

**For discussion
on 7 October 2009**

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

JOINT SUBCOMMITTEE ON
AMENDMENTS TO LAND TITLES ORDINANCE**

**Comparison of Land Titles Ordinance
and Conveyancing and Property Ordinance**

PURPOSE

This paper outlines the comparison exercise carried out by the Administration to ensure the compatibility between the provisions in the Conveyancing and Property Ordinance (Cap. 219) (CPO) and those in the Land Titles Ordinance (Cap. 585) (LTO), and the proposals for amendment.

BACKGROUND

2. Members of the Bills Committee of the then Land Titles Bill have requested the Administration to review the LTO to ensure that any provision in the LTO incompatible with the CPO should be rectified between the enactment and the commencement of the LTO. In response to the above request and as part of the post-enactment review of the LTO, the Administration has reviewed each of the provisions in the CPO and compared them with the provisions in the LTO for the purpose of identifying any issues of incompatibility and conflict. The Administration has also reviewed the consequential amendments to the CPO contained in Schedule 3 to the LTO.

COMPARISON OF CPO AND LTO

3. In the light of the result of the review, we recommend that the CPO and the LTO should run in parallel. We recognise that, while the CPO codifies the legislation affecting land existing at the time of its enactment, introduces reform to remedy deficiencies and streamlines conveyancing documentation and

procedures, the LTO introduces a system of title registration and provides for registration of instruments and matters relating to land to which the LTO applies. There is no intention to merge the CPO and the LTO. Where there is no incompatibility between the CPO and the LTO, the CPO will apply to land to which the LTO applies and, where there is incompatibility, amendments are proposed to the CPO or the LTO to suit the circumstances.

CONSULTATION

4. The recommendation that the CPO and the LTO should run in parallel and the Administration's proposed amendments have been submitted to the LTO Review Committee for deliberation. Among the members, the Law Society of Hong Kong (Law Society) has expressed interest in the subject.

5. The Law Society's Working Party (Working Party) has provided comments and views on the Administration's proposed amendments. In principle, the Working Party agrees to the recommendation of the review. The Working Party is of a similar opinion as the Administration's that the CPO and the LTO should operate independently.

6. The Administration has considered the comments from the Working Party and has further deliberated on the provisions at issue and exchanged views with the Working Party.

PROPOSED AMENDMENTS

7. Appended below in paragraphs 8 to 11 are areas where conflict or doubt exists between the provisions of the CPO and those of the LTO, on which the Administration considers that amendments are necessary.

8. Section 10 of the CPO provides that upon dissolution of a corporate joint tenant, the property shall devolve on the other joint tenant. Section 63 of the LTO refers to a joint tenancy but it only governs transmission on death of a joint tenant. The Working Party and the Administration are in agreement that section 63 of the LTO should be expanded to include transmission on dissolution of a corporate joint tenant.

9. Pursuant to section 12A of the CPO, where the encumbrancer is out of the jurisdiction, cannot be found or is unknown, or if it is uncertain who the encumbrancer is, the Court may discharge a property from an encumbrance upon payment into Court of an appropriate sum of money. Under section 41 of

the LTO, if the Land Registrar (Registrar) is satisfied with the conditions contained therein (i.e. the charge money has been paid in full or partly been paid or the conditions of the charge have been completely fulfilled or partly fulfilled), the Registrar shall remove or alter the entries referring to the registered charge. As the Registrar may have difficulties in exercising the power under section 41 because of the investigation process that is beyond the Registrar's administrative role and, given that there are available Court procedures under section 12A of the CPO, the effect of section 41 may not be feasible as originally intended. The Working Party and the Administration agree that section 12A of the CPO should be expanded so that it will be applicable to land to which the LTO applies and that section 41 of the LTO should be deleted.

10. Section 56 of the CPO provides that a mortgage may be discharged by a signed receipt. It provides for a quick and easy method for discharge or reassignment. There is no objection that such method shall continue under the LTO subject to section 40 of the LTO (*discharge or partial discharge of registered charge*). It is proposed that the amendment contained in section 90 of Schedule 3 to the LTO, which provides that section 56 of the CPO shall not apply to registered land, be repealed. The proposed amendment is agreeable to the Working Party.

11. In paragraph 3 of Part II of the First Schedule to the CPO, a covenant on good title to assign land free from undisclosed encumbrance is implied on the part of the vendor. The LTO provides in sections 23 and 25 that the vesting of land will be subject to exceptions, reservations, etc. contained in the Government lease and any registered matter and overriding interest. It is considered that amendment is required to provide that for land to which the LTO applies, the covenant contained in paragraph 3 of Part II of the First Schedule to the CPO should be qualified as being subject to matters provided in the LTO. The Working Party is agreeable to the proposal.

12. Section 4(1) of the CPO provides for the disposal of a legal estate by deed. During the committee stage discussion of the then Land Titles Bill, the issue on any consequential amendment in recognition of the current practice of disposal of land by deeds was raised. We recommended that section 4(1) of the CPO be amended to the effect that in respect of land to which the LTO applies, the creation, extinguishment or disposal of a legal estate shall comply with both section 4(1) of the CPO and section 32(1) of the LTO. The proposed amendment was intended to make it clear that for disposition of land to which the LTO applies, the relevant instrument has to be registered under the LTO in order for the disposition to be effectual. On further deliberation taking into consideration the comments of the Working Party, we accept that in stipulating the requirement of registration, the LTO does not conflict with the requirement

for disposal of legal estate by deed under the CPO. The Administration agrees with the Working Party's proposal not to amend section 4(1) of the CPO.

13. Having regard to the result of the review, the Administration has come to the view that some consequential amendments to the CPO contained in Schedule 3 to the LTO are unnecessary, as explained in paragraphs 14 and 15 below.

14. Part A of the Second Schedule to the CPO contains covenants and conditions which may be incorporated into an agreement by reference. The parties to the agreement are free to modify the covenants and conditions; and the amendment to the covenants and conditions contained in section 92 of Schedule 3 to the LTO is not necessary. We now propose that section 92 be repealed.

15. Under section 99(1) of the LTO, the Registrar may specify the form of any document. The forms contained in the Third Schedule to the CPO are not mandatory and, as provided in section 87 of Schedule 3 to the LTO, they would not be used for land to which the LTO applies. It is therefore considered unnecessary to amend Form 1, Form 4 and Form 5 in accordance with section 93 of Schedule 3 to the LTO. We propose that section 93 be repealed.

WAY FORWARD

16. The Administration considers that the major issues concerning the interface of the CPO and the LTO to ensure that they can operate concurrently and in harmony have been identified. Where any further issues are identified, the Administration will consult the Law Society. As and when the draft provisions are available, consultation with the Law Society will also be made.

Development Bureau
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