

Bills Committee on Land Titles Bill
Twenty-fourth meeting on 13 February 2004

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

1. In discussing the paper on "Position Report on Main Issues" (LC Paper No. CB(1)968/03-04(02)), members note that during the 12-year incubation period, all existing or newly created unwritten equities affecting unregistered land can be protected by registration of a warning notice known as "caveat" under the Land Registration Ordinance (Cap. 128), and that the caveat will automatically take effect as non-consent caution under the new land title registration system (LTRS). Referring to clause 70(10) of the Bill where it is provided that the Land Registrar (LR) may refuse to register a caution which he considers unnecessary, members suggest the Administration to consider the need to provide LR with the power to refuse to register a caveat which he considers unnecessary. The Administration is also invited to consider whether it is appropriate to allow all caveats to automatically take effect as non-consent cautions. An alternative proposed by members is that a caveat will be regarded as an application for non-consent caution under the new LTRS.
2. In discussing the paper on "Position Report on Main Issues" (LC Paper No. CB(1)968/03-04(02)), members note that cautions against conversion will lapse after 12 months unless the cautioner has commenced court proceedings to establish his claim, and that the registration of these cautions can be extended by the court at its discretion upon application before the end of the 12-month validity period. Members are concerned that in the absence of a limit on the extension period, registration of cautions against conversion may be extended endlessly and the court may be overloaded with such applications. To address the above concern, the Administration is invited to consider the need to impose a limit on the extension period.
3. At the Bills Committee meeting on 13 January 2004, the Administration was invited to consider introducing a review mechanism for the implementation of the daylight conversion system during the 12-year

incubation period. At this meeting, the Administration is invited to consider introducing a review mechanism for the length of the incubation period, so that the period can be extended or shortened when necessary.

4. Members note that as proposed by the Administration, properties under new leases granted by the Government through auction or tender after commencement of the Bill would come directly under the LTRS. In this connection, the Administration is invited to advise the Bills Committee of the types of land which would be defined as "new land", and to provide examples of what would and would not be regarded as such.
5. Members note that the Administration intends to modify the rectification provisions under the Bill to provide for rectification in favour of an innocent former owner if the change of ownership is procured by a forgery. In this regard, the Administration is invited to take the following actions:
 - (a) Please clearly define the term "forgery" in the Bill.
 - (b) According to the Administration's response given at the meeting, it is revealed from recent case law that the court in the United Kingdom has almost without exception granted rectification in respect of the cases where the change of ownership is procured by a forgery. Please provide the relevant case law for the Bills Committee's reference.
 - (c) Given the Administration's current proposal on rectification, the purchaser's solicitor may need to check all relevant title documents in previous transactions to ensure that no forgery has been committed. The proposal might have implications on the liability of solicitors. Since the vendor did not have any obligation under the Bill to provide such documents for inspection, the relevant provisions in the Bill might need to be amended. Please examine, in consultation with the Law Society, the implications of the proposal on the liability of solicitors and how the Bill should be amended to cater for the proposal.
 - (d) When preparing the Committee Stage Amendments to effect the Administration's current proposal on rectification, please take account of the Hong Kong Bar Association's views on security of title made in its submission dated 23 April 2003 (LC Paper No. CB(1)1517/02-03(07)).

6. The last Council meeting for the current session will be held on 7 July 2004. If the second reading debate on the Bill is to be resumed on that day, the Bills Committee would have to submit its report to the House Committee on 18 June 2004. Given the tight schedule, please liaise with the Assistant Legal Adviser of the LegCo Secretariat on the best approach for amending the Bill to reflect the daylight conversion system, and provide a progress report on the discussion to the Bills Committee for consideration at its meeting on 24 February 2004.

7. On the Administration's consultation with the major stakeholders on the revised proposal for the conversion mechanism, please find out how the proposed change would affect their original positions. Please also provide a paper on the outcome of the consultation for the Bills Committee's consideration at its meeting on 9 March 2004.

Council Business Division 1
Legislative Council Secretariat
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