

**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**

**Definition of “deed of mutual covenant”
in Section 53 of Land Titles Ordinance**

PURPOSE

This paper outlines the amendments proposed to be made to the definition of “deed of mutual covenant” in section 53 of the Land Titles Ordinance (Cap. 585) (LTO).

BACKGROUND

2. At the thirty-sixth meeting of the Bills Committee on the then Land Titles Bill held on 15 June 2004, the Assistant Legal Adviser (ALA) of the Legislative Council opined that the definition of “common parts” in the Building Management Ordinance (Cap. 344) (BMO) was not comprehensive enough to cover all relevant cases. Clarification was subsequently made with the ALA over his concern. His concern was directed at the adequacy of the description of “deed of mutual covenant”. He was concerned that the definition of “deed of mutual covenant” in section 53(5) of the LTO did not cover all instruments that should be covered.

3. The Administration has since undertaken a review of the definition of “deed of mutual covenant” in section 53(5) of the LTO.

DEFINITION OF “DEED OF MUTUAL COVENANT” IN SECTION 53(5) OF THE LTO

4. Section 53(5) of the LTO defines “deed of mutual covenant” to include a document which defines the rights, interests and obligations of owners among themselves. The term “owner”, as defined in that section, has the meaning assigned to it by section 2 of the BMO.

5. In section 2 of the BMO, “owner” is defined to mean –

(a) a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building; and

(b) a registered mortgagee in possession of such share.

6. Upon review, it is considered that the definition of “deed of mutual covenant” in section 53(5) of the LTO is too restrictive. By definition, the owner has to hold an undivided share in land on which there is a building in order to come within the meaning of “owner” in section 53(5).

7. There are house-type developments where an owner of a house in the development owns a lot (or a section or subsection of a lot) on which his house is built. The development is managed as a single development but the owners do not own undivided shares in the land of the development. Fairview Park in Yuen Long and Hong Lok Yuen in Tai Po are two examples of such development. The definition of “deed of mutual covenant” in section 53(5) of the LTO may not cover the deed of mutual covenant of such development as the owners do not own undivided shares in land.

8. There are also developments where the whole development has been developed by parts. Owner of a house/unit built in one part of the development owns undivided shares in the land of that part of the development but not undivided shares in the land of the whole development. Palm Springs in Yuen Long is an example of such development. The definition of “deed of mutual covenant” in section 53(5) of the LTO may not cover the deed of mutual covenant of such development as the owners do not own undivided shares in land on which the whole development is built.

9. It is common for the owners of a particular portion of a development to enter into a sub-deed of mutual covenant to define their rights, interests and obligations in respect of that portion, for example, a sub-deed of mutual covenant of the commercial portion of a development which comprises residential portion and commercial portion. As the definition of “deed of mutual covenant” in section 53(5) of the LTO refers to a document which defines the rights, interests and obligations of “owners among themselves”, the definition may not cover a sub-deed of mutual covenant as a sub-deed of mutual covenant concerns only some, but not all, owners of the development.

PROPOSED AMENDMENTS

10. It is proposed that the definition of “deed of mutual covenant” in the LTO be amended to the effect that a deed of mutual covenant means a deed that defines the mutual rights, interests and obligations of –

- (a) persons who are registered holders, or registered mortgagees in possession, of undivided shares in the same lot or lots on which there are one or more buildings;
- (b) owners of land and building that are managed as a single development; or
- (c) any group of persons referred to in (a), or in (b).

For the purpose of (b), “owner” means the registered owner of a lot (or section or subsection of a lot) or registered holder of an undivided share in a lot (or section or subsection of a lot), or registered mortgagee in possession of such lot or share. A deed of mutual covenant of the co-owners holding undivided shares in the whole land will be covered by (a). A deed of mutual covenant of the development referred to in paragraphs 7 or 8 above will be covered by (b) and a sub-deed of mutual covenant will be covered by (c).

**Development Bureau
September 2009**