

2 April 2003

Your Ref: CB1/BC/3/02

Mrs. Queenie Yu  
Clerk to Bills Committee on Land Titles Bill  
The Legislative Council Secretariat  
3/F Citibank Tower  
3 Garden Road  
Central  
Hong Kong

Dear Mrs. Yu

**Land Titles Bill**

We thank you for your letter of 20 March and as requested would like to offer our views on the Bill as follows.

Under the Land Titles Bill, an innocent owner is liable to lose his property by reason of an entry in or omission from the Title Register, as a result of fraud, or mistake or omission by a third party.

The Bill provides that the Court may rectify the Register and restore the title of the innocent owner. In the exercise of its discretion in deciding whether to rectify the Register, the Court is to consider, among other things, hardship to the parties.

The Bill further provides that the innocent owner who loses his property is entitled to be indemnified by the Government but the indemnity is subject to a cap. We understand that the cap is likely to be set at HK\$30 million.

Under the existing law, an innocent owner cannot be deprived of his property by reason of a fraud to which he is not a party. If the Bill is passed into law, the rights of the innocent owner would be seriously eroded:

1. Since hardship is a relevant consideration for the Court in deciding whether the Register should be rectified, a party who is financially stronger will, more likely than not, lose out. At the end of the day, all other things being equal, it may come down to the simple question of “who can afford to lose out?”. We are afraid that this cannot be right and equitable.
2. The innocent owner whose name is not restored to the Register will lose the value of his property in excess of the cap of HK\$30 million.

We understand from the Land Registrar that neither the United Kingdom, Australia nor Canada which adopt a title registration system place a limit on the indemnity. This is consistent with generally accepted principles that no innocent owner should be deprived of his property without proper compensation reflecting the full value of his property.

We also take the view that the Bill, in so far as it attempts to deprive an innocent owner of his property without full compensation, is contrary to the Basic Law.

Under Article 5 of the Basic Law, the previous capitalist system of the Hong Kong SAR and way of life shall remain unchanged for 50 years. Article 6 goes on to provide that the Hong Kong SAR shall protect the right of private ownership of property. The Bill does otherwise. Under the existing law in force before the establishment of the Hong Kong SAR, an innocent owner cannot be deprived of his property. Not only does the Bill fail to protect such right of the innocent owner, it seeks to deprive him of his ownership or the full value of his property.

Article 105 of the Basic Law further confirms that the Hong Kong SAR shall protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and the right to compensation for lawful deprivation of their property. The Bill, if passed into law in its present form, will take away this protection. The placing of a limit on the amount of indemnity is also contrary to the second sentence of Article 105 which requires that compensation for lawful deprivation of property shall correspond to the real value of the property concerned.

To address the foregoing issues, we submit that the Bill should be amended so that:

1. an innocent owner should always be entitled to have the Register rectified and his name restored to the Register; or
2. if the innocent owner is not to be so entitled, there is no cap on the indemnity.

We are pleased to accept your invitation of giving an oral presentation to the Bills Committee on 12 May and shall advise you of the names of our representatives in due course.

Yours sincerely

Louis Loong  
Secretary General