

**For discussion  
on 16 June 2011**

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

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

**Amendments to the Land Titles Ordinance  
Progress Report**

**PURPOSE**

This paper reports progress on the Administration's work on the preparation of the amendments to the Land Titles Ordinance (Cap. 585) (LTO).

**BACKGROUND**

2. At the meeting of the Joint Subcommittee on Amendments to Land Titles Ordinance (Joint Subcommittee) held on 23 December 2010, Members were briefed on the latest position on the following aspects of the LTO amendment exercise : (i) rectification and indemnity arrangements; and (ii) determination of land boundaries (LC paper No. CB(1)838/10-11(01)). In order to give Members a better understanding of the Administration's work in amending the LTO as a whole, the Administration was requested to prepare an updated list setting out the progress of its work -

- (a) in areas which are technical, straightforward and not controversial; and
- (b) in areas which have drawn diverse views and concerns from major stakeholders, and therefore could not proceed smoothly.

**FOLLOW-UP ACTIONS**

3. When the Land Titles Bill was passed by the Legislative Council in

2004, the Administration had undertaken to follow up on a number of outstanding issues raised by the Bills Committee and to review the LTO before commencement. **Annex A** sets out the follow-up actions taken on those issues that were raised in Appendix VI of the Report of the Bills Committee on the Land Titles Bill. **Annex B** sets out further issues identified by the Administration in the course of the post-enactment review of the LTO and their latest position. The Annexes cover issues requested in paragraph 2(a).

4. In regard to paragraph 2(b) above, the ensuing paragraphs update Members on the follow-up actions taken in respect of the rectification and indemnity arrangements under the LTO, which have been drawing diverse views and concerns from stakeholders.

## **Rectification and Indemnity Arrangements**

### *The Issue*

5. As reported to the Joint Subcommittee earlier, the results of the 2009 public consultation on rectification and indemnity arrangements under the LTO revealed that respondents generally supported preserving the mandatory rectification rule under section 82(3) of the LTO, such that an innocent former owner who lost his title by or as a result of fraud could be restored as owner. On the other hand, respondents agreed that there might be circumstances in which it would be impracticable to return the affected properties to the former owners, and that the following exceptions to the mandatory rectification rule should be made –

- (a) where the property affected had been surrendered for public purpose or resumed prior to the discovery of the fraud; and
- (b) where the property had been redeveloped and sold to multiple new purchasers and it would be inequitable to restore title to the former owner.

6. The Law Society of Hong Kong (the Law Society) has subsequently opposed against the mandatory rectification rule under section 82(3) of the LTO. According to the Law Society, since an innocent former owner would, under the LTO, be restored as owner if (i) he lost his title by or as a result of fraud and (ii)

the relevant entry in the Title Register was procured by a void instrument or a false entry, this might encourage a purchaser to go behind the Title Register to investigate previous transactions in order to obtain greater assurance that he would not be at risk. This would undermine the certainty of title and would work against the objective of simplifying conveyancing procedures. The Law Society has instead advocated the adoption of the principle of immediate indefeasibility, i.e. a bona fide purchaser in possession and for valuable consideration will enjoy indefeasible title. They have further suggested that the cap on indemnity (currently proposed at \$30 million) and the bar on indemnity for pre-conversion fraud be removed.

7. On the other hand, the Heung Yee Kuk (HYK) strongly opposes any changes to the mandatory rectification rule. The HYK is concerned that, without the mandatory rectification rule, an innocent former owner would not be able to recover his property lost as a result of fraud. An innocent former owner's position under the new system might therefore be worse off, particularly if the value of the property concerned could not be fully compensated by the indemnity payable under the LTO. Furthermore, the HYK considers that owners in the New Territories attach considerable importance to their ancestral land holdings, the loss of which could not be compensated financially. The HYK is adamant that the mandatory rectification rule should be retained.

8. The Administration has carefully considered the views expressed by various stakeholders. We note that the conversion, rectification and indemnity mechanisms under the LTO are closely intertwined, and represent a delicate balance reached among the Administration, the Legislative Council and stakeholders during the deliberation of the Land Titles Bill. If the Law Society's proposal of indefeasibility were to be adopted, there could be implications on the cap on indemnity and the bar on indemnity for pre-conversion fraud. Removing the cap on indemnity and the bar on indemnity for pre-conversion fraud, however, could subject the Land Titles Indemnity Fund to tremendous financial risks, as there would not be any title checking under the LTO's automatic conversion mechanism. In view of the inter-relationship among conversion, rectification and indemnity, any modifications to these core elements of the LTO would have to be considered in a holistic manner.

*Latest development – Proposed Two-Stage Conversion Mechanism*

9. In order to address and balance the divergent views and concerns of stakeholders, we have developed a new option with two stages of automatic conversion and suitable modifications to the rectification and indemnity arrangements. Initial discussions on the option have been held with stakeholders in the Land Titles Ordinance Steering Committee<sup>1</sup> on 26 May 2011.

10. Under the new option, on commencement of the LTO, title registration system with immediate indefeasibility will forthwith apply to new land<sup>2</sup>. For LRO land<sup>3</sup>, the conversion process would involve two stages of automatic conversion (Two-Stage Conversion Mechanism). After a lead-in period<sup>4</sup> from the date of operation of the LTO on new land, all LRO land except those subject to stopped deeds will undergo the first stage of conversion (primary conversion) and will be automatically brought under the LTO on a designated date. During the 12 years from the primary conversion (incubation period), land with primary title will remain subject to subsisting interests<sup>5</sup>, while new transactions and interests created after primary conversion will be effected in the manner and form prescribed under the LTO. Meanwhile, the mandatory rectification rule will apply to restore title to an innocent former owner who lost his property as a result of fraud, except where it is not possible to restore title to the innocent former owner (see paragraph 5 above). Indemnity with cap will be payable to a displaced owner in respect of fraud which occurred after primary conversion. A registered owner who wishes to preserve the mandatory rectification rule may choose to register an opt-out caution against his own property during the incubation period. The effect of registering an opt-out caution is to prevent the property from automatic full conversion of title, so that the mandatory rectification rule will continue to apply.

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<sup>1</sup> The Land Titles Ordinance Steering Committee is convened by the Land Registrar to, inter alia, consider, recommendations on amendments to the LTO arising from the review of the Ordinance. The Committee comprises representatives from the Administration, the Law Society, the Real Estate Developers Association of Hong Kong, the HYK, the Consumer Council, the Estate Agents Authority, the Hong Kong Association of Banks and the Hong Kong Mortgage Corporation Limited.

<sup>2</sup> “New land” means land granted under a Government lease or an agreement for a Government lease on or after the date of commencement of the LTO (s.20 of the LTO).

<sup>3</sup> “LRO land” means land (as defined in s.2(1) of the LTO) which is the subject of a Government lease for which a register has been kept under the Land Registration Ordinance (Cap.128).

<sup>4</sup> A lead-in period is required for preparatory work including development of a computer system for the conversion and gaining experience from the operation of title registration system for new land.

<sup>5</sup> In essence, a subsisting interest means an interest (whether registered or unregistered) that is subsisting as at the date of primary conversion and that would have been enforceable against the current registered owner had the land remained under the LRO system.

11. By the end of the incubation period, land with primary title will undergo the final stage of conversion (full conversion) and will automatically be fully converted to registered land, except where the land is subject to -

- (a) a warning notice registered by a claimant of an unregistrable subsisting interest;
- (b) a Land Registrar's Caution against full conversion (LRC)<sup>6</sup> for reason of indeterminate ownership;
- (c) an opt-out caution registered by the owner who does not want the title of his property to be fully converted to registered land status; or
- (d) a non-consent caution in respect of rectification proceedings.

Upon full conversion, bona fide purchasers of registered land who are in possession and for valuable consideration will enjoy indefeasible title. A subsisting interest which is not protected by a registered matter will be subject to other registered matters. Indemnity with cap will be payable to a former owner who cannot restore title in respect of fraud which occurred after primary conversion. Further details of the proposed Two-Stage Conversion Mechanism are set out in **Annex C**.

12. The proposed Two-Stage Conversion Mechanism seeks to respond to the comments received during the 2009 public consultation, and to address various concerns recently expressed by stakeholders. The key features of the option include:

- (a) the spirit of automatic conversion of LRO land being preserved;
- (b) an LRC mechanism to deal with known cases of indeterminate ownership;
- (c) the mandatory rectification rule will apply during the 12-year incubation period. Exceptions to the mandatory rectification rule will

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<sup>6</sup> The operation of the LRC mechanism will be similar to that of the Land Registrar's Caution Against Conversion we previously proposed to deal with known cases of indeterminate ownership (see LC Paper No. CB(1)538/09-10(02)).

also be introduced where it is not possible to restore title to the innocent former owner;

- (d) property owners may choose to preserve the mandatory rectification rule beyond the 12-year incubation period by registering an opt-out caution; and
- (e) after full conversion, bona fide purchasers in possession and for valuable consideration will enjoy indefeasible title.

13. As compared to the existing conversion mechanism under the LTO, the proposed Two-Stage Conversion Mechanism will also have the advantage of significantly advancing the implementation of the title registration system for LRO land, as the relevant provisions of the LTO will be applicable immediately after primary conversion. Given the need to accommodate the divergent views of stakeholders, however, the pace of *full conversion* under the option may have to be compromised slightly.

#### *Initial Discussion with Stakeholders on the Option*

14. A meeting of the Land Titles Ordinance Steering Committee was convened on 26 May 2011 for stakeholders to provide their initial views on the proposed Two-Stage Conversion Mechanism. The meeting was attended by representatives of the Law Society, the HYK, the Consumer Council, the Hong Kong Association of Banks, the Real Estate Developers Association of Hong Kong and the Hong Kong Mortgage Corporation Limited. Stakeholders generally welcomed the Administration's efforts in addressing their divergent views and concerns, and considered that the proposed Two-Stage Conversion Mechanism appeared feasible in forming the basis for further discussion with a view to taking the land titles exercise forward. The stakeholders would examine the option in further details within their respective organization and would revert with their comments in due course.

#### **WAY FORWARD**

15. We will continue our discussion with stakeholders on the proposed Two-Stage Conversion Mechanism with a view to developing a suitable legal and operational framework. Subject to a consensus being reached with

stakeholders, we will launch a targeted exercise to update members of the public on the latest development and to hear their views on the proposed way forward while concurrently prepare the necessary amendments to the LTO. As the option would involve major changes to the framework laid down in the LTO, its adoption might inevitably involve considerable new provisions. We will in parallel continue with the preparatory work for other technical and relatively less controversial amendments to the LTO, taking into account any consequential changes that may arise if the proposed Two-Stage Conversion Mechanism is to be adopted.

### **ADVICE SOUGHT**

16. Members are invited to note the latest progress. While we await stakeholders' formal views on the proposed Two-Stage Conversion Mechanism, views from Members at this stage are most welcome.

**Development Bureau**  
**June 2011**

**Follow-up actions 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
<b>Part A : Making of rules and regulations</b>		
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>The respective concepts of 'registration of instrument' and 'registration of interest' have been reviewed.</p> <p>"Instrument" will be defined to include court order and other document in writing.</p> <p>Land Titles Ordinance (LTO will expressly provide for registration of instruments if (a) the registration of such instrument is expressly provided for under the LTO or any other enactment; or (b) it is affecting land and the Land Registry permits.</p> <p>Notices and orders relating to premises under other ordinances can be registered under s.13 of the LTO. No specific rules or regulations are required.</p> <p>Practice guidelines or manual will be issued listing out common instruments which are acceptable for registration.</p>
2	To check whether there are any existing laws of court that govern the exercise of	Given that the land title registration system is new to Hong Kong, and that the LTO is a piece of complex legislation, s.9 is

Item No.	Follow-up action	Action Taken / Updated Position
	<p>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>considered essential in facilitating the exercise of the Registrar's functions and powers.</p> <p>Section 9 of LTO (formerly clause 6A) relates to Registrar's power to make application to court for directions. Researches were conducted. There is no existing laws or rules of court that govern the exercise of such power by the Registrar.</p> <p>In Hong Kong, the Official Receiver is given power to apply to court for directions under the Bankruptcy Ordinance (Cap.6) and Companies Ordinance (Cap.32).</p> <p>Suitable provisions will be provided in the court rules relating to the LTO (as part of the existing Rules of the High Court) to govern such applications. The working draft of the Court Rules from the Law Draftsman will require review upon finalization of the amendment bill.</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>Suitable provisions will be provided in the court rules to regulate the procedure of an application under s.97 of LTO (formerly clause 95) relating to questions over title of land, etc. The working draft of the court rules will require review upon finalization of the amendment bill.</p>

<b>Item No.</b>	<b>Follow-up action</b>	<b>Action Taken / Updated Position</b>
4	<p>To put in place the regulations prescribing the class of persons referred to in <i>clause 77(5)(c)</i> 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>The post-enactment review of s.78 of LTO (formerly clause 77) has recommended that provisions for the Registrar to make, vary and remove restriction orders be deleted. There is fundamentally no difference between the effect of an inhibition order made by the Court and that of 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> <p>Major stakeholders have been advised of the proposed deletion and no objection was received. Assistant Legal Adviser (ALA) of the Legislative Council Secretariat has nevertheless indicated reservation on the proposal. The Administration would further consider the issue in view of ALA’s comments.</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</i></p>	<p>Subject to the final position of item 4 above, relevant rules will be put in place prior to the commencement of the LTO.</p>

Item No.	Follow-up action	Action Taken / Updated Position
	<p><i>5 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004)</i></p>	
<p><b>Part B : Preparation of guidelines, guidance notes and the like</b></p>		
<p>6</p>	<p>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>	<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>
<p>7</p>	<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</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</p>

Item No.	Follow-up action	Action Taken / Updated Position
	<p>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>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>
<p><b>Part C : Further consequential amendments to be introduced after enactment of the Bill</b></p>		
8	<p>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>	<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 LTO Review Committee (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. The Administration proposed to amend section 4(1) of the CPO to make it clear that in respect of registered land, the creation, extinguishment or disposal of a legal estate</p>

<b>Item No.</b>	<b>Follow-up action</b>	<b>Action Taken / Updated Position</b>
		<p>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> <p>The outcome of the review was reported in a paper submitted to the Joint Subcommittee on Amendments to Land Titles Ordinance of LegCo in October 2009.</p>
9	<p>To relay to the Secretary for Home Affairs for his consideration of introducing amendment to the definition of “common parts” in section 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</p>	<p>Clarification was made with ALA of the LegCo Secretariat. 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.</p> <p>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.</p>

Item No.	Follow-up action	Action Taken / Updated Position
	<p>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>)</p>	<p>The outcome of the review was reported in a paper submitted to the Joint Subcommittee on Amendments to Land Titles Ordinance of LegCo in October 2009.</p>
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>The issue was considered by the Review Committee. It is considered 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. Instructions were given to the Law Draftsman to provide for the registration of manager of clan, family or "T'ong" in the LTO.</p> <p>Comments of Heung Yee Kuk on the draft provisions are being considered.</p>
11	<p>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</p>	<p>The Law Society has given the Registrar their proposed amendments to the Solicitors (General) Costs Rules, which will be dealt with as consequential amendment to Cap. 159G in the amendment bill.</p>

Item No.	Follow-up action	Action Taken / Updated Position
	implementation of the land title registration system ( <i>page 35 of LC Paper No. CB(1)1544/03-04(01)</i> )	
12	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>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>

<b>Item No.</b>	<b>Follow-up action</b>	<b>Action Taken / Updated Position</b>
13	<p>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>	<p>A comparison exercise of the provisions of the CPO and the LTO was conducted. A discussion paper was submitted to the Review Committee. Consultation was made with the Law Society.</p> <p>The Administration and the Law Society agreed that the CPO and the LTO should operate independently. Where there is no incompatibility between the CPO and the LTO, the CPO will apply to land to which the LTO applies. Where there is incompatibility, amendments will be proposed to the CPO or the LTO to suit the circumstances.</p> <p>The outcome of the review was reported in a paper submitted to the Joint Subcommittee on Amendments to Land Titles Ordinance of LegCo in October 2009.</p>
14	<p>To introduce any other additional consequential amendments that may become necessary during the period between the passage of the Bill and the 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>)</p>	<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
<b>Part D : Clauses to be reviewed after enactment of the Bill</b>		
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 <i>clause 29(1)</i> 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>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 decided that a disposition is required to be registered to be effectual. The decision is in line with the spirit of the title registration system which aims at certainty of title.</p> <p>To address ALA's concern that an owner's power of disposition might be limited or restricted, it is proposed to amend s.32(1) to the effect that no <i>instrument providing for a disposition</i> (as opposed to the act of disposition) shall be effectual to create, extinguish, transfer, vary or otherwise affect registered land unless and until the instrument is registered. Transmissions and overriding interests are the exceptions.</p> <p>The views of the LTO Review Committee on the proposal will be sought.</p> <p>As regards the priority between a registered interest (which was acquired at valuable consideration) and an unregistered interest, it is proposed to add new priority provisions to the effect that the unregistered interest may only take effect subject to the registered interest.</p>
16	<p>To revisit <i>clause 33(8)</i> and address Law Society's</p>	<p>Research on the position under the existing law was conducted. Discussion papers</p>

Item No.	Follow-up action	Action Taken / Updated Position
	<p>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>	<p>were submitted to the Review Committee.</p> <p>Meetings with the Law Society were held. The Law Society has proposed and the Administration agreed 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. Instructions will be given to the Law Draftsman to reflect the latest proposal.</p>
17	<p>To revisit <b>clause 35(3)</b> 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>	<p>The issue 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 mortgage effected by a legal charge would enjoy as if the mortgage had been effected by way of an assignment.</p> <p>The Administration agrees that the protection currently given under the CPO should be preserved and will reconsider the drafting of section 37(3)(b) of the LTO.</p>

Item No.	Follow-up action	Action Taken / Updated Position
18	<p>To review <i>clause 43</i> 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>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. On further review, 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. The proposal was considered by the Review Committee. The Law Society and Bar Association agreed with the recommendation. Drafting instructions have been given to the Law Draftsman to amend s.45 of the LTO.</p> <p>The outcome of the review was reported in a paper submitted to the Joint Subcommittee on Amendments to Land Titles Ordinance of LegCo in October 2009.</p>
19	<p>To consider how to address the ALA’s concern that, because of the reference to “the entry in the Title Register” in <i>clause 81(4)</i>, it is not clear whether a fraud or voidable transaction that</p>	<p>The Review Committee has considered the issue. It is proposed to clarify that an entry under the LRO made or omitted by or as a result of fraud or a void/ voidable instrument can give rise to a claim for rectification by court under section 82 of LTO. The Law Draftsman has been</p>

Item No.	Follow-up action	Action Taken / Updated Position
	<p>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>instructed to review the relevant provisions and consider whether amendment is needed to make this clear.</p>
20	<p>To review the provisions in <b>clause 92</b> 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 had carefully examined the Joint Subcommittee's concerns on determination of land boundaries and their complex legal and policy implications. Relevant stakeholders were consulted at the Cadastral Survey Consultative Committee meeting in August 2010. Their views remained diverse. To avoid complicating matters, the Administration considered it more appropriate to examine the issues relating to the determination of land boundaries as a separate exercise from the amendment of the LTO. Under this approach, the momentum for taking forward both exercises would be sustained.</p>
<p><b>Part E : Other issues</b></p>		
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</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</p>

<b>Item No.</b>	<b>Follow-up action</b>	<b>Action Taken / Updated Position</b>
	<p>paper on “Indemnity Scheme: Levy Rates and Miscellaneous Matters” (<i>LC Paper No. CB(1)2207/02-03(06)</i>).</p> <p>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>Administration shall review the levy scheme accordingly. 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>
23	<p>To consider how the public, or a solicitor acting on behalf of a member of the public,</p>	<p>For members of the public who have grounds that satisfy the exemptions allowed under the Personal Data (Privacy)</p>

<b>Item No.</b>	<b>Follow-up action</b>	<b>Action Taken / Updated Position</b>
	<p>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>Ordinance ("PDPO"), the Administration is considering to allow them to carry out search by an owner's name. The implications of the PDPO are being considered. The Privacy Commissioner for Personal Data and DoJ will be consulted in due course.</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 by the Review Committee.</p> <p>The LR proposed and the Law Society accepted that the Applications Register under the LTO would be maintained and operated 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>The Review Committee has considered the issue. Comments of the ALA of the LegCo Secretariat were considered. 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> <p>It is proposed that an owner would only be required to produce instruments which support the current entries in the Title Register. The principle of title</p>

Item No.	Follow-up action	Action Taken / Updated Position
		<p>registration is that it would not be necessary to look behind the Title Register 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 on the meaning of “lack of proper care”. The Law Draftsman has been instructed to review the wording used in section 82 of the LTO in light of the advice.</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</i></p>	<p>A letter was sent to Heung Yee Kuk in July 2004 advising enactment of the LTO and inviting nomination for representatives in the post-enactment review.</p>

<b>Item No.</b>	<b>Follow-up action</b>	<b>Action Taken / Updated Position</b>
	<i>Committee on 18 June 2004).</i>	

**Land Registry**  
**June 2011**

## **Further Issues Arising from the Post-enactment Review**

This annex reports on the actions taken by the Administration and the latest position in respect of further 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 also registered at the same time. For a transfer, when the instrument of transfer is registered, title to the property is vested in the transferee who is registered as the owner in the Title Register. Redrafting has been proposed in the working draft of the Land Titles (Amendment) Bill (LT(A)B) which was sent to major stakeholders for consultation. All parties accepted this approach. The same approach will be adopted in the subsequent working drafts of the LT(A)B.

### **B. Instruments providing for disposition 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 the effect that, with the exception of transmission and overriding interest, no *instrument providing for a disposition* of a registered property shall be effectual to affect the registered property or registered charge unless and until the instrument is registered.

5. To supplement the operation of section 32(1) (as amended per paragraph 4 above) and to displace the operation of the common law doctrine of

notice under the LTO completely, it is proposed to add "priority provisions" ("additional priority provisions") to regulate the priority between registered interest and unregistered interest.

6. The "additional priority provisions" will provide to the effect that where there is competition between a registered interest and an unregistered interest in relation to the same property, the unregistered interest may only take effect subject to the registered interest. The new provisions have no application where the registered interest was acquired without valuable consideration, e.g. under a deed of gift. The additional priority provisions also have no application to transmission (other than transmission by court order) and overriding interests.

### **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 governs 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, that would mean an ownership vacuum before completion of registration. Research into the history was conducted to ascertain what the intention was regarding the date of registration. A paper has been issued to the LTO Review Committee (Review Committee). It was agreed that upon completion of registration, an instrument would be deemed to have been registered on the date of presentation of the application for registration of the instrument.

10. The Administration proposes in the working draft of 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.

**D. Overriding interests : rights under enactments**

11. The LTO provides that all registered properties shall be subject to overriding interests referred to in section 28 of the LTO 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. 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. Various enactments were reviewed and revisions to address these conflicts are being examined. To resolve the conflict in the different registration requirements relating to “rights under enactments” which are overriding interest, it is proposed to delete “and any notices, orders and certificates relating to such rights” from section 28(1)(g) of the LTO. Suitable provisions will be added to provide for the registration of such notices, orders and certificates, and to ensure that the overriding status, if any, of the rights

under enactments underlying such notices, orders and certificates will not be affected. Further consultation with departments will be conducted.

### *Prescriptive rights*

13. In view of the development of case law on easements by prescription in *Kong Sau Ching v Kong Pak Yan* [2004] 1 HKC 119 and *China Field Ltd. v Appeal Tribunal (Buildings)* [2008] FAMV No.78/2008 (HKCFA), it is proposed to include easement by prescription as an overriding interest under section 28 of the LTO.

### *Adverse possession*

14. The Law Reform Commission has set up a subcommittee to review the law on adverse possession. In the meantime, a right acquired or to be acquired under the Limitation Ordinance (Cap. 347) remains an overriding interest under section 28(k) of the LTO. The Land Registry (LR) will keep in contact with the subcommittee and consideration will be given in due course to any recommendation in this area of law.

## **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.

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 consideration. Most members agreed to the proposal. Other comments received are being reviewed.

## **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, some issues

have been identified where further amendments may be needed to clarify the position. 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. Any conflict or inconsistency would be removed. Consultation with relevant bureaux and departments is continuing.

(b) *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, some ordinances provide for the creation of charge upon the registration of certain instruments. It is proposed that provisions be added to cover the registration and removal of charges arising under enactment.

(c) *Definitions of “owner”*

Some ordinances contain a definition of the expression “owner” which covers person who is entitled to be registered as owner. In the context of the LTO, an owner is an owner when he is registered. The meaning of “owner” under relevant ordinances has been considered and no conflict was identified.

(d) *Use of the term “registrable”*

Some ordinances refer to an instrument as being “registrable in the Land Registry”. 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. The provisions in the relevant ordinances need to be considered to ascertain if amendment is required in the context of the LTO.

18. Various enactments were reviewed. Proposals and revised 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 bureaux/departments for consultation. After having reviewed the comments received, further revised proposal on interface issues has been issued and further

revised proposal on registration of charges arising under enactments is being drawn up. Further consultation with the relevant bureaux/departments will be conducted.

### **G. Court orders**

19. As regards whether court orders should be required to be registered to be effectual, it is considered that there are court orders such as restraint orders that must take immediate effect for preserving property. There are also court orders made for the purpose of abating the recurring of fire hazard or for fire safety of buildings that should also take immediate effect. The Administration's proposal is that court orders should not be required to be registered to be effectual. For court orders that may affect any interest in land, they will have to be protected by registration in order to gain priority over other registrable interests against the same property.

### **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.

21. Provisions on transmission were reviewed. There was also discussion on how different kinds of transmission should be registered. Research was conducted on when transmission takes effect in other jurisdictions. It is proposed to maintain that transmission does not have to be registered to be effectual except that if transmission under court order is not registered, it will only take effect subject to registered interest.

### **I. Cautions**

22. A discussion paper on cautions dated October 2009 was sent to the Review Committee for consultation, which covers issues including the proposed merger of consent caution (CC) and non-consent caution (NCC), abolition of "one-day rule"<sup>1</sup>, grounds for removal for CC and NCC and the effect of multiple cautions. Replies have been received from members of the LTO Review

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<sup>1</sup> The "one-day rule" is reflected in section 35(6) of LTO which provides that a charging order or a NCC shall have priority from the commencement of the day following the date of its registration.

Committee including the Law Society, Bar Association and Lands Department.

23. The stakeholders generally take the view that the distinction between CC and NCC should be maintained. They also take the view that the one-day rule should be retained. Having considered the stakeholders' comments on various issues raised in the discussion paper, the Administration has concluded that the distinction between CC and NCC and the "one-day rule" should be maintained. To facilitate registration of CC, further consultation was made with the Law Society and the Estate Agents Authority on additional route for registration of CC. Instructions to the Law Draftsman are being prepared.

## **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, a person who claims an unregistrable interest in land may apply to register a caveat against the land. 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 still needs to make the necessary enquiries.

26. Upon conversion to title registration, the registered caveat will be deemed a non-consent caution (deemed 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, that interest would be defeated by a purchaser for value after conversion.

27. Provisions have been made in the Land Registration Ordinance (Cap. 128) (LRO) that the priority of all unregistrable interests relating to the same land shall be determined in accordance with the common law rules. However, when the LRO land is deemed registered land on conversion, the priority as among competing unwritten equities, deemed non-consent caution and other registered instrument or matter remains problematic. New provisions will be added to clarify the issue.

28. It is considered that the application approach for caveat is not in line

with the provisions of the LRO. It is proposed to replace the application approach with registration approach that the person who claims an unregistered interest should register an instrument of caveat instead of making an application to register a caveat.

#### **K. Caution against Conversion (CAC)**

29. Under Schedule 4 to the LTO, provisions for registration of CAC have been added to the LRO to allow a person who claims interest in land to register a CAC. CAC will have the effect of withholding conversion of LRO land to registered land. It will also constitute notice of the claim to all persons. Registration of CAC will expire after one year from the date of its registration unless a court order for its extension has been obtained or a lis pendens relating to the claim is registered.

30. The provisions of CAC have been reviewed. Similar to caveat, it is proposed to adopt registration approach to deal with CAC.

#### **L. Definitions in the LTO**

31. 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 the review and drafting of individual provisions. The Law Society was consulted and their feedback was taken into account. Supplemental instructions will be given in relation to the definitions to ensure coherence of their use within the LTO.

#### **M. Liability of Government**

32. The Administration has reviewed the potential implications of section 11 of the LTO on the Government's liability. Section 11 aims to immune the personal liability of public officer performing his function or power under the LTO in good faith and does not aim to restrict the Government's other tortious liability. The Administration considers that no amendment to section 11 is required.

#### **N. Filing of standard terms documents**

33. 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. The procedure for filing documents was drawn up. Provisions have been set out in the working draft of the LT(A)B.

#### **O. Restriction order**

34. 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, and that the court's decision is final whereas the decision of imposing a restriction order by the Registrar is not, it is proposed to delete the power of the Registrar to make restriction orders. Major stakeholders did not express objection to the proposal. ALA has however indicated reservation on the proposed deletion. The Administration will further review the issue in view of the comments received.

#### **P. Rectification by the Registrar**

35. The scope of rectification by the Registrar has been reviewed. It is the Administration's intention that the Registrar may rectify errors and omissions in the title register only in limited circumstances and will not assume any quasi-judicial role in rectifying the title register. The Administration considers that no amendment to section 81(1) of the LTO is required.

#### **Q. Indemnity provisions**

36. A three-month public consultation was launched on 1 January 2009 to gather views from the public and key stakeholders on various proposals to modify the indemnity provisions. These proposals relate to persons eligible to claim indemnity, distribution of indemnity money in case of multiple claimants, the handling of costs in administering applications for indemnity and indemnity proceedings and the date for assessment of the value of interest. The feedbacks received during the consultation exercise generally support the proposed

amendments to the indemnity provisions. The Joint Subcommittee on Amendments to Land Titles Ordinance of the Legislative Council (LegCo Joint Subcommittee) was briefed on the outcome of the consultation. Instructions will be prepared and sent to the Law Draftsman to reflect the latest proposals.

## **R. Exclusion**

37. Arising from the investigation of problematic land registers, it is clear that the LTO 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.

38. In light of the response to the public consultation on conversion mechanism, a proposal has been developed to empower the Registrar to register a “Land Registrar’s caution against conversion” (LRCAC) under the LRO for dealing with known cases of indeterminate ownership. The LTO Steering Committee and the LegCo Joint Subcommittee were consulted on the proposal.

## **S. Practical implications**

39. 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) *Particulars of Government lease*

Some LRO registers do not contain full particulars of the Government lease, e.g. commencement date and lease term, due to unavailability of the information. Transitional provisions may be required for the smooth conversion of the LRO registers to the new title registers.

(b) *Historical records*

The arrangements for maintenance and access to historical records need to be set out.

(c) *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 merely registered as a transfer. The easement or covenant intended to be created by the instrument of transfer must be separately registered as such. Provisions will be added to give effect to the proposal. Procedures, forms and fees for dealing with this are being drawn up.

(d) *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.

Further consultation will be made with the Lands Department on matters such as first registration of new Government lease, registration of extension areas, and registrability of instruments prepared by the Department.

(e) *Title certificate*

Procedures for issue and cancellation of the certificates are being drawn up.

(f) *Satisfaction of registered charge*

Section 41 of the LTO provides that the Registrar shall remove or alter an entry of a registered charge if he 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. 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 was considered by the Review Committee. It was agreed that section 41 of the LTO should be deleted. The Administration is considering whether section 12A of the CPO should

be amended to incorporate the intention of section 41 of the LTO.

(g) *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. Agreement has been reached with the Collector of Stamp Revenue as to how to ensure compliance with the provision as well as to ensure that registration is not delayed by the stamping process. Instructions to amend the Stamp Duty Ordinance will be sent to the Law Draftsman when prepared.

(h) *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. Provisions will be added to clarify that the power provided to personal representative will not relieve the personal representative or purchaser with knowledge of breach of duty from liability.

(i) *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 to add provisions 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.

(j) *Address for service*

It is proposed to amend s.95 of the LTO empowering the LR to require an application to include an address for service in Hong Kong. Any notice required to be served under the LTO (other than service of notice governed by the Rules of High Court), shall be deemed to be duly served if it is served on the relevant person’s last known address

as reflected in the Land Titles Register.

(k) *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 new development of land, sale and purchase and charge, are being planned. Conveyancing forms and application forms for registration are being drawn up.

**T. Transitional Provisions**

40. During post-enactment review, a number of transitional issues relating to conversion of LRO land to registered land have been identified and are under consideration. Instructions will be given to the Law Draftsman to add provisions to deal with the transitional issues.

**U. Removal of Stopped Instruments under the LRO (consequential amendments to the LTO)**

41. Under the LRO, the Registrar does not have power to vacate entry relating to instrument which has been withheld from registration (stopped instrument). Under Schedule 1 to the LTO, LRO land in respect of which there is any stopped instrument immediately before the statutory conversion day will not be converted to registered land until completion of registration of that instrument.

42. Law Society has been consulted on the proposal to make consequential amendments to the LTO to add provisions in the LRO to provide power for the Registrar to remove from the LRO register stopped instruments that have been withheld from registration for more than 6 months. Details of the proposal are being drawn up and Law Society will be further consulted.

## Details of the Proposed Two-Stage Conversion Mechanism

### Primary Conversion

#### *The Process*

After a lead-in period from the date of commencement of the Land Titles Ordinance (LTO) on new land, all eligible LRO land except those subject to stopped deed will undergo primary conversion on a designated date and the relevant registers kept under the Land Registration Ordinance (LRO registers) will be deemed to be primary titles registers (PTRs). A new individual PTR will be opened during the incubation period. Before opening a new individual PTR, staff of the Land Registry (LR) will conduct checking on whether there is any broken chain of title.<sup>1</sup> LR may clean up obsolete entries upon opening of the new PTR.

#### *Subsisting Interests*

2. During the incubation period, land with primary title will remain subject to subsisting interests.

#### *Transactions and Interests Created after Primary Conversion*

3. From the date of primary conversion, all transactions relating to land with primary title are to be effected in the same manner and form appropriate to the particular transactions prescribed under the LTO. An interest created after primary conversion which is not protected by a registered matter will be subject to other registered matters.

4. During the incubation period, production of title deeds and documents would model upon the practice of those stated in sections 13<sup>2</sup> and 13A<sup>3</sup> of the

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<sup>1</sup> LR may invoke the mechanism of Land Registrar's Caution against full conversion if LR identifies any register of indeterminate ownership. See paragraph 10.

<sup>2</sup> Under section 13 of the CPO, a vendor has to provide the purchaser with government grant and title deeds and documents extending for period since the government grant or since an assignment, a mortgage by assignment or a legal charge of not less than 15 years before the contract of sale, whichever is later (root of title).

Conveyancing and Property Ordinance (Cap.219) (CPO), except that documents registered after primary conversion are not required to be produced if entries relating to them are no longer contained in the PTR. With the passage of time, documents which are required to be produced will be gradually reduced.

*Rectification and Indemnity*

(i) Fraud under section 82(3) of the LTO

5. During the incubation period, mandatory rectification rule as provided in section 82(3) of the LTO will apply to restore title to an innocent former owner who lost his property as a result of fraud, while indemnity with cap will be payable to a displaced current owner in respect of fraud which occurred after primary conversion. In case a former owner's title cannot be restored due to the following exceptions (two exceptions), indemnity will be payable to the former owner –

- (a) property is being resumed or surrendered for public purpose; or
- (b) property redeveloped, sold to multiple new purchasers and it is inequitable to restore title to the former registered owner.

(ii) Mistake or omission

6. Since land with primary title is subject to subsisting interests, the purchaser's solicitors should check both the historical LRO register as well as the PTR (if opened) for approval of title during the incubation period. With such checking, even if there is any mistake or omission in entering entry in the PTR relating to instrument registered before primary conversion, party dealing with the property should be able to identify any discrepancies as the correct entry would still be shown on the LRO register. Accordingly, no indemnity will be payable during the incubation period in respect of any mistake or omission in entering entry in the PTR relating to instrument registered before primary conversion.

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<sup>3</sup> Under section 13A of the CPO, a vendor has to provide the purchaser with original documents within root of title which relate exclusively to the property.

7. During the incubation period, if any inaccuracy of the PTR is found in respect of any instrument registered before primary conversion, the Court and LR may rectify any mistake or omission of entry in the PTR in relation to such instrument.

8. As regards other mistakes or omissions that occurred after primary conversion, sections 81 and 82 (except section 82(3)) of the LTO on rectification will apply to the PTR. Indemnity provisions under section 84 of the LTO will apply for mistake or omission by LR staff (except as mentioned in paragraph 6 above) which occurred after primary conversion.

### *Key Factors Affecting Eligibility for Full Conversion*

#### (i) Warning notices

9. A person having a claim to an unregistrable subsisting interest in a property may give a notice of his claim by registering a warning notice during the incubation period. The priority of unregistrable subsisting interests, irrespective of whether a warning notice has been registered in respect thereof, shall be determined in accordance with the common law. There will **not** be automatic full conversion of title unless the warning notice is removed.

#### (ii) Land Registrar's Caution against full conversion

10. To better manage the risks of converting land with indeterminate ownership, LR may register a Land Registrar's Caution against full conversion (LRC) during the incubation period if it appears to the LR that –

- (a) there are more than one individual registers in respect of the same parcel of land or in respect of more than one parcels of land bearing the same lot number; or
- (b) the person whose name appears in the individual register as the current owner of the land may not be the true owner.

There will **not** be automatic full conversion of title until the LRC is removed. The operation of the LRC mechanism will be similar to that of the Land Registrar's Caution against Conversion previously proposed to deal with known

cases of indeterminate ownership.

(iii) Opt-out caution

11. An owner who does not want the title of his property to be fully converted to registered land may register an opt-out caution against his own property. There will **not** be automatic full conversion of title until the opt-out caution is withdrawn by the registered owner.

## **Full Conversion**

### *The Process*

12. After 12 years from the primary conversion, all land with primary title, except land which is subject to (a) a warning notice; (b) an LRC; (c) an opt-out caution; or (d) a non-consent caution in respect of rectification proceedings, will undergo the final stage of conversion and will automatically be fully converted to registered land. The PTR will be converted to the Land Titles Register (LTR) upon full conversion of title.

### *Subsisting Interests*

13. Upon full conversion of title, a subsisting interest which is not protected by a registered matter will be subject to other registered matters. A holder of an unregistered subsisting interest may still register a non-consent caution to protect his interests. The order of priority between such cautioned interests and any other registered matters shall be determined by the date of registration in accordance with the LTO.

### *Production of Title Documents*

14. After full conversion of title, production of title deeds and documents would follow section 46 of the LTO. Instruments registered after primary conversion which are not shown in the LTR will no longer be required to be produced to the purchaser.

*Rectification and Indemnity*

(i) Fraud

15. After full conversion of title, a bona fide purchaser in possession and for valuable consideration will, subject to section 82(1) and (2) of the LTO, be entitled to immediate indefeasibility. Indemnity with cap will be payable to a former owner who cannot restore title in respect of fraud which occurred after primary conversion.

(ii) Mistake or omission

16. The provisions of the LTO on rectification and indemnity in relation to mistake or omission will apply to registered land after full conversion of title.

**Land Registry**  
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