

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 21 May 2001

1. To consider including in clause 4(67) in respect of regulation 15(3) of the Land Registration Regulations the requirement of a lodging party of an instrument withheld from registration to inform and provide a copy of the withheld instrument to the owner concerned

(a) The Administration had arranged a meeting with the Law Society on 24 May 2001. The Law Society representatives agreed initially that the lodging parties of instruments withheld from registration (stopped deeds) should provide copies of the instrument to owners and interested parties. They had however expressed concern on two issues, viz. the solicitors' duty of confidentiality toward their clients and whether the Personal Data (Privacy) Ordinance would be breached if they had to provide copies of such documents to a third party.

(b) Advice had been obtained from the Department of Justice on the issues of duty of confidentiality and personal data privacy. The Land Registry conveyed in its letter of 30 May 2001 to the Law Society the following legal advice –

(i) there would be no breach of the solicitors' duty of

confidentiality towards their clients if the clients have given prior consent to the solicitors for providing the copies; and

(ii) in respect of the personal data privacy issue, if the instrument contains personal data of the parties, prior consent of the data subjects, which means all the parties to the instrument, would be required in order to comply with the Personal Data (Privacy) Ordinance.

(c) On further consideration, the Law Society in its letter of 8 June 2001 to the Land Registry conveyed its decision that the proposal for the lodging parties of “stopped deeds” to provide copies of the instrument to owners and interested parties was not acceptable.

2. To discuss with the Law Society of Hong Kong the best possible way through which problems arising from stopped / withheld deeds can be handled and revert back to the Bills Committee with subsequent Committee Stage Amendments, if any

(a) The Law Society had stated in their letter of 8 June 2001 that there should be provisions in the Land Registration (Amendment) Bill for copies of the “stopped deeds” to be made available by the Land Registrar and the Land Registrar should be conferred with such statutory power and duty accordingly.

- (b) After careful consideration, the Administration agrees to the suggestion on the basis of the following proposals –
- (i) after the commencement of operation of the relevant provisions, the Land Registry will keep copies of all stopped deeds and provide the same for public search at a fee. As the work involved for providing a copy of a stopped deed is effectively the same as that for providing a copy of a registered instrument, it is proposed that a fee equivalent to the charge for the latter i.e. \$120 per instrument, should be charged;
 - (ii) if the instrument is stopped more than once, only the latest copy of the stopped deed will be available for public search;
 - (iii) upon completion of registration of the instrument, the stopped deed will no longer be available for public search;
and
 - (iv) certified copies of stopped deeds will not be provided.
- (c) A consultation paper was issued on 13 September 2001 to the Law Society, Heung Yee Kuk, Hong Kong Real Estate Agencies General Association and Properties Agencies Association Ltd. for

their comments.

- (d) All the consultees have provided their response indicating agreement to the proposals. The Law Society had requested further clarification on whether a copy of the relevant scrutineer's note (a note on which the reasons why the instrument has been withheld were stated) would also be provided as part of a stopped deed. The Land Registry in its letter of 3 October 2001 rejected such a request. This is because the scrutineer's note is only for the lodging party's reference and as such it would not be appropriate to release it to third parties.

- (e) To implement the proposal on the new procedures for handling stopped deeds, the Administration suggests to make further Committee Stage Amendments to the Bill. Bilingual versions of the revised Committee Stage Amendments (English version : 15th draft, Chinese version : 12th draft) are attached at **Annex A**.

Planning and Lands Bureau
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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: 30.6.2001
14th draft: 29.8.2001
15th draft: 17.9.2001

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 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".

(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,";

(ii) in the proposed regulation 15A -

(A) in paragraph (5) -

(I) by adding "(including any contract therefor)" after "land";

(II) in paragraph (a), by deleting "good faith" and substituting "favour of a bona fide purchaser or mortgagee";

(B) in paragraph (6) -

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

(II) in paragraph (b), by deleting "sitting" and substituting ", or Registrar of the High Court, sitting in open court";

(C) 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."

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

".".

(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 B, 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".