

For discussion
on 19 March 2009

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT AND
PANEL ON ADMINISTRATION OF JUSTICE AND LEGAL SERVICES**

**JOINT SUBCOMMITTEE ON
AMENDMENTS TO THE LAND TITLES ORDINANCE**

Amendments to the Land Titles Ordinance

PURPOSE

The purposes of this paper are to –

- (a) advise Members of the follow-up actions taken by the Administration since the enactment of the Land Titles Ordinance (Cap. 585) (LTO) in 2004;
- (b) give detailed information on the post-enactment review of the LTO; and
- (c) provide an updated work plan for commencement of the LTO.

BACKGROUND

2. Before the LTO was enacted in July 2004, during the committee stage discussion of the then Land Titles Bill, Members sought and the Administration undertook to review the LTO before commencement. The Administration would also follow up on a number of outstanding issues and consult the Panel before the commencement notice for the LTO is published. From the subsequent legal review it has been concluded that an amendment bill needs to be enacted before it can be brought into effect. Substantive amendments have to be made to the LTO before it can be commenced.

3. In May 2007, the Administration briefed the then Panel on Planning, Lands and Works on the progress of the follow-up work made since the enactment of the LTO in 2004. The Paper No. CB(1)1643/06-07(07) (the 2007 Paper) set out the work being conducted both on the legal review and on administrative preparation. In December 2008, we reported further to the Panel on Development, via Paper No. CB(1)369/08-09(06) (the 2008 Paper), the progress on the preparation of amendments to the LTO and the substantial matters to be finalised before the amendments could be ready for consideration.

4. This paper provides a summary and a progress update on the follow-up actions concerning the above various aspects.

FOLLOW-UP ACTIONS

Legal Review

5. With respect to the legal review, the 2007 Paper reported that the post-enactment review of the LTO was not confined to issues raised in Appendix VI of the Report of the Bills Committee on Land Titles Bill (Paper No. CB(1)2219/03-04) (the Report). The wording and operation of every section of the LTO had been examined, and substantial amendments had to be made to the LTO before it could be commenced. The close interrelationship between different provisions in the LTO means that the effects of the present wording have to be analysed extensively, as do any proposed revisions. The large number of ordinances for which the LTO must provide support in succession to the Land Registration Ordinance (Cap. 128) (LRO) means that the task of ensuring effective, unambiguous integration between the existing legislation and the new LTO requires thorough consultation and coordination.

6. Annex A sets out issues that were raised in the Report and the latest positions to date. Apart from the issues raised in the Report, during the course of the review of the LTO, the Administration has identified a number of further issues that have to be resolved before the amendment bill can be finalised. Annex B sets out these further issues and the latest progress on the follow-up actions. We have either resolved or identified solutions for most of the issues. As reported in the 2008 Paper, there remain four substantial matters to be finalised before the Land Titles (Amendment) Bill (LT(A)B) is ready for consideration, namely –

- (a) the relationship between the LTO and other legislation;
- (b) arrangements for updating land boundaries;
- (c) modification to rectification and indemnity provisions; and
- (d) modification to the conversion mechanism.

7. On (a), the Land Registry (LR) is in consultation with departments concerned on proposed changes. The LR will work to finalise the amendments to be made to the LTO and the consequential amendments to other legislation.

8. On (b), it has been reported that the Administration had decided to repeal section 94 of the LTO and introduce comprehensive arrangements for dealing with updating of land boundaries in the Land Survey Ordinance (Cap. 473) (LSO). Amendments to the LSO are being prepared and it is intended to package these amendments as consequential amendments in the LT(A)B.

9. As reported in the 2008 Paper, a three-month public consultation exercise on (c) and (d) was launched on 1 January 2009. With respect to the mandatory rectification provision, the main question that has been raised is the effect that the rule may have on the confidence of purchasers using the new system and on the ability of the new system to deliver the intended improvements in the efficiency and security of conveyancing. With the rule as currently enacted, a purchaser will not be sure that they are safe from a claim for recovery by a past owner, undermining the confidence of the purchaser on the title register and defeating the major objective of introducing title registration, which is to improve efficiency, reduce cost and provide certainty in property transactions. As detailed in the 2008 Paper, in light of the assessment of the risk of the existing mandatory rectification rule undermining the potential benefits of the title registration, we have developed modifications that would address the risk to confidence and deal with the practical issues that the current provisions would raise.

10. With respect to the conversion mechanism, during the post-enactment review of the LTO, a range of issues have been examined. They include such matters as the need for a mechanism to deal with properties where ownership is uncertain; how to manage the conversion most efficiently so as to minimise risks to public funds and costs to public users; and how to resolve questions over the priority of interests protected by caveats under the LRO. As detailed in the 2008 Paper, we have examined and proposed modifications to the conversion process that might address the above issues.

11. Our proposals have been publicised and the major stakeholders, including the Law Society of Hong Kong (Law Society), the Hong Kong Bar Association, the Real Estate Developers Association of Hong Kong as well as the Heung Yee Kuk, are being consulted. The initial reaction from the Law Society Working Party, while appreciating the need for new provisions to tackle the issues so identified, has been to question the extent to which liabilities might arise on conversion and to doubt the need for significant change to the enacted mechanism of conversion. The LR is engaging in further examination of the various outstanding issues with the stakeholders and will carefully consider their views in deciding the way forward.

Administrative Preparation

IT development strategy

12. To reduce the time required between enactment of the amendment bill and rules and the commencement of land title registration, the LR is designing a new title registration information system such that development of those functions and infrastructure components with less dependence on the final form of

the amendment bill and rules can proceed at an earlier stage. Upon enactment of the amendment bill and rules, the IT system will be further adjusted to cater for those legislative and operational requirements that are essential for the commencement of title registration. Such an approach will help ensure the availability of the initial, essential IT support as soon as possible after enactment of the amendment bill.

13. Tenders for construction of the new search system that will operate independently of the existing Integrated Registration Information System (handling deeds registration) and the planned Title Registration Information System have been called and are now being evaluated. It is intended to have the new search service in operation by late 2010. Persons seeking information on registered property will be able to obtain that information seamlessly through the new search system.

Operational preparation and training

14. To support the implementation of the land title registration system, the LR has prepared draft registration procedures and application forms for title registration. Consultation on these drafts with the stakeholders and other interested groups will be carried out prior to introduction of the amendment bill. On education and publicity, a Title Registration Education Committee has been formed. With assistance from the RTHK, a ten-part programme on the development of Hong Kong's system of land administration has been launched, as a means to raise public awareness of the intended change to a title registration system.

WORKPLAN

15. A detailed work plan setting out the various matters to be settled for completion of the LT(A)B and subsidiary legislation is at [Annex C](#). We aim to introduce the LT(A)B into the Legislative Council by late 2010.

**Development Bureau
March 2009**

Annex A

Follow-up actions to be taken by the Administration after enactment of the Land Titles Ordinance

The following table reports the latest positions in respect of the follow-up actions listed in Appendix VI of the Report of the Bills Committee on the Land Titles Bill (Paper No. CB(1)2219/03-04).

Item No.	Follow-up action	Action Taken / Updated Position
Part A : Making of rules and regulations		
1	To specify in the regulations relating to the <i>original clause 4(a)</i> 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 (<i>item 26 of the list of follow-up actions to the thirty-fifth meeting of the Bills Committee on 11 June 2004</i>)	<p>Post-enactment review groups were formed. Meetings were held to review the provisions of the Land Titles Ordinance (Cap. 585) (LTO). The concept of registration of instruments was considered. A Land Titles Rules Subcommittee was set up and meetings were held. Registration procedures were considered.</p> <p>The review has concluded that no specific regulation or rule is needed. There are two types of court orders to consider –</p> <p>(a) those where there is no vesting of title, such as building orders or closure orders; and</p> <p>(b) those that support a transmission, such as vesting orders under section 45 of the Trustee Ordinance (Cap. 29).</p> <p>In case (a), the order itself will be registered as an instrument. In case (b), the procedure for registration of transmissions will be followed. Special regulations or rules for registration of a court order are therefore unnecessary. The same applies to notices in respect of which no special regulations or rules for registration are necessary.</p>

Item No.	Follow-up action	Action Taken / Updated Position
2	<p>To check whether there are any existing laws of court that govern the exercise of power by the Land Registrar (the Registrar) under the <i>new clause 6A</i> and consider the need to make regulations to provide for the relevant implementation procedures (<i>item 6 of the list of follow-up actions to the thirty-third meeting of the Bills Committee on 1 June 2004</i>)</p>	<p>A LTO Court Rules Subcommittee was set up and meetings were held. Discussion paper on the Court Rules was considered by the LTO Review Committee (Review Committee). Researches in Hong Kong ordinances and overseas legislations on similar power to that of the Registrar under section 9 were conducted. No existing laws of court governing the exercise of power by the Registrar have been found. The Court Rules relating to the LTO (whether as part of the Rules of the High Court or a set of stand-alone rules) will provide these.</p> <p>Draft drafting instructions (DDIs) were sent to the Department of Justice (DoJ) for preparation of the court rules to regulate applications to the Court under the LTO, including applications by the Registrar for directions. Working draft of the Court Rules was reviewed.</p> <p>Consultation was also made with the Judiciary. The DoJ's advice was sought on issues raised by the Judiciary about section 9. Further instructions for revision to the working draft of the Court Rules have been sent to the DoJ.</p>
3	<p>To make recommendations for the Chief Justice to make rules for regulating applications made to the court under <i>clause 95</i> (<i>page 29 of LC Paper No. CB(1)1544/03-04(01)</i>)</p>	<p>A LTO Court Rules Subcommittee was set up and meetings were held. DDIs have been sent to the DoJ for comment and preparation of the draft Court Rules. Working draft of the Court Rules was reviewed.</p> <p>Further instructions have been given to the DoJ to revise the working draft. The working draft will then be prepared for submission to the Chief Justice for consideration by the Rules Committee of the High Court.</p>

Item No.	Follow-up action	Action Taken / Updated Position
4	<p>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 LTO (<i>item 4 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004</i>)</p>	<p>A Land Titles Rules Subcommittee was set up and meetings were held. Research on the definition of “interested person” under the Land Registration Act 2002 and the Land Registration Rules 2003 of the United Kingdom (UK) was conducted. Notes on the draft definition of “interested person” were prepared and considered.</p> <p>The review has recommended that provisions for the Registrar to make, vary and remove restriction orders be deleted. There is fundamentally no difference between an inhibition order made by the Court and a restriction order made by the Registrar. Duplication of power is not necessary. Further, the making of an inhibition order is final whereas a restriction order made by the Registrar is still subject to the scrutiny of the Court.</p>
5	<p>In connection with item 4 above, to put in place all the relevant regulations before the commencement of LTO and consult the Legislative Council (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 (<i>item 5 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004</i>)</p>	<p>Various subcommittees were formed for preparation of all the relevant regulations or rules.</p> <p>An amendment bill is required. This will be put to the LegCo together with all necessary regulations or rules. The timing of commencement will be determined when the amendment bill is enacted.</p>

Item No.	Follow-up action	Action Taken / Updated Position
Part B : Preparation of guidelines, guidance notes and the like		
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 (<i>item 4 of LC Paper No. CB(1)1425/03-04(02)</i>)	<p>Similar guides prepared in other jurisdictions for the operation of title registration system have been reviewed and the nature and scope of documents that need to be prepared have been determined.</p> <p>Drafting will begin once the amendment bill is finalised. The Law Society of Hong Kong (Law Society), Estate Agents Authority and other interested parties will be consulted on the drafts. Subject to any final amendments required when the amendment bill is enacted, the documents will be published before the implementation of the title registration system.</p>
7	<p>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 land title registration system, and that they will be regularly updated and made available to the legal practitioners and the public on the Internet (<i>item 40 of LC Paper No. CB(1)1425/03-04(02) and item 4(d) of the list of follow-up actions to the twenty-eighth meeting of the Bills Committee on 13 April 2004</i>)</p>	<p>Operation guides prepared in other jurisdictions have been reviewed and the nature and scope of the documents to be prepared have been determined. Officers of the Land Registry (LR) have been sent for attachment to the Registers of Scotland Executive Agency and Her Majesty's Land Registry of England and Wales to help prepare for the practical issues of implementation of the title registration system. References have been made to the websites of the Land Registries of other jurisdictions to ensure that appropriate operation guides will be made available and regularly updated on the LR's website in an efficient and user-friendly manner.</p> <p>Similar to item 6, drafting of the documents will be carried out after the amendment bill has been finalised and they will be published on the LR's website before the implementation of the title registration system.</p>

Item No.	Follow-up action	Action Taken / Updated Position
Part C : Further consequential amendments to be introduced after enactment of the Bill		
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 land title registration system, so that such legislation would not apply to land registered under land title registration system (<i>item 11 of the list of follow-up actions to the thirty-first meeting of the Bills Committee on 11 May 2004</i>)	<p>Provisions of the LTO and the Conveyancing and Property Ordinance (Cap. 219) (CPO) were examined. Discussion paper comparing the provisions of the LTO and the CPO was submitted to the Review Committee. Consultation with the Law Society was made on the proposals put forth in the discussion paper. Comments of the Law Society were considered.</p> <p>Section 4(1) of the CPO provides for the disposal of a legal estate by deed. The Law Society and the Administration are in agreement that the CPO and the LTO should operate independently. To remove any doubt whether a legal estate in land may be created, extinguished or disposed of on the execution of a deed under section 4(1) of the CPO, the Administration proposed to amend section 4(1) to make it clear that in respect of registered land, the creation, extinguishment or disposal of a legal estate shall comply with both section 32(1) of the LTO and section 4(1) of the CPO. The Law Society is of the view that the amendment is not necessary. On review, the Administration accepts that the LTO - which deals with registered land - sets requirements that are additional to those under the CPO - which deals with land in general. It is not recommended to amend section 4(1) of the CPO.</p>
9	To relay to the Secretary for Home Affairs for his consideration of introducing amendment to the definition of "common parts" in section	Clarification was made with the Assistant Legal Advisor (ALA) of the LegCo Secretariat over his concern.

Item No.	Follow-up action	Action Taken / Updated Position
	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 (<i>item 9 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004</i>)	The ALA has clarified that his main concern is that the definition of “deed of mutual covenant” in section 53(5) of the LTO does not cover all types of deeds of mutual covenant under the present conveyancing system. The definition of “deed of mutual covenant” in the LTO was reviewed. The Administration has asked the Law Draftsman to amend the definition of “deed of mutual covenant” to include sub-deeds of mutual covenant. The Law Draftsman has also been instructed to revise the definition of “owner” to include owners of the same housing estate who do not hold individual shares in the whole lot.
10	<p>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 (Cap. 97) only governs cases relating to clan, family or t’ong (<i>item 14 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004</i>)</p>	<p>Post-enactment review groups were formed and meetings were held. Discussion papers were considered by the Review Committee. The review has concluded that a “T’so” is similar to a clan, family or “T’ong” under section 15 of the New Territories Ordinance (Cap. 97). ‘T’so’ may therefore be registered as an owner, as with a “T’ong”, together with the name of the manager if any has been appointed.</p> <p>Comments of the ALA of the LegCo Secretariat were sought. Meetings with Heung Yee Kuk were held. Provisions will be added to the LTO on registration of manager of clan, family or “T’ong”. DDIs were given to the DoJ.</p>

Item No.	Follow-up action	Action Taken / Updated Position
11	To invite the Law Society to deal with the consequential amendments to the Solicitors (General) Costs Rules (Cap. 159G) as part of the overall arrangement for the implementation of the land title registration system (<i>page 35 of LC Paper No. CB(1)1544/03-04(01)</i>)	Consultation was made with the Law Society, which has suggested amendments to the Solicitors (General) Costs Rules.
12	<p>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, namely, “the land register kept in the Registry” or “the land register kept under the Land Registration Ordinance” and make any necessary simplification (<i>item 15 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004</i>)</p>	<p>Word searches were conducted on Hong Kong ordinances. A discussion paper was considered by the Review Committee. It is proposed to add provisions in the Land Registration Ordinance (Cap. 128) (LRO) to the effect that –</p> <p>(a) unless the context otherwise requires, any reference in any other enactment to “land register”, “Land Registry register”, “records of the Land Registry”, “Land Registry records”, “register kept in the Land Registry”, or similar expressions, shall be construed to mean the register or records kept under the LRO or the LTO, as the case may require; and</p> <p>(b) unless the context otherwise requires, any reference in any other enactment to “Land Registry register”, “land register”, “records of the Land Registry”, “Land Registry records”, “register kept in the Land Registry”, “register kept under the Land Registration Ordinance”, or similar expressions, shall be construed to refer to the records kept by the Registrar in the register card and the register computer defined in Regulation 2 of the Land Registration Regulations (Cap. 128A).</p> <p>DDIs were sent to the DoJ.</p>

Item No.	Follow-up action	Action Taken / Updated Position
13	To ensure that any provision incompatible with the CPO would be rectified during the 2-year period between the enactment and commencement of the Bill (<i>item 28 of the list of follow-up actions to the thirty-fifth meeting of the Bills Committee on 11 June 2004</i>)	<p>A comparison exercise of the CPO and the LTO was conducted. Provisions of both ordinances were examined. A discussion paper was submitted to the Review Committee. Consultation was made with the Law Society on the proposals put forth in the discussion paper. Comments of the Law Society were considered.</p> <p>The Administration and the Law Society agreed that the CPO and the LTO should operate independently. Both agreed to amend section 12A of the CPO but have not come to agreement on the following provisions of the CPO –</p> <ul style="list-style-type: none">(a) section 23A – whether to expressly provide that it does not apply to registered land;(b) section 53 – whether to make it clear the requirement for registration;(c) section 56(1) – whether to revise it to the effect that nothing therein provided shall affect the provisions of the LTO, if section 90 of Schedule 3 to the LTO is to be deleted. <p>The Administration agrees that there is no incompatibility between section 53 of the CPO and the LTO, and that amendment to section 53 is not necessary. The Administration has asked for further views on the proposed amendment to sections 23A and 56(1). The Law Society's view is pending. DDIs have been given to the DoJ.</p>
14	To introduce any other additional consequential amendments that may become necessary during the period between the passage of the Bill and the	<p>The follow-up action was noted.</p> <p>All additional consequential amendments will be considered together with the amendment bill and enacted together with it.</p>

Item No.	Follow-up action	Action Taken / Updated Position
	implementation of land title registration system in the form of subsidiary legislation that require positive vetting of the LegCo (<i>item 33 of LC Paper No. CB(1)1425/03-04(02)</i>)	

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

15	<p>To do some research during the 2-year period between the enactment and commencement of the Bill and, in consultation with Law Society and other relevant parties, revisit the 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 (<i>item 2 of the list of follow-up actions to the thirty-ninth meeting of the Bills Committee on 21 June 2004</i>);</p>	<p>Post-enactment review groups were formed and meetings were held. Researches in other jurisdictions were conducted. Discussion papers were submitted to the Review Committee. The Review Committee has examined sections 32(1) and 32(2) and has decided that registration of dispositions is required. The decision is in line with the spirit of the title registration system which aims at certainty of title.</p> <p>The ALA has commented on the decision to retain sections 32(1) and 32(2) and has raised further questions on the surrender of leases and the creation of easements by prescription. With respect to surrender or termination of leases, it is proposed that –</p> <ul style="list-style-type: none"> (a) if termination of a lease that is registered is provided in an instrument of termination, the instrument must be registered; or (b) if a lease that is registered is terminated in any other manner, an application for removal of the relevant entry is needed. <p>With respect to easements by prescription, a non-consent caution may be registered. Consideration is being given to include such easements as overriding interests under section 28 of the LTO.</p>
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Item No.	Follow-up action	Action Taken / Updated Position
		On advice by the Law Draftsman, it is proposed to state expressly that no instrument shall be effectual to create, extinguish, transfer, vary or otherwise affect registered land or a registered long term lease or any interest in or over the land or lease unless and until the instrument is registered. Transmissions and overriding interests are the exceptions. DDIs were given to the DoJ.
16	To revisit clause 33(8) and address Law Society'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 (<i>item 3 of the list of follow-up actions to the thirty-ninth meeting of the Bills Committee on 21 June 2004</i>)	<p>Post-enactment review groups were set up and meetings were held. Research on the position under the existing law was conducted. Discussion papers were submitted to the Review Committee. DDIs were sent to the DoJ.</p> <p>Meetings with the Law Society were held. The Law Society has proposed to delete the words "under a provisional agreement for sale and purchase or an agreement for sale and purchase" from section 35(5), so that section 35(5) will apply not only to consent cautions in relation to an interest under a provisional agreement for sale and purchase or an agreement for sale and purchase but also to other consent cautions. It is intended that the Law Society's suggestion be accepted.</p>
17	To revisit clause 35(3) to address Law Society's concern that the protection given to a registered charge under the Bill may be too limited (<i>item 5 of the list of follow-up actions to the thirty-ninth meeting of the Bills Committee on 21 June 2004</i>)	<p>Review groups were formed and meetings were held. A discussion paper was considered by the Review Committee.</p> <p>Section 37(3)(b) of the LTO is a provision clarifying that registration of a charge under the Ordinance will not affect the operation of section 44(2) of the CPO. Section 44(2) of the CPO preserves the protection, powers and remedies that the mortgagor and the mortgagee under a</p>

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		<p>mortgage effected by a legal charge would enjoy as if the mortgage had been effected by way of an assignment. There are other sections of the CPO which provide for the powers or remedies available to a mortgagor and mortgagee, for example, sections 49, 50 and 51. The Administration agrees therefore that section 37(3)(b) of the LTO referring only to section 44(2) of the CPO is too limited. After discussion with the Law Society, the Administration also agrees that the protection currently given under the CPO should be preserved. It is proposed that section 37(3)(b) will be deleted and a new provision will be added to the LTO to achieve this.</p> <p>Instruction was given to the DoJ to delete section 37(3)(b) and add a general provision to the effect that the LTO does not affect the operation of the CPO.</p>
18	<p>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 (<i>item 14 of the list of follow-up actions to the thirty-seventh meeting of the Bills Committee on 17 June 2004</i>)</p>	<p>Review groups were formed and meetings were held. A discussion paper on implied covenants under the CPO was considered by the Review Committee.</p> <p>Consultation was made with the Law Society. The Law Society has taken the view that implied covenants should take effect on the date of the instrument. It is proposed that implied covenants and the exclusion, variation and extension thereof shall take effect on the date of execution of the instrument. Moreover, it is intended that the operation of section 35 of the CPO will be preserved and will not be disturbed by the LTO. A further discussion paper on implied covenants under the CPO has been prepared; and further consultation is intended.</p> <p>DDIs were sent to the DoJ.</p>

Item No.	Follow-up action	Action Taken / Updated Position
19	<p>To consider how to address the 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 LRO can be rectified after the commencement of LTO (<i>item 8 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004</i>)</p>	<p>Post-enactment review groups were set up and meetings were held. Researches on "void" or "voidable" transactions were conducted. A discussion paper was submitted to the Review Committee.</p> <p>Rectification may be made in respect of an entry under the LRO if the entry was made or omitted by or as a result of fraud or a voidable transaction. However, no indemnity will be payable if the fraud occurred before the date of first registration. The Law Draftsman has been instructed to consider whether amendment is needed to make this clear. If in the affirmative, this will be put forward in the amendment bill.</p>
20	<p>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 (<i>item 13 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004</i>)</p>	<p>The Administration has decided that rather than having separate provisions dealing with similar matters in the LTO or the LRO and the Land Survey Ordinance (cap. 473) (LSO), there would be a single set of provisions covering the determination of the boundaries of land registered under the LRO or the LTO and the registration of the resultant land boundary plans contained in the LSO. The Administration has decided to repeal section 94 of the LTO and replace it with new provisions in the LSO. Consequential amendments to amend the LSO will be packaged in the Land Titles (Amendment) Bill.</p> <p>Discussions with the Lands Department were conducted, and meetings were held. DDIs for amendment to the LSO were prepared by the Lands Department. Comments were made on the DDIs.</p>

Item No.	Follow-up action	Action Taken / Updated Position
Part E : Other issues		
21	<p>To carry out fresh calculations closer to the time of implementation of the land title registration system the estimated levy rates for the properties valued over \$30 million set out in Annex A to the paper on “Indemnity Scheme: Levy Rates and Miscellaneous Matters” (<i>LC Paper No. CB(1)2207/02-03(06)</i>). Consideration will then be given to the rate to be applied to each value of property (<i>item 15 of LC Paper No. CB(1)1425/03-04(02)</i>)</p>	<p>The LR has engaged actuaries to review the planning assumptions and calculations for the operation of the indemnity fund.</p> <p>Given the conversion mechanism and the rectification and indemnity provisions in the enacted LTO may be amended, the levy scheme may need to be adjusted. The proposed levy will be set out in the Land Titles (Fees and Levies) Rules.</p>
22	<p>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 (<i>item 18 of LC Paper No. CB(1)1425/03-04(02)</i>)</p>	<p>Draft application forms, Land Titles Register, historical records and title certificates had been sent to the Law Society Working Party on the LTO (WP) for comments. As the proposed amendments to the LTO may affect the forms to be used, the WP was informed to withhold their comments on these draft forms and documents. Draft procedures have been prepared in parallel with the preparation of the rules.</p> <p>The draft procedures, forms and documents will require review upon finalisation of the amendment bill. They will then be put to the Law Society for consideration together with the main rules. The LR will provide a briefing on the intended procedures and forms as part of the introduction to the rules when they are laid before members for consideration.</p>

Item No.	Follow-up action	Action Taken / Updated Position
23	<p>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) (<i>item 20 of LC Paper No. CB(1)1425/03-04(02)</i>)</p>	<p>Discussion was held within the LR. Two related papers were prepared.</p> <p>In order to allow for members of the public who have grounds that satisfy the exemptions allowed under the Personal Data (Privacy) Ordinance for searching the title register by the name of an owner, the Administration intends to allow the public to carry out search by an owner's name on an administrative basis and in due course give consideration to the need of legislative amendment. Draft application forms and related documents for such search are being prepared.</p>
24	<p>To consult Law Society on the applications register under the land title registration system, so that legal practitioners would in future know how to deal with it (<i>item 16 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004</i>)</p>	<p>Relevant provisions were reviewed. Particulars of applications register were considered. Discussion paper was submitted to the Review Committee.</p> <p>The LR has proposed and the Law Society has accepted that the Applications Register under the LTO should be maintained in the same manner as the Memorial Day Book under the LRO.</p>
25	<p>To resolve before commencement of the Bill certain issues, such as the documents to be kept under the land title registration system under clause 44(1), which the Administration has agreed to resolve with Law Society after enactment of the Bill (<i>item 23 of the list of follow-up actions to the thirty-seventh meeting of the Bills Committee on 17 June 2004</i>)</p>	<p>Post-enactment review groups were formed and meetings were held. A discussion paper on the retention of title deeds was submitted to the Review Committee. Comments of the ALA of the LegCo Secretariat were considered. A Land Titles Rules Subcommittee was set up and the documents to be prescribed by regulations or rules under section 46(1)(a)(iv) of the LTO were considered. Researches in other jurisdictions on the vendor's obligation to produce documents were also conducted.</p>

Item No.	Follow-up action	Action Taken / Updated Position
		<p>An owner would only be required to produce instruments which support a current entry. The principle of title registration is that it would not be necessary to look behind the transaction so that historic instruments are not required to prove title. Even under the existing deeds registration system, certified copies of title deeds as opposed to original deeds are acceptable, so to require production of original instruments would even be more onerous than under the existing system. For proving forgery, secondary evidence can also be relied upon.</p>
26	<p>To provide in due course the relevant case law in the UK on how the court interprets the expression “lack of proper care” in <i>clause 81 (item 7(b) of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004)</i></p>	<p>The LR has obtained and reviewed an opinion from a UK QC as well as relevant case law on the meaning of “lack of proper care”. In light of the advice, amendment will be proposed to section 82 of the LTO.</p>
27	<p>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” (<i>LC Paper No. CB(1)1230/03-04(04)</i>), and provide the Bills Committee with a copy of the reply (<i>item 25 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004</i>).</p>	<p>A letter to Heung Yee Kuk, advising enactment of the LTO and inviting nomination for representatives in the post-enactment review, was sent.</p>

Additional Major Issues Raised by the Review

This annex reports the actions taken by the Administration and the latest position in respect of major issues identified during the post-enactment review of the Land Titles Ordinance (Cap. 585) (LTO).

A. Concept of registration of instruments

2. Under the original provisions of the LTO, a disposition (the act as opposed to the instrument) is required to be registered. The instrument providing for the disposition supports the application for registration of the disposition. The instrument itself is not registered.

3. As recommended by the Law Draftsman, registration of instruments is a simpler and more straight-forward approach. When a transaction is to be effected by an instrument, the transaction is not effectual until the instrument is registered. Upon registration of the instrument, the interest in the registered land to which the transaction relates is registered. For a transfer, when the instrument of transfer is registered, title to the property is vested in the transferee. Redrafting has been proposed in the second working draft of the Land Titles (Amendment) Bill (LT(A)B) which was sent to various stakeholders for consultation. All parties accepted this approach. The fourth working draft of the LT(A)B is being prepared by the Law Draftsman.

B. Instruments not effectual until registered

4. Section 32(1) of the LTO provides that no disposition shall be effectual unless and until the disposition is registered. Redrafting of section 32 has been proposed to stipulate that, with the exception of transmission and overriding interest, no instrument shall be effectual to affect a registered property or registered charge unless and until the instrument is registered. However, there are certificates, orders, notices and other documents under other enactments that at present are effective without being registered.

5. The approach that an instrument is not effectual until it is registered was incorporated into the second working draft of the LT(A)B. The second working draft was sent to various stakeholders for consultation. Feedback from the Law Society of Hong Kong (Law Society) was received. Research was done on similar provisions in other jurisdictions. Instructions were given to the Law Draftsman.

6. The wording of Section 32(1) is under close review along with the production of new working drafts and response from stakeholders. Impact of section 32(1) on those certificates, notices or other documents which may be effective without registration is being reviewed.

C. Date of registration

7. Under the LTO, the title register is conclusive of all matters registered. No disposition will be effectual unless and until the disposition has been registered. That being the case, the date of registration is important and needs to be certain.

8. Section 35 of the LTO stipulates the priority of registered matters. The order of presentation of the applications to the Land Registrar (the Registrar) is important in according priority irrespective of the dates of the instruments. That means the date of presentation determines the priority whereas the date of registration (whatever that means) confers title to the land.

9. Unless there is to be instantaneous registration, there will be a turnaround time between the date of presentation and the date of physical registration. Given the turnaround time, if the date of registration were the date of physical entry in the title register, that would mean an ownership vacuum during that period. There would be no certainty of title until completion of registration. Consequently we intend to propose in the LT(A)B that the date of registration is to be the date of presentation. There would then be certainty as to the date on which a person became a registered owner. The date will be determined directly by the interested person (through his solicitors) as it is the same date that he chooses to present his application for registration.

10. The date of registration was considered and reviewed by the LTO Review Committee (Review Committee). Research into the history was conducted to ascertain what the intention was regarding the date of registration. A paper on the date of registration has been issued to the Review Committee for confirmation.

D. Overriding interests

11. The LTO provides that all registered properties shall be subject to overriding interests referred to in section 28 of the LTO. This is irrespective of whether the interests are entered in the title register. Included in the list are rights under enactments relating to resumption, extinguishment of rights or creation of easements, and costs for works, and any notices, orders or certificates relating to these rights. The provisions in other enactments in relation to these rights have been examined, and conflicts have been found between them and the LTO. Examples are –

(a) *Necessity of registration*

Some ordinances mandate registration but under the LTO overriding interests need not be registered.

(b) *Registration of statutory charge*

It is not clear how certain statutory charges are to be treated.

(c) *Discharge of statutory charge*

In some ordinances it is clear that a charge must be registered but it is not clear how the discharge of this charge is to be effected.

(d) *Re-entry or vesting*

The Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) makes clear provision for registration of a memorial of re-entry. But, re-entry or vesting may be cancelled and there is no clear provision to deal with this.

12. Revisions to address these conflicts are being examined. Advice from the Department of Justice (DoJ) was sought on “rights under enactments”. The advice was considered and various enactments were reviewed. The initial proposals in relation to charges arising under enactments were sent to various departments for consultation. The consultation is underway. Subject to the result of the consultation, provisions may be added to deal with charges arising under enactments. Suitable amendments will be made to the LTO, probably section 28, to resolve any conflict in the different registration requirements relating to “rights under enactments” which are also overriding interest. Notices, orders and certificates referred to in section 28(1)(g) of the LTO are proposed to be removed from the list of overriding interests.

Prescriptive rights

13. Having regard to the case of *Kong Sau Ching v Kong Pak Yan* [2004] 1 HKC 119, there has been a call to expand the list of overriding interests to specifically include rights acquired by prescription. In view of the development of case law on easements by prescription, it is proposed to include easements by prescription as overriding interests under section 28 of the LTO, subject to the Court of Final Appeal’s decision in *China Field Ltd. v Appeal Tribunal (Buildings)* [2008] FAMV No.78/2008.

Adverse possession

14. The Law Reform Committee has set up a subcommittee to study the law on adverse possession. A right acquired or to be acquired under the Limitation Ordinance (Cap. 347) is preserved as an overriding interest under section 28(k) of

the LTO. The subcommittee has reviewed the law on adverse possession and took reference from other jurisdictions. The Land Registry (LR) will keep in close contact with the subcommittee and consideration will be given in due course to any recommendation that may be made requiring additions to the LTO.

E. Severance of joint tenancy

15. Under section 8(1) of the Conveyancing and Property Ordinance (Cap. 219) (CPO), joint tenancy may be severed at law by notice served by a joint tenant on the other or an instrument. It is proposed to include provisions in the LTO to deal in a general way with severance of joint tenancy. However, the registration requirements under the LTO raise question as to when severance takes effect, whether upon the execution of the instrument of severance or its registration, or upon the service of notice or the alteration of the entry referring to the joint tenancy.

16. The issue of when severance of joint tenancy takes effect was reviewed. Research on the provisions on severance of joint tenancy in other land title registration jurisdictions was conducted. It is recommended that a severance of joint tenancy under section 8(1) of the CPO takes effect on the date of registration of the severance. A paper on severance of joint tenancy has been issued to the Review Committee for confirmation.

F. Consequential amendments in other legislation

17. Schedule 3 of the LTO provides for amendments to other legislation consequential upon the enactment of the LTO. During review, a number of issues have been identified where further amendments to clarify the position is needed. These include –

(a) *Interfacing with other ordinances*

Some provisions in the LTO state that the LTO would not affect or prejudice the operations of other ordinances. Whether this is appropriate in each case requires review. Other examples of interfaces that require review are where the registration of an instrument referred to in another ordinance is mandatory but it may be an overriding interest in the LTO, which is not required to be registered; or how the effect of registration provided for in another ordinance is to be reflected in the LTO register; and, how charges arising under other ordinances are to be registered and discharged under the LTO. Any conflict or inconsistency should be removed.

(b) *Reference in other enactments to registered instruments*

It is common that other enactments refer to rights under an “instrument registered under the Land Registration Ordinance”. Clarity is needed as to whether such reference, in the context of the LTO, means “instrument registered under the Land Titles Ordinance” or “instrument supporting an entry in the Title Register” or both.

(c) *Creation of charges*

Different enactments adopt different approaches for creation of a charge. While some ordinances provide that a charge is created when certain events happen or upon the registration of certain instruments, there are ordinances, such as the Water Pollution Control Ordinance (Cap. 358), which provides that a registered copy of a certificate itself constitutes a legal charge as defined in the CPO. This inconsistency with the LTO should be removed.

(d) *Definitions of “owner”*

Some ordinances contain a definition of the expression “owner”. In the context of the Land Registration Ordinance (Cap. 128) (LRO), an owner is still an owner even if he is not registered under that ordinance. In the context of the LTO, an owner is not an owner unless he is registered. The meaning of “owner” under each ordinance needs to be clarified.

(e) *Use of the term “registerable”*

Some ordinances refer to an instrument as being “registerable in the Land Registry”. In the context of the LRO, the expression can mean either an instrument that has been registered or an instrument that has not been registered but could be submitted for registration. In the context of the LTO an instrument not registered is ineffectual. Each ordinance needs to be checked to ensure that the LTO does not have unintended consequences.

(f) *Special provisions on priority*

There are enactments which provide for their own priority rule. For example, the Bedspace Apartments Ordinance (Cap. 447) provides that a charge under that Ordinance shall have priority from the commencement of the day following the date of its registration. That is not the case under the LTO. It is uncertain whether in the context of the LTO a special priority rule should apply to such charge and if so, how the special priority rule is to be dealt with as against priority under the LTO.

18. Various enactments were reviewed. Initial proposals in relation to charges arising under enactments and the interface issues between the LTO and other enactments were drawn up and sent to the relevant departments for consultation. Initial comments received are being reviewed. Further consultation on specific provisions in other enactments that may not be consistent with the LTO is expected.

G. Court orders

19. To protect the integrity of the title register and ensure that interested parties are not caught by hidden matters, a court order should be registered before it is effectual. Revision may be needed to clarify this. New proposal was drawn up and sent to the Judiciary for consultation. Before pronouncement and registration of the court order, the claim under it can be protected by registration of a non-consent caution. Subject to the views of the Judiciary, instructions have been given to the Law Draftsman to make clear in the LTO the effects of court orders.

H. Transmission

20. Under the LTO, transmission does not have to be registered to be effectual. Registration only confirms the vesting of rights that are vested by court order, enactment or operation of law. However, one of the purposes of the LTO is to provide certainty of title to property, and to provide certainty as to which party a purchaser of property should deal with. If transmission takes effect without registration, there is a risk that the registered owner with whom the purchaser is dealing no longer holds the title to the property as a result of transmission. If transmission is required to be registered before it is effectual, then the position under the common law and other enactments would be disturbed. A balance has to be struck.

21. Issues on transmission were discussed in the post-enactment review meetings. We intend to amend the LTO to provide that, save and except for transmission by court order, registration of transmission will only confirm the vesting. For transmission by court order, the order has to be registered before transmission is effectual. Draft drafting instructions (DDIs) were sent to Law Draftsman for amending the LTO. Internal discussion was carried out on how different kinds of transmission should be registered. Research was conducted on when transmission takes effect in other jurisdictions. Consultation is being made with the Judiciary on transmission under court order. A discussion paper on transmission by court order is being prepared for consultation with the Review Committee.

I. Cautions

22. The LTO provides that upon the registration of the instrument providing for the disposition to which a registered consent caution relates, the priority of all instruments or matters registered after the consent caution will be postponed as against the disposition. The postponement will only take effect when the disposition is registered. During the time between the registration of the consent caution and the registration of the disposition, other instruments, such as a court order, can be registered. These instruments may affect the registrability of the disposition to which the consent caution relates.

23. After review of provisions for the protection of dispositions in other jurisdictions, the LR has concluded that no additional mechanisms are needed under Hong Kong's circumstances. Consultation with the Law Society on various sections concerning registration of cautions was conducted. Discussion papers on (i) priority effect of consent cautions under section 35 of the LTO; (ii) section 71(2) of the LTO on cautions; (iii) section 35(5) of the LTO; (iv) sections 35(5), 71(1) and 72(3) of the LTO in respect of consent cautions; and (v) date of registration and priority of charging orders were prepared and submitted to the Review Committee. It is proposed to merge consent caution with non-consent caution.

J. Caveats

24. At present, unwritten equities are not registrable. If a purchaser for value of a legal estate has made reasonable enquiries and has no notice of the unwritten interest, then he and his successors in title would not take subject to it.

25. Under Schedule 4 to the LTO, provisions for registration of caveats have been added to the LRO to allow an alleged interest holder to give notice of his unwritten equity. The provisions are not intended to substitute or to disturb the present law on unwritten equities so that an interest holder does not lose his interest by non-registration. A purchaser has still to make the necessary enquiries.

26. Upon conversion to title registration, the registered caveat will be deemed a non-consent caution under the LTO and all matters registered after the conversion would take subject to that interest. If no caveat was registered before conversion, then that interest would be defeated by a purchaser for value after conversion.

27. Provisions have been made in the LRO to determine priorities as between competing unwritten equities whilst the LRO applies to the LRO land to which the unwritten equities relate. However, when the LRO land is deemed registered land on conversion, the priority as among competing unwritten equities, the caveated unwritten equities, the newly registered non-consent caution and the deemed non-consent caution remain problematic.

28. Mechanism for converting LRO land to title registration system is being reviewed. Provisions for caveats will be further considered. Under the new conversion mechanism, there will be no caveat.

K. Definitions in the LTO

29. The definitions in the LTO have been given careful scrutiny to ensure that they can be applied as intended to a particular section of the LTO. Review of definitions in the LTO is kept going with each working draft of the LT(A)B produced by the Law Draftsman. The Law Society was consulted and their feedback was taken into account. The fourth working draft of the LT(A)B is being prepared by the Law Draftsman.

L. Liability of Government

30. Section 11 of the LTO restricts the Government's liability to those under the indemnity provisions. This may have the effect of excluding the Government from other tortious claims. This is not intended and amendment may be needed to remove this limitation. The DoJ was consulted and the advice was passed to the Law Draftsman. New provisions were drawn up by the Law Draftsman and were passed to the DoJ. Whether further amendment is needed is under consideration.

M. Filing of standard terms documents

31. Many terms of an instrument are standard such as a charge to a particular bank. A proposal has been made for banks to file a set of standard terms of frequently used documents and has been agreed by the Hong Kong Association of Banks. Legal research on the amendments to the LRO was conducted. The procedure for filing documents was drawn up. Provisions have been set out in the working draft of the LT(A)B. Practical arrangements and possible provisions under the LRO are now being considered. DDIs to provide for the incorporation of standard terms document under the LRO are prepared and will be sent to the Law Draftsman.

N. Restriction order

32. The LTO provides for the Registrar to have the power to prohibit dealings. Legal research to other jurisdictions was conducted. The issue of restriction order was reviewed. Comparison between restriction order and inhibition order was made. Having concluded that such a power is not that different to that of the court if it were to make an inhibition order, it has been decided that the power of the Registrar to make restriction orders can be deleted. The court's decision is final whereas the decision of imposing a restriction order by the Registrar is not. To review the Registrar's exercise of the power in an application for a restriction order will add to costs unnecessarily.

O. Rectification by the Registrar

33. Section 81 of the LTO provides for the Registrar to rectify errors or omissions in the title register only in limited circumstances, such as where the error or omission is of a clerical nature or the error or omission would not materially affect the interest of the owner. In all other cases the interested parties would have to resolve the error or omission by court proceedings. It was recognised that there are certain errors or omissions which fall outside these two categories which justify being rectified without resorting to court proceedings, for example, when the Registrar is of the view that it would otherwise be unjust not to rectify. Legal research on other jurisdictions was conducted and relevant cases were studied. Amendments to deal with this will be put forward in the fourth working draft of the LT(A)B.

P. Indemnity provisions

34. Apart from addressing the issue raised in the Bills Committee Report (item 19 of Annex A), the review has examined the entire operation of the indemnity provisions. The LR has sought views from stakeholders on the proposed revisions to clarify the operation of these provisions.

35. A discussion paper on section 85 of the LTO on the mortgagee's entitlement to indemnity money before the mortgagor was prepared. Consultation was made with the DoJ on issues such as costs, persons eligible to claim indemnity, distribution of indemnity money in case of multiple claimants and the meaning of "value of interest". A paper on "Indemnity and Exclusions" was submitted to the LTO Steering Committee and was discussed in the third meeting of the LTO Steering Committee. Researches on rectification and indemnity provisions of foreign jurisdictions were conducted.

36. A consultation paper on modification of the rectification and indemnity provisions was issued to various key stakeholders, including the Law Society, Hong Kong Bar Association (Bar Association), the Real Estate Developers' Association (REDA) and Heung Yee Kuk. Feedbacks from various stakeholders were received and replies were prepared to address the concerns of various stakeholders.

37. A three-month public consultation was launched on 1 January 2009 to gather views from the public and key stakeholders on modification of the rectification and indemnity provisions.

Q. Exclusion

38. Arising from the investigation of problematic land registers, it is clear that the LTO as it stands does not have provisions to enable the Registrar to handle certain cases where he cannot determine before the statutory conversion date who is the owner to be entered in the title register. These cases are where there is more than one register in respect of a single property, or more than one owner found on a single register.

39. Internal discussion was conducted on analysing different options for dealing with problematic lots. Research was conducted on the conversion mechanism and exclusion of liabilities provisions of foreign jurisdictions. A paper on “Indemnity and Exclusions” was submitted to the LTO Steering Committee and was discussed in the third meeting of the LTO Steering Committee. Consideration is being given to how to deal with problematic land registers. Alternative option on modifying the conversion mechanism was proposed. A three-month public consultation on the modified conversion mechanism is in progress.

R. Practical implications

40. Practical implications of the operation of the LTO have been considered to identify whether any further amendments are needed and what needs to be covered in guidelines. Issues that have been addressed include –

- (a) *Commencement date and expiry date of Government lease term*
Section 4(2) of the LTO needs to be amended to make more provisions for all past arrangements as well as arrangements for new land.
- (b) *Historical records*
The arrangements for maintenance and access to historical records need to be set out.
- (c) *Unposted applications list*
In cases where a relevant register has not yet been created or cannot be found or exists, pending applications cannot be entered in the title register. It has been decided that an unposted applications list should be maintained so that such pending applications can be recorded for reference.
- (d) *Power to reject/withhold applications*
The criteria and the procedures for withholding or rejecting an application are being drawn up.

(e) *Registrable instruments or matters*

The registrability of each instrument in current use is being considered so as to provide clear guidance.

(f) *Separate registration*

An easement or covenant may be created in an instrument of transfer. It may not be desirable to treat these interests as registered when the instrument of transfer is registered. The interests themselves are not referred to in the application for registration of transfer. They should be separately registered. Procedures, forms and fees for dealing with this are being drawn up.

(g) *First registration of new land*

Part 4 of the LTO deals with registration of title to new land. Applications for registration of title to new land will be presented by the Director of Lands. The procedures and timetable for doing this are being tested.

Extension areas may be granted by the Government as extension to new land. Consideration is being given to how to register extension areas and whether there are any practical difficulties to apply the provisions for registration of title to new land to extension areas.

Consultation is being made with the Lands Department on matters such as first registration of new land, registration of extension areas, and registrability of instruments prepared by the Department.

(h) *First registration of long term lease*

Provisions need to be added to allow presentation of an application for registration of a long term lease by a person other than the first lessee.

(i) *Title certificate*

Section 29(1) of the LTO provides for the issue of title certificates. Some revisions to allow applications only on or after the first transfer after conversion are being considered. Procedures for issue, cancellation and management of the certificates are being drawn up.

(j) *Satisfaction of registered charge*

Under section 41 of the LTO, if the Registrar is satisfied that the charge money has been paid in full or partly paid or the conditions of the charge has been completely or partly fulfilled, he shall remove or alter the entry in the title register referring to the charge. In cases where mortgages are noted in the Block Government Leases and the

amount of the mortgage money or the conditions of the mortgage are not available, the Registrar will have difficulty in the exercise of the power. Investigation as to whether the mortgage money has been paid or the conditions of the mortgage have been fulfilled is beyond the Registrar's administrative role. A discussion paper on section 41 of the LTO and section 12A of the CPO was prepared and considered in the Review Committee. The Law Society was also consulted on the proposal recommended in the discussion paper. It was decided to delete section 41 and to expand section 12A of the CPO to the effect that in the case of registered land, the court shall have the power to declare the land to be free from a registered charge and make an order for discharge if the court is satisfied with fulfillment of part or all of the conditions to which the charge relates.

(k) *Stamping and Stamp duty charges*

Section 60(1) of the LTO provides that no instrument required by law to be stamped shall be accepted for registration unless the instrument is stamped. Consultation with the Collector of Stamp Revenue is ongoing to ensure compliance with the provision as well as to ensure that registration is not delayed by the stamping process. Consultation is also ongoing regarding the operation of section 102(1)(m).

(l) *Unrestricted power of sale by personal representative*

Under section 66 of the LTO, a personal representative who in that capacity is registered as the owner has the unrestricted power of sale. The Secretary for Home Affairs has advised that the power of sale should be restricted, subject to the Probate and Administration Ordinance (Cap. 10). Whether amendment is needed is under examination.

(m) *Transmission on bankruptcy*

Section 67(1) of the LTO provides that a trustee in bankruptcy shall be entitled to be registered as the owner with the addition after his name of the words "as trustee of the property of a bankrupt". The entry of the name of the trustee in the title register means that on each change of appointment of trustee, an application needs to be presented to the LR to alter the entry. This will cause practical difficulties. Agreement has been reached with Official Receiver's Office on the short-cut approach in handling registration of transmission, whereby if a transmission in favour of a trustee in bankruptcy has been registered, it is not necessary to register any change of appointment or additional appointment of a person as trustee in bankruptcy.

(n) *Address for service*

The practicality of section 95 of the LTO, which empowers the Registrar to issue notice to a person as described therein to provide the Registrar with his address for service, is doubtful since the Registrar may not have that person's address in the first instance for issue of the notice. Also, there is no certain mechanism for keeping addresses up to date. Proposal was made on moving the provisions for address for service to the Land Titles Rules.

(o) *Conveyancing practice*

It is necessary to match the provisions of the LTO with the conveyancing practice. Mock conveyancing transactions with the assistance of solicitors' firms in key areas such as combination and division of land, new development of land, sale and purchase and charge, are being planned. Conveyancing forms and application forms for registration are being drawn up.

S. Conversion Mechanism

41. During the post-enactment review of the LTO, a range of issues concerning the conversion mechanism have been examined, including but not limited to cases of uncertain ownership, unknown liabilities to the LR and management of conversion to minimise the risks to public fund and costs to public users. Internal discussion was conducted to consider different conversion mechanisms in foreign jurisdictions and review the existing conversion mechanism contained in the LTO. After consideration, a new modified conversion mechanism is proposed to handle the issues.

42. Under the new conversion mechanism, automatic conversion from registers kept under the LRO to converted title registers would take place after three years from commencement of the LTO, rather than at the end of 12 years. Transactions in converted land would remain subject to subsisting interests and title would have to be deduced as required under the CPO with adaptation until title is upgraded. At a specified time after conversion (tentatively 12 years), application would be allowed for approval to upgrade the title to registered land. The application process would allow for the Registrar to undertake such screening as was appropriate for the title in question. This would reduce the risk of there being any pre-conversion issues remaining to be dealt with.

43. Consultation was made with the DoJ on the new conversion mechanism. Consultation is being made with the Law Society, Bar Association, REDA, Heung Yee Kuk and other key stakeholders. A briefing was given to the Law Society on examples of problematic registers, as well as Heung Yee Kuk on the

consultation paper of conversion mechanism. A three-month public consultation was launched on 1 January 2009 to gather views from the public and key stakeholders on conversion of existing land and property to land title registration.

T. Rectification by the Court

44. Section 82 of the LTO provides for various circumstances where the Court may rectify errors or omissions in the title register. Section 82(3) requires the Court to make an order for rectification in favour of a former registered owner if he lost his title by or as a result of fraud, irrespective of whoever is currently the registered owner. This mandatory rectification rule may have the unintended effect of reducing confidence in the title register and reducing the effectiveness of the title registration system in improving the efficiency with which conveyancing can be conducted.

45. Internal discussions were conducted to review the rectification and indemnity provisions, in particular the mandatory rectification rule as contained in section 82(3) of the LTO. Researches on rectification and indemnity provisions of foreign jurisdictions were conducted. Consultation was made with the DoJ on issues such as costs in rectification proceedings. A consultation paper on modification of the rectification and indemnity provisions was issued to various key stakeholders, including the Law Society, Bar Association, REDA and the Heung Yee Kuk. Feedbacks from various stakeholders were received and replies were prepared to address the concerns of various stakeholders. A three-month public consultation was launched on 1 January 2009 to gather views from the public and key stakeholders on modification of the rectification and indemnity provisions.

**Land Registry
March 2009**

Annex C

Work Plan on Preparatory Work for Land Titles (Amendment) Bill

Action	Estimated Timing	Remarks
1. Consult stakeholders and public on conversion mechanism and rectification and indemnity provisions	January to March 2009	
2. Discuss with each concerned bureau and department on the interface problems of other legislative provisions with Land Titles Ordinance and draft provisions to address the problems	within 2009	
3. Revise and draft provisions on statutory charges and rights under enactments in consultation with bureaux/departments	within 2009	
4. Discuss with each concerned bureau and department and settle on the provisions relating to overriding interests	within 2009	
5. Prepare draft consequential amendments in the Land Titles Amendment Bill (LT(A)B) to amend the Land Survey Ordinance (Cap. 473) on arrangements for updating land boundaries	within 2009	
6. Prepare draft consequential amendments in the LT(A)B to amend the Land Registration Ordinance (Cap. 128) on instruments withheld from registration and standard terms documents	within 2009	
7. Discuss with the Lands Department on registration of the Department's instruments and other land matters and settle on the provisions	within 2009	

Action	Estimated Timing	Remarks
8. Review fourth working draft of the LT(A)B and the draft Land Titles Rules and discuss with the Law Draftsman on any amendments required	March to late 2009	Work on subsidiary legislation other than the draft Land Titles Rules to be continued after gazettal of the LT(A)B
9. Analyse comments received on conversion mechanism and rectification and indemnity provisions, propose and agree on necessary amendments within the Administration	mid 2009	
10. Revise the draft LT(A)B to amend the conversion mechanism and rectification and indemnity provisions	mid to late 2009	
11. Prepare the draft Indemnity Fund Rules	mid to late 2009	Review of the draft to be carried out after gazettal of the LT(A)B
12. Consult and discuss with (a) the Law Society of Hong Kong and other key stakeholders on the final drafts of the LT(A)B and the Land Titles Rules and (b) bureaux and departments on consequential amendments to other ordinances	early to mid 2010	Consultation on subsidiary legislation other than LT Rules to be carried out after gazettal of LT(A)B
13. Analyse comments on the final drafts and further revise the drafts if necessary	mid 2010 to late 2010	
14. Finalisation of the draft LT(A)B	mid 2010 to late 2010	
15. Gazettal of the LT(A)B	late 2010	