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**Meeting of the Panel on Planning, Lands and Works
on 21 December 2004**

Land Title Registration System

Background Brief

Introduction

The Land Titles Bill (the Bill) was passed by the Legislative Council (LegCo) on 7 July 2004. The object of the Bill is to replace the existing deeds registration system with a new system of registering the title to land and the interests in the land subject to which the title is held. Under the existing deeds registration system, registration of deeds governs priority of the deeds but does not confer title. All deeds shall have priority one over the other according to the priority of their respective dates of registration. Under the new Land Title Ordinance (LTO), registration as owner confers title to the land, and certainty is provided both as to the ownership of land and the interests in that land. The Title Register shall be conclusive evidence of the title to registered land and it will no longer be necessary to review the historical title deeds to establish title as at present. This will give security to property interests and simplify conveyancing.

Preparation work for implementation of land title registration

2. In the course of deliberations by the Bills Committee formed to study the Bill, members identified a number of issues that need to be followed up before the implementation of land title registration. These include, amongst others, putting in place the relevant regulations and finalizing the guidance notes for legal practitioners and members of the public. The Bills Committee therefore agreed that LTO be commenced two years after its enactment. The Bills Committee urged the Administration to make full use of the two-year period to ensure the effective implementation of LTO. In this respect, the Administration undertook the following:

- (a) the list of regulations set out in **Appendix I** will be put in place before the commencement of LTO;
 - (b) a review of LTO will be conducted during the two-year period between its enactment and commencement; and
 - (c) the Panel on Planning, Lands and Works will be consulted on the proposed commencement date of LTO before the commencement notice is published in the Gazette. The commencement notice should be subsidiary legislation subject to the vetting of LegCo.
3. At the request of the Law Society of Hong Kong (Law Society), the Administration also undertook to the Bills Committee:
- (a) to work with the Law Society to address any subsisting points of concern and any issues that emerge on further consideration of the drafting of LTO before its implementation; and
 - (b) not to implement LTO pending the review of the Solicitors (Professional Indemnity) Rules and the Professional Indemnity Scheme by the Law Society on the issue of double payment from the Solicitors Indemnity Fund in respect of any claim arising from LTO and to effect any consequential amendments in this regard.
4. A comprehensive list of follow-up actions to be taken by the Administration after the enactment of LTO is set out in **Appendix II**.
5. A list of relevant papers with their hyperlinks at the LegCo website is in **Appendix III**.

**List of Regulations to be enacted
before commencement of the Land Titles Ordinance**

1. Land Titles Regulations

These will cover most of the specific provisions for regulations set out in Clause 100(1) or referred to in other clauses of the Bill, the exceptions being those dealt with under the other sets of regulations listed below.

2. Land Titles Indemnity Fund Regulations

These will provide for the detailed operation of the Indemnity Fund established under Clause 87A of the Bill. They will cover the matters as set out in Clause 100(1) subsections (zh) to (zm) .

3. Land Titles (Fees and Levies) Regulations

These will be made under Clause 98 to provide for the fees to be paid to the Registrar for matters set out in sub-clause (1) and the levy to be paid for the purposes of the indemnity fund under sub-clause (2A).

4. Land Titles Transitional Regulations

These will be made under Clause 100(1)(zp) and will provide for matters required to support Clauses 8 and 9 of Schedule 1A and any other purely transitional matters.

5. Court Rules

These may be made by the Chief Justice under Clause 91 to provide any necessary rules for regulating appeals and other applications.

All the regulations (items 1 to 4) are needed to ensure the smooth implementation of the new land title registration system and will be enacted before commencement of the Ordinance.

Rules under item 5 are at the discretion of the Chief Justice. The Administration will refer matters to him for consideration after enactment and will request that the necessary rules be made before commencement of the Legislation.

**List of follow-up actions to be taken by the Administration
after enactment of the Land Titles Bill**

Part A: Making of rules and regulations

Apart from preparing the regulations highlighted in clause 100 of the Bill, the Administration has also agreed to take the following actions where regulations are concerned -

1. To specify in the regulations relating to the original clause 4(a) the means by which notices and orders relating to premises under other Ordinances, such as section 153M of the Crimes Ordinance (Cap. 200), can be registered under the original clause 4(a) as matters expressly provided for in other enactments;
2. To check whether there are any existing laws of court that govern the exercise of power by the Land Registrar under the new clause 6A and consider the need to make regulations to provide for the relevant implementation procedures;
3. To make recommendations for the Chief Justice to make rules for regulating applications made to the court under clause 95;
4. To put in place the regulations prescribing the class of persons referred to in clause 77(5)(c) on the definition of "interested person" before the commencement of the Land Titles Ordinance (LTO); and
5. In connection with item 4 above, to put in place all the relevant regulations before the commencement of LTO and consult the LegCo Panel on Planning, Lands and Works in due course on the proposed commencement date of LTO before the commencement notice for the Ordinance is published in the Gazette.

Part B: Preparation of guidelines, guidance notes and the like

The Land Registry has agreed to prepare the following to facilitate implementation of the new land title registration system (LTRS) -

6. To prepare Land Registry Circular Memoranda and other advisory publications for solicitors, estate agents and other practitioners once the Bill is enacted. These documents will be drafted in consultation with the relevant professional bodies and issued before the Bill is brought into effect; and

7. To prepare practice guides and explanatory notes on the use of cautions, restrictions and inhibitions, similar to those issued by the Land Registrar in England, for reference by the public and practitioners. The Administration would also ensure that the above and all practice guides and explanatory notes on the registration of matters under the Bill would be ready before the implementation of LTRS, and that they will be regularly updated and made available to the legal practitioners and the public on the Internet.

Part C: Further consequential amendments to be introduced after enactment of the Bill

The Administration has agreed to consider further consequential amendments arising from the Bill, as follows -

8. To make any other consequential amendments to the relevant legislation in recognition that the current practice of disposal of land by deeds would discontinue after the implementation of LTRS, so that such legislation would not apply to land registered under LTRS;
9. To relay to the Secretary for Home Affairs for his consideration of introducing amendment to the definition of “common parts” in section 2 of the Building Management Ordinance (Cap. 344) the following comments, namely, that the original and proposed revised definitions of “common parts” are not comprehensive enough to cover all relevant cases. For example, supplemental deeds of mutual covenant may not fall under the definitions. The definitions may also fail to exclude the case where certain parts of the building are dedicated to public use and hence are not common parts;
10. To consider outside the context of the Bill how registration as owners in cases relating to t’so should be dealt with, so as to address the Bills Committee’s concern that section 15 of the New Territories Ordinance (NTO) (Cap. 97) only governs cases relating to clan, family or t’ong;
11. To invite the Law Society of Hong Kong (Law Soc) to deal with the consequential amendments to the Solicitors (General) Costs Rules (Cap. 159 sub. leg.) as part of the overall arrangement for the implementation of the LTRS;
12. To carry out in the 2-year period between the enactment and commencement of the Bill a review of the references in the Bill to the register kept under the existing deeds registration system (DRS), namely, “the land register kept in the Registry” or “the land register kept under the Land Registration Ordinance” and make any necessary simplification;

13. To ensure that any provision incompatible with the Conveyancing and Property Ordinance (Cap. 219) would be rectified during the 2-year period between the enactment and commencement of the Bill; and
14. To introduce any other additional consequential amendments that may become necessary during the period between the passage of the Bill and the implementation of LTRS in the form of subsidiary legislation that require positive vetting of the Legislative Council.

Part D: Clauses to be reviewed after enactment of the Bill

The Administration has agreed to review the following clauses of the Bill after its enactment -

15. To do some research during the 2-year period between the enactment and commencement of the Bill and, in consultation with Law Soc and other relevant parties, revisit the Assistant Legal Adviser (ALA)'s concern that by putting in clause 29(1) a universal prohibition on the creation, extinguishment, transfer, variation or affection of land by means other than by registration under the Bill, and qualifying such with subclause (2), the power of an owner to dispose of his property would be significantly affected;
16. To revisit clause 33(8) and address Law Soc's concern about the subclause as a result of the retention of the words "under a provisional agreement for sale and purchase or an agreement for sale and purchase" therein;
17. To revisit clause 35(3) to address Law Soc's concern that the protection given to a registered charge under the Bill may be too limited;
18. To review clause 43 in consideration of ALA's view that implied covenants should take effect upon registration and not when the relevant transfer is signed;
19. To consider how to address ALA's concern that, because of the reference to "the entry in the Title Register" in clause 81(4), it is not clear whether a fraud or voidable transaction that would give rise to a claim for rectification in relation to land which was registered under the Land Registration Ordinance (LRO) (Cap.128) can be rectified after the commencement of LTO; and
20. To review the provisions in clause 92 after introducing a similar provision in a suitable ordinance that will apply to land not yet registered under LTO.

Part E: Other issues

The Administration has also undertaken to take the following actions after enactment of the Bill -

21. To carry out fresh calculations closer to the time of implementation of the LTRS the estimated levy rates for the properties valued over \$30 million. Consideration will then be given to the rate to be applied to each value of property;
22. To discuss with the relevant parties on the relevant procedures, forms and documents once the terms of the Bill are settled. The exercise will be undertaken in parallel with the preparation of regulations under the Bill and a presentation may be made to members before the regulations are submitted for approval;
23. To consider how the public, or a solicitor acting on behalf of a member of the public, may search properties by owners' names provided that they comply with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486);
24. To consult Law Soc on the applications register under the LTRS, so that legal practitioners would in future know how to deal with it;
25. To resolve before commencement of the Bill certain issues, such as the documents to be kept under the LTRS under clause 44(1), which the Administration has agreed to resolve with Law Soc after enactment of the Bill;
26. To provide in due course the relevant case law in the UK on how the court interprets the expression "lack of proper care" in clause 81; and
27. To reply to Heung Yee Kuk shortly regarding its comments on the paper on "Report on Consultation on Revisions to Conversion Mechanism and Rectification Provisions" (*LC Paper No. CB(1)1230/03-04(04)*), and provide the Bills Committee with a copy of the reply.

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List of relevant papers

Council/Committee	Date of meeting	Paper
Bills Committee on Land Titles Bill		LegCo Brief (http://www.legco.gov.hk/yr02-03/english/bills/brief/b28_brf.pdf) Background brief (http://www.legco.gov.hk/yr02-03/english/bc/bc03/papers/bc030319cb1-1143-1e.pdf) Report (http://www.legco.gov.hk/yr03-04/english/hc/papers/hc0625cb1-2219e.pdf) (http://www.legco.gov.hk/yr02-03/english/bc/bc03/reports/bc03cb1-2276-rpt-e.pdf)