

**立法會**  
**Legislative Council**

LC Paper No. CB(4)264/14-15(05)

Ref : CB4/PL/AJLS

**Panel on Administration of Justice and Legal Services**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 22 December 2014**

**Law Reform Commission's  
Consultation Paper on Adverse Possession**

**Purpose**

This paper gives an account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the Law Reform Commission ("LRC")'s Consultation Paper on Adverse Possession ("the Consultation Paper").

**Background**

The doctrine of adverse possession

2. Adverse possession is the process by which a person can acquire title to someone else's land by continuously occupying it in a way inconsistent with the right of its owner. If the person in adverse possession (also referred to as a "squatter") continues to occupy the land, and the owner does not exercise his right to recover it by the end of a prescribed period, the owner's remedy as well as his title to the land are extinguished and the squatter becomes the new owner. The squatter's new possessory title cannot normally exceed, in extent or duration, that of the former owner.

The relevant law

3. The basic rules relating to acquisition of land through adverse possession are found in the Limitation Ordinance (Cap. 347) and relevant case law. Except in the case of Government land, for which the limitation period is 60 years, no

action to recover land is allowed after 12 years from the date upon which the right of action accrued. Time starts to run when the landowner has been dispossessed of his land or where he has discontinued use of his land, and the adverse possessor has taken possession of the land.

4. Despite the enactment of the Land Titles Ordinance (Cap. 585) in 2004 to provide for a title registration system (which is proof of ownership) of conveyancing in Hong Kong, the Ordinance is not yet implemented. The present system of land registration under operation in Hong Kong is a deeds registration system (which is a register of documents) governed by the Land Registration Ordinance (Cap. 128). The existing deeds registration system gives no guarantee of title. Even if a person is registered as the owner of a property, there may still be uncertainties or defects in his title to the property. Hence, title to land is relative and depends ultimately upon possession.

#### The Consultation Paper

5. On 10 December 2012, the LRC Sub-committee on Adverse Possession released the Consultation Paper making preliminary recommendations applicable to Hong Kong when a registered title regime is in place. The main recommendations are as follows:

- (a) the existing provisions on adverse possession should be retained, having regard to the situation of Hong Kong, including the existing possession based un-registered land regime, the land boundary problem in the New Territories and that the existing provisions in the Limitation Ordinance on adverse possession have been held to be consistent with the Basic Law;
- (b) the law of adverse possession should be recast under the prospective registered land system. Registration should of itself provide a means of protection against adverse possession, though it should not be an absolute protection;
- (c) when a registered title regime is in place in Hong Kong, adverse possession alone should not extinguish the title to a registered estate. The rights of the registered owner should be protected. If, for example, the registered proprietor is unable to make the required decisions because of mental disability, or is unable to communicate such decisions because of mental disability or physical impairment, then a squatter's application will not be allowed. However, such protection would not be absolute. Under the proposed scheme:

- (i) the person in adverse possession of registered title will only have a right to apply for registration after 10 years' uninterrupted adverse possession;
  - (ii) the registered owner will be notified of the squatter's application and will be able to object to the application;
  - (iii) if the registered owner fails to file an objection within the stipulated time, then the adverse possessor will be registered;
  - (iv) if the registered owner objects, the adverse possessor's application will fail unless he can prove either :
    - 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 is for some other reason entitled to be registered as the proprietor of the estate; or
    - the squatter has been in adverse possession of land adjacent to his own under the mistaken but reasonable belief that he is the owner of it; and
  - (v) if the squatter is not evicted and remains 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 "implied licence" principle should be abolished, and there should be in Hong Kong a provision to the effect that:
- "For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land";
- (e) there should not be a statutory presumption or assignment to the effect that the adverse possessor becomes liable under the covenants in the Government Lease;

- (f) 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;
- (g) 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
- (h) there is no need to change the law of adverse possession on "Tso"<sup>1</sup> land.

The consultation ran from 10 December 2012 to 15 March 2013.

### **Past discussions**

6. The Panel was briefed on the Consultation Paper at its meeting on 26 February 2013. Views and concerns expressed by members and the LRC's responses are summarized in the ensuing paragraphs.

#### Justification for adverse possession

7. Question was raised as to whether the law on adverse possession should be retained, as land in Hong Kong was scarce and valuable. Another member was of the view that the existing law on adverse possession enshrined in the Limitation Ordinance should be amended or removed to prevent unscrupulous people from using the law to take over properties from their rightful owners.

8. The LRC advised that 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 principle was that a fixed period should be prescribed for the sake of certainty.

#### Rights of owners and occupants

---

<sup>1</sup> According to paragraph 7.43 of the Consultation Paper, "Tso" is a family group owning property for the purpose of ancestral worship. "Tso" is a customary land trust and is not a legal entity.

9. Some members opposed to the proposed scheme set out in paragraph 5(c) above, as this would confer greater protection to owners against squatters who were generally people of meagre means. Moreover, 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.

10. The LRC advised that the proposed arrangement was meant to deal with the registered land title system, which gave guarantee of titles, when the Land Titles Ordinance became effective. 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. The proposed arrangement was identical to that implemented in the United Kingdom.

11. Question was raised as to 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. The LRC replied in the negative, as the person's occupation of the property was on the permission of his parent.

12. As to 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 governed by the Land Registration Ordinance, the LRC advised that this 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.

#### Time limits to bring legal action to recover land in adverse possession

13. As existing legislation provided that a piece of Government land would become the occupant's property after the property had been continuously occupied for 60 years, suggestion was made that the same statutory time limit should be applied to private land so that the occupant could only claim possession of the private property after he had continuously occupied it for 60 years.

14. The LRC pointed out that prolonging the statutory time limit for the occupants to claim possession of private property/land from the existing 12

years<sup>2</sup> could not take effect overnight, as such a change must allow for transitional arrangements.

15. As to the suggestion of imposing a shorter time limit to bring legal action to recover private land in the urban areas than in the New Territories which often had land boundary problem, the LRC responded that 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.

#### Views of the Heung Yee Kuk

16. The LRC was urged to consider the concerns/views of the Heung Yee Kuk ("HYK") on the Consultation Paper which included the following:

- (a) the existing law on adverse possession should be amended or removed to prevent unscrupulous people from using the law to take over properties from their rightful owners;
- (b) owners of land in the New Territories had difficulty in preventing adverse possession of their land, as the area of their land was vast and some of these owners had long resided overseas;
- (c) there was a need for the Government to resolve the problem of land boundary in the New Territories to prevent adverse possession disputes;
- (d) although the registered owner of a property would be notified of the squatter's application to possess the property after 10 years' uninterrupted adverse possession and the registered owner would be able to object to the application under the scheme proposed in the Consultation Paper, the owner's title to the property could not be guaranteed. For instance, it was unclear whether the squatter's application would be allowed if the squatter could not locate the whereabouts of the registered owner; and
- (e) the time limit to bring legal action to recover private land should align with that for Government land which was 60 years.

17. The LRC advised that it had received the views of the HYK on the

---

<sup>2</sup> The Limitation Ordinance was amended in 1991 to shorten the limitation period to bring action to recover private land from 20 years to 12 years.

Consultation Paper. The LRC would duly take into account the HYK's views in the course of preparing the final report on adverse possession.

### **Latest position**

18. The LRC's Report on Adverse Possession was released on 20 October 2014.

19. The LRC will brief the Panel on its Report on Adverse Possession at the Panel meeting on 22 December 2014.

### **Relevant papers**

20. A list of relevant papers is in the **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
16 December 2014

**Law Reform Commission's  
Consultation Paper on Adverse Possession**

**List of relevant papers**

Date	Meeting	Paper
26 February 2013	Panel on Administration of Justice and Legal Services	<p>Paper on "Executive Summary of the Law Reform Commission's Consultation Paper on Adverse Possession" provided by the Law Reform Commission LC Paper No. <a href="#">CB(4)398/12-13(01)</a></p> <p>Powerpoint presentation materials on "Law Reform Commission's Consultation Paper on Adverse Possession" provided by the Law Reform Commission LC Paper No. <a href="#">CB(4)447/12-13(03)</a></p> <p>Referral arising from Legislative Council Members' meeting with Heung Yee Kuk members on 21 February 2013 concerning amendments to the existing legislation on adverse possession (Chinese version only) (Restricted to members) LC Paper No. <a href="#">CB(4)440/12-13(01)</a></p> <p>Minutes of meeting LC Paper No. <a href="#">CB(4)640/12-13</a></p>