

Bills Committee on Land Titles Bill
Twenty-eighth meeting on 13 April 2004

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

1. In discussing item 28 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 a person who commits an offence under clause 96(1) or (2) is liable on conviction on indictment to penalty, while a person who commits an offence under clause 96(3), (4), (5) or (6) is liable on conviction to penalty. The Administration is invited to take the following actions:
 - (a) On clause 96(1), members concur with the Administration that the fraudulent offences referred to in the subclause should be given serious penalties so as to preserve the integrity of the new land title registration system (LTRS) and the accuracy of the Title Register. Please delete clause 96(1)(g) which is related to the issue of a certificate of good title.
 - (b) Given the wide scope of clause 96(2) and the fact that some of the offences referred to in the subclause are not so serious, please consider whether it is justified to provide that the offences under the subclause shall be triable only on indictment. A member suggests that the words "on indictment" in clause 96(2) be deleted.
 - (c) Please confirm whether it is the case that the offences under clause 96(3), (4), (5) and (6) shall be triable either summarily or on indictment.

2. On item 35 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members invite the Administration to take the following actions:
 - (a) Please provide information on how often the Land Registrar in England has exercised his power in making a restriction and how the costs so incurred are dealt with.
 - (b) Please provide the general practice guide issued by the Land Registry in England which sets out the circumstances under which a restriction should be applied from the Land Registry and those

under which an inhibition should be applied from the court, as well as the procedures involved. Please also provide the relevant information in respect of the new LTRS proposed under the Bill.

- (c) Please illustrate how the proposed provisions in the Bill relating to imposition of restrictions are going to work in practice. Please also make reference to the situation in England.
 - (d) Please consider how the scope of the inquiries to be conducted by the Land Registrar under clause 77(1) could be restricted to avoid the inquiries from being turned into a quasi-judicial process. A member suggests that the Registrar's power to make inquiries should be restricted by limiting its scope to the examination of documents and facts only.
3. On item 36 of the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB(1)1425/03-04(02)), a member refers to clause 77(1)(b)(ii), and enquires about the steps that the Land Registrar will take to ensure that the affected owner has the opportunity to present his objection before a restriction is registered, particularly in the event that the affected owner is away from Hong Kong. In response, the Administration refers members to clause 94(2) for the meaning of "opportunity of being heard", and assures members that the Registrar will not make a restriction until he is satisfied that the affected owner is given the opportunity of being heard. Members then request the Administration to examine whether clauses 77(1)(b)(ii) and 94(2) adequately correlate to each other to bring about the above intended legal effect and if not, to amend clause 77(1) as appropriate.
4. On item 40 of the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB(1)1425/03-04(02)), members invite the Administration to take the following actions:
- (a) Please confirm whether some common instruments like the general power of attorney which may be revoked, the power of attorney which is expressed to be irrevocable, deed of severance and nomination are covered by clause 4(a), (b), (c) or (d) and if not, whether it is necessary to amend clause 4 to cover them.
 - (b) Please explain how each of the instruments mentioned in item (a) above is to be registered under the LTRS and whether they would be registered as consent cautions, non-consent cautions, restrictions or other items under the Bill. On the general power of attorney which

may be revoked, the Assistant Legal Adviser (ALA) opines that it is not registrable under the Bill unless a new category of notice is created. On the power of attorney which is expressed to be irrevocable and given to secure a proprietary interest of the donee, a member suggests that it be registered in the same way as a mortgage. The member also suggests that reference be made to the practice in England.

- (c) On clause 4(d), please compare the merits and demerits of the existing negative way of drafting (i.e. "No matter shall be capable of being registered unless") with those of the positive way, and consider how the drafting could be improved. Please make reference to the relevant provision(s) in respect of the existing deeds registration system (DRS).
 - (d) Please ensure that the practice guides and explanatory notes to be issued by the Administration on the registration of matters under the Bill and the use of cautions, restrictions and inhibitions should be ready before the implementation of the LTRS, and that such guides and notes will be regularly updated and made available to the legal practitioners and the public on the Internet.
5. On item 50 of the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB(1)1425/03-04(02)), members consider that the term "forgery" should be clearly defined to set out the types of forgery cases in respect of which the court may order rectification of the title of a property in favour of an innocent former owner. Members invite the Administration to provide a paper covering the following aspects:
- (a) Please set out the policy decisions on the types of forgery cases in respect of which the court may order rectification of the title of a property in favour of an innocent former owner and provide justifications for such policy decisions. In making the policy decisions, please strike a balance between the need to protect the interests of the innocent former owners of properties and the need to ensure the security and certainty of title.
 - (b) In connection with item (a) above, please advise whether the scope of forgery under the Bill would cover a case where the change of ownership of a property of a company is procured by a Board member of the company through forging the minutes of a Board meeting or without proper authorization of the company.

- (c) Please provide the definitions of the term "forgery" adopted in title registration systems in other jurisdictions.
 - (d) Please provide the relevant case laws (including the *Argyle Case (1985)* and the *Hayes Case (1994)* mentioned in LC Paper No. CB(1)1425/03-04(02)). In *Hayes Case (1994)*, the Deputy Judge stated that "the power to order rectification is, of course, a discretionary one but, where a co-owner has forged a transfer, there is (subject to section 82(3)) usually an overwhelming case for rectification as against the transferee and their mortgagees.". Please elaborate on the type of case which is regarded as "an overwhelming case for rectification".
6. On Annex C to the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB (1)1425/03-04(02)), members note the concern expressed by ALA that the protection of priority under the LTRS is different from that under the DRS, especially where non-consent cautions are concerned. Members express their view that provisions regarding priority should be clear, and that parties whose priorities will be affected by the changes in protection of priority to be effected by the Bill should be made aware of such. At members' request, ALA agrees to prepare a table setting out the perceived differences between the DRS and LTRS on this issue, and the unfairness that may be caused to the owner or purchaser of a property under the LTRS. In this connection, the Administration is invited to provide more illustrative examples to explain how priority is protected in different cases. Please refer to ALA's table and account for the differences highlighted therein. Please also seek the views of The Law Society of Hong Kong on any proposed changes from the existing practice.