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The Government of the Hong Kong Special Administrative Region

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By Fax

17 January 2018

Clerk

Public Accounts Committee

Legislative Council

Legislative Council Complex

1 Legislative Council Road

Central, Hong Kong

(Attn: Mr Anthony CHU)

Dear Mr Chu,

Public Accounts Committee

Consideration of Chapter 5 of the Director of Audit's Report No. 69

Operation of the Land Registry

I refer to your letters of 20 December 2017 to the Secretary for Development and the Land Registrar. Our responses are now set out at **Appendix** for reference by the Public Accounts Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Jasmine Choi".

(Ms Jasmine CHOI)
for Secretary for Development

c.c. Land Registrar

**Public Accounts Committee
Consideration of Chapter 5 of the Director of Audit's Report No. 69
Operation of the Land Registry**

Consolidated Response from the Development Bureau (DEVB) and the Land Registry (LR) on Part 3 (other than the question concerning paragraph 3.30)

Part 3: Implementation of land title registration system

- 1) According to paragraphs 3.10 and 3.23, during the scrutiny of the Land Titles Bill (introduced into the Legislative Council in December 2002) by the Bills Committee, the Government proposed to commence the Land Titles Ordinance (Cap. 585) (“LTO”) two years after its enactment in July 2004. However, up to September 2017, LTO had not yet been implemented. On what basis did the Administration make the assessment that LTO could commence two years after its enactment? Does the Administration agree that LR had under-estimated the complexity of the issues and the work involved in implementing LTO and land title registration system (“LTRS”)? What measures will the Administration take to fully assess the complexity of the issues and the work involved?**

Shortly before the Land Titles Bill (“LTB”) was passed in 2004, a number of substantial changes were made to the bill, including the change from gradual conversion to daylight conversion and the inclusion of the Mandatory Rectification (“MR”) rule (mandatory rectification of title in favour of the former owner in fraud case and the current owner being displaced) in the rectification provisions to address the concern on the indemnity cap. During the closing stage of the committee stage discussion, at the request of members of the Bills Committee, the Government undertook to conduct a review of the LTO and the preparatory work before bringing LTO into effect. The work envisaged then included, inter alia, engaging relevant stakeholders to address any subsisting points of concern and any issues that might emerge on further consultation before the implementation of LTO, and taking the follow-up actions set out in the

Report of the Bills Committee on Land Titles Bill (“Bills Committee’s Report”)¹.

LTRS is inherently complicated as it involves complex legal issues and carries significant implications. The Government has never underestimated its complexity and has been endeavouring to bridge different expectations on LTRS from pertinent stakeholders. Since the enactment of LTO, detailed internal review of the LTO provisions had been conducted by LR. In fact, the Government had either resolved or identified solutions for most of the issues raised in the Bills Committee’s Report by 2007.

However, further issues were identified during the review which would require substantial amendments to LTO to ensure the efficient operation of the new system. These issues mainly relate to the conversion mechanism (there were difficulties with the operation of the daylight conversion mechanism e.g. how registers with indeterminate ownership should be dealt with) and the rectification and indemnity arrangements (there were concerns over the effect of the MR rule in fraud case which would result in restoration of title to the former owner and the current owner being displaced with only capped indemnity) adopted in LTO which might undermine title certainty and the purchasers’ confidence in the new system. Efforts have been made to sort out and resolve these issues before an amendment bill can be submitted to the Legislative Council (“LegCo”) for implementation of LTRS. Throughout the years, the Government has put forward different proposals to address the views of stakeholders with regard to the conversion mechanism as well as the rectification and indemnity arrangements. Despite our continuous efforts, a consensus amongst key stakeholders over certain major issues has yet to be reached.

Looking forward, we will continue the engagement with major stakeholders and strive to resolve the outstanding issues. We will also actively pursue the ‘new land first’ proposal with the goal of forging consensus for an earlier implementation of LTRS.

¹ See Appendix VI and the specific undertakings set out in paragraphs 120 to 122 of LC Paper No. CB(1)2219/03-04.

- 2) With reference to paragraphs 3.13(c) and (d), why were the 18 issues involving significant matters for substantial amendments not identified before the enactment of LTO? Given that substantial amendments to LTO are required, does the Administration agree that the preparatory work before the enactment of LTO was inadequate?**

LTRS is inherently complicated and it involves complex legal issues and carries significant implications. LTB was passed with the Government's undertaking that a range of issues and various practical arrangements would be reviewed and worked out in consultation with the stakeholders before the Ordinance can commence operation.

In addition, LTB had undergone major changes shortly before enactment, including the change from gradual conversion to daylight conversion and the inclusion of the MR rule in the rectification provisions to address the concern on the indemnity cap.

Against the above backdrop, notwithstanding the enactment of LTO, a thorough review of the LTO provisions is therefore required to ensure a sound LTRS for both legal practitioners and the public. The review revealed that, in addition to the major issues of the conversion mechanism as well as the rectification and indemnity arrangements, there were certain specific issues that needed clarification (e.g. date of registration, whether court order is required to be registered to be effectual, caution provisions) and relevant amendments to LTO were essential to ensure the efficient operation of the new system.

- 3) According to paragraph 3.24(c), LR was exploring the proposal of implementing LTRS on new land only at this stage and was seeking the stakeholders' views. What is the progress and implementation timetable? Does the Administration agree that this proposal could be implemented first to early reap the benefits of LTRS; if not, please explain the reasons.**

The proposal of implementing LTRS on new land only at this stage (“‘new land first’ proposal”) was raised as one of the four options in LTO Steering Committee (“LTOSC”) Paper No.14 (2014) by the Government with a view to reaping the benefits of LTRS early.

From 2014 onwards, LR had exchanged views with different members of LTOSC on the options set out in LTOSC Paper No. 14. At the same time, internal deliberations on the scope of new land and assessment on the major amendments required to be made to LTO if it were to be applied to new land first were carried out. In December 2016, the 11th LTOSC meeting was held and the ‘new land first’ proposal was further discussed. The majority of LTOSC members considered that the ‘new land first’ proposal was a feasible way forward and it would enable earlier implementation of title registration system in Hong Kong. Throughout 2017, the Government continued to reach out to different stakeholders to solicit their views about the ‘new land first’ proposal. The general feedback was positive, though there were some queries on the implication of the proposal, for example the parallel running of two systems. At the 12th LTOSC meeting held in November 2017, members were briefed on further details of the ‘new land first’ proposal, especially on the scope of new land.

It remains our wish to first implement the ‘new land first’ proposal, and to this end, we are continuing our efforts in engaging major stakeholders.

- 4) According to paragraph 3.27(a), in September 2017, LR said that it was not practical to prepare a realistic implementation timetable for LTRS at this stage as a general consensus among stakeholders on the main issues had not been reached. Given that LR was able to set a target time and devise action plan for implementing LTRS during 2004-2005 to 2009-2010 (paragraph 3.26), why is it not able to do so now? Given that setting a target LTRS implementation date and devising an action plan with implementation timetable would facilitate steering and coordinating the various work for implementing LTRS, will the Administration re-consider setting the target date and devising the action plan?**

The proposed timetable for the implementation of LTO submitted to LTOSC in 2004-2005 was prepared on the basis that the follow-up work to be undertaken by the Government would take two years to complete. As pointed out above, the post-enactment review of LTO revealed that there were further issues requiring substantial amendments to LTO before its implementation.

A public consultation was carried out on the proposed amendments on these issues in 2009.

The public consultation exercise revealed that respondents generally favoured the automatic conversion approach, meaning that the proposed gradual conversion approach was not supported. Moreover, the stakeholders had divergent views as to the application of the MR rule after the public consultation. While further implementation timetables were submitted to LTOSC for information in 2009-2010, these were formulated on the assumption that a consensus could be forged amongst stakeholders on the said issues within a short period of time.

As stakeholders continued to have divergent views on these issues, the implementation timetable was not included as an agenda item in the subsequent LTOSC meetings. However, members have been kept informed regarding the progress of the review of LTO.

As regards timetable, tentatively, subject to a broad consensus being reached with major stakeholders on the ‘new land first’ proposal by around mid-2018, we would consult the LTO Review Committee and the LTOSC in the latter half of 2018. We would then refine the ‘new land first’ proposal in the light of their comments, and brief the LegCo Panel on Development before conducting a public consultation on the whole package of proposals including the proposed scope of new land and proposed rectification and indemnity arrangements. Depending on the outcome of the public consultation, a more concrete timetable for the preparation and introduction of the Land Titles (Amendment) Bill (“LT(A)B”) to the LegCo for scrutiny could then be prepared.

- 5) According to paragraph 3.32(c), many jurisdictions had converted to title registration gradually involving parallel running of title registration and their original systems over a considerable period of time. Please inform this Committee whether the Administration would adopt similar measures; if yes, what is the timeline; if not, why not?**

Under LTB 2002, the Government proposed to convert existing land to LTRS gradually with conversion to take place upon the first transfer of the property supported by a solicitor's certificate of good title. Due to reservation about the requirement for a solicitor's certificate of good title, the conversion mechanism was revised in 2004 to allow for automatic conversion of existing land after a 12-year interim period.

The conversion mechanism (i.e. the daylight conversion mechanism) as enacted in LTO was an automatic conversion mechanism. During the post-enactment review of LTO, issues concerning the daylight conversion mechanism were identified and in 2009 the Government proposed to adopt a modified gradual conversion approach². However, the outcome of the public consultation in 2009 revealed that the public generally preferred to retain an automatic conversion mechanism as provided under LTO. The Government is now pressing ahead with the 'new land first' proposal and shall keep under review the most appropriate conversion approach.

² It was then suggested that owners should apply for upgrading of title after a period of time after the commencement of operation of LTO.

LR's Response on Part 2, Part 3 (on question concerning paragraph 3.30) and Part 4

Part 2: Provision of services

- 6) With reference to paragraphs 2.7 and 2.8, what measures will LR take to expedite the progress of the tidying up the land registers? What is the revised target completion date of the tidying up exercise? How will LR ensure that there will be no further slippage?**

The tidying up exercise of land registers comprises three tasks: (a) filling in information (e.g. names of owners) of historical transactions not shown in the land registers; (b) inputting the full address of the property in the “address” field for land registers which contain only partial address in the “address” field with the remaining part of the address recorded in the “property remarks” field; and (c) filling in the nature of registered documents of some historical transactions not shown in the land registers.

For task (a), as of December 2017, about 2.7 million (84% of the total 3.25 million) memorial entries have been checked and updated with related particulars as needed. We expect that task (a) would be completed in early 2019, slightly behind the original schedule of end 2018.

For task (b), the processing of all 120,000 land registers involved has been completed ahead of schedule in April 2017.

For task (c), about 44,000 (40% of the total 110,000) land registers have been checked and updated. In order to expedite the updating of the remaining land registers, LR is developing an information technology programme and plans to redeploy staff working on task (a) to task (c) upon completion of task (a). With these arrangements, it is estimated that the time required for completing task (c) will be shortened from around 3 years to around 1.5 years and expect to complete before end 2019.

We will closely monitor the progress and keep in view of the resources requirement to ensure that there will be no further slippage for tasks (a) and (c).

- 7) According to paragraph 2.23, LR will explore using the Integrated Registration Information System ("IRIS") for tracking and monitoring the errors that were made after the implementation of IRIS in 2005. What is the progress so far? Please provide details how LR could make use of IRIS for tracking and monitoring the errors.**

The enhancement to IRIS for tracking and monitoring errors made after the implementation of IRIS in 2005 will be implemented by two phases.

For Phase 1, IRIS will be enhanced to generate log reports recording the amendments made to the registers and the officers concerned for tracking and monitoring the errors. System design for Phase 1 is in progress. The enhancement is targeted to be released by March 2018.

For Phase 2, IRIS will be enhanced to capture more information (e.g. types of errors) to facilitate analyses of the errors. The tentative implementation date is by end 2018.

- 8) According to paragraph 2.39(a), LR said that possible measures will be explored to improve the performance of the three New Territories Search Offices ("NTSOs"), having regard to their continued operating losses and low patronage as stated in paragraphs 2.27 and 2.28. What is the progress so far? What measures will LR take to further improve the performance of NTSOs?**

The three NTSOs have been operating with a minimum number of staff for the delivery of services. That said, to improve the operational performance of NTSOs, aside from assignment of additional tasks of preparing reports on owners' corporation records for "reports on title" requested by government departments and agencies, and compiling returns to the Home Affairs Department on registration of owners' corporations and filing of documents to the staff of NTSOs, we will continue to explore other possible measures in this respect having regard to service needs.

With a view to improving the financial performance of NTSOs, we are reviewing the office accommodation for NTSOs to see if there is any room for optimising the utilisation of the office space concerned. Proposals are being worked out.

We will continue to monitor and take measures to enhance the performance and financial positions of NTSOs.

Part 3: Implementation of land title registration system

- 9) According to paragraph 3.30, since the enactment of LTO in July 2004, LR had incurred about \$24 million per year on average in staff costs on matters concerning the review of LTO, preparation of the Land Titles (Amendment) Bill, engagement of stakeholders on the proposed legislative amendments and implementation of LTRS. Has the Administration come up with any measures to cut down the above expenditure? If yes, please provide the details; if not, please explain the reasons and inform this Committee whether the Administration has studied other measures to address the above issue.**

The LTO review involves complex legal issues and will have far reaching implications on property conveyancing. Throughout the years, different proposals have been devised with the aim of addressing the concerns of stakeholders which required delicate balancing of the divergent views over the key interrelated issues of conversion, rectification and indemnity. The proposals have to be feasible both legally and practically. Thus the review of LTO requires thorough consideration of the LTO provisions and preparation of a LT(A)B for the necessary amendments before implementation of LTRS.

In conducting the LTO review and related work, LR has all along been keeping in view the resources requirements and has taken measures to contain its expenditures. Staff resources have been suitably deployed based on the requirements for the LTO review and related work.

LR will continue to keep in view the resource requirements and ensure the resources deployed are necessary and appropriate for dealing with the LTO review and related work.

Part 4: Financial issues and performance reporting

10) According to paragraph 4.4, since its establishment in 1993, LR conducted five fee reviews of all fee items supported by costing statements at a time interval of three to seven years between each review (i.e. in 1998, 2005, 2008, 2011 and 2016). Why were the fee reviews not conducted at more regular intervals? Will LR issue guideline on the time interval for conducting future fee reviews?

Under the Trading Funds Ordinance (Cap. 430), LR is required to achieve a reasonable return on the fixed assets employed. To meet this financial objective, LR follows the general principle stipulated in Financial Circular No. 6/2016 “Fees and Charges” issued by the Secretary for Financial Services and the Treasury (“FSTB”) to set its fees at levels adequate to recover the full cost of providing its services on an overall basis and to attain the target rate of return on average net fixed assets (“ANFA”). Hence, instead of a fee review of all fee items supported by costing statements, LR conducts a fee review on an overall basis annually by comparing LR’s overall revenue against its overall expenditure with reference to the achievement of the target rate of return on ANFA in the context of formulating its Corporate-cum-Annual Business Plan (“Corporate Plan”).

LR has conducted five fee reviews (in 1998, 2005, 2008, 2011 and 2016) covering all fee items supported by costing statements on a need basis. For example, LR has conducted a fee review of all fee items supported by costing statements in 2016 in response to FSTB’s request for a fee proposal as it was forecasted in the financial projections in LR’s Corporate Plan for 2016-17 that operating loss might be incurred in the coming years.

While LR will continue to conduct a fee review on an overall basis annually, with reference to the guideline for non-trading fund departments

as set out in the said Financial Circular No. 6/2016 issued by FSTB, LR will see to it that all fee items will be subject to a fee review at regular intervals of once around every four years.

- 11) According to paragraphs 4.9 and 4.10, the number of land documents delivered for registration had dropped significantly by 45% and the related revenue had also dropped by 47% from 2010-2011 to 2016-2017. According to the results of the fee reviews, there was a drastic change from over-recovery of costs of \$93 million in 2010-2011 to under-recovery of costs of \$80 million in 2015-2016. LR said that the revenue from the services is very much susceptible to the volatility of the property market conditions (paragraph 4.11). What is the current cost recovery rate of the services? What measures will LR take to address the impact of the property market conditions on the services?**

The cost recovery rate of registration of document services in 2016-17 was 68%, 1% higher than the rate in 2015-16.

While revenue from registration of document services is very much susceptible to the volatility of the property market conditions, LR will continue to keep in view its financial position and take measures to contain its expenditures and explore new business opportunities to seek additional revenue. To meet the property market conditions in the past few years, LR has implemented various cost saving measures including re-engineering the registration workflow by separating the data input function from the registration function, temporarily leaving some vacant permanent establishment posts unfilled, redeploying staff flexibly to perform other duties and employing contract staff to cope with fluctuations in workload. As for new business, LR launched an e-Alert Service with modified features for Authorized Institutions under the Banking Ordinance (Cap. 155) (i.e. licensed banks, restricted licence banks and deposit-taking companies) in February 2017 with a view to generating additional and relatively steady income.

The financial result of LR improved in 2016-17, i.e. its rate of return on ANFA improved from 4.1% in 2015-16 to 8.1% in 2016-17.

12) According to paragraph 4.20, LR relied on a manual system for compiling the actual performance information. Why was more technology not used in compiling LR's actual performance information? Does LR consider that IRIS could be used in this regard? If not, why not and what measures will be adopted to address the problem?

IRIS was implemented in 2005 to support central registration so that geographic boundaries for lodgement of documents for registration could be removed, as well as to provide online search services to the public over the Internet. LR has completed the upgrading of IRIS so as to cater for additional loading to perform other functions, including to compile information on LR's actual performance of the 30 performance targets under the nine service types mentioned in paragraph 4.16(a) of the Audit Report as far as practicable. In order to perform such functions using IRIS while at the same time protect the stable and smooth running of the existing IRIS services, LR has commenced a feasibility study in November 2017 to study the enhancements to IRIS including analysing sample data and reviewing user requirements. Our plan is to implement the enhancements for providing the performance information of six service types by end 2018. As regards the remaining three service types concerning registration services, the implementation schedule will have to be subject to the findings of the study, which is expected to be completed by Q3 2018.