

立法會
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(These minutes have been
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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 26 February 2013, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Dr Hon Kenneth CHAN Ka-lok
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, JP
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen

**Member
absent** : Hon Kenneth LEUNG

**Public Officers : Item III
attending**

Miss Emma LAU
Judiciary Administrator

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Mr Esmond LEE
Deputy Judiciary Administrator (Development)

Mrs Sylvia LAM
Project Director
Architectural Services Department

Mr WU Chung-kei
Chief Project Manger
Architectural Services Department

Mr CHUNG Ming-cheong
Senior Architect
Architectural Services Department

Hong Kong Bar Association

Ms Liza Jane CRUDEN

Item IV

Miss Emma LAU
Judiciary Administrator

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Ms Catherine LEE
Chief Systems Manager (Project Management Office)
Judiciary Administration

Hong Kong Bar Association

Mr Jeremy CHAN

Item V

Law Reform Commission of Hong Kong

Mr Stephen WONG Kai-yi
Secretary

Mr Edward CHAN, SC
Chairman
Sub-committee on Adverse Possession

Mr Michael YIN
Member
Sub-committee on Adverse Possession

Ms Cathy WAN
Secretary
Sub-committee on Adverse Possession

Hong Kong Bar Association

Mr Benjamin CHAIN

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Cindy CHAN
Senior Council Secretary (4)2

Ms Rebecca LEE
Council Secretary (4)2

Ms Mandy WAN
Administrative Assistant (4)1

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The Chairman offered her condolence to family members of the nine Hong Kong people died in a hot-air balloon accident in Egypt earlier today.

I. Information paper(s) issued since the last meeting

2. Members noted that no information paper had been issued since the last meeting.

II. Date of next meeting and items for discussion

[LC Paper Nos. CB(4) 430/12-13(01) and (02)]

3. Members noted that in respect of the review of the Professional Indemnity Scheme ("PIS") of The Law Society of Hong Kong ("the Law Society"), the Law Society had submitted to the Panel its fourth report of the PIS Review Working Group on 16 July 2012. In its fourth report, the Law Society concluded that cover would continue to be provided to its members under the PIS and the PIS Review Working Group be dissolved as the review had been completed. In this regard, the Chairman suggested removing the item "Professional Indemnity Scheme of the Law Society of Hong Kong" from the Panel's list of outstanding items for discussion [LC Paper No. CB(4) 430/12-13(01)]. Members agreed.

4. Members agreed to discuss the following item at the next regular meeting scheduled for 26 March 2013 at 4:30 pm -

Role of the Hong Kong legal profession in the development of Qianhai Bay Economic Zone

(Post meeting note: At the request of Hon Gary FAN [LC Paper No. CB(4)496/12-13(01)] and with the concurrence of the Panel Chairman, a new item on the issue of "Establishing an independent mechanism to review the decisions of The Ombudsman" was added to the agenda for the March meeting.)

III. Relocation of the Court of Final Appeal to the site of the former Legislative Council Building

[LC Paper Nos. CB(4) 425/12-13(01) and (02)]

5. Deputy Judiciary Administrator (Development) ("DJA (Development)") made a powerpoint presentation on the Judiciary's project to relocate the Court of Final Appeal ("CFA") to No. 8 Jackson Road ("the project"), details of which were set out in the Judiciary Administration's paper [LC Paper No.

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CB(4)425/12-13(01)] and in the powerpoint presentation materials issued to members vide LC Paper No. CB(4)447/12-13(01) on 27 February 2013. Subject to members' views, the Judiciary planned to consult the Public Works Subcommittee ("PWSC") and the Finance Committee ("FC") of the Legislative Council ("LegCo") on 13 March 2013 and 3 May 2013 respectively. Subject to FC's funding approval, conversion works for the future CFA building were expected to commence in May 2013 for completion in March 2015.

Views of the Hong Kong Bar Association

6. Ms Liza Jane CRUDEN of the Hong Kong Bar Association said that the Bar Association would continue to monitor the project and would welcome the continuous consultation as the project developed.

Discussion

7. Ms Cyd HO said that it was not appropriate to completely restore the building on No. 8 Jackson Road to its earliest condition as the Supreme Court, Ms HO was of the view that consideration should be given as to how the history of constitutional development and the development of democracy, during the quarter of a century when LegCo was accommodated in the building (from 1985 to 2011), should be recorded and shown to the public. Ms HO expressed opposition to the demolition of the two public galleries in the former LegCo Chamber, as this was the place where members of the public witnessed important events and historical moments. If this could not be done, at least one of the two public galleries should be retained. Ms HO also suggested that the pantry on the ground floor of the building previously used for detaining persons before the arrival of law enforcement officers should be retained, as some of these detainees had and might become important public figures in Hong Kong.

8. Judiciary Administrator ("JA") responded that apart from conserving the existing building fabrics, another major consideration of the Judiciary in implementing the project was to make alterations or additions to meet the operational needs of the Judiciary. On the suggestion of retaining at least one of the two public galleries in the former LegCo Chamber, JA said that to do so would mean that public seats at the large courtroom would be located higher than the judges' bench at the large courtroom, which was not fit for the purpose of the Court.

9. Ms Starry LEE said that as the future CFA building was a building of great historical value and interest, it should be opened to the public as much as possible. For instance, consideration should be given to allowing members of

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the public to access to the verandah on the first floor and the roof terrace on the second floor outside the former Dining Hall of the building, to enable appreciation of the building from the best angle. The Chairman expressed similar views.

10. JA responded that it was the Judiciary's intention to open as much as possible the future CFA building to the public, provided that the functioning of the Court would not be adversely affected. JA further said that in the future CFA building, two galleries would be set up, one for exhibits relevant to the Judiciary, and the other in connection with the history of architectural development of the building. The Judiciary was presently working out details of the guided tours which would focus, amongst others, on areas of architectural interest within the building. On the suggestion of opening the verandah on the first floor of the building to the public, JA said that it was the Judiciary's plan to open part of the verandah to the public. The Judiciary was presently studying the required additional safety measures along the verandah before it could be open to the public.

11. As to the suggestion of opening the roof terrace on the second floor outside the former Dining Hall of the building to the public, DJA (Development) responded that there was no plan to do so having regard to management consideration. DJA (Development) pointed out that the roof terrace on the second floor of the building was not accessible to the public when LegCo was accommodated in the building.

12. Ms Starry LEE urged the Judiciary Administration to incorporate, in its design of the future CFA building, public access to the verandah on the first floor and the roof terrace on the second floor outside the former Dining Hall of the building.

13. Mr NG Leung-sing expressed support for the project. Mr NG then asked the following questions -

- (a) apart from the seats in the courtrooms, what other facilities for the public and the press would be provided in the future CFA building;
- (b) what was the justification for providing printing rooms in the future CFA building, as the printing jobs could be carried out by the Government Printer and/or outside contractors; and
- (c) whether there would be a dedicated fund for maintaining the building features of the future CFA building with heritage value.

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14. JA responded as follows -

- (a) ample waiting areas with sufficient seats would be provided in the court lobby and registry counter. A press room would also be provided for use by reporters to better serve the needs of the media;
- (b) the printing rooms would be used to place photocopiers to meet the operational needs of the Court; and
- (c) the annual recurrent expenditure of the future CFA building would include the annual maintenance fee for carrying out heritage preservation of the building.

15. Mr Alan LEONG shared the views of Ms Cyd HO that members of the public should be informed that the future CFA building was used by LegCo for 25 years. Mr LEONG suggested that a useful starting point might be to identify the major events and historical moments and then consider the contents of such information for visitors of guided tours. Mr LEONG requested the Judiciary Administration to provide a response on this in its funding proposal to the PWSC and the FC. JA agreed to convey Mr LEONG's views to the Judiciary for consideration.

16. Mr YIU Si-wing noted that subject to FC's funding approval, conversion works for the future CFA building were expected to commence in May 2013 for completion in March 2015. Mr YIU queried whether such a timeframe was sufficient, having regard to the scale and scope of the project.

17. Project Director, Architectural Services Department responded that the Administration was confident that the project could be completed within the planned timeframe.

18. In response to Mr YIU Si-wing's enquiry on when the CFA could relocate to No. 8 Jackson Road, JA said that the relocation was expected to take place in the second half of 2015 provided that the project could be completed in March 2015 as planned.

19. Mr Dennis KWOK enquired about the seating capacity for the public in the large courtroom. JA replied that about 50 seats for the public would be provided in the large court room.

20. Mr Dennis KWOK expressed concern that the 50-odd seating capacity for the public in the large courtroom would be inadequate if the case being heard was a high-profile one.

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21. JA responded that should the large courtroom be unable to accommodate members of the public and the press in the event of high-profile court cases, live broadcast of the court proceedings would be provided in the small courtroom and in the court lobby.

22. Mr Dennis KWOK said that due to the poor acoustic in the courtrooms of the existing CFA building, members of the public attending court hearings had difficulty in following what was going on. Mr KWOK hoped that such a problem would not happen in the future CFA building.

23. JA responded that an acoustics expert had been engaged to study the acoustics of the two courtrooms. The design was intended to allow all parties attending court hearings at the future CFA to hear clearly what was exchanged in the courtrooms without the need of using earphones.

24. Mr Dennis KWOK asked whether the library in the future CFA building would be opened for use by legal practitioners handling the cases being heard by the CFA. JA replied in the affirmative, as practised in the existing CFA building.

Conclusion

25. The Chairman concluded that the Panel had no objection to the Judiciary Administration submitting the project to the PWSC for endorsement and the FC for approval. The Judiciary Administration was however requested to provide response to the following views raised by members in its submission to the PWSC and the FC -

- (a) at least one of the two public galleries in the former LegCo Chamber should be retained, to preserve the history of LegCo which was accommodated in the building on No. 8 Jackson Road for over a quarter of a century;
- (b) it was not appropriate to completely restore the building on No. 8 Jackson Road to its earliest condition as the Supreme Court, as it would have the effect of wiping out an important part of the history of constitutional development and the development of democracy during the quarter of a century when LegCo was accommodated in the building;
- (c) the pantry on the ground floor of the building should be retained, and its previous use to detain persons (e.g. those ordered to leave

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the LegCo Chamber public galleries before the arrival of law enforcement officers) could be included in the guided tour information for visitors of the building; and

- (d) members of the public should be given access to the roof terrace on the second floor outside the former Dining Hall of the building on weekends and Sundays, to enable appreciation of the building from the best angle.

(Post-meeting note: The Judiciary's response was included in its submission to the PWSC.)

IV. Implementation of Projects under the Information Technology Strategy Plan of the Judiciary

[LC Paper No. CB(4)430/12-13(03)]

26. Ms Catherine LEE, Chief Systems Manager of Judiciary Administration ("CSMJA"), made a powerpoint presentation on the Judiciary's Information Technology Strategy Plan ("ITSP") and Six-year Action Plan (the first phase of the ITSP from 2013-2014 to 2018-2019), details of which were set out in the Judiciary Administration's paper [LC Paper No. CB(4)430/12-13(03)] and in the powerpoint presentation materials issued to members vide LC Paper No. CB(4)447/12-13(02) on 27 February 2013. Subject to members' views, the Judiciary Administration planned to seek funding approval from FC of LegCo in May 2013. Subject to FC's funding approval, implementation of the Six-year Action Plan was expected to commence in July 2013 for completion in June 2019.

Views of the Hong Kong Bar Association

27. Mr Jeremy CHAN said that the Bar Association had given its views and suggestions to the Judiciary during the consultation session held with stakeholders. He was pleased to note that a number of the suggestions made had been incorporated into the Judiciary's ITSP which included provision of free wireless Internet access service outside the courtrooms, electronic service for submitting documents electronically to the Judiciary, and facilities for the use of electronic court bundles in court hearings. The Bar Association would be willing to share its experience with the Judiciary in the implementation of the ITSP.

Discussion

28. Mr Charles Peter MOK said that Ms Emily LAU, Mr Dennis KWOK and he had met with the representatives from the Judiciary Administration earlier to learn in detail the project initiatives and the arrangements for the implementation of the ITSP and exchange views on the implementation of the ITSP, in particular the Six-year Action Plan. He understood that the Judiciary received positive support from both internal and external stakeholders during the consultation with stakeholders. Overall, he agreed to the Judiciary's adoption of a building block approach that foundation components which included standardized data structure and integrated data architecture with stringent security measures would be implemented first, followed by the rolling-out of the application systems by phases at various levels of courts and tribunals. According to the Judiciary, upon completion of the implementation, electronic services would be introduced to enable court users and the public to interact with the Judiciary in a more convenient fashion. Noting that there was a need to safeguard the confidentiality of the court case records, he accepted that the Judiciary's information technology infrastructure and systems should be separate from that of the centralized system of the Government. He expressed support to the ITSP and the Six-year Action Plan of the Judiciary.

29. Apart from the provision of IT infrastructure and facilities, Mr Charles Peter MOK enquired whether the Judiciary Administration had any plans for the future deployment of manpower in support of the operation of various IT systems. JA replied that recurrent and non-recurrent staff costs had been included in the funding proposal for the purposes of system maintenance, promotion of the use of information technology and electronic services, and rendering assistance to users of the self-help centres in future.

30. Mr Steven HO noted that the integrated court case management system would be implemented for the CFA, the High Court ("HC"), the District Court ("DC"), the Magistrates' Courts ("MC") and the Small Claims Tribunal ("SCT") under the Six-year Action Plan, whilst that for the remaining courts and tribunals including the Labour Tribunal would be implemented from 2019-2020 onward. For the benefit of the employees, he considered it important to include the Labour Tribunal in the Six-year Action Plan in view of the substantial number of labour disputes including wage claims processed in the Labour Tribunal each year.

31. JA responded that under the ITSP, the existing 62 court-related and non-court related application systems at all levels of courts and tribunals were to be replenished by latest technologies. In view of the project scope and the outcome of risk assessment, the logical grouping and prioritization of the

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implementation of the Six-year Action Plan for the courts and tribunals were worked out having regard to the anticipated benefits and current pressure points. The Judiciary's plan was to implement the integrated court case management system for the DC and the Summons Courts of the MC during the first three years of the Six-year Action Plan so that the experience gained would serve as a reference for the implementation of the respective system for the CFA, HC, SCT and the Non-summons Courts of the MC. She explained that:

- (a) the litigation procedures in the DC were similar to those in the HC. Hence, the implementation experience gained in the DC in the first three years would be useful for the implementation in the HC;
- (b) as the cases processed at the Summons Courts of the MC were large in number and one of the parties to the litigation comprised mainly institutional court users, there would be great benefit brought about by implementing the respective system for the Summons Courts as the first step; and
- (c) as the litigation processes adopted in the Labour Tribunal were less complicated and IT systems had been put in place in support of its operation, it would be more appropriate to implement the integrated court case management system for the Labour Tribunal during the second phase implementation of the ITSP.

32. Mr Steven HO suggested that although the Labour Tribunal was to be included in the second phase implementation of the ITSP, the Judiciary should seek to commence some preparatory work for the Labour Tribunal under the Six-year Action Plan. In reply, JA assured members that to expedite the implementation of the rest of the project initiatives in the ITSP, the Judiciary planned to commence appropriate preparatory work for the remaining courts and tribunals in the implementation of the Six-year Action Plan as early as possible.

Funding proposal

33. Mr YIU Si-wing noted that an amount of \$386,763,000, representing more than half of the estimated non-recurrent expenditure over a six-year period from 2013-2014 to 2018-2019, was earmarked for the procurement of software and implementation services respectively (as referred to in paragraph 21(b) and (c)). He sought further clarification from the Judiciary as to what particular items would be included in terms of the software and implementation services.

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34. CSMJA elaborated that it was the Judiciary's plan to outsource some of the projects of the Six-year Action Plan through tendering. According to the Six-year Action Plan, the Judiciary would have to procure the necessary software and the relevant users' licence for the use and maintenance of the IT systems, whilst the contractors would, under the implementation services, be responsible for the development and delivery of the integrated court case management system and various application systems for the Judiciary.

Courtroom facilities

35. Mr Steven HO expressed concern that although the Judiciary sought to equip the courtrooms with appropriate IT infrastructure and equipment, there was a lack of courtroom facilities in place for the protection of the privacy of victims/witnesses of sexual offence cases.

36. The Chairman shared the same view. She pointed out that some women organizations had expressed similar concern to her recently and would make submission to the Panel. She urged that the Judiciary should take into account the views and particular suggestions made by members and the public, and make corresponding improvement to courtroom facilities.

37. Members noted that the Judiciary Administration and the Security Bureau had submitted to the Panel information on the measures that were available for adoption by the court during judicial proceedings where protection of the victims of sexual offence cases was required, and the measures adopted by the Hong Kong Police Force in the investigation of sexual violence cases [LC Paper Nos. CB(4)439/12-13(01) and (02)]. JA responded that the Judiciary had put in place various measures to ensure that the victims of sexual offence cases could have the necessary privacy and protection during the court proceedings, such as admission of video recorded evidence, permission for giving evidence by way of a live television link, and provision of screen to be placed around the victim during the related proceedings. She welcomed further suggestions from members on the related provisions and arrangements.

Conclusion

38. The Chairman concluded that the Panel had no objection to the Judiciary Administration submitting the project to the FC for approval.

V. Law Reform Commission's Consultation Paper on Adverse Possession

[LC Paper No. CB(4)398/12-13(01) and CB(4)440/12-13(01)]

39. Mr Edward CHAN, Chairman of the Sub-committee on Adverse Possession of the Law Reform Commission, made a powerpoint presentation on the Consultation Paper on Adverse Possession ("the Consultation Paper"), details of which were set out in the executive summary of the Consultation Paper [LC Paper No. CB(4)398/12-13(01)] and in the powerpoint presentation materials issued to members vide LC Paper No. CB(4)447/12-13(03) on 27 February 2013. The main recommendations of the Consultation Paper were as follows -

- (a) the existing provisions on adverse possession should be retained;
- (b) the law of adverse possession should be recast under the prospective registered land system. Many common law jurisdictions, such as the United Kingdom and New Zealand adjusted their law of adverse possession under their registered land system;
- (c) when a registered title regime was in place, adverse possession alone should not extinguish the title to a registered estate. Although the rights of the registered owner would be protected, such protection would not be absolute. Under the proposed scheme -
 - (i) the person in adverse possession (also referred to as a "squatter") of registered title would only have a right to apply for registration after 10 years' uninterrupted adverse possession;
 - (ii) the registered owner would be notified of the squatter's application and would be able to object to the application;
 - (iii) if the registered owner failed to file an objection within the stipulated time, then the adverse possessor would be registered;
 - (iv) if the registered owner objected, the adverse possessor's application would fail unless he could prove either –

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- it would be unconscionable because of an equity by estoppel for the registered owner to seek to dispossess the squatter and the circumstances are such that the squatter ought to be registered as the proprietor; or
 - the applicant was for some other reason entitled to be registered as the proprietor of the estate; or
 - the squatter had been in adverse possession of land adjacent to his own under the mistaken but reasonable belief that he was the owner of it; and
- (v) if the squatter was not evicted and remained in adverse possession for two more years, then the squatter would be entitled to make a second application, and the matter could be referred to the adjudicator for resolution;
- (d) the Government should step up efforts to address the boundary problem in the New Territories, which should best be dealt with together and in the context with the implementation of the Land Titles Ordinance (Cap. 585);
- (e) in relation to a mortgagee's right to take possession of a mortgaged property vis-à-vis the mortgagor, legislation should be passed to spell out clearly that the limitation period starts to run from the date of default of the mortgagor's obligations; and
- (f) there was no need to change the law of adverse possession on "Tso" land.

40. Mr Edward CHAN further said that the recommendations in the Consultation Paper were intended to facilitate discussion and did not represent the final views of the Sub-committee.

Views of the Hong Kong Bar Association

41. Mr Benjamin CHAIN said that Bar Association welcomed a review of the law of adverse possession. The Bar Association was studying the recommendations of the Consultation Paper and had yet to come up with a stance on the matter.

Discussion

42. Dr Anne CHIANG asked about the origin of the law of adverse possession and what was the justification for the law.

43. Mr Michael YIN, member of the Sub-committee on Adverse Possession of the Law Reform Commission, responded as follows -

- (a) adverse possession was the process by which a person could acquire proprietary rights to someone else's land by continuously occupying it in a way inconsistent with the right of its owner. If a squatter continued to occupy the land, and the owner did not exercise his right to recover it by the end of a prescribed period, the owner's remedy of recovering possession from the squatter as well as his proprietary rights over the land were extinguished. When this should have happened, there would not be anybody capable of challenging the squatter's right to remain in possession of the land and hence, the squatter became the new owner. This common law concept was enshrined in the Hong Kong law after Hong Kong came under the British rule in 1841; and
- (b) the main justification for adverse possession was to protect squatters who had long uninterrupted possession of a land from stale claims and to encourage owners not sleep on their rights. This was because with the passage of time, it would become more and more difficult to investigate the circumstances in which a possession commenced and continued. Therefore, the policy was that a fixed period should be prescribed for the sake of certainty.

44. Dr Anne CHIANG opined that it was questionable whether the law of adverse possession still remained valid, as land in Hong Kong was scarce and valuable. Dr CHIANG asked whether a person would become the owner of a property by adverse possession, if the property was given to him for occupation by his parent in the absence of any tenancy agreement or payment of money and the person had incurred expenditure to improve the property. Mr Edward CHAN responded that the person could not take possession of the property by adverse possession as his occupation of the property was on the permission of his parent.

45. Mr Michael TIEN asked whether under the proposed scheme referred to in paragraph 39(c) above, it would become more difficult for a squatter to acquire title of the property by means of adverse possession in that the registered owner would be notified of the squatter's application to acquire the

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title of the property and the squatter's application would fail should the registered owner object.

46. Mr Edward CHAN responded that the proposed scheme would confer greater protection on registered owners against the acquisition of title by means of adverse possession. Mr CHAN further said that the proposed scheme was meant to deal with the registered land title system, which gave state guaranteed titles, when the Land Titles Ordinance (Cap 585) became effective.

47. Mr Ronny TONG opposed to the proposed scheme as it was at variance with the principles of common law to protect squatters who had long uninterrupted possession of a land from stale claims and to encourage owners not sleep on their rights. Mr TONG further said that to his understanding, squatters were generally people of little or meagre means, whereas this was not the case for owners. Mr James TO and Mr LEUNG Kwok-hung expressed similar views.

48. Mr Edward CHAN reiterated that the proposed scheme was meant to deal with the registered land title system, which gave state guaranteed titles, when the Land Titles Ordinance (Cap 585) became effective. In future, when a registered title regime was implemented in Hong Kong, the unqualified application of adverse possession principles to a registered title regime could not be justified. If the system of registered titles was to be effective, those who registered their titles should be able to rely upon the fact of registration to protect their ownership except where there were compelling reasons to the contrary. Registration should of itself provide a means of protection against adverse possession, though it should not be unlimited protection. Mr CHAN further said that the proposed scheme was identical to that implemented in the United Kingdom.

49. Mr YIU Si-wing said that the existing law of adverse possession enshrined in the Limitation Ordinance (Cap. 347) should be amended or removed to prevent unscrupulous people from using the law to take over properties from their rightful owners. Mr YIU further said that as existing legislation provided that a piece of government land would become the occupant's property after it had been continuously occupied for 60 years, the same time period should be provided for private land.

50. Mr Edward CHAN responded that the main justification for the law of adverse possession was explained in paragraph 43(b) above and further elaborated in Chapter 2 of the Consultation Paper. Mr CHAN further said that to amend the time limit to bring legal action to recover private land from the existing 12 years to a longer time could not take effect overnight, as such a

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change must allow for transitional arrangements. Mr CHAN pointed out that the amendment to the Limitation Ordinance to amend the time limit to bring action to recover private land from 20 years to 12 years was last made in 1991.

51. The Chairman invited the Sub-committee on Adverse Possession to consider the views of Heung Yee Kuk on the Consultation Paper [LC Paper No. CB(4)440/12-13(01)]. The Chairman further asked the following questions –

- (a) whether a tenant who occupied a property without paying rent for a long stretch of time would be able to possess the property by adverse possession under the existing deeds registration system under the Land Registration Ordinance (Cap 128);
- (b) whether consideration should be given to providing a shorter time limit to bring legal action to recover private land in the urban areas than in the New Territories, having regard to the boundary problem in the New Territories; and
- (c) when the Land Titles Ordinance would come into operation.

52. Mr Edward CHAN responded that the Sub-committee would consider the views of the Heung Yee Kuk. On the questions raised by the Chairman, Mr CHAN responded as follows -

- (a) whether a tenant who occupied a property without paying rent for a long stretch of time would be able to possess the property by adverse possession under the existing deeds registration system under the Land Registration Ordinance (Cap 128) had not been tested in the Court. It should however be pointed out that in *Wong Tak Yue v Kung Kwok Wai & Another*, the Court of Final Appeal held that, after the termination of the lease, a squatter's intention to pay rent to the owner would destroy the necessary intention to possess;
- (b) it would be up to the legislature to decide what time limits should be set in order to strike a proper balance between safeguarding the rights of owners and that of the claims made by squatters; and
- (c) he envisaged that the Land Titles Ordinance would not become effective in the foreseeable future.

53. Mr Dennis KWOK expressed concern that the great majority of the recommendations made by various Sub-committees of the Law Reform

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Commission ("LRC") had not been implemented by the Administration. Mr KWOK urged the Administration to provide responses as to when these recommendations could be implemented; and if not, why not.

54. The Chairman said that as stated in the list of items for discussion by the Panel, a report on the progress of the Administration's implementation of LRC's recommendations was planned for submission to the Panel in the 2nd quarter of 2013.

Conclusion

55. The Chairman thanked members of the Sub-committee on Adverse Possession for attending the meeting. The Chairman further said that the deadline of the Consultation Paper would end on or before 15 March 2013.

VI. Any other business

56. There being no other business, the meeting ended at 6:50 pm.

Council Business Division 4
Legislative Council Secretariat
10 May 2013