

**Bills Committee on Land Registration
(Amendment) Bill 2000**

**Administration's Response on the List of follow-up actions arising
from the discussion at the meeting on 19 November 2001**

- 1. To consider including in the application form for registration a reminder to alert the lodging party that any instrument which is withheld from registration may be made available for public inspection as the Land Registrar thinks fit**

There is no application form for registration – lodging parties fill the particulars of the instrument in a memorial form which accompanies the instrument delivered for registration. Nonetheless, the Land Registry will issue a circular memorandum to all lodging parties advising them of the new arrangement.

The Land Registry will also inform members of the public by putting up notices in the search area and the deeds receipt areas that copies of the deeds which have been stopped from the commencement date of the relevant provisions are available for inspection.

2. **To review proposed Regulation 15A(5a) to ensure that the way it is drafted will not inadvertently alter the legislative intent of the principal Ordinance in respect of property rights**

The original draft Regulation 15A(5) as amended provided as follows –

“15A(5) An application under paragraph (1) shall not affect a disposition of any estate or interest in land (including any contract therefor) –

- (a) made in favour of a bona fide purchaser or mortgagee and for valuable consideration; and
- (b) registered under the Ordinance at any time before the originating summons or petition concerned is registered under the Ordinance.”

The underlying intention of draft Regulation 15A(5) is to provide protection for the bona fide purchaser or mortgagee who had given value for the property.

Following the query from the Bills Committee, the Department of Justice has advised that the original draft Regulation 15A(5) would have the effect of altering the law as to the priority of registered instruments under section 3 of the Land Registration Ordinance. At present, for a stopped deed, the date of registration would be the date of its first delivery for registration. The original draft Regulation 15A(5) would have the effect of postponing the priority of the stopped deed to which the removed particulars relate when duly registered as against a bona fide purchaser or mortgagee for valuable consideration.

Having reviewed the original draft Regulation 15A(5) in the light of the legal advice, the Administration proposed to replace the original draft Regulation 15A(5) with a provision stipulating that the existing law relating to registered instruments would not be affected. Following consultation with the Law Society on the amended proposal (as detailed in answer to point 4 below) the draft Regulations have been revised further to set out clear guidelines as to how the question of priority is to be handled.

3. **To introduce a Committee Stage Amendment to proposed Regulation 15A(6a) requiring the judge in the District Court to sit in open court**

The Administration now proposes a Committee Stage Amendment (CSA) to Regulation 15A(6)(a) in the 21st Draft CSAs at **Appendix** and the last phrase of proposed Regulation 15A(6)(a) now reads as “a judge sitting in open court in the District Court”.

4. **To consult the Law Society on the revised Committee Stage Amendments, particularly on proposed Regulation 15A(5a)**

The Administration consulted the Law Society on the revised CSAs and on the proposal to revise Regulation 15A(5) on 24 January 2002. The Law Society responded on 6 and 8 March 2002 saying they had no further comment on the majority of the revised CSAs but seeking further revision in connection with Regulation 15A(5). They considered that to give the Court an absolute discretion on priority issues in a scenario where new instruments had been registered against a property without the parties knowing about a stopped deed with particulars removed from the land register,

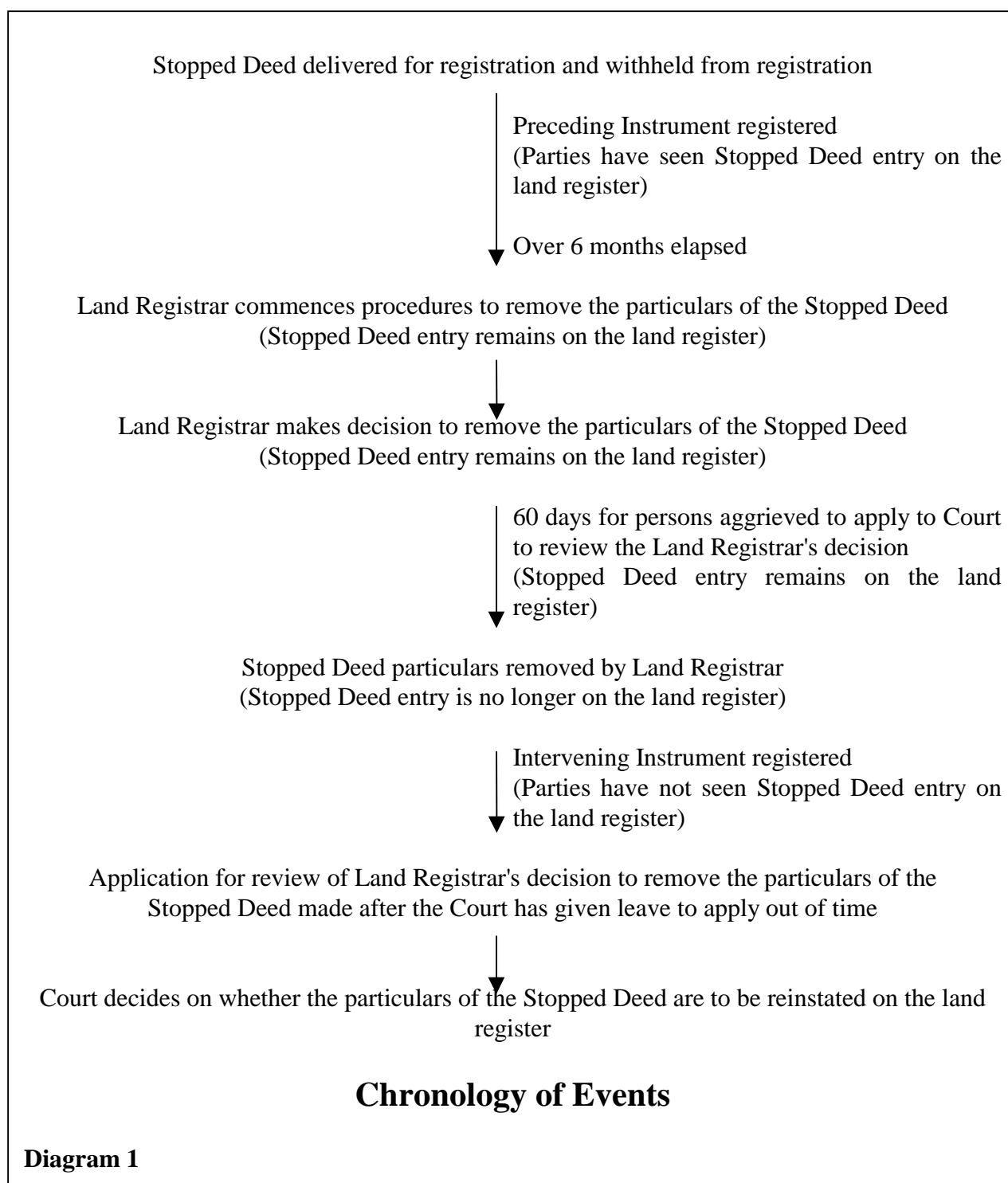
which stopped deed may be subsequently reinstated and registered on the land register, would undermine the spirit of the Land Registration Ordinance to provide certainty through the land register. The guiding principle should be that an instrument is subject to what is on the register but is free from what is not on the register at the time the instrument is registered.

The Law Society proposed that the law should expressly provide for the priority position between competing interests in the scenario where:

- (a) the particulars of the stopped deed had been removed from the land register;
- (b) with the leave of the Court an application for review of the Land Registrar's decision of removal is made outside the statutory period for application; and
- (c) a decision is made by the Court on reinstatement of the stopped deed and the stopped deed is registered after the

Court has given an order to reinstate the particulars of the stopped deed on the land register.

The chronology of events in such a scenario is shown in the flow chart in Diagram 1.



The Law Society proposed: -

- (A) If no intervening instrument has been registered after the removal of the particulars of the stopped deed and before the application for review, and if the Court decided to reinstate the particulars of the stopped deed on the land register, the priority of the stopped deed when registered would revert to the original position as if no removal had ever taken place. This would be the same whether there is any preceding instrument registered against the property after the original date of delivery of the stopped deed but before the removal of the particulars of the stopped deed as the parties of the preceding instrument already have notice of the stopped deed and their interest in the property should be subject to the stopped deed.
- (B) Where there are instruments registered after the delivery of the stopped deed, the position will vary according to the date on which such instruments are registered, as follows:

- (I) For a preceding instrument registered after the original date of delivery of the stopped deed but before the removal of the particulars of the stopped deed and where there are no instruments registered after the removal of the particulars of the stopped deed:
 - (i) the parties of the preceding instrument already have notice of the stopped deed;
 - (ii) the position of the preceding instrument will not be prejudiced by an order of the Court to reinstate the particulars on the land register;
 - (iii) the priorities of the competing interests upon the reinstatement of the particulars on the land register and registration of the stopped deed should revert to the original position as if no removal of the particulars had ever taken place.

- (II) For instruments registered after the removal of the particulars of the stopped deed the position depends on whether there is an assignment of the ownership of the property among these instruments:

- (i) Where there is an assignment of ownership of the property registered after the removal of the particulars of the stopped deed but before the application for review is registered, as the stopped deed relates to the former owner, the Court shall not give an order to require the Land Registrar to reinstate the removed particulars of the stopped deed on the land register because of the change in ownership. The new owner and all subsequently registered instruments should not be subject to the stopped deed.
- (ii) Where there is no assignment of ownership but there are other intervening instruments registered after the removal of the particulars of the stopped deed but before the application for review is registered, as the parties of the intervening instruments registered after the removal had no notice of the stopped deed, such intervening instruments should not be subject to the stopped

deed. If the Court gives an order to reinstate the particulars of the stopped deed on the land register, every instrument, i.e. including a preceding instrument and an intervening instrument, duly registered from the original date of delivery of the stopped deed to the registration of the application for review shall have priority over the stopped deed when registered. The priority of the instrument registered after the original date of delivery of the stopped deed but before the removal of the particulars of the stopped deed i.e. the preceding instrument, is also protected to preserve its priority over the deed registered after the removal of the particulars of the stopped deed i.e. the intervening instrument, as the intervening instrument which is registered after the preceding instrument should be subject to the preceding instrument.

The Administration considers that the circumstances as described will only occur on very rare occasions upon the occurrence of all of the following events –

- (a) where the Land Registrar has decided to remove the particulars of a stopped deed;
- (b) the application for review is made out of time;
- (c) the Court exercises its discretion to allow the application for review to be made out of time; and
- (d) the Court makes a decision on whether the particulars of the stopped deed should be reinstated on the land register.

However, the Administration shares the view that a key objective of a public land register is to give the greatest possible certainty to parties consulting the register. Furthermore, those who enter into transactions without knowing of any other earlier instruments should not be subject to the possibility of the earlier instrument being reinstated to rank in priority over their transaction.

The proposals made by the Law Society will declare clearly the priorities in the scenario as described and provide for the non-reinstatement of the particulars of the stopped deed in the

circumstances as described. Such a scenario is not covered under existing section 3 of the Land Registration Ordinance which only deals with priority between registered instruments and the effect of non-registration. Section 3 does not deal with the position of a stopped deed for which the particulars have been removed from the land register and then subsequently may be reinstated.

The Administration considers that it is right to provide for certainty should any such circumstances arise and has drawn up further amendments in the 21st draft CSAs to put these proposals into effect. Regulations 15A(3), (5) and (8) have been revised in light of the Law Society's proposals:

(a) Regulation 15A(3)

Regulation 15A(3) is made subject to Regulation 15A(5), this means that the Court in making an order on an application to review has to take Regulation 15A(5) into account and shall not give an order to reinstate the particulars in the circumstances set out in Regulation 15A(5).

(b) Regulation 15A(5)

Regulation 15A(5) provides that where the Land Registrar has removed any particulars on the register computer pursuant to Regulation 15(6)(a), and the Court has allowed an application for review to be made outside the 60 days' period, and an assignment has been registered after the removal of the particulars but before the service on the Land Registrar and registration of the originating summons or petition in respect of the application for review, the Court shall not make an order which would require the Land Registrar to reinstate those particulars or register the instrument to which those removed particulars relate i.e. the stopped deed. This reflects the proposals set out in (B)(II)(i) above.

(c) Regulation 15A(8)

Regulation 15A(8) states that where the Land Registrar has removed any particulars on the register computer pursuant to Regulation 15(6)(a), and the Court has allowed an application for review to be made outside the 60 days' period, and the Land Registrar reinstates the particulars or registers

the stopped deed pursuant to a Court order, the priority of the stopped deed upon registration will be as follows:

- (i) If no document has been registered after the removal of the particulars and before the service on the Land Registrar and registration of the originating summons or petition, the stopped deed shall have the priority that it would have had if the Land Registrar had never removed those particulars. Please refer to Regulations 15A(8)(a), (b), (c), (d)(i) and (e). This reflects the proposals in (A) above.
- (ii) If there are instruments registered after the removal of the particulars and before service on the Land Registrar and registration of the originating summons or petition, every instrument duly registered in the period commencing at the date, including the time, of receipt of the stopped deed by the Land Registrar and ending at the time of the service and registration of the originating summons or petition shall have priority over the stopped deed when duly registered. Please

refer to Regulations 15A(8)(a), (b), (c), (d)(ii) and (f).

This reflects the proposals in (B)(I) and (B)(II)(ii) above.

The Law Society was consulted on the revised Regulations 15A(3), 15A(5) and 15A(8) on 22 March 2002 and indicated agreement to the revised draft Regulations on 10 April 2002.

The Judiciary Administrator has been consulted on the revised Regulations 15A(3), 15A(5) and 15A(8) as the provisions restrict the scope of the order to be made by the Court in the circumstances as described. The Judiciary Administrator has indicated no objections to the provisions.

5. Other Committee Stage Amendments.

The Administration proposes the following further amendments to the Bill in the 21st draft CSAs:

- (a) Addition of Section 44B to the Schedule of the Land Registration (Amendment) Bill

New Section 44B is added for amendment to the Antiquities and Monuments (Declaration of Historical Buildings) Notice (L.N. 272 of 2001) which was gazetted on 14 December 2001.

(b) Draft Regulation 15(12) of the Land Registration Regulations

Amendment is proposed to Regulation 15(12) to clarify the effect of removal of the particulars of the stopped deeds.

(c) Draft Regulation 15A(2A) of the Land Registration Regulations

Regulation 15A(2A) is added to impose the requirement on the Land Registrar to give notice of the application for review to the current owner or any affected persons. This amendment is proposed to notify the current owner and other affected persons of an application for review which is made outside the statutory period for application.

(d) Draft Regulation 15A(6)(b) of the Land Registration Regulations

The Judiciary Administrator now advises that the Registrar of the High Court has no jurisdiction if it is an open court hearing and proposed that the reference to “the Registrar” in the Regulations in relation to the High Court hearings be deleted. Accordingly, the reference to the Registrar of the High Court in Regulation 15A(6)(b) is deleted.

Planning and Lands Bureau

April 2002

Appendix

GFOX:DMA#38885v21
1st draft: 5.2.2001
2nd draft: 13.3.2001
3rd draft: 14.3.2001
4th draft: 26.3.2001
5th draft: 26.4.2001
6th draft: 26.4.2001
7th draft: 8.5.2001
8th draft: 10.5.2001
9th draft: 15.5.2001
10th draft: 23.5.2001
11th draft: 25.5.2001
12th draft: 25.5.2001
13th draft: 30.5.2001
14th draft: 29.8.2001
15th draft: 17.9.2001
16th draft: 19.11.2001
17th draft: 6.12.2001
18th draft: 18.1.2002
19th draft: 22.1.2002
20th draft: 15.3.2002
21st draft: 10.4.2002

LAND REGISTRATION (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Planning and Lands

Clause

Amendment Proposed

New By adding -

**"1A. Copies of documents etc.
admissible in evidence**

Section 26A of the Land Registration Ordinance

(Cap. 128) is amended by adding -

"(3) For the avoidance of doubt, it is
hereby declared that nothing in this section or

any other provision of this Ordinance shall require the Land Registrar or a person mentioned in subsection (1) to provide a certificate mentioned in that subsection in relation to any copy, print or extract of or from any instrument, including any copies, prints or extracts of or from the memorial and plans (if any) relating thereto, withheld from registration pursuant to the Land Registration Regulations (Cap. 128 sub. leg.).".".

2 By deleting "of the land Registration Ordinance (Cap. 128)".

Schedule (a) By adding -

**"Antiquities and Monuments (Declaration
of Historical Buildings)(No. 2)
Notice 2000**

**44A. Declaration of historical
building**

Paragraph 1(b) of the Antiquities and Monuments (Declaration of Historical Buildings)(No. 2) Notice 2000 (L.N. 368 of 2000) is amended by repealing "Tsuen Wan New Territories".

**Antiquities and Monuments (Declaration
of Historical Buildings) Notice 2001**

44B. Declaration of historical building

Paragraph 1(a), (b) and (c) of the Antiquities and Monuments (Declaration of Historical Buildings) Notice 2001 (L.N. 272 of 2001) is amended by repealing "Yuen Long New Territories".

(b) In section 46 -

(i) in paragraph (q), by deleting the full stop and substituting a semi-colon;

(ii) by adding -

"(r) in subparagraph (as), by repealing "Tsuen Wan New Territories".

(c) In section 63 -

(i) by deleting paragraph (a) and substituting -

"(a) in paragraph (1) -

(i) by repealing "An instrument" and substituting "Subject to paragraph (1A), an instrument (including a copy thereof)";

(ii) by repealing subparagraph (b) and substituting -

"(b) contain, where practicable -

- (i) in the case of an individual signing the instrument -
 - (A) his identity card number if he is the holder of an identity card;
 - (B) in any other case, particulars of a travel document of which he is the holder;
- (ii) in the case of a company executing the instrument -
 - (A) the number by which it is registered under the Companies Ordinance (Cap. 32);
 - (B) if that Ordinance

does not
apply,
particulars
of its
incorporation
or
establishment
sufficient to
identify the
company;" ;

(ii) by adding -

"(aa) by adding -

"(1A) A copy of an
instrument may only be delivered
for registration instead of the
instrument if -

(a) the instrument
belongs to a
class of
instruments
specified in
column 1 of the
Third Schedule
and the copy is
certified, by the
person or in the
manner, if any,

specified
opposite thereto
in column 2 of
that Schedule, to
be such a copy;
or

(b) the Land
Registrar so
permits in
writing and the
copy is certified,
by a person or in
a manner
satisfactory to
the Land
Registrar, to be
such a copy.

(1B) The Land Registrar may,
by notice in the Gazette, amend
the Third Schedule."

(ab) in paragraph (2), by adding "(or
a copy thereof)" after
"instrument";".".

(d) By adding -

"64A. **Keeping of temporary
index**

Regulation 11 is amended by repealing "or

register card".

(e) In section 67 -

(i) in the proposed regulation 15 -

(A) in paragraph (2) -

(I) in subparagraph (a), by deleting "and";

(II) by adding -

"(aa) keep a copy of the instrument, together with copies of the memorial and plans (if any) relating thereto, in such form and by such method as the Land Registrar thinks fit; and";

(B) by adding -

"(4A) The Land Registrar may destroy or otherwise dispose of any copy of an instrument kept under paragraph (2)(aa), together with copies of the memorial and plans (if any) relating thereto so kept -

(a) if the instrument -

(i) is
redelivered
for
registration;
or

(ii) is registered;
and

(b) in such manner as the
Land Registrar thinks
fit.";

(C) in paragraph (5), by deleting "and
(4)" and substituting ", (4) and (4A)".

(D) in paragraph (6), by deleting "12
months commencing on the date it is
delivered for registration" and
substituting "6 months commencing on
the date it is delivered for
registration (or such longer period as
the Land Registrar thinks fit in all
the circumstances of the case)";

(E) in paragraph (7)(a), by adding "the
person who appears from the records of
the Land Registry to be the last owner
of the land and premises to which the
instrument relates," after
"concerned,";

(F) in paragraph (12)(b), by adding "and,

accordingly, the instrument to which those particulars relate shall, subject to regulation 15A(8), be treated as never having been delivered for registration" after "in it";

(ii) in the proposed regulation 15A -

(A) by adding -

"(2A) Where an applicant mentioned in paragraph (1) complies with paragraph (2)(a) and (b) after the Court has exercised its discretion in paragraph (1) to permit the applicant to make the application to the Court after the expiration of the period of 60 days mentioned in paragraph (1), then the Land Registrar shall, as soon as is reasonably practicable after having been served with the originating summons or petition concerned, give notice of the application to -

(a) the person who appears from the register computer to be the last

owner of the land
and premises to
which the
application
relates; and

(b) any other persons
who, in the
opinion of the
Land Registrar,
may be affected by
the application.”;

(B) in paragraph (3), by deleting “The”
and substituting “Subject to paragraph
(5), the”;

(C) by deleting paragraph (5) and
substituting -

“(5) Where -

(a) the Land Registrar has
exercised his power
under regulation
15(6)(a) to remove any
particulars entered in
the portion of a
register computer kept
by him for the purposes
of regulation 10(d)(i)
for the land and

premises affected by
the instrument
("relevant instrument")
to which those
particulars relate;

(b) an applicant mentioned
in paragraph (1)
complies with paragraph
(2)(a) and (b) after
the Court has exercised
its discretion in
paragraph (1) to permit
the applicant to make
an application to the
Court -

(i) in respect of
the relevant
instrument;
and

(ii) after the
expiration of
the period of
60 days
mentioned in
paragraph (1);
and

(c) an assignment has been

registered in respect
of all or part of that
land and premises in
the period -

(i) commencing at
the time the
Land
Registrar so
removed those
particulars;
and

(ii) ending at the
time the
applicant
complied with
paragraph
(2)(a) and
(b),

then the Court shall not make an order
referred to in paragraph (3) which
would require the Land Registrar to -

(d) reinstate those
particulars; or

(e) register the relevant
instrument,

insofar, but only insofar, as those
particulars or the relevant instrument,

as the case may be, relate or relates to such of that land and premises that is the subject of the assignment."

(D) in paragraph (6) -

(I) by deleting "this regulation" and substituting "paragraphs (1) and (3)";

(II) in paragraph (a), by adding "in open court" after "sitting";

[(III) in paragraph (b), by adding "in open court" after "sitting";

(E) by adding -

"(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.

(8) Where -

(a) the Land Registrar has exercised his power under regulation 15(6)(a) to remove any particulars entered in the portion of a register computer kept

by him for the purposes
of regulation 10(d)(i)
for the land and
premises affected by
the instrument
("relevant instrument")
to which those
particulars relate;

(b) an applicant mentioned
in paragraph (1)
complies with paragraph
(2)(a) and (b) after
the Court has exercised
its discretion in
paragraph (1) to permit
the applicant to make
an application to the
Court -

(i) in respect of the
relevant

instrument; and

(ii) after the
expiration of the
period of 60 days
mentioned in
paragraph (1);

(c) pursuant to an order

referred to in
paragraph (3), or on
the determination of an
appeal under paragraph
(7), the Land

Registrar -

(i) reinstates those
particulars; or

(ii) registers the
relevant
instrument; and

(d) either -

(i) no deed,
conveyance, or
other instrument
in writing, or
judgment,
mentioned in
section 3 of the
Ordinance has
been registered
in respect of
that land and
premises in the
period -

(A) commencing
at the time

the Land
Registrar so
removed
those
particulars;
and

(B) ending at
the time the
applicant
complied
with
paragraph
(2)(a) and
(b); or

(ii) one or more deeds,
conveyances, or
other instruments
in writing, or
judgments,
mentioned in
section 3 of the
Ordinance has or
have been
registered in
respect of that
land and premises
in the period

mentioned in sub-
subparagraph (i),

then -

(e) where subparagraph
(d)(i) is applicable,
the relevant instrument
when duly registered
shall have the priority
that the relevant
instrument would have
had if the Land
Registrar had never so
removed those
particulars;

(f) where subparagraph
(d)(ii) is applicable,
every deed, conveyance,
and other instrument in
writing, and judgment,
mentioned in section 3
of the Ordinance that
was duly registered in
the period -

(i) commencing at the
date (including
the time) of
receipt of the

relevant
instrument by the
Land Registrar as
recorded pursuant
to regulation
10(c); and

(ii) ending at the
time the
applicant
complied with
paragraph (2)(a)
and (b),

shall have priority
over the relevant
instrument when duly
registered.".

(f) By deleting section 72(a) and substituting -

"(a) by repealing paragraph (a)(i) and
substituting -

(i) recorded on microfilm, by
supplying a copy thereof in the
form generally known as a reader-
printer hard copy;

(aa) by adding -

"(aa) in the case of an instrument,
together with the memorial and
plans (if any) relating thereto,

to which regulation 15(2)(aa) applies and the registration of which has not been completed, by supplying the latest copy of the instrument, together with the latest copies of the memorial and plans (if any), kept under that regulation in such form and by such method as the Land Registrar thinks fit;".

(g) By adding -

"73A. Schedule added

The following is added -

"THIRD SCHEDULE [reg. 9]

CLASSES OF INSTRUMENTS FOR WHICH
CERTIFIED COPIES MAY BE
SUBMITTED FOR
REGISTRATION

<u>Column 1</u>	<u>Column 2</u>
Class of instrument	Person who may certify copy of instrument and/or manner of certification
Certificate of Incorporation on Change of Name issued by the Companies Registry	Registrar of Companies of Hong Kong, a person authorized in writing by him or a solicitor
Death Certificate issued by the Births and Deaths Registry	Registrar of Births and Deaths of Hong Kong or a person authorized in

	writing by him
Certificate of Exemption from Estate Duty issued by the Estate Duty Office	Commissioner of Estate Duty of Hong Kong or a person authorized in writing by him
Certificate of Receipt of Estate Duty issued by the Estate Duty Office	Commissioner of Estate Duty of Hong Kong or a person authorized in writing by him
Probate granted by the High Court	Registrar of the High Court or a person authorized in writing by him
Letters of Administration granted by the High Court	Registrar of the High Court or a person authorized in writing by him
Occupation Permit issued by the Building Authority	Director of Buildings of Hong Kong or a person authorized in writing by him
Power of Attorney	Solicitor
Letter of determination or rescission of an agreement for sale and purchase	Solicitor
Notice of discontinuance of court action	Solicitor
Notice of severance of joint tenancy	Solicitor
Memorandum or Letter of Compliance of conditions precedent in Government Grant issued by the Lands Department	Nil
Notice or Letter of Compliance issued by	Nil

the Building Authority
confirming building
works have been
completed or building
orders have been
complied with

".".

(h) By deleting section 89.

(i) By adding -

"Caritas - Hong Kong Incorporation

106. First Schedule amended

The First Schedule to the Caritas - Hong Kong Incorporation Ordinance (Cap. 1092) is amended -

- (a) in item 8, by repealing "Tuen Mun District Land Registry by Memorial No. 197963" and substituting "Land Registry";
- (b) in item 9, by repealing "Tsuen Wan District Land Registry by Memorial No. 82418" and substituting "Land Registry".

**Kadoorie Farm and Botanic
Garden Corporation**

107. Schedule amended

The Schedule to the Kadoorie Farm and Botanic Garden Corporation Ordinance (Cap. 1156) is amended, in paragraphs 1 and 2, by repealing "Tai Po District".