

**Bills Committee on Land Titles Bill**  
**Twenty-fifth meeting on 24 February 2004**

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

1. In discussing the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)1057/03-04(03)), members note that if the daylight conversion mechanism and the proposed changes to the court's power of rectification of registered title in the case of forgery are adopted, the Administration considers that compulsory retention of certain title documents for future reference for an appropriate period of time will be necessary. The Administration also proposes to impose a limitation period of 12 years for the rectification of Title Register. In this regard, the Administration is invited to take the following actions:
  - (a) Please ensure that there will be clear provisions for the compulsory retention of documents and, in particular, which party (owners, solicitors or mortgagee banks) should be responsible for keeping the documents. Some members consider that solicitors should not be required to keep the documents. Please consult the Law Society of Hong Kong (Law Soc) and report the outcome to the Bills Committee in due course;
  - (b) The proposed changes to the court's power of rectification of registered title in the case of forgery would have great impact on the claim of negligence against solicitors and in turn on the Professional Indemnity Scheme of Law Soc. Please clarify the duty of a solicitor in this regard and, in particular, whether a solicitor would be under a duty to check all the documents to ensure that no forgery has been committed. Please also consult Law Soc on this issue; and
  - (c) To provide for a situation where an owner may be out of Hong Kong or is a minor during the 12-year period, please consider whether the period should only be counted from the date when the owner becomes aware of the forgery in question and whether extension of the period should be allowed under certain special circumstances.

2. In discussing the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)1057/03-04(03)), members note the sample Title Register showing transmission of interest upon the successive death of more than one joint owners. In this regard, the Administration is invited to take the following actions:
  - (a) Please consider how the following concerns of members could be addressed:
    - (i) Under the existing practice, transmission on death of a joint tenant will take effect by operation of law on the date of death of the deceased joint tenant. Under the new land title registration system, the Administration proposes to revise the condition precedent to transmission on death of a joint tenant in clause 62(2)(b) to the effect that it is necessary to satisfy the Land Registrar either that the estate duty has been paid or its payment has been fully secured to the satisfaction of the Commissioner of Estate Duty. It is not clear which date (e.g. the date of death of the deceased joint tenant or the date of alteration of title registration) should be regarded as the date on which the ownership is transmitted to the surviving joint tenant(s). The legal status of the ownership between the two dates is also unclear; and
    - (ii) There appears to be an anomaly: If transmission will take effect on the date of death of the deceased joint tenant, it may contradict clause 21 which provides that "a transfer or transmission shall, when registered, vest [the land] in the person becoming the owner of the land"; if transmission will take effect on the date of alteration of title registration, it may be contrary to the Common Law rule that transmission on death of a joint tenant will take effect on the date of death of the deceased joint tenant.
  - (b) Members consider the formulation, "the Registrar shall not comply with subsection (1)..." in clause 62(2), rather odd as it seemed to ask the Land Registrar not to comply with certain part of the Bill. Please consider replacing the term "comply with" with a more appropriate term.

3. In discussing the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)1057/03-04(03)), members note that the Administration may adopt section 41(1) of the New South Wales Real Property Act 1900 as the model to make amendments to clause 29(1) of the Bill in order to remove some interpretation problem due to the word "create". In relation to implied covenants, please consider the Assistant Legal Adviser (ALA)'s view that clause 43 on covenants for title should also be amended.
  
4. 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. Responding to members' view raised at the meeting on 19 December 2003 that a mechanism should be put in place for the removal of the words "a minor" when the minor concerned attains the age of majority, the Administration considers that clause 80 would enable the Land Registrar to remove the annotation on presentation of evidence that the owner has attained the age of majority (paragraph 19 of the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)1057/03-04(03))). Members share ALA's view that clause 80 as presently drafted does not provide the Registrar the power to remove the annotation. Please amend clause 80 as appropriate.

Council Business Division 1  
Legislative Council Secretariat  
26 February 2004