

Bills Committee on Land Titles Bill
Twenty-first meeting on 19 December 2003

List of follow-up actions to be taken by the Administration

Transmissions, Receivership and Trusts

1. In discussing the paper on "Transmissions, Receivership & Trust" (LC Paper No. CB(1)524/03-04(02)), members note that where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease dies, upon proof of the death of the joint tenant and payment of Estate Duty, the Land Registrar will remove the name of the deceased joint tenant from the column "Name of Owner" in the Title Register. An appropriate note will be added in another column to highlight the transmission of ownership to the surviving joint tenant(s) under clause 62. In this connection, please consider the following views expressed by the Assistant Legal Adviser (ALA):
 - (a) Where there are more than two joint tenants, it is necessary to add the note mentioned above twice or more. It is suggested that a column on details of the registered charge be added to the Title Register to list out the names of all the joint chargors, so that the name of the deceased would be traceable.
 - (b) In relation to clause 62(2)(b), please consider whether there are any means to enable the purchaser of a property to know directly that the payment of estate duty has been postponed in accordance with the provisions of the Estate Duty Ordinance (Cap.111).

2. Please follow up the following two points raised by members when discussing ALA's concern about the appropriateness of permitting the registration of a restriction upon the appointment of a receiver under a debenture or legal charge:
 - (a) Members note that whether a restriction would be registered depends very much on how the Land Registrar interprets the relevant legislation, such as the insolvency law, and/or legal documents. Given the implication of the registration of restrictions and the absence of indemnity for wrongful registration of restrictions, there is a need to put in place safeguards against

wrongful registration of restrictions caused by misinterpretation of the relevant legislation and/or legal documents. In members' view, such safeguards may include soliciting legal advice where necessary, issuing relevant guidelines for reference, and putting in place a mechanism where the affected parties could present their views if their legal points are different from those of the Land Registrar, etc.

- (b) There are similarities and differences between the appointment of a receiver by court and the execution of a power of attorney by the owner of a property. Please advise how powers of attorney would be dealt with under the land title registration system.

Implied covenants

3. In discussing the supplementary paper on "Implied Covenants" (LC Paper No. CB(1)600/03-04(02)), members note that the Administration will work out a mechanism to ensure that if several registrable matters are provided for in one instrument, registration of the principal matter supported by that instrument will effect the registration of other matters in that instrument which also affect the registered land, registered charge or registered long term lease. Members also note ALA's concern that such other matters could only cover those which affect the registered land, registered charge or registered long term lease and registrable under the land title registration system. The problem relating to the modification of implied covenants under section 35 of the Conveyancing and Property Ordinance (Cap. 219) is not solved. Please consider how this concern could be addressed and how details of any implied covenants could be readily discernible from the Title Register to obviate the need to refer to the relevant instrument(s). Please make reference to relevant overseas practices.

Part 6 - Instruments

4. Please follow up the following two points raised by members and ALA when discussing the paper on "Part 6 - Instruments (Minors)" (LC Paper No. CB(1)600/03-04(03)):
 - (a) Clause 61(3) provides that the words "a minor" shall be added after a minor's name if the minor is registered in the Title Register as the owner of registered land. In ALA's view, it should be the responsibility of the solicitors of the parties to a disposition to

ascertain the status of the owner of the property, i.e. to ascertain whether the owner is a minor or mentally incapacitated, etc. The need for making a provision in the Bill to cater particularly for the situation where the owner is a minor has not been sufficiently demonstrated and should be reconsidered.

- (b) If the present drafting of clause 61(3) is to be retained, a mechanism should be put in place for the removal of the words "a minor" when the minor concerned attains the age of majority. In this regard, a member proposes an alternative that the words "minor until (date)" may be added.

Submission dated 16 December 2003 from The Law Society of Hong Kong

- 5. Please clarify with The Law Society of Hong Kong (Law Soc) the details of the scheme of daylight conversion suggested in its submission dated 16 December 2003. Please provide, for the Bills Committee's consideration at its meeting on 13 January 2004, a paper setting out an outline of the scheme, and the Administration's assessment of the implications of the scheme on the Bill if the scheme is to be adopted, including the parts of the Bill affected and the scope of amendments that need to be made.

Council Business Division 1
Legislative Council Secretariat
23 December 2003