

**For discussion
on 7 December 2009**

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

JOINT SUBCOMMITTEE ON
AMENDMENTS TO LAND TITLES ORDINANCE**

Land Registrar's Caution against Conversion

PURPOSE

This paper sets out the Administration's proposal to provide the Land Registrar (Registrar) with power to register a caution against conversion under the Land Registration Ordinance (Cap.128) (LRO) for dealing with known cases of indeterminate ownership.

BACKGROUND

2. Under the Land Titles Ordinance (Cap.585) (LTO), all eligible¹ existing land for which registers have been kept under the LRO (LRO land) will be converted automatically to registered land under the LTO on a date 12 years after the commencement of the LTO (Conversion Day). The registers in respect of the LRO land will be deemed to form part of the title register kept under the LTO on the Conversion Day.

3. Through computer screening and past notifications, a number of problematic registers have been identified where ownership of the land concerned cannot be determined. These include cases where there are two or more registers with different owners for the same lot number or description, or there appears more than one owner under a single register. There is no existing power under the LTO or the LRO that would allow the Registrar to withhold conversion of such land. For instance, the number of double register cases that have been screened out by computer is around 500. There is also the

¹ "Eligible" land is land that meets the definition of "LRO land" in section 1 of Schedule 1 to the LTO and against which no valid caution against conversion subsists and no outstanding instrument remains pending registration.

possibility that more cases may be uncovered before the Conversion Day. A suitable mechanism has to be put in place to address the situation.

4. At the meeting of the Joint Subcommittee on 16 June 2009, the Administration undertook to prepare a paper on the mechanism known as “Land Registrar’s Caution against Conversion” (LRCAC) for discussion at the Joint Subcommittee. The Administration also undertook to consult stakeholders on the details of the mechanism.

CONSULTATION

5. The Administration has consulted stakeholders on the proposed LRCAC mechanism. The stakeholders support in principle the mechanism and have highlighted for the Administration’s deliberation the issues set out in paragraphs 6 to 9 below. The Working Party on Land Titles Ordinance of the Law Society of Hong Kong (Law Society Working Party) has advised us that they have referred the LRCAC proposal to the Hong Kong Solicitors Indemnity Fund Limited for consideration, and whose views are awaited.

Registration of Notice of Intention

6. The Estate Agents Authority considers that a notice of intention to register LRCAC (Notice of Intention) should be registered for the sake of transparency and for the purpose of protecting consumer interests. The Law Society Working Party is also of the view that the Notice of Intention should be registered for enabling persons dealing with the property to have the opportunity to make informed decisions. The Administration proposes that the Notice of Intention be registered.

Compensation for negligent registration of LRCAC

7. The Consumer Council supports in principle the proposed scheme of empowering the Registrar to withhold the conversion of land with indeterminate ownership by means of an LRCAC. It considers that a person who suffers loss or damage from the wrongful registration of an LRCAC due to negligence of the Land Registry should be compensated. The Administration is prepared to accept liability for acts done negligently.

Extension of notice period for Notice of Intention

8. The Heung Yee Kuk supports the LRCAC mechanism as the arrangement would facilitate a smooth conversion and protect the property

owners. The Heung Yee Kuk considers that 60 days may not be sufficient for relevant persons to submit objection and supporting documents. It proposes to extend the 60 days period to 100 days. The Administration has noted the need to cater for individual cases whereby a longer period might be necessary for the submission of objections, and proposes to provide the Registrar with the power to extend the period for submitting objections and supporting documents.

Disclosure of Registrar's reason for registration of LRCAC

9. Heung Yee Kuk suggests that the Notice of Intention and the LRCAC should disclose the reasons for which the Registrar intends to register or registered the LRCAC. The Administration proposes that the Registrar should state the relevant ground(s) in the Notice of Intention and the LRCAC.

10. Comments of the stakeholders have already been incorporated into the proposal summarised below and detailed at **Annex**. It should be noted that the Registrar will invoke the LRCAC mechanism *only* if the problem of indeterminate ownership cannot be resolved on the basis of available evidence. The Administration would accept liability for registering an LRCAC negligently.

PROPOSED LRCAC MECHANISM

11. To deal with known cases of indeterminate ownership, the Administration proposes to introduce the LRCAC mechanism by way of consequential amendments to the LRO. The mechanism will empower the Registrar to exclude properties with indeterminate ownership from automatic conversion to the title registration system on the Conversion Day.

12. Before the Registrar invokes the power, investigation work will be carried out to establish whether the apparent problems found in known cases of indeterminate ownership can be resolved before the Conversion Day. If the investigation fails to resolve the uncertainty, the Registrar will publish a Notice of Intention in the Gazette, send a copy of the Notice of Intention to the owner concerned and register the Notice of Intention against the land concerned. Affected parties will be given 60 days or such extended period as the Registrar considers appropriate to object to the registration of the LRCAC. The Registrar will register an LRCAC *only* if it appears to the Registrar that –

- (a) there are two or more registers kept under the LRO in respect of two or more parcels of LRO land bearing the same lot number;

- (b) there are two or more registers kept under the LRO in respect of the same LRO land; or
- (c) the person whose name appears in the register kept under the LRO as the current owner of the LRO land may not be the true owner.

13. After registration, affected parties can make representation to the Registrar or seek a Court order to have the LRCAC removed. Until a Court order is given or the Registrar is satisfied that the LRCAC can be removed, the property will remain governed by the LRO and will not be converted to the title registration system.

ADVICE SOUGHT

14. Members are invited to comment on the proposed LRCAC mechanism.

**Development Bureau
December 2009**

Proposed Mechanism of Land Registrar's Caution against Conversion

Investigation before Registration of Land Registrar's Caution against Conversion

Prior to registration of a Land Registrar's Caution against Conversion (LRCAC), investigation work will be carried out in respect of known cases of indeterminate ownership to establish whether the apparent problems found in the registers kept under the Land Registration Ordinance (Cap.128) (LRO) can be resolved before the Conversion Day. New cases of registers kept under the LRO with indeterminate ownership which emerge before the Conversion Day will be handled similarly. Where investigation has failed to resolve the uncertainty, an LRCAC may be considered and be registered.

Grounds for Registration of LRCAC

2. If it appears to the Land Registrar (Registrar) that –
 - (a) there are two or more registers kept under the LRO in respect of two or more parcels of land bearing the same lot number;
 - (b) there are two or more registers kept under the LRO in respect of the same parcel of land; or
 - (c) the person whose name appears in the register kept under the LRO as the current owner of the land may not be the true owner,

the Registrar may register an LRCAC against the land concerned.

Effect of Registration of LRCAC

3. Land against which a registered LRCAC subsists shall not become registered land under the Land Titles Ordinance (Cap.585). If the Registrar is satisfied that the grounds causing the registering of the LRCAC no longer exist or a removal order has been obtained from the Court, the Registrar may register a removal of the LRCAC against the land. As long as the LRCAC remains in place, the affected land will remain governed by the LRO.

Notice of Intention to Register LRCAC

4. Prior to registration of an LRCAC, the Registrar shall –
 - (a) publish in the Gazette a notice of intention to register LRCAC (Notice of Intention), giving notice of the intention to register an LRCAC against the land specified in the Notice of Intention and stating the ground for the intended registration of LRCAC; and
 - (b) send a copy of the Notice of Intention to the owner whose name appears in the register kept under the LRO as the current owner to the property address and his last known address (if available from registered instruments).

The Registrar shall also register the Notice of Intention against the land concerned. No LRCAC shall however be registered until after the expiration of 60 days from the date of the Notice of Intention.

5. If any interested party objects to the registration of the LRCAC, he shall inform the Registrar within 60 days from the date of the Notice of Intention giving reasons for the objection and any supporting documents. The Registrar may at any time before the registration of the LRCAC extend the period for submission of objection for such period as appropriate.

Removal of Notice of Intention

6. The Registrar may, on the Registrar's own motion or on request of an interested party for removal of the Notice of Intention, register a removal of Notice of Intention against the land concerned if he is satisfied that an LRCAC should not be registered against the land.

Registration of LRCAC

7. The Registrar shall as soon as reasonably practicable consider the reasons and supporting documents (if any) submitted for objecting to the registration of the LRCAC and make a decision thereon.
8. If the Registrar decides to proceed to register the LRCAC, the Registrar shall state in the LRCAC the grounds for registration and register the LRCAC against the land concerned.

Removal of LRCAC

9. An interested party may apply to the Court of First Instance (Court) for the removal of the LRCAC and the Court may make such order as appears to the Court to be just.

10. The Registrar may, on the Registrar's own motion or on application by an interested party for removal of the LRCAC, register a removal of LRCAC against the land concerned if he is satisfied that –

- (a) the grounds on which the LRCAC was registered no longer exist; or
- (b) an order of the Court for its removal has been obtained.

Liability of Registrar and Others

11. The Registrar and any other person employed in the Land Registry shall not be liable in damages for registering, in good faith, a Notice of Intention or an LRCAC or for refusing, in good faith, an application for the removal of an LRCAC, provided that this shall not affect the Registrar's liability for acts done negligently.

12. The Registrar shall not be compelled to register an LRCAC. Compensation would not be payable by the Registrar in respect of any alleged loss resulting from the failure to register an LRCAC.