

**Bills Committee on Land Titles Bill
Thirty-first meeting on 11 May 2004**

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

1. In examining clause 21, members note that the Administration's policy intent is that under the new land title registration system (LTRS), transmission on death of a joint tenant will, as at present, take effect by operation of law on the date of death of the deceased joint tenant, but the surviving joint tenant would only be able to deal with the land concerned upon registration of the transmission. Members are concerned that this policy intent is not reflected in clause 21, and that clause 21(1), which provides that "a transfer or transmission shall, when registered, vest in the person becoming the owner of the land", may imply that transmission will take effect upon registration of the transmission. In this connection, the Administration is invited to take the following actions:
 - (a) Please clearly set out the Administration's policy intent in clause 21(1);
 - (b) Please confirm whether the land will be vested in the surviving joint tenant on the date of death of the deceased joint tenant or upon registration of the transmission; and
 - (c) Please examine whether there would be any implications, in particular the implications on the third parties involved, should the surviving joint tenant deal with the land concerned before registration of the transmission.
2. On clause 24, the Assistant Legal Adviser (ALA) considers that given the Administration's agreement to apply the doctrine of notice to deal with the priority issue under the LTRS, it may not be necessary to retain subclause (1)(g). Please consider ALA's view.
3. On clause 26, the Administration is invited to take the following actions:
 - (a) Given that a title certificate is only a document showing all current entries in the Title Register affecting the land concerned (subclause (1)) and is not conclusive evidence of title (subclause (4)), members query the need for the requirement of returning the title certificate

for cancellation before a transfer or transmission could be registered (subclause (5)). In this connection, members point out that there may be cases in which the holders of title certificates, who are not the owners of the land concerned, refuse to return the certificates for cancellation upon the death of the owners. Please review the need for the requirement under subclause (5) and examine the legal effect of giving a title certificate to effect a gift to someone else or using it as a security for mortgage under LTRS.

- (b) Subclause (7) provides that a new title certificate may be issued in place of a title certificate which has been lost or destroyed. On the question of what need to be produced to prove that a title certificate has been lost or destroyed, members note the Administration's advice that the relevant details would be specified in the regulations. Please advise the Bills Committee of the Administration's proposal in due course.
4. On clause 28, members note that subclause (2) provides that no solicitor, trustee or other person in a fiduciary position shall be liable in damages for any loss occasioned by the inaccuracy of a document purporting to be a copy, print or extract of the Title Register or of other documents referred to in subclause (1). Some members opine that the protection afforded by the subclause should be made available to all users of the document and not only the above categories of persons. Please consider their view.
5. On clause 29, members note that "dealing" means disposition and transmission but "disposition" does not include transmission. In this connection, the Administration is invited to consider the following views expressed by members:
- (a) The fact that "disposition" does not include transmission should be more clearly spelt out in the definition of "disposition" in clause 2.
 - (b) It is doubtful whether "dealing" could cover disposition and transmission. The reasons are twofold. Firstly, the term "dealing" appears to have a narrower meaning than "disposition". Secondly, the term "dealing", especially its Chinese version ("交易", which normally denotes "transaction"), seems to be a conscious act of the parties concerned rather than an effect of law. Transmission however is essentially effected by the operation of law.
 - (c) In connection with item (b) above, there is a need to review the Chinese version of the relevant terms. In so doing, please ensure

that the Chinese version adopted in the Bill is consistent with that adopted in existing legislation.

- (d) There is a need to improve the definition of "transmission" by explaining when the vesting of interest in land takes place.
6. On clause 35, ALA expresses the view that in order to ensure consistency with the Conveyancing and Property Ordinance (Cap. 219) (CPO), the term "charge" in the clause should preferably be replaced by such terms as used in CPO. Please consider ALA's view.
 7. On clause 39, members express concern about under what circumstances the Land Registrar (LR) would exercise his power under the clause to remove from the Title Register the entry referring to a registered charge. A member also doubts whether it is appropriate to give LR, instead of the court, such power of removal. Members note the Administration's advice that the clause was introduced at the request of The Law Society of Hong Kong (Law Soc) to deal with long outstanding mortgages which may become unfair encumbrances. While members have no objection to the policy intent, they are concerned that clause 39, as presently drafted, may appear to be a general provision that is interchangeable with clause 38, so that it can be resorted to lightly. The Administration is invited to consider amending clause 39 in such a way that it only serves as a remedial provision, and the power would be exercised by LR only under special circumstances.
 8. On clause 49, ALA is concerned that it is not clear whether easements may be granted between tenants in common of the same land. Please consider how ALA's concern could be addressed.
 9. On clause 51, members note the Administration's advice that the clause was introduced to address the Law Soc's concern that there is a need to provide for the registration of deeds of mutual covenant (DMCs) in a single clause, having regard to the fact that DMC is a very common instrument affecting land in Hong Kong and the difficulties in separating and registering each of the rights, easements or covenants contained therein. ALA however considers that it has already been provided in the relevant provision in clause 50 (Covenants). A separate clause is not required if clause 50(3) is removed. ALA's views are as follows:
 - (a) Given that LTRS is a system for registration of interests and not

registration of instruments, it does not seem appropriate to provide for the registration of DMC, which is an instrument, in the Bill;

- (b) It is very difficult to define "DMC", and there is no comprehensive definition of this term in existing legislation; and
- (c) Law Soc's concern about the difficulties in registering each of the rights, easements or covenants contained in a DMC could be addressed by a Committee Stage amendment to the effect that one single registration of a covenant in the DMC against the relevant title would operate to effect the registration of all the easements, rights and covenants contained in the DMC which affect the registered land (paragraph 7 of the paper on "Registration of Deeds of Mutual Covenant (LC Paper No. CB(1)2305/02-03(08))). To preserve the status quo, it could be further provided that the registration would not reflect on the validity or enforceability of the easements, rights and covenants.

The Administration is invited to consult Law Soc on ALA's views and report back to the Bills Committee.

- 10. On clause 57, members and ALA consider it advisable to clearly set out in the Bill how "tso" and "tong" land in the New Territories, which belong to a special category of land in the New Territories, would be dealt with under the LTRS. Please consider their views and to make reference to section 15 of the New Territories Ordinance (Cap. 97). Please also confirm whether the dealings of this special category of land under the LTRS would be subject to the consent of the Secretary for Home Affairs.
- 11. In examining clause 57, ALA expresses his view that as the current practice of disposal of land by deeds would discontinue after the implementation of the LTRS, there is a need to make consequential amendments to the relevant legislation so that such legislation would not apply to land registered under the LTRS. The Administration undertakes to take follow-up actions accordingly.
- 12. In examining clause 59, ALA expresses his view that the proposed consequential amendments to the Stamp Duty Ordinance (Cap. 117) by adding a new section 2A (Instruments affected by Land Titles Ordinance) set out in item 40 of Schedule 2 to the Bill could not achieve its purpose. The Administration undertakes to consult the Stamp Duty Office and the Department of Justice, and report back to the Bills Committee.

13. On clause 61, the Administration is invited to take the following actions:
 - (a) On subclause (2), please explain where the burden of proof lies as to whether "the person to whom the disposition is made acted in good faith".
 - (b) Subclause (3) provides that the name of a minor "may" be entered in the Title Register as the owner of registered land with the addition after the minor's name of the words "a minor". In this regard, a member opines that in order to better protect a minor's interests, the addition of the words "a minor" should be made a mandatory requirement. Please consider the member's view and report back to the Bills Committee.
 - (c) Members note that clause 80 will be amended to provide LR with the power to remove, when a minor who has been registered in the Title Register as the owner of registered land attains the age of majority, the annotation "a minor" added after the minor's name in the Title Register. In this regard, please consider a member's suggestion that the date of birth of the minor be added after the annotation. In so doing, please also give due consideration to the enhanced risk of accuracy arising from the suggestion.

14. On clause 63, the Administration is invited to take the following actions:
 - (a) Members are concerned that the phrase "registered by transmission as the owner" in subclauses (1) and (3) is misleading and does not reflect the fact that transmission takes place by operation of law first before registration of the transmission. The phrase may imply that registration is effected by way of transmission. A member suggests that the phrase be amended to read "registered as the owner by transmission". Please consider the suggestion and improve the drafting of the two subclauses as well as any other clauses of the Bill where the above phrase appears.
 - (b) Subclause (2) provides that LR may, on the presentation to him of the grant concerned by the personal representative of the deceased owner or lessee, and without requiring the personal representative to be registered, register by transmission a transfer of the land or a discharge of the charge by the personal representative. A member considers the above exemption of registration of the personal representative not conducive to the preservation of the chain of title, which may need to be traced as a result of the proposal to modify

the rectification provisions under the Bill to provide for rectification in favour of an innocent former owner if the change of ownership is procured by a forgery. Some other members however consider that since the Title Register is the conclusive evidence of ownership under the LTRS and the name of the personal representative will be shown on all supporting documents of transfer, the exemption may be acceptable and necessary to keep the LTRS simple. Please consider whether the personal representative should be required to register in the light of the above views.

Council Business Division 1
Legislative Council Secretariat
17 May 2004