

Bills Committee on Land Registration (Amendment) Bill 2000

List of follow-up actions arising from discussion at the meeting on 4 May 2001

- (1) **To seek the Law Society of Hong Kong's views on the Administration's response to its submission dated 12 April 2001**

The views of the Law Society have been sought. Please refer to the letter from the Land Registry to the Law Society dated 4 May 2001. A meeting was held on 8 May 2001 with representatives from the Law Society. We have just received the written submission from the Law Society dated 15 May 2001 and we will give a reply on or before the date of the next Bills Committee Meeting.

- (2) **To provide the list of certified documents which are considered registrable by Law Society and the rationale for the Administration to accept or decline to accept registration of these documents**

The Law Society has no adverse comments on the contents of the letter of 4 May 2001 from the Land Registry so far as relating to certified copy documents. No such list has been provided by the Law Society.

(3) **To re-consider the provision for destroying or otherwise disposing of copies of plans after they have been recorded by the imaging method**

- (I) After the full operation of the colour imaging service, for an instrument with attached plans which are of A3 size or smaller, both the imaging of the instrument and the attached plans will be done internally in the Land Registry. No extra copies of the plans are required. Upon completion of the registration process including the colour imaging, the instrument together with the attached plans will be returned to the lodging party. The Land Registry will not keep any copy of the instrument nor the plans.
- (II) On the other hand, the colour imaging of plans larger than A3 size will be carried out by an external contractor and we anticipate that this will take longer than for the plans which are imaged within the Land Registry. A duplicate of any plan which is larger than A3 size is required so that the colour imaging of the instrument and such large-sized plans can be conducted separately. In this way, the entire instrument (including the large-sized plans) can be returned to the lodging party without delay once the registration is completed. After the large-sized plan is imaged, the duplicate will serve no further purpose.

(III) As regards the old copy plans referred to in the proposed Regulation 18A, they will also be imaged in colour. After imaging, they will serve no further purpose. While the provisions in the proposed Regulation 18A confer on the Land Registrar the power to destroy or dispose of these plans after colour imaging, the Land Registrar does not intend to destroy or dispose of these plans. Instant, it is intended to send these old copy plans to the Public Records Office for archival purposes.

(4) **To refine the drafting of section 63 in respect of an individual signing the instrument**

This has been updated. Please refer to the new clause in the 8th Draft Committee Stage Amendments.

(5) **To revert back to members the measures to safeguard against trespassing and unauthorized amendments to entries of the Central Registration System after these have been worked out**

(I) Central registration will be implemented through the Land Registry's new Integrated Registration Information System (IRIS). In early 2000, the Registry commissioned a consultant to conduct a Security Risk Assessment

(SRA). The key objectives of the consultancy study were to examine the security risk associated with the business operation under IRIS and to identify measures to mitigate against these risk exposures.

(II) The study gave recognition to the fact that security of the registration records, such as safeguard against trespassing and unauthorized amendments, requires the implementation of a comprehensive security programme of measures. The SRA report identified measures addressing the different aspects of security :

- Personnel Security
- Physical and Environmental Security
- Data Communications and Systems Operations Management
- Access Control
- Systems Development and Maintenance
- Business Continuity
- Compliance Checking

(III) With respect to computer system security, the measures identified in the SRA include the best practices such as the use of firewalls and intrusion

detection system to control network traffic. Within the processing workflow, examples of the security measures identified include the checking of registration entries by registration team leaders and computer audit trails to keep record of changes to registration data. Compliance checking includes measures such as penetration testing.

(6) **To seek legal advice on whether an application against a decision of the Land Registrar to withhold registration could be submitted by way of summons in chambers in addition to originating summons and petition**

(I) **The Administration's view**

The Administration takes the view that an application to court for review of the Land Registry's decision under the proposed Regulation 15A is similar to a judicial review of an administrative decision. The public should have a right to be informed about the review of such a decision. As proceedings which are heard in chambers are generally conducted in private and members of the public have no right of access to the hearings, the Administration is of the view that "summons in chambers" is not an appropriate mode of hearing under the proposed Regulation 15A.

(II) Judiciary's view

(i) Further views of the Judiciary had been sought on the proposal of instituting proceedings by way of “summons in chambers”. The advantages of the mode of application by “summons in chambers” of being simpler, quicker, and reducing cost had been put forward. The Administration’s view that an open court hearing is more appropriate for such review had also been put forward for the Judiciary’s consideration.

(ii) The views of the Judiciary are as follows –

(a) According to Rule 5 of the Rules of the High Court, Cap.4, there are four ways of commencing an action –

- (1) by writ;
- (2) by originating summons;
- (3) by originating motion; and
- (4) by petition.

(b) If the proposed Regulation 15A is amended as suggested, it will create a fifth way i.e. by way of summons in chambers, for commencing an action, which is not in line with the normal practice.

- (c) The Judiciary shared the Administration's view that these matters should be heard in open court but not in chambers. However, if achievable, a reduction of costs of litigation, will be of benefit to all concerned.
- (d) The Judiciary suggested that there should be no change to the modes of application in the proposed Regulation 15A(1). However, a compromise had been suggested that the proposed Regulation 15A(6)(b) should be amended to state that the proceedings may also be before the Registrar of the High Court in open court. As a solicitor has the right of audience before the Registrar in open court, the proposal will lead to reduction in legal costs. The openness of the hearing is also achieved. Furthermore, with a view to avoid extra costs for any intermediate appeals, the Judiciary suggested that all appeals shall lie to the Court of Appeal.

(III) The Administration considers that the suggested compromise is acceptable.

Suggested amendments to the Bill are as follows –

- (i) In proposed Regulation 15A(6), delete “this regulation” and substitute with “paragraphs (1) and (3)”;
- (ii) In the proposed Regulation 15A(6)(b), delete “sitting” and substitute with “, or Registrar of the High Court, sitting in open court”;
- (iii) Addition of a new Regulation 15A(7) :–

“(7) A person aggrieved by an order referred to in paragraph (3)

(including any costs and expenses to which the order relates)

may appeal to the Court of Appeal against the order.”