

Bills Committee on Land Registration (Amendment) Bill 2000

INTRODUCTION

A

The purpose of this paper is to respond to the queries raised by the Legal Adviser to the Legislative Council in his letter of 12 January 2001 (English copy at Annex A) concerning the Land Registration (Amendment) Bill 2000 (the Amendment Bill).

Sections 53 and 56 of the Schedule : New Territories Ordinance (Cap. 97)

2. These sections relate to the repeals of section 10 and 11 of the New Territories Ordinance and the New Territories (Land Registries Approval) Order. The policy intent behind the repeals is to implement the Central Registration System (CRS) for the Land Registry (paragraphs 3-6 and 13 of the Legislative Council Brief on the Amendment Bill refer).

3. Under the CRS, all instruments will be registered at one central registration office at the Queensway Government Offices. This being the case, references in all legislation to registration at New Territories Land Registries or District Land Registries (where, under the current system, instruments for land in all New Territories District are registered in the respective New Territories Land Registries or District Land Registries) will no longer be appropriate and will need to be repealed. Sections 53 and 56 of the Schedule do this in respect of the New Territories Ordinance. The places referred to in the New Territories (Land Registries Approval) Order would cease to be New Territories Land Registries for the registration of instruments, but would remain open as places for cross-district search of land particulars and for owners' incorporation services. As there will no longer be any New Territories Land Registries after the implementation of the CRS, those places previously approved by order of the Chief Executive in Council will cease to be New Territories Land Registries.

Sections 58 and 73 of the Schedule - Land Registration Regulations (Cap. 128, sub leg)

4. These sections relate to the repeal of definition of “Land Registry” and “New Territories Land Registry” in the Land Registration Regulations (LRR). We will rely on section 2 of the Land Registration Ordinance (Cap. 128) (LRO) to establish what the Land Registry is. The Land Registry is the name of the department for the registration of instruments affecting land. After implementation of the CRS, the Land Registry will have offices in the Queensway Government Offices and in the New Territories. The latter offices will be called the New Territories Search Offices of the Land Registry and will provide cross-district searches and owners’ incorporation services. There is no need for these offices to be explicitly named in the legislation.

Section 60 of the Schedule LRR, Regulation 6

5. The query relates to the memorials and how district code identifiers will be attached to such memorials.

Existing Situation

6. The existing Regulation 6(1)(f) and 6(2)(f) of the LRR requires a memorial to contain the memorial number of any other instrument or lis pendens, judgment or charging order being discharged, cancelled or satisfied by the instrument delivered for registration. It means, in effect, that a memorial of a receipt for a discharge or cancellation agreement has to state the memorial number of the relevant mortgage being discharged or the relevant sale and purchase agreement being cancelled and that in a memorial of an instrument for the satisfaction or discharge of a charging order, the memorial number of the charging order has to be stated. As each of the current nine Land Registries has maintained its own set of memorial numbers and there is duplication in the memorial numbers, it is necessary to identify clearly the relevant instrument or lis pendens etc. being discharged, cancelled or satisfied after implementation of CRS.

After implementation of the CRS

i) District Code Identifiers

7. The district code identifier will be inserted by the Land Registry to the memorial numbers of all instruments delivered before implementation of CRS. The district code identifier will be added on the land register. The district code identifier will not be added on any already registered memorials. After implementation of CRS, the district code identifier will be easily ascertainable from a search of the land register.

ii) Registration of instruments relating to earlier instruments registered before CRS was implemented

8. It is not necessary to add the district code identifiers to memorials delivered after commencement of new Regulations 6(1)(fa) and 6(2)(fa), as there will no longer be any duplication of the memorial numbers after centralization.

9. An applicant for registration of an instrument (2nd instrument) which cancels, discharges or otherwise satisfies another instrument (1st instrument) which was delivered before implementation of CRS should ascertain the district code identifier of the 1st instrument from the land register and should insert the district code identifier to the memorial number of the 1st instrument on the memorial of the 2nd instrument being submitted for registration.

Section 62 of the Schedule – Regulation 8 of the LRR

10. We confirm that the proposed colour imaging method of plans falls within the definition of “imaging” or “imaging method” in section 1A of the Land Registration Ordinance.

Section 63 of the Schedule – Regulation 9 of the LRR

11. The Administration intends that the list of certified copies acceptable for registration and the necessary certification manner may be reviewed by the Land Registrar from time to time in consultation with the Law Society and other interested parties, as the categories and certification methods of the copy of conveyancing instruments acceptable for production as title deeds in conveyancing transactions may change according to case law. It is foreseen that the power to permit in a particular case a certain certified copy of instrument not already specified in a Land Registry Circular Memorandum would be rarely used.

Section 65 of the Schedule – Regulation 12 of the LRR

12. The Memorial Day Book refers to a set of the particulars of every memorial kept by the Land Registry as specified in Regulation 12(1) of the LRR. It is now kept and available for search on the basis of a particular date. As the public searchers are now familiar with the name of Memorial Day Book and the Memorial Day Book is available for search on the basis of a particular date, the Administration considers that the term “Memorial Day Book” should be kept. There should be no doubt that the term “Memorial Day Book” covers both the book and computer mentioned in Regulation 12(1) as it is proposed to be amended to -

“in a book or computer kept for the purpose known as the Memorial Day Book.”

The particulars will be available for search in a book in the event of computer failure and the reference to “a book” should be retained.

**Section 66 of the Schedule – Regulation 14 of the LRR and
Section 68 of the Schedule – Regulation 17 of the LRR**

i) Register Card

13. We agree that the words “or register card” in Regulation 11

should be repealed by a Committee Stage Amendment to follow a similar repeal in section 66.

ii) Gum labels

14. The gum label referred to in Regulation 16 is a gum label affixed to the memorial form under regulation 10(c). This is different from the gum label which is the certificate of registration under Regulation 14(2). It is not necessary to amend Regulation 16. No amendment is necessary to Regulation 18 as there is no reference to the gum label in that regulation.

iii) Notice of collection

15. The practice of giving notice for collection is proposed to be discontinued as there are delays in collection of the instruments as most solicitors' clerks would only collect the instruments if and when they deliver any instruments for registration. They do not usually make a special trip for collection of instruments. Delivery by post or courier will avoid such delays and is agreed by the consultees.

16. The instruments delivered by solicitors firms will be returned by special courier company to mail-boxes kept by that company for the solicitors if the solicitors firms are members of that courier company. If the solicitors firms are not members of that courier company, the instruments will be returned to their office by courier – a secure method for delivery. The instruments delivered by individual citizens will be returned by courier or registered post.

Section 67 of the Schedule – Regulation 15 of the LRR

i) Circumstances under which LR may exercise his power of removal of withheld instruments under Regulation 15(6)

17. In the proposed new Regulation 15(6) –

- (a) where the Land Registrar withholds the instrument under regulation 15(1); or

- (b) where an instrument is redelivered for registration, the Land Registrar withholds the instrument again under Regulation 15(4)(b); and
- (c) the instrument has been withheld either –
 - (1) pursuant to the former Regulation 15(1) or Regulation 15(4)(b) which is in force at any time before the commencement of Regulation 15(6), that is, an instrument which has already been delivered for registration before the said commencement date, or
 - (2) pursuant to the new Regulation 15(1) or Regulation 15(4)(b) which is in force at any time after the commencement of Regulation 15(6), that is, an instrument which is delivered for registration after the commencement date;

then the Land Registrar may exercise the new power of deletion, subject to the provisions of the Regulations.

18. This provision will enable the Land Registrar to deal with all instruments withheld from registration for not less than 12 months, including instruments so withheld under the existing (to be repealed) Regulation 15 as well as the new Regulation 15. If this were not so, then all the instruments presently causing difficulties under the existing Regulations 15 would continue to cause difficulties after the new Regulation 15 comes into operation.

ii) Sending of prescribed notices

19. It will not be possible to send a prescribed notice by post under Regulation 15(6)(b)(ii) if the address of the affected person is not shown on any instrument registered in the Land Registry. The persons referred to in Regulation 15(7) on whom notice will be served will include the persons who delivered the relevant instrument for registration, the parties to the instrument and other persons, for instance, parties to an instrument already entered on the land register who may be affected by the exercise of the removal power.

Section 69 of the Schedule – Regulation 18 of the LRR

20. We confirm that the New Territories register cards are sent to the Public Records Office by the Land Registrar in exercise of the power under Regulation 19.

21. In order to retain the flexibility to allow for destruction in the event that no more searches are made on these cards, we do not propose to repeal the words “destroy or otherwise”.

Section 70 of the Schedule – Regulation 18A of the LRR

22. The Land Registrar will keep the 16 mm microfilm of a plan as back-up and will not destroy them after imaging.

Section 72 of the Schedule – Regulation 21 of the LRR

23. We agree that the word “either –” appearing immediately before sub para. (a)(i)(A) be repealed by a technical Committee Stage Amendment.

Plans deposited in the Land Registry under the Antiquities and Monuments Ordinance, Port Control (Public Cargo Working Area) Orders, Waterworks Ordinance, Public Health and Municipal Services Ordinance, Country Parks Ordinance, Hong Kong Industrial Estates Corporation Ordinance and Hong Kong Airport (Control of Obstruction) Exemption Order and Mass Transit Railway (Transport Interchange) (Deposit of Plans) Notice

24. The aim of the proposed amendments for these Ordinances and subsidiary legislation are to abolish the terms “District Land Registry” and “New Territories Land Registry” and to replace them with “Land Registry”. See also paragraph 4 above.

25. The plans or maps already deposited in the respective District Land Registries and New Territories Land Registries referred to in the above Ordinances and subsidiary legislation will still be kept in the Land Registry.

Section 10 to 44 Antiquities and Monuments Ordinance (Cap. 53) and its subsidiary legislation

26. In 1993, the Land Registry was established as an independent department. Accordingly, the plans deposited in the District Land Offices under the Antiquities and Monuments Ordinance have been redeposited in the District Land Registries since the establishment of the Land Registry as a separate Department in 1993. The actual Legal Notices of the deposit have not however been amended. For instance, in L.N. 34 of 1979, the reference in paragraphs 2(a), 2(b) and 2(c) is to the “District Land Office Sai Kung”. However in the Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice, in paragraphs 2(b), 2(c) and 2(d), the reference has already been changed to the “District Land Registry, Sai Kung”. L.N. 34 of 1979 and paragraph 2 of the Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice are enclosed for your easy reference. For consistency, we proposed amendments to both the actual Legal Notice which still contain reference to District Land Office and to the Consolidation Notice.

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Sections 45 and 46, Antiquities and Monuments Ordinance (Cap. 53) and its subsidiary legislation

27. It is not necessary to amend the references to “Victoria” in paragraphs 2 and 3 of this Notice. “Victoria” is defined in the Schedule 1 of the Interpretation and General Clauses Ordinance (Cap. 1) and the Land Registry at Queensway is within Victoria.

28. The Administration will move a technical Committee Stage Amendment to amend L.N. 368 of 2000, made after drafting of the Amendment Bill. When the Bill is about to be enacted, a computer search will be done to track down all references to New Territories Land Registries which have been enacted subsequent to the Bill’s introduction into Legislative Council. Thus it is possible that there may be more technical Committee Stage Amendments.

Section 57 of the Schedule – Waterworks Ordinance (Cap. 102)

29. Notices published under Section 23(6) of the Waterworks Ordinance (Cap. 102) are not subsidiary legislation. Therefore, they do not need to be amended by the Bill. If any amendments to them are required, they will be made by the authority which issued the notices.

Section 90 of the Schedule – Housing Ordinance (Cap. 283)

30. The proposed amendment is to amend the definition of “Land Registry” in s.2 by repealing “and a District Land Registry established under the New Territories Ordinance (Cap. 97)”. In the Housing Ordinance, the Land Registry is only referred to in the definition of “owner”. The “owner” means a person appearing from the records at the Land Registry to be the owner of an undivided share in land. As the records kept in the District Land Registries will continue to be kept in the Land Registry under the central registration system, no practical difference will be caused by the amendment.

Section 92 of the Schedule – Demolished Buildings (Re-development of Sites Ordinance (Cap. 337)

31. The definition of “Land Registry” in s. 2(1) is amended by repealing “and any New Territories Land Registry approved under the New Territories Ordinance (Cap. 97)”. “Land Registry” is referred to in s. 3(2), 4(2), 6(2), 9(1) and 12(1) of Cap. 337. They relate to the Land Registry registers and registration of orders in the Land Registry. As all the land registers and orders which have been registered will still be kept in the Land Registry after the amendment, no practical difference will be caused by the amendment. Memorials will be delivered to the central registration office in Queensway after CRS has been implemented.

Section 93 of the Schedule – Building Management Ordinance (Cap. 344)

32. The definitions of the “Land Registrar” and “Land Registry” in s.2 are amended to repeal the reference to “District Land Registry”.

- (a) “Land Registry” is referred to in the definitions of “owner” and “registered mortgagee” in s.2, s.5(5)(c)(iii), 5A, 19(1), 34A(1), 34A(2)(b), 34B, 39, 45(3), 45(4)(j), para.3(5)(a) of Schedule 3, para. 13(c)(iii) of Schedule 8, paras.7 and 8 of Schedule 10. They relate to the Land Registry records and instruments registered in the Land Registry. As all the Land Registry records and instruments registered in the Land Registry will still be kept in the Land Registry after the amendment, no practical difference will be caused by the amendment.
- (b) The definition of “Land Registrar” in s.2 is amended by repealing the reference to “District Land Registry”. “Land Registrar” is referred to in s.7(1), 7(2), 7(3)(d), 8(1), 9, 10(1), 10(2), 10(4), 12(1), 12(2), 12(3), 12(5), 30(2), 30(3), 32(2), 34A (2), 34(B), 41, Regulation 2 and the Schedule of the Building Management (Fees) Regulations. They relate to the duties and responsibilities of the Land Registrar in application for registration, change of name, maintenance of register of corporations, filing of resolution for dissolution, notice of appointment or determination of appointment of administrator, winding-up petitions or orders and fees in respect of owners corporations.
- (c) Under the existing definition of “Land Registrar” in Cap.344, “Land Registrar” includes the Authority, i.e. the Secretary for Home Affairs, for buildings and lands registered in a District Land Registry save that only the Land Registrar may specify forms. This means that the Secretary for Home Affairs has the same responsibilities and duties under Cap.344 as the Land Registrar for buildings on land registered in the District Land Registry, which means the New Territories. After the

amendment, the “Land Registrar” will be defined as including the Secretary for Home Affairs in respect of buildings on land registered in the New Territories. The Secretary for Home Affairs will therefore continue to have duties and responsibilities for buildings in the New Territories in relation to Cap.344 as he does now. No practical difference will be made by the amendment.

Section 95 of the Schedule – Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438)

33. The definition of “Land Registry” in s.2 is amended by repealing “and any District Land Registry established under the New Territories Ordinance (Cap.97)”. “Land Registry” is referred to in s.4(2)(d), 5(1), 8(3), 9, 11(1) and 11(2). They relate to the instruments registered in the Land Registry, registration of orders, deposit of plans and rectification of a plan deposited in the Land Registry. These activities will still be carried out in the offices of the Land Registry and the repeal of the “District Land Registry” will not make any practical difference.

Section 96 of the Schedule – Land Drainage Ordinance (Cap. 446)

34. The definition of “Land Registry” in s.2 is amended by repealing “and any District Land Registry established under the New Territories Ordinance”. “Land Registry” is referred to in the definition of “mortgage” and “owner” in s.2, s.5(7), 15, 37(7) and 44. They relate to instruments registered in the Land Registry, the deposit of plan, noting of vesting or reversion in the land register. These activities will continue to be carried out in the offices of the Land Registry after the amendment.

Section 97 of the Schedule – Land Survey Ordinance (Cap. 473)

35. The definition of “Land Registry” in s.2 is amended by repealing “or any District Land Registry established under the New Territories Ordinance (Cap. 97)”. “Land Registry” is referred to in s.30.

It relates to the registration of an instrument effecting a division of land in the Land Registry to be accompanied to a land boundary plan. Such requirement is still necessary after the amendment.

Section 100 of the Schedule – Marine Parks and Marine Reserve Regulations (Cap. 476 sub leg)

36. The definition of “Land Registry” in s.2 is repealed. “Land Registry” is referred to in R.18 of the regulations. The Land Registry will mean the Land Registry established under s.2 of the Land Registration Ordinance after the amendment. No practical difference will be caused by the amendment.

Section 103 of the Schedule – New Territories Land Exchange Entitlements (Redemption) Ordinance (Cap. 495)

37. The definition of “appropriate New Territories Land Registry” in s.2 is repealed and the definition of “lot” in s.2 is amended by repealing “appropriate New Territories”. After the amendment, “lot” is defined as a piece or parcel of ground identified as a lot with a lot number assigned in the Land Registry. The lot number is assigned by the Lands Department and remains the same for the full lease term.

Section 94 of the Schedule – Kowloon Canton Railway Corporation Ordinance (Cap.372)

38. We confirm that the Conditions of Sale referred to in para. 23 of the Second Schedule to Cap. 372 remains to be known as New Grant No. 11236.