

**Bills Committee on Land Titles Bill**  
**Twenty-ninth meeting on 20 April 2004**

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

1. On the table prepared by the Assistant Legal Adviser (ALA) on "Comparison of Provisions Governing Priorities under the existing registration of documents system of the Land Registration Ordinance (Cap. 128) and under the proposed title registration system of the Land Titles Bill (LC Paper No. LS67/03-04)", the Administration is invited to provide a written response to the table, covering the following points:
  - (a) Please examine whether the relating back provision in the Bill would change the law and could have unintended legal effects as highlighted in the table prepared by ALA -
    - (i) If yes, please explain how the Administration would rectify the situation. In this connection, please consider the two solutions suggested by ALA, i.e. to remove the relating back provision, and to strengthen the protection of priority by notice by including provisions similar to Part IV of the Land Registration Act 2002 in England;
    - (ii) If not, please set out the legal points in support of the Administration's view; and
    - (iii) Please compare the legal effect of the relating back provision in the Bill with that of the doctrine of notice under the existing deeds registration system in different scenarios, particularly for rented properties where the priority issue would have an impact on who has a claim to the rental concerned.
  - (b) In connection with item (a) above, please seek the views of the Association of Banks and the Law Society of Hong Kong on the issue.
  - (c) Clause 71(1)(b) provides that no subsequent interest can obtain priority without the cautioner's express consent. In ALA's view, this requirement would be a restriction on an owner's power of disposition of his own land. For example, where a consent caution has been registered by a mortgagee bank, a subsequent purchaser would need the bank's consent before he can register a caution of

the agreement of sale and purchase. Members are concerned that as revealed from past experience, it may be difficult and would involve costs to seek such consent from the mortgagee bank. If the relating back provision is to be retained, please consider ALA's suggestion that clause 71(1)(b) be amended to the effect that express consent is required to be sought from the person holding the relevant interests in land which are the subject matter of the consent caution, and not from the cautioner.

Council Business Division 1  
Legislative Council Secretariat  
26 April 2004