



**Panel on Development and
Panel on Administration of Justice and Legal Services
Joint Subcommittee on Amendments to Land Titles Ordinance**

**Views from the Hong Kong Institute of Surveyors on
Determination of Land Boundaries**

This paper presents the views from the Hong Kong Institute of Surveyors on the matters on determination of land boundaries which were discussed in the Joint Subcommittee meetings held 7 October 2009 and 7 December 2009.

Certainty of land boundaries is essential for good land governance

2. The Hong Kong Institute of Surveyors strongly supports the enactment of legislation for determination of land boundaries which will enable identification of the extent of land parcels with **certainty**. Knowing the exact boundaries of property is of utmost importance for protecting the rights and interests of property owners. Certainty of land boundaries is essential for the Government to carry out its duties to administer the leased and unleased land, to control land use and to formulate policy for planning and land development. Good land governance needs the support of an effective land boundary system. The legislation for implementation of determination of land boundaries is necessary for bringing certainty to the location of land parcels.

3. The Government introduced the provisions in the Land Title Ordinance (LTO) for determination of boundaries of the land registered under LTO. In response to Subcommittee Members' requests, the Government submitted a proposal to extend determination of land boundaries to the land registered under the Land Registration Ordinance (LRO). In the Joint Subcommittee meetings held on 7 October 2009 and 7 December 2009, Members raised concerns on a numbers of issues, inter alia, (1) on the changes in the descriptions of land boundary, (2) making the new plan available for public inspection and its implication for land transaction, (3) completion of checking the land



subdivision boundary plan before submission for registration. Members requested the Government to further consider the process of determination of land boundaries.

4. In order to aid the deliberation of determination of land boundaries, we would like to explain the nature of land boundaries and give our views on the concerned issues as follows.

Nature of land boundaries

5. Land boundaries are the limits of the extent of a land parcel **on the ground**. The limits can be the physical ground features which are taken as the boundary, or the limits can be the lines joining the boundary markers installed at the perimeter of the land parcel, or the limits may be situated on open ground without being marked by any visible markers but represented by numerical co-ordinates or written description.

6. The location and extent of the boundaries were agreed by the grantor and grantee when the land was granted. In most of the cases (under normal circumstance), the ground location of the land parcel was indicated by the grantor to the grantee during the land grant process. **They agreed on the ground location of the boundaries** (and the terms and conditions of land grant). The grantee took possession of the land after fulfillment of the requirements of lease terms (e.g. payment of consideration).

7. In order to record the agreement, the lease document was signed by the parties to the Contract. The lease document contains the description of the land parcel which can be in the form of words or plan. The description of the boundaries ('area' in words, 'shape' and 'location' drawn on the plan) are meant to represent the boundaries on the ground. Boundary descriptions may have different levels of accuracy. **Words and lines drawn on plan are not boundaries, they are description of the boundaries on ground.** The ground location of the boundaries as agreed by the grantor and grantee are the basis for deciding where is the land parcel and its size.



The question of change (change of boundaries or change of descriptions?)

8. For land conveyance, both the purchaser and the vendor need to understand clearly and precisely the extent of the land to be sold. The concerned parties can rely on the description in the lease document to identify the extent of the property. For those land granted many decades or even a century ago, the plan attached (or relating) to the lease (“old plan”) shows the ground situation at the time of land grant (e.g. fields for cultivation) which is different significantly from the present ground situation (e.g. buildings and roads).

9. For the general public, it is not easy to use the old plan to find out the exact location of the land. The parties may employ an Authorised Land Surveyor (ALS) to help locating the land. The ALS studies the boundary descriptions in the lease document (the old plan), locates the boundary evidence on the ground, and examines the maps and aerial photographs showing the concerned land in the past. After the investigation, the ALS will identify the boundaries on ground; and prepare a new plan showing (1) the boundaries, (2) the boundary markers placed by him at the site and (3) the present ground situation.

10. The new plan prepared by the ALS shows the same land parcel as that shown on the old plan -- it reflects the boundaries agreed by the Grantor and Grantee when the land was granted, although the quality of the old plan and the new plan may be different. (The old plan may be drawn at a small scale, whereas the new plan is drawn at a large scale and showing dimensions and coordinates with centimeter-level accuracy).

11. The boundary descriptions in the old plan and the new plan may be different slightly due to accuracy improvement of the modern measurement; however, the boundaries on the ground are exactly the same as that agreed by the grantor and the grantee. **There is no change in the boundaries on the ground, only the descriptions are improved.** The extent of the land being enjoyed by the land owner remains the same.



The relationship between the new plan and the lease

12. The old plan is part of the lease document or a relevant document as mentioned in the lease document. As explained in the previous paragraphs, both the old plan and the new plan are describing the same piece of land. For the purpose of identification of the land parcel, the lease (old plan) should be treated as the primary evidence for ascertaining the boundaries. However, in the case where the old plan is of such a small scale and that the ground situation have been changed significantly, **the new plan (together with the land survey report of the land surveyor who conducted boundary investigation) can be used as a secondary evidence to explain the meaning of the old plan and to enable the interested parties to locate the exact location of boundaries on the ground.**

13. The Government proposed that the Director of Lands is empowered to carry out land boundaries determination upon application from the land owners. It is our opinion that in the process of determination of land boundaries, the role of the Government is to decide that (1) whether the ground location of the boundaries are based on the intention of the lease, (2) whether the re-established boundaries on ground are supported by reliable boundary evidences and (3) whether the new measurements of the boundaries are conducted in according to the Code of Practice issued under the Land Survey Ordinance.

14. For those new plans which have satisfied the above three requirements, we consider that the new boundary descriptions, which are more accurate, should be used as the evidence for ascertaining the exact location of the boundaries.

15. On the question of how to deal with the difference between the boundary descriptions of the old plan and the new plan, our opinion is that the matter should be handled according to the terms and conditions of the lease of the land parcel concerned.



Proper management of the new plans

16. The new plans are the results of a thorough search and investigation of boundary evidences. We consider that **the Government should be responsible for the proper management of the new plans and the supporting evidences** so as to ensure that reliable evidences are available for ascertaining the exact location of land parcels. It is necessary for protection of the rights and interests of land owners, to facilitate the efficient operation of the land market and to perform effective management of the Government land.

17. In the countries (e.g. Australia, New Zealand, and Singapore) with title registration system in operation, the land register consists of two parts – the title register and the cadastre. The title register, under the supervision of the Registrar General, maintains the records of property ownership and information about the rights and interests. The cadastre, under the supervision of the Surveyor General, maintains the records of land boundaries.

18. We propose that the land boundary records system of the Hong Kong Title Registration System be modelled on the relevant system of the aforesaid countries. The Land Survey Authority (the Director of Lands) defined in the Land Survey Ordinance, whose function is to maintain land boundary records, should take up the responsibility to maintain the new plans prepared under the process of determination of land boundaries.

Make the better boundary descriptions available to the public

19. Under section 18 of the LTO, a plan referred to in the title register shall be treated as only indicating the approximate situation and the approximate boundaries of the registered land to which the plan relates.

20. To supplement the above limitation, we propose that **all approved land boundary information (including the new plan) should be kept by the Land Survey Authority under a land boundary record system so as to make the**



better boundary descriptions available to the public.

21. We propose that an entry, indicating the existence of land boundary records of a land parcel, should be entered in the title/land register maintained by the Land Registrar so as to inform the public and the solicitors handling the conveyance about the availability of reliable evidences for ascertaining the exact location of the land parcel.

22. We propose the Government could make reference to the Cadastral System of the Macao Cartography and Cadastre Bureau of the Government of the Macao Special Administrative Region. 75% of the granted land parcels in Macao SAR have the boundaries confirmed and the definite cadastre plans prepared. The definite cadastre plans are the evidences with legal effect for ascertaining the location and area of a property.

Ensure the land boundary plans are checked before submission for registration

23. The Government in the paper on determination of land boundaries (Para. 13, P.5 of CB(1)2675/08-09(03)) proposed that the land boundary plan for land subdivision shall be checked by the Land Survey Authority before submission of the relevant instrument to the Land Registry for registration.

24. We fully support the Government's proposal. We consider that **the existing practice of submitting the unchecked land boundary plan for registration should be discontinued.** The existing practice may cause serious consequences as rectification of a mistake in the register cannot be effected (in a practical sense) if the land is further subdivided and sold to other purchasers. The uncorrected mistake may cause dispute among subsequent vendor and purchase of the property.

25. We do not think that checking the land boundary plan may affect the critical time-path of land transaction because the checking work can be done in parallel with other conveyancing process (e.g. drafting of the conveyance).



Furthermore, the Lands Department has pledged to complete the checking work submitted under LSO within four working weeks.

Appeal mechanism

26. We proposed that an appeal mechanism be introduced to allow land owners to appeal against the decision of the Government in relation to determination of land boundaries.

The Hong Kong Institute of Surveyors
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