

立法會
Legislative Council

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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 ninth meeting held on
Thursday, 23 December 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Members absent** : Hon Miriam LAU Kin-ye, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Public officers attending** : **Agenda item I**
Mr Tommy YUEN Man-chung, JP
Deputy Secretary for Development
(Planning and Lands) 2

Ms Judy CHUNG Sui-kei
Principal Assistant Secretary for Development
(Planning and Lands) 1

Mr Edward TO Wing-hang
Principal Assistant Secretary for Development
(Planning and Lands) 3

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

Mr WONG Chung-hang
Deputy Director (Survey and Mapping)
Lands Department

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

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Simon CHEUNG
Senior Council Secretary (1)1

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Election of Chairman (if necessary)

Members agreed that there was no need to elect a new Chairman. Dr Margaret NG agreed to continue to serve as the Chairman of the Joint Subcommittee.

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

(LC Paper No. CB(1)838/10-11(01) -- Paper provided by the Administration

LC Paper No. CB(1)790/10-11(01) -- Letter dated 10 December 2010 from the Law Society of Hong Kong

LC Paper No. CB(1)880/10-11(01) -- Letter dated 20 December 2010 from the Administration regarding the Administration's response to the submissions from the Association of Government Local Land Surveyors

LC Paper No. CB(1)2198/09-10(01) -- Submission dated 2 June 2010 on determination of land boundaries from the Association of Government Local Land Surveyors (English version only)

2. The Administration briefed the Joint Subcommittee on the latest progress of its work on amendments to the Land Titles Ordinance (Cap. 585) (LTO), followed by discussion with members (Index of proceedings at **Annex**). It was agreed that in order to give members a better understanding of the Administration's work in amending the LTO as

a whole, the Administration would prepare an updated list setting out the progress of its work:

- (a) in areas which were technical, straightforward and not controversial; and
- (b) in those areas that had drawn diverse views and concerns from major stakeholders, and therefore could not proceed smoothly.

III Any other business

Date of next meeting

3. The Joint Subcommittee would meet again when the Administration was ready with the information mentioned in paragraph 2 above.

4. There being no other business, the meeting ended at 3:28 pm.

Council Business Division 1
Legislative Council Secretariat
8 April 2011

**Panel on Development and
Panel on Administration of Justice and Legal Services
Joint Subcommittee on Amendments to Land Titles Ordinance
Proceedings of the ninth meeting
held on Thursday, 23 December 2010, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000840	Chairman Members	Election of chairman	
000841 – 002414	Administration Chairman	<p>The Administration reported that:</p> <ul style="list-style-type: none"> (a) in order to take the LTO amendment work forward, the Administration had held meetings with major stakeholders since last Joint Subcommittee meeting on 28 June 2010; (b) there were great differences in the views held by the Law Society of Hong Kong (Law Society) and other stakeholders regarding the rectification and indemnity arrangements; (c) the Law Society advocated the principle of immediate indefeasibility of title and the removal of the indemnity cap, as it believed that the mandatory rectification rule, if implemented, would undermine the certainty and reliability of the new land title registration system brought by the LTO; (d) the Law Society had been requested to advise on what additional conveyancing procedures would be induced if the mandatory rectification rule was adopted, and to consider the divergent views of other stakeholders; (e) the latest position was that the Law Society remained strongly opposed to the mandatory rectification rule and continued 	

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		<p>to call for the adoption of the immediate indefeasibility principle. As an alternative, the Law Society was prepared to accept limited discretion by the Court to rectify in favour of an innocent former owner by either retaining section 82(1) and 82(2) of LTO, or following the United Kingdom's (UK's) model under the Land Registration Act 2002;</p> <p>(f) it was necessary for the Administration to carefully consider the likely impacts of the Law Society's proposal;</p> <p>(g) the Administration had arranged the Law Society and the Heung Yee Kuk N.T. (HYK) to meet and exchange views on the rectification and indemnity arrangements;</p> <p>(h) a Land Titles Ordinance Steering Committee (LTOSC) meeting chaired by the Land Registrar (LR) was held on 16 December 2010 to examine the inter-relationship between conversion, rectification and indemnity, and the potential risks to the Land Titles Indemnity Fund (LTIF) if the mandatory rectification rule were to be removed; and</p> <p>(i) the Administration noted that although the immediate indefeasibility principle was widely practiced in other jurisdictions, none of these countries adopted an automatic conversion mechanism as currently provided for under the LTO. The proposal to replace the mandatory rectification with immediate indefeasibility had to be considered in the context of the three core elements of the LTO, i.e. conversion, rectification and indemnity.</p> <p>The Chairman asked whether the Administration had come to any policy decision after gathering views and concerns from major stakeholders, and whether the Administration</p>	

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		<p>had in mind a time-table for introducing the amendment bill to the LTO.</p> <p>The Administration responded that it respected the concerns and opinions of major stakeholders, and would continue to communicate with them with an open mind, in the hope that the major LTO amendments would be agreeable to them. At present, in view of great differences in the views of the major stakeholders, the Administration did not find it easy to arrive at an agreed course for the major LTO amendments.</p> <p>The Chairman remarked that the Administration might have misconceived the situation by trying to bring different stakeholders to come to terms. She believed that the Administration should make its policy decisions basing on sound and valid arguments after listening to all the views of major stakeholders.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none">(a) due to the strong reservation held by the Law Society towards the mandatory rectification rule, the Administration found it necessary to consider their concerns with other stakeholders with a view to properly addressing such concerns;(b) while the Administration took note of the Law Society's views regarding the definition of "fraud" and its potential implications on the solicitors' work on title checking, it would like to point out that the title register would serve as "conclusive evidence of title" under the LTO;(c) the Administration had carefully examined the Joint Subcommittee's concerns on determination of land boundaries and their complex legal and policy implications. Relevant stakeholders were consulted at the	

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		<p>Cadastral Survey Consultative Committee meeting in August 2010. Their views remained diverse; and</p> <p>(d) to avoid complicating matters, the Administration considered it more appropriate to examine the issues relating to the determination of land boundaries as a separate exercise from the amendment of the LTO. Under this approach, the momentum for taking forward both exercises would be sustained.</p>	
002415 – 003354	Mr Albert HO Chairman	<p>Mr Albert HO commented that there had been adequate discussions on relevant issues over the years. Unless the Administration had come to a policy decision, the work to prepare for the implementation of the LTO would drag on indefinitely.</p> <p>The Chairman commented that:</p> <p>(a) while the LTO was enacted in 2004, the Administration had subsequently proposed a lot of changes to it and stakeholders had also raised their areas of concern, thereby bringing up complicated matters and making further deliberations by the Joint Subcommittee necessary;</p> <p>(b) the purpose of setting up the Joint Subcommittee was to enable members to have a better understanding of the highly complicated LTO and issues identified in the post-enactment review, so as to facilitate the legislative process for the future LTO amendment bill;</p> <p>(c) she was concerned that although the Administration had collected a great deal of views from relevant stakeholders, it appeared to her that the Administration had not decided on the way ahead; and</p>	

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		<p>(d) she enquired whether the Administration had already formulated a concrete plan for the LTO amendment bill.</p> <p>The Administration responded that:</p> <p>(a) it was necessary to carefully consider the amendments to LTO and the consequential amendments in great detail in order to address the diverse views of major stakeholders in the key areas; and</p> <p>(b) amendment work on other non-controversial aspects was in progress.</p> <p>The Chairman asked whether it was possible for the Administration to draw up a list showing details of the progress of the Administration's amendment work in areas:</p> <p>(a) which were technical, straightforward and not controversial; and</p> <p>(b) which had drawn diverse views and concerns from major stakeholders and therefore could not proceed smoothly.</p> <p>The Administration replied that it would be able to draw up such a list.</p> <p>In response to the Chairman's enquiry, ALA6 said that through lengthy discussions he had reached some understanding with the Land Registrar's Legal team on some proposed technical amendments to the LTO.</p>	<p>Administration to take follow-up</p>
<p>003355 – 005254</p>	<p>Mr Paul TSE Chairman The Administration</p>	<p>Mr Paul TSE said that:</p> <p>(a) he was disappointed with the poor progress of the Administration's work in relation to the LTO, and would like to find out causes of the delay;</p>	

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		<p>(b) he noted that land titles registration systems had been rolled out successfully in some jurisdictions including UK for quite some years. Problems which worried major stakeholders in Hong Kong should have already surfaced in these jurisdictions;</p> <p>(c) he wished to ascertain whether the LTO could be implemented by stages, leaving areas such as lands in the New Territories for implementation at a later date;</p> <p>(d) as it was not possible for the proposed amendments to LTO to gain the consent of every stakeholder, the Administration should demonstrate the will and courage to take decisive steps forward; and</p> <p>(e) he stressed that the existing deeds registration system requiring solicitors to go through previous transaction records was causing plenty of wastage of resources.</p> <p>The Chairman said that:</p> <p>(a) the Administration and major stakeholders including the Law Society had attributed the delay of the LTO amendment work to different causes;</p> <p>(b) the Administration had stated repeatedly that the main hurdle was the Law Society's change of its stance on the mandatory rectification rule at this stage. The Law Society held that unless the mandatory rectification rule was removed, to safeguard their clients' benefits, solicitors would have to check through all land transaction records. This would defeat the original purpose of LTO aiming at simplicity and efficiency;</p> <p>(c) a major difference between the land title registration systems of UK and Hong Kong was that the former system did not impose a cap on indemnity;</p>	

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		<p>(d) what made the LTO system complicated in Hong Kong was the inter-relationship between the three core components, i.e. conversion, rectification and indemnity;</p> <p>(e) towards the end of 2009, the Secretary for Development (SDEV) had indicated strongly the Government's determination to take the LTO forward by committing to introduce appropriate financial measures where necessary to meet the potential liabilities arising from conversion to the land title registration system; and</p> <p>(f) whether LTO could be implemented counted largely on the Administration's will to take a policy decision in the face of divergent views.</p> <p>The Administration responded that given the divergent views of stakeholders, it was not possible for the Administration to work out a realistic timetable for the amendment bill of the LTO at this stage.</p> <p>The Chairman said that given the existing progress of the Administration, it might not be possible for the future Bills Committee to complete the scrutiny of the amendment bill before the end of the current term of the Legislative Council in 2012.</p>	
005255 – 005951	Mr Abraham SHEK Chairman Administration	<p>Mr Abraham SHEK commented that:</p> <p>(a) he was disappointed that the Administration had failed to honour its promise to the then Bills Committee in 2004 to carry out a thorough post-enactment review on LTO;</p> <p>(b) it was irresponsible for the Administration to set a cap on indemnity since it would give rise to a lot of problems in future; and</p> <p>(c) it was the responsibility for Members to monitor the work of the Administration and point out any inadequacy.</p>	

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		<p>The Chairman remarked that:</p> <ul style="list-style-type: none"> (a) the Joint Subcommittee might have to write to SDEV at a later stage to air members' concerns on the Administration's progress; (b) she was worried that due to various reasons, the legal profession sector would lose out experienced and capable solicitors to deal with conveyancing cases down the years, and this in turn might affect smooth implementation of the LTO; (c) the setting of the indemnity cap at \$30 million might have to be reviewed later, given the substantial increase in property prices over the years; and (d) the Administration should note that in future the major stakeholders mostly affected by the implementation of the LTO or otherwise would be the whole lot of property owners in Hong Kong. <p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) the indemnity cap was one of the issues the Administration had to consider; and (b) given the inter-relationship of conversion, rectification and indemnity, it was necessary for the Administration to examine the implications of different proposed changes on LTO as a whole. 	
005952 – 010039	Chairman	<p>The Chairman commented that it was most important for Members and the Administration to ensure that LTO would be implemented in manners truly beneficial to the Hong Kong public.</p>	

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010040 – 010055	Chairman	Date of next meeting: The Chairman suggested that the Joint Subcommittee should meet again when the Administration had drawn up an updated list on LTO amendments as mentioned above.	

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