

**Editorial :**

## **Development of Boundary rights and registration law in Hong Kong**

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### **1 A quick review on legal settings of the Hong Kong cadastral survey system**

In Hong Kong, the developments of cadastral surveying system and the registration system are two different issues responsible by different government departments and professions. The promotion of titles registration here is led by the Land Registry whereas the improvement of cadastral surveying system is led by the Survey and Mapping Office as well as the land surveying professionals of the Hong Kong Institute of Surveyors. So far the development of the two systems has minimal interactions and integrations, nevertheless, as viewing from other developed cadastral systems, there exists a strong bonding between the two systems – land boundary rights is a significant right next to the ownership right and should be well protected under a secure titles registration system.

The main aim of the Hong Kong Titles Registration Bill is to improve the efficiency of the land register such that a transaction registered is a legal proof of title. The security of land boundary rights through registration is nonetheless a secondary aim. As informed by the Land Registrar, Mr. Kim Salkeld [2003], the government is willing not only to work on the ownership rights but also to include other information in the titles register. There are views from the public, mostly land surveyors, that the Titles Bill should contain provisions for the establishment of registered titles survey plan for all types of land grants in Hong Kong, as long as the Survey Authority accepts that.

Unlike the majority of land boundary systems in the world, Hong Kong follows the British tradition that land boundary right is one of the estates of a property registered in a deed. In case of disputes, the court follows common law practice, in particular, contract law, to make decision based on best available evidence instead of technically determine the best possible boundary. Countries with survey law usually provide a legalized procedure to technically determine land boundary matters. Hong Kong at this moment is still in the earliest design of the land boundary system. It largely depends on the administrative act of the government department to keep land boundary records. For old land boundary records that are inaccurate and even dilapidated, there is no real cure to the problems. Solution lies on the amendment of the current land survey law, and, most importantly, there is a need to update the registration law for the proper registration of current land boundary survey result.

A milestone of survey law development was made in 1996 when the Land Survey Ordinance came into operation. The law concerns land subdivisions and still lacks a mechanism to legalize a properly processed land boundary survey. While the Survey and Mapping Office is now working on the technical side of the boundary issue for the improvement on the Land Survey Ordinance [Cap.473], the impending land titles registration law renders a long waited opportunity to formally assign legal authority to a properly surveyed land boundary plan. It is utmost important to have a clause in the law to provide registration of a survey plan to all land lots in Hong Kong.

It is under such a circumstance that the editorial board decides to have a special issue on cadastral surveying and the cadastral system at large.

### **2 The content of this special cadastral issue**

This cadastral special issue invites submissions from the developed cadastral world. As Australia has experienced boundary discrepancies tracing from crude boundary surveys and records, Park

and Williamson propose that the new Hong Kong titles law should include statutory encroachment as a means to solve boundary problems. Wakker, van der Molen and Lemmen introduce the cadastral survey system in the Netherlands, which is a deeds registration system with cadastre law. It is a reference for Hong Kong in developing her own cadastral survey system.

To integrate spatial information and rights in a database with appropriate legal authority is the main theme of cadastral development. van Oosterom and Lemmen give us a major global review on the standard of cadastral domain and propose a cadastral data model using ISO and OpenGIS. Steudler, Williamson and Rajabifard illustrate the development of a cadastral template which is to be adopted during the Workshop of the Permanent Committee on GIS Infrastructure for Asia & the Pacific 2003. Both papers provide good insights for the development of cadastral database in Hong Kong, which invariably involves ownership rights, land rights, building rights, boundary rights, management rights, etc.

Tang and Lam review on the security of cadastral rights in Hong Kong land properties and state that there is a lack of protection of rights other than ownership under the Land Registration Ordinance. There is a need to strengthen the legal tie between the registration law and boundary rights as well as the cadastral surveying system.

### **3 Concluding remarks**

In summary, the papers introduce possible developmental paths for a rudimentary land boundary system like Hong Kong. The options could be the improvement of the boundary survey system itself or, following the trend of most developed countries, the building up of the cadastral system with information not only limited to tenure, but also land use, land value and all land related spatial information. That could be a long journal for Hong Kong, yet all can be started with research first.

The author takes this opportunity to thank all the authors for their contribution, to reviewers for their kind assistance, and particularly to Prof Zhilin Li, the Chief Editor, for his encouragement and support to the issue. It is wished that the readers could find insights for the development of our own surveying system.

### **Reference**

Salkeld, K [2003] Address to HKIS on the Members Forum on Land Titles Bill, Office of the Hong Kong Institute of Surveyors, 16 July 2003.