

Letterhead of THE LAW SOCIETY OF HONG KONG

CB(1) 733/00-01(03)

Our Ref : PPTY
Your Ref : CBI/BC/6/00
Direct Line :

BY FAX (28692794) AND BY POST

2 March 2001

Mrs. Mary Tang
Clerk to Bills Committee on
Land Registration (Amendment) Bill 2000 URGENT
Legislative Council
Legislative Council Building
6, Jackson Road
Central
Hong Kong

Dear Mrs. Tang,

Bills Committee on Land Registration (Amendment) Bill 2000

Thank you for your letter dated 13 February 2001 and I apologise for the delay in replying.

I regret to advise that the Society's Property Committee will need further time to consider the Bill. The Committee will consider the Bill in detail on 14 March and I trust that I shall be in a position to revert with their written comments shortly after then.

Meantime, you may be interested to know that the Committee has considered and given its views to the Land Registry before the Bill was available on the various proposals to amend the Land Registration Ordinance and the Land Registration Regulations. Attached are copies of the relevant correspondence with members of the Land Registry for your attention.

Subject to the further discussion by the Committee and to the availability of members, I believe that the Committee will wish to make oral representation to the Bills Committee on its submissions on the Bill.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

Letterhead of THE LAW SOCIETY OF HONG KONG

Our Ref : PPTY
Your Ref : (6) in LR/HQ/101/20/2
Direct Line :

BY FAX (25960281) AND BY POST

30 August 2000

Mr. A.G. Cooper
The Land Registrar
Queensway Government Offices,
28/F., 66 Queensway,
Hong Kong.

Dear Mr. Cooper,

Proposed Amendments to the Land Registration Ordinance & Regulations

Thank you for your letter dated 2 August 2000 and the briefings given by representatives of the Land Registry to members of our Property Committee on the above legislative proposals on 17 August 2000.

The Committee has since reviewed the Administration's legislative proposals in the light of what have been discussed at the briefing session and have the following comments:

1. **Property Reference Number**

The Committee appreciates that the property reference number may serve as a useful alternative retrieval key of the Land Register. However, members believe that it is important to maintain the current search system or practice whereby properties may be searched by reference to the address or the lot number.

2. **Memorial**

It is proposed that all memorial forms will be bar-coded and printed by the Land Registry. Members generally believe that it will be more effective timewise and costwise for practitioners to be able to adopt their own computer printout form. Perhaps the Land Registry can provide samples of computer printout and memorial form for implementation of the proposed changes for members' further consideration.

3. **Removal of entries of Instruments withheld or temporarily withdrawn from registration**

The Committee has already highlighted to you and your colleagues at the briefing session the problems that "deeds pending registration" can cause to affected parties, particularly when such deeds are lodged by mistake or with malice. Under the present practice, the Land Registry will in these cases return the deeds to the solicitors concerned for corrections or clarifications without keeping copies of the same. The affected parties can thus have no means to ascertain the contents of such deeds and the extent that they will affect the properties. The Committee suggests that the Land Registry should consider including provisions allowing for copies of deeds pending registration to be made available to interested parties. In view of the speed of the property transactions in the local market, the Committee will also urge the Land Registry to consider shortening the proposed one-year period to empower the Land Registrar to promptly remove entries of all instruments pending registration in appropriate cases.

Members have also discussed a case whereby a *lis pendens* has been lodged against a property (registration completed) although it is obvious and clear from the Memorial thereof that it relates to other property. In that case, the Land Registrar has confirmed that he has no power to vacate the *lis pendens*. As a result, although the entry was obviously entered wrongly through no fault of the vendor, the vendor was forced to waste much cost and time to obtain a court order to vacate its registration. The Committee suggests that the Administration should consider introducing legislative amendments to empower the Registrar to vacate any deed that is maliciously or mistakenly registered.

4. **Copy Instruments**

A proposal is made to amend the Regulations to provide for registration of *copy* documents that are certified in a manner deemed acceptable to the Land Registrar. The Committee believes that the legislation should spell out clearly what kind of certified documents are registrable and what manners of certification are satisfactory to the Land Registrar.

5. **Identification of Signing Parties in the Instruments**

While it is the usual practice that identification of the signing parties will be stated in the Instrument, making it a statutory requirement may present difficulties to the parties in certain cases.

6. **Memorial Day Book**

The Administration has proposed to exclude the names of the parties or relevant persons in the Memorial Day Book to avoid the possible misuse of such information in breach of the Personal Data (Privacy) Ordinance. However, members believe that such information provides an idea to the searcher on the nature of the Instrument involved and should not be kept from the public.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

LETTERHEAD OF LAND REGISTRAR

(9) LR/HQ/101/20/2 Pt.2

4 October 2000

The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road
Central
Hong Kong

(Attn: Ms. Christine W.S.Chu
Assistant Director of Practitioners Affairs)

Dear Ms. Chu,

Re: Proposed Amendments to the Land Registration Ordinance & Regulation

Thank you for your letter of 30 August 2000 giving us your comments on the proposed amendments.

We have reviewed your comments and would reply as follows:-

1. Property Reference Number

The current search system by reference to the address or the lot number will still be maintained. The property reference number will be an additional search key of the land register.

2. Memorial

Each memorial form has a unique bar code to secure the priority of the instruments lodged. The bar-coded memorial is also an essential means to enhance the security and the imaging quality of the new system. The Land Registry will provide samples of the bar-code memorial form to the Law Society for consideration after the forms have been prepared.

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3. **Removal of entries of instruments withheld or temporarily withdrawn from registration**

You propose that copies of deeds pending registration should be made available to interested parties. The Land Registry is of the view that as the registration of stopped deeds or deeds pending registration have not yet been completed, the stopped deeds are not public documents and the Land Registry does not have the statutory authority nor obligation to make copies of the instruments to the interest parties.

Further the proposed one-year period is a reasonable period for the lodging solicitor to have sufficient time to deal with the outstanding issues stated in the stopped deed note or arrange for rectification of mistakes by the parties.

You suggest that the Land Registrar should be empowered to vacate any deed that is maliciously or mistakenly registered. After consideration, we take the view that as the Land Registry is only a registration authority, it does not have the judicial capacity to adjudicate whether a deed is maliciously registered. If a deed is maliciously registered, the owner may apply to the Court for a court order to vacate the entry.

4. **Copy Instruments**

To allow for flexibility to accept new types of certified documents and manners of certification, the Land Registry will issue the Land Registry Circular Memorandum from time to time notifying the legal practitioners and the interested parties of any such new types of certified documents and the manner of certification.

5. **Identification of signing parties in the instruments**

The Amendment Bill only stipulates that the identification number is to be provided in the instruments where practicable. If there is difficulty, the solicitors may elect not to provide the identification. It is not a compulsory requirement.

6. Memorial Day Book

Under Regulation 12(1)(d) of the Land Registration Regulations, the nature of the instrument is an item listed in the Memorial Day Book. There is no proposal to delete this item in the Amendment Bill. The searchers may still ascertain the nature of the instrument in the Memorial Day Book after the enactment of the Amendment Bill.

Yours sincerely,

(A.G. Cooper)
Land Registrar

Letterhead of THE LAW SOCIETY OF HONG KONG

Our Ref : PPTY
Your Ref : (9) LR/HQ/101/20/2 Pt.2
Direct Line :

BY FAX (25960281) AND BY POST

21 November 2000

Mr. A.G. Cooper
The Land Registrar
Queensway Government Offices,
28/F., 66 Queensway,
Hong Kong.

Dear Mr. Cooper,

Proposed Amendments to the Land Registration Ordinance & Regulations

Thank you for your letter dated 4 October 2000 which has been considered by the Property Committee at its recent meeting.

The Committee reserve their rights to comment on the Bill when drafted. Meantime, members have the following observations:-

Memorial

The Committee shall be looking forward to receiving from you samples of the bar-code memorial form.

Removal of entries of instruments withheld or temporarily withdrawn from registration

Members note that you have responded on their concern on "*maliciously*" but not "*mistakenly*" registered deed. It is believed that should the Land Registrar not already have the statutory power to rectify mistaken entry, legislation in this regard should be introduced.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

Letterhead of THE LAND REGISTRY

In reply please quote this Ref.: (29) in LR/HQ/101/20/2 Pt.2

Your Ref.: PPTY

Tel.: 2867 8003 7 December 2000

Ms. Christine W. S. Chu,
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F Wing On House,
71 Des Voeux Road,
Central
Hong Kong

Dear Ms. Chu,

Re: Land Registration (Amendment) Bill

Thank you for your letter of 21 November 2000 with the Law Society's views on the proposed amendments.

We will send you a copy of the Bill for comments when it is gazetted. We had discussed the Bill with the Legislative Council Panel on Planning, Lands and Works on 4 December 2000. Subject to approval by the Chief Executive in Council, we now plan to introduce the Bill into the Legislative Council in January 2001. As regards the two issues raised in your letter, our views are -

1. Memorial

The samples of the bar-coded memorial form will be provided to the Law Society for consideration when the forms are prepared.

2. Removal of entries of instruments withheld or temporarily withdrawn from registration

The Law Society suggested that the Land Registrar should have power to removal "mistaken" entries. As there may be subsequently registered or unregistered interests after the registration of the "mistakenly" registered deed, the Land Registrar is really not in a

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"mistakenly" registered deed, the Land Registrar is really not in a position to adjudicate on such cases. We are of the view that the Land Registrar should not have the statutory power to rectify the "mistaken" entries.

Yours sincerely,

(Ms. May LEE)
Deputy Principal Solicitor
for Land Registrar

Letterhead of THE LAW SOCIETY OF HONG KONG

Your Ref : PPTY
Direct Line : (29) in LR/HQ/101/20/2 Pt.2

BY FAX (25960281) AND BY POST

22 December 2000

Ms. May Lee
Deputy Principal Solicitor
The Land Registry
Queensway Government Offices,
28/F., 66 Queensway, Hong Kong.

Dear Ms. Lee,

Land Registration (Amendment) Bill

Thank you for your letter dated 7 December 2000 which was considered by the Society's Property Committee at its recent meeting.

The Committee notes your view that the Land Registrar should not be given the statutory power to rectify "mistaken" entries as there may be subsequently registered or unregistered deed and the Land Registrar may not be in a position to adjudicate on such case.

With respect, the Committee fails to follow the logic of your argument for refusing for a rectification "power" to be given. It is observed that there can be 3 kinds of mistaken entries, those made by the solicitor, the Land Registry itself or other Government bodies which has lodged the registration. While there may be circumstances making it difficult for the Land Registrar to effect rectification, there can also be very obvious cases, which can be easily rectified. The Land Registrar should indeed be obliged to rectify entry mistakenly made by itself.

The Committee strongly believes that the power to rectify mistaken entries should be given to the Land Registrar and be embodied in the legislation so that in obvious and proper cases, the Land Registrar can intervene.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

LETTERHEAD OF THE LAND REGISTRY

In reply please quote this Ref.: (43) in LR/HQ/101/20/2 Pt.2
Your Ref.: PPTY
Tel.: 2867 8003

13 February 2001

Ms. Christine W. S. Chu
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F Wing On House,
71 Des Voeux Road Central,
Hong Kong.

Dear Ms. Chu,

Re: Land Registration (Amendment) Bill 2000

I refer to your letters of 22 December 2000 and 30 January 2001.

Where the Land Registry has identified errors, usually typo or clerical errors, on the land registers which are made purely by the Land Registry staff, i.e., the errors do not involve errors made in the instrument or the memorial, then the Land Registry will correct such 'mistaken entry' on the basis of the information stated in the memorial.

It is the view of the Land Registry that as it is a function of the Land Registry to register instruments affecting land under the Land Registration Ordinance, the correction of the "mistaken entries" made by the Land Registry in the above cases are ancillary to the performance of this function.

In the case of entries on the land register made as a result of the errors in the memorial or instrument by the party lodging the instrument for registration, the errors should be rectified before the Land Registry can correct the entries on the land register. In the case of errors contained in the memorial, any corrections can be made in the memorial by the lodging party under Regulation 20 of the Land Registration Regulations. In the case of errors contained in the registered instrument, a Deed of Rectification should be registered by the lodging party.

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To: The Law Society of Hong Kong

As the Land Registry is already rectifying obvious mistakes made solely by itself in proper cases, we do not consider it necessary to give the power to the Land Registrar in the Amendment Bill to correct mistaken entries.

Please also let me know whether the Law Society has any comments on the Bill as requested in my letter of 27 December 2000.

Yours sincerely,

(Ms. May LEE)
Deputy Principal Solicitor
for Land Registrar

cc. SPL (Attn: Mr. Geoffrey Woodhead, PAS/B) Fax No: 2899 2916