clause 95 will be established by the Courts.

## **Offences**

10. For drafting improvement purpose the Law Draftsman suggested that the Chinese version of "application for the registration of any matter" in Clause 96 should be amended to “要求將任何事項註冊的申請”.

## **Regulations – General Powers**

11. It is intended that the Registrar should be empowered to borrow moneys for the purposes of the indemnity fund and not to borrow moneys of the indemnity fund. Clause 100(1)(zi) will be amended accordingly.

12. Under Clause 100(1)(zm), the Secretary for Housing, Planning and Lands is empowered to make regulations for procedures for instituting court proceedings for claiming indemnity. This is to facilitate the Registrar to recover the indemnity paid pursuant to Clause 86. This power is necessary as the Registrar has a duty to recover the indemnity paid from any persons responsible for the loss.

13. Clause 100(3)(a) empowers the Secretary for Housing, Planning and Lands to grant exemptions from the regulations. These exemptions may be necessary in respect of the size, form and colouring of plans attached to a supporting instrument (Cl.100(1)(c)).

14. Other important provisions in Clause 100 are explained in the Paper on Part 11 – Miscellaneous Provisions (LC No. CB(1) 274/03-04(07)).

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*Housing, Planning and Lands Bureau*

**Comments of the concerned parties on determination of lot boundaries and the Administrations' response to the views**

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	<b><u>Views of organizations</u></b>	<b><u>Name of Organization</u></b>	<b><u>Response of the Administration</u></b>
1	<p>(a) It is most important that the title registration system should provide reliable and adequate records about the particulars of the landed interest including plan showing the size, boundary and layout of the interests. Regrets to note that the new system as proposed under the Bill provides guarantee of ownership only.</p> <p>(b) Clause 92(2)(b) states that the Director of Lands shall not determine the boundaries of a lot held under block Government lease. Would it imply a defect in the land title for the old scheduled lots?</p> <p>(c) Clause 92(5) states that the Director of Lands may</p>	<p>Hong Kong Institute of Surveyors</p>	<p>(a) In Hong Kong, most properties are units in multi-storey buildings. The owners are not concerned with the extent of the land boundary of the lot. Moreover, most properties do already have clear plans, copies of which are attached to registered deeds at present and will continue to be attached to documents maintained under the title register. Where there are particular uncertainties over boundaries, there are already channels to deal with them e.g. negotiated settlements between the parties and obtaining Court rulings.</p> <p>(b) (i) The plans in the block Government leases were made a hundred years ago for the purpose of collection of rent and they did not contain any information on the dimension or area of the lots. As such, these plans cannot be used as the basis for determination of land boundaries under the Bill.</p> <p>(ii) The exclusion of determination of the lot boundaries under a block Government lease does not imply that there is a title defect. The parties concerned can have the boundaries surveyed and if there is any dispute, to settle them in court.</p> <p>(c) The functions of the Director of Lands under the Bill do not include survey</p>

	<u>Views of organizations</u>	<u>Name of Organization</u>	<u>Response of the Administration</u>
	authorize “a person” to perform function, etc. under this clause. Since this function may include survey for boundary plans, it should be done by an Authorized Land Surveyor as described under the Land Survey Ordinance (Cap. 473) or by a Government Employee with professional capacity in land surveying.		for boundary plans. Therefore, the question of the Director of Lands authorizing a person to perform survey for boundary plans should not arise.
	(d) Clause 92(6) outlines the meaning of boundary “determination” in which a boundary survey has been explicitly excluded. In the process of updating the boundary, a land boundary survey plan should be prepared in accordance with the Code of Practice as referred to under the Land Survey Ordinance.		(a) The preparation of a land boundary plan can be part of the process of updating the boundary. A land boundary plan prepared in accordance with the code of practice approved under the Land Survey Ordinance is required under Clause 92(3)(d).
2	<p>(a) Agrees with the proposal that leaves boundary disputes to be dealt with outside the title registration system.</p> <p>(b) It may not be just to the neighbouring owners for an owner to secure registration of a lot boundary plan behind the back of his neighbours. Suggests that a requirement be made as a condition for any application for registration of boundary plans that proper notice be given to neighbouring owners and a way be provided for these neighbouring owners to make any objection or submission to the Land</p>	Bar Association	<p>(a) Noted.</p> <p>(b) The Director of Lands shall not make a determination of the boundaries of a lot if the plan changes the boundaries or area or measurement of that lot shown on a land boundary plan or on any Government lease. Therefore, it is not necessary to give notice to the neighbours as their interests will not be affected.</p>

	<u>Views of organizations</u>	<u>Name of Organization</u>	<u>Response of the Administration</u>
	Registrar within a specified period of time.		
	<p>(c) It is not clear what legal effect would follow from the registration of the boundary plans.</p> <p>(d) The question of boundary and the question of title to any property are intertwined. If the boundary of the land is such that certain part of the land is occupied by a neighbour, then under the existing law, the title to the land cannot be said to be a good title.</p>		<p>(c) The determination of boundary plans provides an avenue for lot owners to survey their lot boundary to present day standards and if approved by the Director of Lands, will provide reliable land records in future.</p> <p>(d) A land boundary dispute may be settled by the Court. A good title can be given upon decision by the Court.</p>
3	<p>(a) HYK supports the proposal to allow the owner of registered land to make an application to the Director of Lands for a determination of lot boundaries. However, the relevant procedures as well as the respective roles of the Lands Department and the Government should be clearly stated.</p> <p>(b) When the owner of registered land makes an application to the Director of Lands for a determination of lot boundaries, if the Director considers that the existing land boundary plan is acceptable for the purpose, he should verify the plan together with the relevant District Survey Office before</p>	Heung Yee Kuk	<p>(a) The detailed application procedures will be devised in due course. The functions of the Director of Lands are clearly set out in Clause 92.</p> <p>(b) The Government will set out the criteria for deciding whether a land boundary plan, including the existing plan prepared by the Survey and Mapping Office of the Lands Department is acceptable for determination of the boundaries of a lot and registration in the Land Registry.</p>

	<u>Views of organizations</u>	<u>Name of Organization</u>	<u>Response of the Administration</u>
	causing the plan to be registered under clause 92(3)(c).		
	<p>(c) If there is no existing land boundary plan or the existing plan is not acceptable, the Director of Lands should not solely rely on the land boundary plan prepared by the authorized land surveyor appointed by the owner of the lot under clause 92(3)(d) in determining the boundaries of a lot. The Director should ensure that there is concrete information and data relating to the boundaries of the lot.</p> <p>(d) There is a need for the Government to establish a database of the land boundary plans and relevant data of all lots to facilitate search by land owners and the public so as to reduce boundary disputes.</p>		<p>(c) The Director of Lands will make reference to all the available land boundary records in deciding whether a plan is acceptable for the determination of lot boundary.</p> <p>(d) The Survey and Mapping Office is working towards this. The cadastral information system, which is part of the computerized land information system of the Lands Department, is a comprehensive database where boundary information of all the land parcels in the territory is stored. Members of the public can purchase from the Lands Department lot index plans showing the approximate location of a lot. Moreover, authorized land surveyors can inspect and obtain copies of any land boundary plan deposited with the Lands Department under the Land Survey Ordinance upon payment of the prescribed fee.</p>