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6 November 2002

Clerk to Panel
(Attn: Miss Salumi Chan)
LegCo Panel on Planning, Lands and Works
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Miss Chan,

**LegCo Panel on Planning, Lands and Works
Meeting on 8 November 2002**

**Agenda Item IV
Removal of Stopped Deeds
- proposed amendments to Land Registration Regulations**

I refer to your letter dated 4 November 2002 and enclose herewith more detailed information on the views of Hong Kong Bar Association and the Department of Justice on the point raised by the Panel Chairman for your further action.

Yours sincerely,

(Parrish Ng)
for Secretary for Housing, Planning and Lands

**Legislative Council Panel on Planning, Lands and Works
Meeting on 8 November 2002**

**Agenda Item IV
Removal of Stopped Deeds**

**Administration's Response on the issues raised in the letter of 4 November 2002
from Clerk to the Panel to the Secretary for Housing, Planning and Lands**

1. The justifications put forward by the Hong Kong Bar Association to substantiate its view that the removal of stopped deeds is outside the scope of section 28 of the Land Registration Ordinance
 - (a) The Bar Association considers that the Land Registration Regulations are subsidiary legislation made under the powers conferred upon the Land Registrar under section 28 of the Land Registration Ordinance. Matters for which the Land Registrar has power to make regulations are limited to those set out in that section. The Bar Association considers that the removal of stopped deeds does not come within any of the matters listed in section 28.
 - (b) The Bar Association also considers that provisions which have the effect of altering substantive rights of priority should be distinguished from those which are merely procedural. They believe that as a matter of principle, provisions affecting substantive property rights as opposed to merely procedural matters ought not to be included in subsidiary legislation.

2. The justifications put forward by the Department of Justice to substantiate its view that the removal of stopped deeds is within the scope of section 28 of the Land Registration Ordinance. Please specify the relevant subsection
 - (a) The Department of Justice advises that the power given to the Land Registrar in section 28(1)(a) of the Land Registration Ordinance to make regulations for "the manner" in which entry and registration of instruments and documents etc. shall be effected and for the withdrawal of instruments and documents etc. from registration is broad enough to give power to the Registrar to make regulations for the removal of stopped deeds. Stopping

and removing deeds are part of the manner in which registration is carried out or otherwise.

- (b) The Department of Justice also advises that it is appropriate to make regulations which provide for a difference in order of priority to that set out in section 3(1) of the Land Registration Ordinance. Section 3(1) of the Land Registration Ordinance is explicitly made "subject to this Ordinance". As the definition of "Ordinance" in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1 states that "Ordinance" includes "any subsidiary legislation made under [the] Ordinance", the qualification in section 3(1) of the Land Registration Ordinance means that it is legally permissible to enact subsidiary legislation to provide for an order of priority which may be different from that set out in section 3(1).
- (c) The Department of Justice is not aware of any legal doctrine that subsidiary legislation cannot be used to alter substantive property rights.

Housing, Planning and Lands Bureau
6 November 2002