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19 May, 2003

Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Attn : Ms. Sarah Yuen

Dear Ms. Yuen,

Re: Bills Committee on Land Titles Bill -
Invitation for submissions on the proposed indemnity scheme

We thank you for your letter dated 13th May 2003 asking for our views on the paper on indemnity dated May 2003 prepared by the Housing, Planning and Lands Bureau for the Bills Committee (the "Paper").

Source of the proposed indemnity fund

In the Paper, it is stated that the proposed indemnity fund will be financed by (1) a levy on registrations, (2) by payments from the Land Registry Trading Fund in the case of losses caused by mistakes or omissions by the Registry, and (3) by action to recover money from parties who have contributed to losses by their fraud or negligence and the losses have been compensated for by the indemnity fund.

Regarding (1), we note that under Section 98 the Financial Secretary has power to prescribe fees and levy. Regarding (3), there is Section 86(1)(a) which empowers the Government to recover money which has been paid by way of indemnity. However, it seems that the Land Title Bill does not have any provision that covers (2). As regards the Land Registry Trading Fund, are there or will there be any statutory regulation governing the said Fund's payment to the proposed indemnity fund?

Immunity of the Government

Section 8(2) gives the Government immunity from liability in damages under two situations as set out in Section 8(2) (a) and (b) except where the concerned loss is covered by the indemnity fund. Section 8(2)(a) and (b) are broadly drafted covering acts and defaults, both in good faith and not in good faith, of the Registrar and public officers.

We would think that the proposed indemnity fund is an additional protection to the public. After the establishment of the proposed indemnity fund, there should not be any disentitlement to a legal claim which is otherwise allowed under the present law (i.e. claim against Government as employer).

We would urge the Government to consider waiving its immunity to enhance public confidence in the new title system to be implemented.

Constitutionality of the cap on indemnity

We have no comment in this respect. We trust that the Government has the expertise in constitutional law and human rights law and will also duly consider non-Government experts' advice.

Yours sincerely,

Mrs. CHAN WONG

Chief Executive

Shui

CWS/WC/rl