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Paper for the House Committee meeting on 14 June 2002

Report of the Bills Committee on Land Registration (Amendment) Bill 2000

Purpose

This paper reports on the deliberations of the Bills Committee on Land Registration (Amendment) Bill 2000.

Background

2. The Land Registration Ordinance (Cap. 128) (the Ordinance) provides for the registration of deeds, conveyances, judgements and other instrument affecting real or immovable property, the keeping of Land Registry records and for other matters relating to land registration. The Strategic Change Plan (SCP) was issued by the Land Registry in March 1998 as part of its effort to improve efficiency of the registration of property transactions and to provide better quality service to customers. It recommended, among other things, the provision of a Central Registration System (CRS).

The Bill

3. The Land Registration (Amendment) Bill 2000 seeks to improve the procedures for land registration by :

- (a) giving effect to CRS under which all registration of property transactions will be carried out in the central office of the Land Registry;
- (b) introducing a new service of colour imaging of plans; and
- (c) improving the performance of the registration and search functions of the Land Registry and regulating certain existing practices of the Land Registry.

The Bills Committee

4. At the House Committee meeting on 19 January 2001, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Albert CHAN Wai-yip, the Bills Committee has held eight meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from interested parties. Four groups, including one from the legal profession and two from the estate agency trade, have made written and/or oral representation to the Bills Committee. A list of these groups is at **Appendix II**.

Deliberations of the Bills Committee

Central Registration System

5. Under CRS, all documents for registration will be lodged at the Land Registry at the Queensway Government Offices and no registration will be carried out at the existing eight land registries in the New Territories (NT). All memorial forms will be standardized, bar-coded and provided by the Land Registry.

6. The Bills Committee notes that the proposed centralization of registration services may have impact on the operation of conveyancing firms, particularly on those based in NT. According to the Administration, there are about 22 conveyancing firms operating solely in NT. Of these, nine are based in new towns on the Kowloon-Canton Railway or the Mass Transit Railway lines and will have easy access to the central registration office. For the remaining 13, they will be able to access to the central registration office by way of documents courier. Feedback from the conveyancing firms have indicated support for the proposal.

7. Doubt has been raised on the requirement for conveyancing solicitors to use memorial forms provided by the Land Registry since it will save much effort and cost if solicitors are able to use their own computer printout memorial forms. The Administration's explanation is that all memorial forms will have to be bar-coded to maintain system integrity of CRS. The bar-coded memorial form is an essential tool to enhance the security and efficiency of the registration system. The uniqueness of each bar-code will ensure the priority of the instruments lodged. As the bar-coded memorial forms are to be centrally processed at the central registration office, these cannot be reproduced by photocopying nor using computer printouts.

Colour imaging

8. The Bill proposes that plans attached to or endorsed on an instrument be imaged in colour, replacing the present practice of imaging in black and white followed by manual colouring. Plans previously registered will also be imaged in

colour.

9. While appreciating the high quality of the samples of the colour imaged plans, the Bills Committee emphasizes the need for quality assurance in the event of mass production of the plans. There are also suggestions that the Land Registry should make reference to the deeds to confirm any missing colour codes before the plans are imaged in colour and to further look into the problem of fading of colour in the original plans. In response to members' concern on the destroying or otherwise disposal of copies of plans after colour imaging, the Administration has undertaken that the Land Registry will not destroy or dispose of these plans but will send them to the Public Records Office for archival purposes.

Certified copy documents

10. The Bill proposes to provide for registration of certain types of copy documents which are certified in a manner satisfactory to the Land Registrar. Concerns have been raised on the types of certified documents that are registrable and the manner of certification. According to the Administration, the Land Registry will only accept for registration a limited category of certified copy instruments which have to be certified to the satisfaction of the Land Registry either by the solicitors or the issuing authorities. The Land Registry will also issue Land Registry Circular Memorandum from time to time to notify the legal practitioners and other clients of the certification methods. In the light of views of deputations, the Law Society (LS) in particular, the Administration is prepared to add a Schedule to the Land Registration Regulations setting out the list of certified copy documents agreed between the Registrar General/Land Office and LS in 1991. On the suggestion that the list should also include other instruments such as letters and notices of which the originals are not recoverable due to loss or the fact that these have been sent to other parties, the Administration's explanation is that the category of "other instruments" will be too wide for inclusion in the legislative list. Nevertheless, it is prepared to include in the Committee Stage amendments (CSAs) the more common types of certified copy documents, such as Letter of Rescission of an Agreement for Sale and Purchase, which fall within this category and have been accepted in the past.

Removal of stopped deeds

11. "Stopped deeds" refer to deeds withheld from registration due to mistakes or other issues. At present, there is no provision under the Ordinance to remove stopped deeds from the land register. The large number of stopped deeds has caused inconvenience to searchers since deeds which have not been registered are not available for search. The Bill proposes to empower the Land Registrar to remove the entries of these stopped deeds and the instruments temporarily withdrawn by the lodging parties from the land register after one year from the date of delivery.

12. A strong call from deputations has been made to the Bills Committee for shortening the period for removal of entries of instruments withheld or temporarily withdrawn from registration from the land register from one year to six months, subject to extension on application. This will not only expedite the entire registration process but also prevent manipulation of stopped deeds by unscrupulous solicitors to procrastinate property transactions. According to the Administration, one year is a reasonable period so that the lodging solicitors will have sufficient time to deal with the outstanding issues stated in the stopped deed notes. In the light of members' concern, the Administration has agreed to reduce the period from 12 months to six months with power for the Land Registrar to extend the time in appropriate cases.

13. The Bill proposes that an application against a decision of the Land Registrar to withhold registration can be submitted by way of originating summons and petition. The Bills Committee holds the view that consideration should also be given to hearing the application in chambers which is simpler, quicker and can reduce the cost of litigation. According to the Administration, an application to court for review of the Land Registrar's decision is similar to a judicial review of an administrative decision. The public shall 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, hearing in chambers is not considered appropriate. Legal advice from the Judiciary also agrees that these matters shall be heard in open court but not in chambers. To avoid extra costs for any intermediate appeals, it is suggested that all appeals shall lie to the Court of Appeal.

14. Concern has been raised that the proposed removal will have the effect of altering the principal Ordinance as to the priority of registered instruments. At present, the date of registration of a stopped deed will be the date of its first delivery for registration. The removal may postpone the priority of the stopped deed to which the removed particulars relate and which have been subsequently reinstated and registered on the land register. There may also be circumstances where new instruments have been registered against a property without the parties knowing about a stopped deed with particulars removed from the land register. This will undermine the spirit of the 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 Administration shares this view and is prepared to amend the Land Registration Regulations to that effect.

15. In consultation with LS on the proposed amendment, the Administration believes that consideration should be given to expressly providing for the priority position between competing interests where -

- (a) the particulars of the stopped deed has 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.

16. According to the Administration, the circumstances as described will only occur on very rare occasions. However, as there may be cases of exception to the general principles under certain limited circumstances, the Administration is requested to consult the Bar Association on the proposed amendments as well as members' concern about the propriety to amend the Regulations rather than the principal Ordinance which deals with priority between registered instruments and effect of non-registration. While agreeing that the subject warrants further discussion, the Bills Committee holds the view that it is not desirable to delay the resumption of Second Reading debate on the Bill which aims to bring improvement to the procedures of land registration. To this end, the Administration has been requested to delete the proposed provisions relating to removal of stopped deeds from the Bill.

Provision of copies of stopped deeds

17. Question has been raised on whether the Land Registry should be required to make copy of each and every document being withheld/stopped from registration and to make available such documents for public inspection. The Administration's explanation is that as registration of the stopped instruments has not yet been completed, such instruments are not public documents and the Land Registry does not have the statutory authority to provide copies of the instruments to the interested parties. Moreover, as stopped deeds only account for 4.8% of the total number of deeds lodged for registration, it will not be an efficient use of resources to keep copies of all stopped deeds in order to facilitate search of the small percentage of outstanding stopped deeds. Owners or their legal representatives who wish to obtain copies of the documents should approach the persons who have submitted the documents.

18. According to LS, the current practice of the Land Registry of not keeping copies of stopped deeds leaves open a loophole for a holding document to be lodged for registration and given priority by reference to its date of lodging even though its contents may be changed extensively at a much later time. As stopped deeds may affect property transactions, the non-availability of copies of stopped deeds may deny the aggrieved owners' access to sufficient information to institute prompt legal proceedings against the defaulting parties. It is also pointed out that the person submitting a document for registration is usually a solicitor who cannot supply a copy of the document without the client's permission on account of duty of confidentiality. In the light of members and deputations' concern, the Administration is prepared to move a CSA to empower the Land Registrar to keep and supply the latest copy of an

instrument which has not been completed. It also agrees to issue a circular memorandum to all lodging parties that copies of the deeds which have been stopped from the commencement date of the relevant provisions are available for inspection.

Memorial Day Book

19. The Bill proposes that the names of the parties or other relevant persons will not be entered in the Memorial Day Book to avoid the setting up of a names index by users of the Memorial Day Book, which is a breach of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). Doubt has been cast on the efficacy of such an arrangement since the land register will still contain the names of the parties. According to the Administration, the cost of search of land register is \$15 per entry whereas the cost of bulk search of the Memorial Day Book is \$260 per day for all entries within a district. The higher cost of search of land register will serve as a disincentive for the setting up of a names index.

Name search

20. The Bills Committee notes with concern the power of government departments to conduct name search of the land register as this will intrude into the privacy of individuals, thereby contravening PDPO. According to the Administration, only authorized departments are allowed to conduct name searches of the land register. They have to complete standard search forms to be signed by officers at directorate level and to provide the reasons for search. The name search is also a common feature of land registries of other Governments. In the light of members' concern, the Land Registry undertakes to enhance the current computer system to record the number of name searches conducted by each government department. A monthly statistics on the number of name searches will be generated for monitoring purpose to ensure no abuse.

Committee Stage amendments

21. A copy of the Committee Stage amendments to be moved by the Administration is at **Appendix III**. According to the Administration, the implementation of the accountability system will involve a reorganization of a number of policy bureaux, including the Planning and Lands Bureau. It may therefore need to move a consequential CSA to reflect the new nomenclature of the Bureau Secretary after the relevant Resolution to effect the transfer of statutory functions has been approved at the Council meeting on 19 June 2002.

Recommendation

22. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 3 July 2002.

Advice sought

23. Members are requested to support the recommendation of the Bills Committee at paragraph 22 above.

Prepared by
Council Business Division 1
Legislative Council Secretariat
13 June 2002

Bills Committee on Land Registration (Amendment) Bill 2000

Membership list

Chairman	Hon Albert CHAN Wai-yip
Members	Hon Margaret NG Hon CHAN Yuen-han, JP Hon Andrew WONG Wang-fat, JP Hon Miriam LAU Kin-yee, JP Dr Hon TANG Siu-tong, JP Hon Abraham SHEK Lai-him, JP Hon IP Kwok-him, JP Hon LAU Ping-cheung Hon Audrey EU Yuet-mee, SC, JP (Total : 10 Members)
Clerk	Miss Becky YU
Legal Adviser	Ms Bernice WONG
Date	13 June 2002

**A list of deputations
which have made oral presentation to the Bills Committee**

Meeting on 6 March 2001

Heung Yee Kuk New Territories

Hong Kong Real Estate Agencies General Association

Properties Agencies Association Ltd

Meeting on 28 March 2001

Law Society of Hong Kong

Appendix III

GFOX:DMA#38885v23

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
22nd draft: 23.5.2002

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 immediately after section 44 -

**"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 semicolon;

(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 (1), by deleting ", subject
to paragraph (6),";

(B) 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";

(C) in paragraph (4)(b), by deleting "and
subject to paragraph (6)";

(D) 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.";

(E) in paragraph (5), by deleting "and (4)"
and substituting ", (4) and (4A)";

(F) by deleting paragraphs (6) to (12);

(ii) by deleting the proposed regulation 15A.

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

"(a) by repealing subparagraph (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

Column 1	Column 2
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 the subheading before section 89.
- (i) By deleting section 89.
- (j) By adding -

"Caritas - Hong Kong Incorporation Ordinance

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 Ordinance**

**107. Property to vest in
the Corporation**

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".