

**Bills Committee on Land Titles Bill**  
**Thirty-second meeting on 25 May 2004**

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

1. In examining clause 92, members note that The Hong Kong Institute of Surveyors (HKIS) has very different views from the Administration on the boundary issues. Given that the HKIS would be attending the Bills Committee meeting on 8 June 2004 to present its recent submission, the Administration is invited to provide a written response to the submission before the meeting.
2. In examining clause 96, members note that any person who, without reasonable excuse, fails to comply with any requirement made under clause 6(2)(a), (b) or (c) commits an offence and is liable on conviction to a fine at level 3 (\$10,000) and, in the case of a continuing offence, to a daily penalty of \$1,000 (clause 96(4)), while any person who, without reasonable excuse, fails to comply with any requirement made under clause 32(1) commits an offence and is liable on conviction to a fine at level 4 (\$25,000) and, in the case of a continuing offence, to a daily penalty of \$1,250 (clause 96(5)). Given that the proposed daily fines for a continuing offence under clause 96(4) and (5) constitute 10% and 5% of the maximum fines for the two types of offences respectively, members are concerned that the proposed daily fines are not proportional to the maximum fines. The Administration is invited to provide justifications for the proposed daily fines and comparable provisions in existing legislation.
3. In examining clause 99, members note that unpaid costs, charges and expenses required to be paid to the Land Registrar (clause 99(3)) or to a person other than the Registrar (clause 99(4)) shall be recoverable summarily as a civil debt within the meaning of the Magistrates Ordinance (Cap. 227). To address members' concern about how the recovery of debt could be done summarily, the Administration is invited to provide details of the procedures involved and some relevant examples.

4. In examining clause 100, members note that under the proposed new subclause (1)(zi), the Secretary for Housing, Planning and Lands (the Secretary) may make regulations to empower the Land Registrar to manage and invest the moneys of the indemnity fund, and to borrow for the purposes of the fund. Given that the indemnity fund and the power of the Registrar in respect of the fund are not mentioned in the main body of the Bill, the Assistant Legal Adviser (ALA) is concerned whether it is sufficient to provide such power in the regulations. He considers it more appropriate to provide in the main body of the Bill for the establishment of the indemnity fund and that the Registrar may manage and invest the moneys of the indemnity fund, and borrow for the purposes of the fund subject to the regulations to be made by the Secretary under clause 100. Please consider ALA's views and make reference to the legislative provisions on other similar funds.
  
5. To facilitate members to have a better understanding of the draft proposed Committee Stage Amendments (CSAs), the Administration is invited to provide, before the next meeting on 1 June 2004, a paper explaining the draft CSAs, in particular those related to the daylight conversion mechanism. The Administration is invited to cover the following items in the paper:
  - (a) Background and purpose of the draft provisions (with the relevant clause numbers and references);
  - (b) To what extent The Law Society of Hong Kong (the Law Soc) has accepted the draft provisions;
  - (c) Procedures for the Land Registrar to process applications for registration of caveats (proposed new section 21A of the Land Registration Ordinance (LRO) (Cap. 128) provided in the proposed new Schedule 3 to the Bill) and for registration of cautions against conversion (proposed new section 21G of LRO); and
  - (d) In connection with item (c) above, whether there are any provisions in the Bill governing the approval and rejection of the two types of applications by the Registrar.
  
6. The Administration is invited to forward the draft proposed CSAs and the paper mentioned in item 5 above to the Hong Kong Bar Association for comments.

7. In examining the proposed new Schedule 3, members note that the Court of First Instance "shall not" grant any extension of time under subsection (2) which would extend the validity of registration of a registered caution against conversion beyond the date of the 2<sup>nd</sup> anniversary of the caution against conversion's first date of registration (the proposed new section 21J(4) of LRO), and that the Registrar "shall not" again register a caution against conversion the registration of which has previously expired (the proposed new section 21J(6)(b)(i) of LRO). Members consider that the above provisions may be too restrictive and could not cater for circumstances that warrant extension or re-registration, such as when the person concerned was absent from Hong Kong or seriously ill during the period in question. The Administration is invited to consider amending the proposed provisions to provide the court with the discretion to extend the validity of registration of a registered caution against conversion or to register again a caution against conversion under special circumstances before the property concerned is converted to the new land title registration system (LTRS).
8. In examining the proposed new Schedule 3, a member questions the need for the phrase "but only if" in the proposed new section 21K(1)(b)(ii) and (iii) of LRO. The Administration agrees to delete the phrase in the two subsections.
9. In examining the proposed new Schedule 3, members express concern that under the proposed new section 21K, applications for the removal of cautions against conversion could be made to the Land Registrar as well as to the court at the same time without any restrictions. To address member's concern, the Administration agrees to consider amending the proposed new section 21K to the effect that if an application for the removal of a caution against conversion is being considered by the court, the Registrar should not deal with the same application at the same time, and if an application has been rejected by the court, the Registrar should not deal with the same application unless the person concerned is able to present fresh grounds to support his claim.
10. Members note that the proposed new clause 10A provides that where, on the date of first registration of any land, the land is subject to a relevant lease registered under LRO, then on that date the relevant lease shall be deemed to be a registered long term lease, and all the provisions of the Bill

shall apply to the lease accordingly. Members also note ALA's view that the proposed deeming clause is not necessary because whether a long term lease would be a registered long term lease under the new LTRS would hinge on whether it could meet the definition of a long term lease under the LTRS. The Chairman opines that since the definition of long term lease is provided in clause 2, if the conversion of interests in land and long term leases are the same under the LTRS, it may suffice to provide in the proposed new Schedule 1A that all unregistered long term leases shall become registered long term leases immediately upon the expiration of the 12-year incubation period in the same way that unregistered land shall become registered land. The Administration is invited to take the following actions:

- (a) To check whether there is any difference in the conversion mechanism governing the two, in particular on whether a caution against conversion can be registered against long term lease;
- (b) To consider, instead of adding the proposed new clause 10A, amending the proposed new Schedule 1A as proposed above to cover long term leases as well; and
- (c) To consult Law Soc on any proposed changes.

Council Business Division 1  
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