

**Bills Committee on Land Titles Bill
Twenty-seventh meeting on 2 April 2004**

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

1. In discussing item 8 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members note the Administration’s view that the provisions in the Trading Fund Ordinance (Cap. 430) and the amendments to be introduced to the resolution passed by the Legislative Council in 1993 on the establishment of the Land Registry Trading Fund (LRTF) will suffice to effect the Administration’s proposed arrangement that the Indemnity Fund will be indemnified by payment out of the LRTF in case of mistake or omission of Land Registry staff. Given that the original resolution does not cover the land title registration system (LTRS) and that the proposed amendments to the resolution are not yet available, the Assistant Legal Adviser (ALA) has to reserve opinion on the Administration’s view. However, ALA suggests that it would be more straightforward if the Administration’s proposed arrangement could be set out in the Bill. Please consider ALA’s suggestion.
2. In discussing item 12 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members note the Administration’s advice that under the current case law on registration there is an English House of Lord’s decision in Shaw v Neale (1856) 6 H.L. Case 581 (English Report Vol.10 at p.1422) to the effect that if a second encumbrance was registered within the 5 years’ validity of the first encumbrance, then the first encumbrance is protected as against the second encumbrance even though there is no re-registration of the first encumbrance after the expiry of the 5 years’ period (Paper on “Response to Drafting Issues” (LC Paper No. CB(1)2501/02-03(03)) issued on 29 September 2003). For the avoidance of doubt, the Administration proposes to make appropriate amendments to clause 34 to state clearly this point. Please consider the following points raised by members or ALA:

- (a) It seems that the proposed amendments to clause 34 would not serve any meaningful purpose. Instead, please amend clause 34 to the effect that re-registration of a charging order shall have a priority relating back to its first registration.
 - (b) If the owner of a property against which a charging order has been issued sells the property concerned to a purchaser for value, or gives it away as a gift, what is the impact of the transaction or transfer of title on the priority of the charging order?
3. In discussing item 19 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members note the Administration’s proposal that the vendor will be required to provide the purchaser with only a copy of any instrument referred to in any current entries in the Title Register. Given the Administration’s proposal to amend clause 81 to provide for the rectification of Title Register in favour of an innocent former owner where title has been changed as a result of forgery, ALA points out the need for retaining the original copy of the instruments for inspection to enable forgery to be detected. Please consider this point and discuss with The Law Society of Hong Kong on the documents to be retained under the LTRS.
4. In discussing item 20 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members note that the Land Registry is studying the technical and administrative requirements for the search of properties by owners’ names to be conducted by the public and solicitors, and that whether this is to be done will very much hinge on the outcome of the study. Members are of the view that the Administration should decide on the policy first before studying the technical and administrative requirements for and the cost implications of the proposed search. Members also express the following views:
 - (a) It is only fair to allow the public and solicitors to search properties by owners’ names given that some Government departments are allowed to do so;
 - (b) There is a need to examine whether the proposed search is allowed in overseas jurisdictions, such as the United Kingdom and Australia;
 - (c) Technical viability should not be used as an excuse for not allowing the proposed search, and cost considerations may be addressed by

charging fees for the service;

- (d) Irrespective of whether the proposed search will be implemented, it is essential to ensure that the search functions that are allowed under the existing system, such as search of properties by addresses, will be maintained under the LTRS;
- (e) The relevant implementation details of the proposed search should be worked out carefully to avoid causing nuisances to namesakes of persons whose properties are searched. In this regard, consideration may be given to the disclosure of the first few digits of the identity card number of the person concerned to facilitate the proposed search;
- (f) The proposed search should be allowed for legitimate purposes only, such as for the enforcement of court orders on debt payment, etc; and
- (g) There is a need to ensure that the proposed search would be done in compliance with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486) to strike a balance between the need to protect the owners' privacy and the public's right to obtain information.

Please take members' views into account and provide a paper setting out the Administration's policy and the practices adopted in other jurisdictions. If the proposed search is allowed, please also state in the paper the implementation details and the estimated costs; if the proposed search is not allowed, please explain in the paper the policy objections.