

Joint Subcommittee on Amendments to Land Title Ordinance

Determination of Land Boundaries – repeal of Section 94 of Land Title Ordinance (LTO) and amendment of Land Survey Ordinance (LSO)

Dear Patrick,

The Hong Kong Institute of Surveyors Land Surveying Division would like you to note the following views on the proposed amendment of the Land Survey Ordinance (Cap. 473) (LSO) and wish you to express the views in the Legco Panel Joint Subcommittee on amendment to Land Title Ordinance (Cap. 585) (LTO)

1. Completion of checking Land Boundary Plan before relevant instrument effecting a division of land is registered 先完成核實土地界線圖，後註冊有關的土地分割文書 (Check Before Registration)

(Refer. Para. 13, P.5 of the Panel Paper CB(1)2675/08-09(03) -- 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.)

We support this amendment proposed by the Administration and consider such amendment is necessary. Without checking, the land boundary information of the registered instrument may contain mistakes. When the mistake is discovered in a later stage during the checking process, the instrument containing faults has already been registered in the Land Registry.

Rectification of the mistakes can only be effected by preparing a new instrument which should be registered in the Land Registry again. It takes additional time and money.

Preparing a new instrument for rectification is not always possible when the land owner(s) is not willing to do so (as the transaction was already completed) or the land owner(s) cannot be found to perform such action or the land is further subdivided.

Registration of the rectification instrument to replace the faulty plan cannot be performed if the land owner is not available or do not want to take the trouble to carry out follow up action even though the authorized land surveyor is willing to pay all the cost for preparing the rectification instrument.

The uncorrected mistake in the land boundary descriptions in the registered instrument has the following problem:

- Cause dispute among subsequent vendor / purchaser of the property.
- Cause an authorized land surveyor liable for the damages suffered by any person as a result of the faulty land boundary plan

(Refer section 28 (4) of the Land Surveyor Ordinance : “An authorized land surveyor shall be personally responsible for the accuracy and completeness of every land boundary plan signed and certified by him and produced from a land boundary survey carried out by him personally or by other persons under his supervision or direction, or partly by or under the supervision or direction of another authorized land surveyor, and he shall be liable for any loss or damage suffered by any person as a result of any inaccuracy or incompleteness of any land boundary plan so signed and certified.)

2. Appeal mechanism

In the process of boundary determination, the Director of Lands (Director) can advise the land owner to appoint an authorized land surveyor to conduct a land boundary survey of the lot and to deliver

the resultant land boundary plan ("new plan") to the Director for deciding whether the new plan is acceptance. If the new plan submitted is not accepted by the Director of Lands, there is no avenue for the land owner to appeal against the decision of the Director.

The proposed amendment to LSO should include an appeal mechanism to allow reviewing the decision of the Director.

Land Survey Division

Hong Kong Institute of Surveyor

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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

改善土地界線圖註冊 Improvement to Registration of LBP

- 地界細微修改過的土地界線圖可以註冊
LBP with minor changes to boundaries can be registered
- 新註冊的土地界線圖可以取代舊圖
New LBP supersedes any previously registered plans
- 未能註冊的新土地界線圖可以存放在土地測量監督處以備公眾查閱
Unregistered new LBP can be deposited in Land Survey Authority for public inspection
- 先完成核實土地界線圖，後註冊有關的土地分割文書
Completion of checking LBP before relevant instrument effecting a division of land is registered

