

立法會

Legislative Council

LC Paper No. LS78/08-09

**Observations on Follow-up actions taken by the Administration
after enactment of the Land Titles Ordinance
(Annex A to LC Paper No. CB(1)1028/08-09(01))**

Item No.	Observations on Updated Position
1	<p>The explanation of how two types of court orders are dealt with seems to suggest that the concept of registration of instruments, which belongs to the old regime, still has a strong influence on the drafting.</p> <p>(a) For case (a), the meaning of “the order itself will be registered as an instrument” is unclear. Under the registration of title system, there is no registration of instruments. Hence, the order itself cannot be registered. What should be registered is either a caveat or a caution. The purpose is to alert people who may deal with the affected property that it is subject to such an order.</p> <p>(b) Court orders effecting vesting of interest in land would not affect the land if the transmission is not registered in the relevant title register. The court orders would have effect, so far as the parties to the relevant proceedings are concerned, immediately upon each order is made. However, the order would only affect land upon the vesting, but not the order itself, is registered as a transmission (as the Administration has proposed).</p>
2	Members may wish to know what advice the DoJ has given about section 9.
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4	<p>(a) Members may wish to know more about the reasons for the proposed abolition of the restriction order by registrar as a separate order from the inhibition order by the court. The proposal may have focused only on the effect of the two forms of order but may not have given due consideration to the different purposes for which the two orders were first proposed. Moreover, it is not known whether the costs factor has been fully considered.</p> <p>(b) Since the Administration has decided to delete the sections relating to restriction order, no regulation is made to further delineate who may be an “Interested person” for the purpose of section 78(5)(c).</p>
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8	<p>CPO is an Ordinance enacted for the registration of deeds system. It has been drafted on the basis of disposition of land by deed only and the attending conveyancing practice. It touches upon matters which would be governed by LTO when all land in Hong Kong has been converted to registered land. Members may need to consider whether CPO is required to be harmonized with LTO so that its provisions may still have meaning and application, where appropriate. Section 4(1) of CPO is an instance of such provision because it will become literally inconsistent with section 32(1) of LTO when all title may only be transferred by registration.</p>
9	<p>Members may wish to know whether the proposed amendment to the definition of “deed of mutual covenant” would be adequate to cover all types of deeds containing mutual covenants pertaining to land and buildings.</p>
10	<p>Members may wish to know what amendments will be introduced by the Administration. The Administration’s attention has been drawn to the pitfalls in registering “T’so” or “T’ong” as owner of land. It has been suggested that they should be considered as land trusts with the managers registered as trustee but subject to requirements set out in section 15 of the New Territories Ordinance (Cap. 97). Members may wish to know whether the existence of “T’so” or “T’ong” depends on registration in the land registry.</p>

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12	Members may wish to know whether the solutions set out in paragraphs (a) and (b) have adequately considered whether the legislative provisions, in which the relevant phrases or expressions occur, themselves need to be harmonized with LTO after registration becomes the only mode of disposition of land.
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14	Members may wish to know what consequential amendments are required to be put in the amendment bill.
15	The Administration has not mentioned the basis of the ALA's objection to section 32 of LTO. It is because section 32 would have the effect of changing the law and unduly restricting an owner and other persons' rights to dispose of interest in land. The surrender of lease and easement by prescription are only examples used to illustrate how section 32 would change the law. The corresponding provision in the English Land Registration Act 2002 (section 27) is much more circumspect and suggests that a sweeping provision such as section 32 is not essential for the implementation of a title registration system.
16	The existing provision aims at preserving the "relate back" doctrine at common law. The proposed deletion appears to change the law. The proposed new rule would have no basis in the hitherto jurisprudence in the law of real property or conveyancing.
17	Section 37(3)(b) is another instance that concerns the question whether any harmonization between CPO and LTO is necessary.
18	The implementation of the title registration system may necessitate fundamental changes in conveyancing practice, especially the style of completion. Whether section 45 should be amended may only be decided after the conveyancing practice of sale and purchase of land under title registration system has been fully constituted.
19	This is a drafting issue but is related to the policy of indemnity under LTO. It is necessary to clarify what the expression "the entry in the Title Register" is intended to mean.
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23	The policy and procedure should be clearly set out in some guidelines or practice notes so that no impression of favouritism or arbitrariness would be created. Due attention must be given to possible abuse and fraud because the search available would be of very useful for judgment creditors and matrimonial litigants who are seeking financial relief.
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25	This question should be considered in the context of post-conversion conveyancing practice.
26	Members may wish to know what advice has been given and what amendments are proposed.
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Prepared by

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