

**For discussion on  
8 November 2002**

**LEGISLATIVE COUNCIL PANEL  
ON PLANNING, LANDS AND WORKS**

**Removal of Stopped Deeds  
Land Registration Regulations**

**PURPOSE**

This paper outlines the Administration's proposed revisions to the Land Registration Regulations (Cap.128, sub. leg.) following consultation with the legal profession.

**BACKGROUND**

2. The Land Registration (Amendment) Bill 2000 was introduced into the Legislative Council on 17 January 2001. The Bill sought to amend the Land Registration Ordinance (LRO) and its regulations to give effect to the Central Registration System, introduce colour imaging of plans, improve the performance of the registration and search functions and regulate existing practices of the Land Registry. The Bill also provided that the Land Registrar

would be authorized to remove after one year from the land register the entries of deeds withheld from registration due to mistakes or other problems.

3. At present, there are more than 2,000 deeds which have been “stopped” for more than one year. This has caused inconvenience to searchers because copies of these deeds are not available for search because their registration has not been completed. This leads to uncertainty over title to these properties and may deter property transactions.

4. In the scrutiny of the Bill in the Bills Committee, it was agreed that the Land Registrar (LR) should be empowered to vacate the entry that has become stopped deeds six months after the delivery of the instrument for registration into the Land Registry. Detailed provisions were proposed on the priority of interests if a stopped deed should be removed but subsequently reinstated by the Court. These dealt with how priority should be determined in rare cases where a stopped deed had been removed, a notice for appeal against the decision had been lodged out of time but nevertheless granted by the Court and the stopped deed eventually became registrable.

5. The Bills Committee requested the Administration to consult the Law Society and the Bar Association on the proposed regulations on priority. In order not to delay the passage of the Bill, the provisions on the removal of stopped deeds were deleted from the Bill and the second and third reading of the revised Bill was moved on 3 July 2002. The Administration undertook to revert to the Legislative Council with the proposal on how to deal with the removal of stopped deeds after consulting the legal profession. The Land Registration (Amendment) Ordinance (Ord.20 of 2002) was enacted on 11 July 2002.

#### **LEGAL PROFESSION'S VIEWS**

6. The Law Society has confirmed its continued support for the Administration's proposals.

7. The Bar Association has indicated its support of legislation for removal of long outstanding stopped deeds in principle. It has pointed out, however, that the proposals should be effected through amendments to the principal ordinance because –

(a) the removal of stopped deed is outside the scope of s.28 of the LRO (the section on regulation making powers); and

(b) substantive property rights will be affected.

8. On point (a), the Department of Justice has advised that making regulations for the proposal of removal of the stopped deed entries is within the scope of s.28 of the LRO. On point (b), the Department of Justice has advised that it is not aware of legal doctrines that require matters affecting substantive property rights to be set out in primary legislation only.

## **PROPOSAL**

9. In the light of para. 8, the Administration intends to implement the proposal regarding the removal of stopped deeds by way of amendments to the subsidiary legislation and plans to make the following provisions in the Regulations for the purpose of -

(a) giving the LR the power to remove the entry of stopped deeds outstanding for more than 6 months. The lodging

party and other affected persons should be notified of the proposed removal of such entries and be given a period of 28 days for them to make written submissions to the LR for a decision on the matter;

(b) providing an avenue for a party aggrieved by the decision of the LR on the removal of the entry of the stopped deed to appeal to the Court; and

(c) providing for the priority of the instruments in the event of a decision of removal of the entry of the stopped deed which is subsequently overturned by the Court, as follows –

(i) if no document has been registered after the removal of the particulars of the stopped deed and before the registration of the application for review, the stopped deed shall have the priority that it would have had as if the Land Registrar had never

removed those particulars;

(ii) if there are instruments registered after the removal of the particulars of the stopped deed and before the registration of the application for review, every instrument duly registered in the period commencing on the date of receipt of the stopped deed and ending with the time of registration of the application for review shall have priority over the stopped deed when duly registered; and

(iii) where an assignment has been registered after the removal of the particulars but before the registration 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 stopped deed.

10. In August 2002, the Administration informed both the Bar Association and the Law Society of its intention to amend the Land Registration Regulations to provide for the removal of stopped deeds.

## **DRAFT REGULATIONS**

11. The draft Land Registration (Amendment) Regulations is at **Annex.**

## **WAY FORWARD**

12. Subject to Members' views, we propose to make the Amendment Regulations in late 2002.

Housing, Planning and Lands Bureau

November 2002

**LAND REGISTRATION (AMENDMENT) REGULATION 2002**

(Made under section 28 of the Land Registration  
Ordinance (Cap. 128))

**1. Commencement**

This Regulation shall come into operation on a day to be appointed by the Land Registrar by notice published in the Gazette.

**2. Procedure where instrument is withheld from registration**

Regulation 15 of the Land Registration Regulations (Cap. 128 sub. leg.) is amended -

- (a) in paragraph (1), by adding ", subject to paragraph (7)," after "shall";
- (b) in paragraph (4)(b), by adding "and subject to paragraph (7)" after "satisfied";
- (c) by adding -

"(7) Where under paragraph (1), or under paragraphs (1) and (4)(b), as in force at any time (including at any time before the commencement of this paragraph), an instrument is withheld from registration for not less than 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) -

(a) the Land Registrar may, as he thinks fit but subject to paragraph (8), on or after the expiration of the period of 60 days mentioned in regulation 15A(1) remove any particulars -

(i) entered in the portion of the record of a register computer kept by him for the purposes of regulation 10(d)(i) for the land and premises affected by the instrument; and

(ii) which were so entered in consequence of such delivery of the instrument;

(b) the Land Registrar shall, as soon as is practicable after exercising his power under subparagraph (a), give notice of the exercise of the power -

(i) by placing a prescribed notice on a notice board -

- (A) maintained for  
the purposes of  
this paragraph;
  - (B) in a conspicuous  
place in the Land  
Registry; and
  - (C) for not less than  
28 days; and
- (ii) if practicable, by  
sending a prescribed  
notice by post to the  
persons concerned  
mentioned in paragraph  
(8)(a).

(8) Where the Land Registrar proposes to  
exercise his power under paragraph (7)(a), he  
shall -

- (a) give the person who delivered the  
instrument concerned, 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, and any  
other person who, in the opinion  
of the Land Registrar, may be  
affected by the exercise of that  
power, an opportunity of making

written submissions;

(b) not exercise that power -

(i) subject to sub-

subparagraph (ii),

after he has been served  
with a writ,

originating summons,

originating motion or

petition which relates

to the registration of

the instrument that

would be affected by the

exercise of that power;

(ii) until the conclusion of

the proceedings on the

writ, summons, motion

or petition, as the case

may be.

(9) For the purposes of paragraph (8)(a),  
a person shall be deemed to have been given an  
opportunity of making written submissions if -

(a) he intimates, personally or by a  
solicitor or other agent, that he  
does not wish to make any such  
submissions; or

(b) both -

(i) subject to paragraph

(10), a notice in writing has been issued to him by post specifying the proposed exercise of the power under paragraph (7)(a) and a date, being a date not less than 28 days after the date of service of the notice, on or before which he may make any such submissions; and

(ii) a notice in writing specifying the name of the person, the proposed exercise of the power under paragraph (7)(a) and a date, being a date after the expiration of the period mentioned in sub-sub-subparagraph (C), on or before which he may make any such submissions has been placed on a notice

board -

- (A) maintained for the purposes of this paragraph;
- (B) in a conspicuous place in the Land Registry; and
- (C) for not less than 28 days.

(10) Paragraph (9)(b)(i) does not need to be complied with in the case of a person in respect of whom the Land Registrar is satisfied that it is not practicable to comply with that paragraph and, in the case of that person, compliance with paragraph (9)(b)(ii) shall be deemed to be sufficient for the purposes mentioned in paragraph (9).

(11) After the expiry of the period for making any written submissions under this regulation, the Land Registrar shall, as soon as is practicable -

- (a) consider the submissions and make a decision on whether or not to implement the proposed exercise of his power under paragraph (7)(a); and
- (b) issue a notice in writing to the

persons mentioned in paragraph (8)(a) specifying his decision.

(12) In this regulation, "prescribed notice" (訂明通知), in relation to an instrument delivered for registration, means a notice specifying -

- (a) the memorial number;
- (b) the date of the instrument;
- (c) the date of delivery;
- (d) the names of the parties or other persons concerned mentioned in paragraph (8)(a);
- (e) the name of the lodging party; and
- (f) the address of the land and premises to which the instrument relates.

(13) For the avoidance of doubt, it is hereby declared that -

- (a) the Land Registrar may under paragraph (1) withhold an instrument from registration on the ground mentioned in subparagraph (a) of that paragraph notwithstanding that a request mentioned in subparagraph (b) of that paragraph has been made in relation to the instrument, and

the other provisions of this regulation shall be construed accordingly;

- (b) where the Land Registrar exercises his power under paragraph (7)(a) to remove particulars from the record of a register computer, then, for all purposes, the record of the register computer shall be regarded as never having had those particulars entered in it and, accordingly, the instrument to which those particulars relate shall, subject to regulation 15A(9), be treated as never having been delivered for registration."

### 3. Regulation added

The following is added -

**"15A. Application to Court by person aggrieved by decision mentioned in regulation 15(11)**

(1) A person aggrieved by a decision mentioned in regulation 15(11) may have the decision reviewed by making an application by originating summons or petition to the Court not later than 60 days after the notice of the decision has been issued under that regulation or within such further period as to the Court

appears just in any particular case.

(2) An applicant mentioned in paragraph (1) shall -

- (a) serve the originating summons or petition concerned on the Land Registrar; and
- (b) register that summons or petition, as the case may be, under the Ordinance.

(3) 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 record of the Land Registry 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.

(4) Subject to paragraph (6), the Court may make such order on an application under paragraph (1) as the circumstances may require together with, as to the Court appears just, any costs and expenses properly incurred in relation to the application.

(5) The Land Registrar shall give effect to an order referred to in paragraph (4) in so far as it relates to him and, for that purpose, shall have such powers as are necessary to give effect to the order.



(6) Where -

(a) the Land Registrar has exercised his power under regulation 15(7)(a) to remove any particulars entered in the portion of the record 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 (4) 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.

(7) In paragraphs (1) and (4), "Court" (法庭) means -

- (a) if the rateable value determined in accordance with the provisions of the Rating Ordinance (Cap. 116), or the annual value, whichever is the less, of the land and premises to which the decision mentioned in regulation 15(11) relates does not exceed \$240,000, a judge sitting in open court in the District Court;
- (b) in any other case, a judge sitting in open court in the Court of First Instance.

(8) A person aggrieved by an order referred to in paragraph (4) (including any costs and expenses to which the order relates) may appeal to the Court of Appeal against the order.

(9) Where -

- (a) the Land Registrar has exercised his power under regulation 15(7)(a) to remove any particulars entered in the portion of the record 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 (4), or on the determination of an appeal under paragraph (8), 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, 5 or 5A 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, 5 or 5A 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, 5 or 5A 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."

Land Registrar

2002

Explanatory Note

This Regulation amends regulation 15 (section 2) and adds new regulation 15A (section 3) for the purposes of -

- (a) introducing procedures to permit the Land Registrar to remove particulars concerning any instrument which has been withheld from registration for not less than 6 months; and
- (b) providing that a person aggrieved by a decision of the Land Registrar to remove such particulars may have the decision reviewed by making an application to the Court by way of originating summons or petition.