

9 June 2004

The Honourable Margaret Ng  
Chairman of the  
Bills Committee on Land Titles Bill  
c/o Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

**Land Titles Bill**

We are pleased to enclose a copy of our letter of date to the Land Registrar, in response to his request for our views on the changes as proposed by the Administration to the Bill. A copy of the Land Registrar's letter of 24 May is also enclosed for your ready reference.

As you will note, our concerns on the effect that some of these changes, Clause 81 in particular, may bring about are very real. We would be grateful if you and your colleagues in the Bills Committee could take our views into consideration in your scrutiny of these amendments.

Yours sincerely

Louis Loong  
Secretary General

9 June 2004

Mr. Kim Salkeld  
Land Registrar  
28/F Queensway Government Offices  
66 Queensway  
Hong Kong

### **Land Titles Bill**

We thank you for your letter of 24 May 2004 and wish to offer our comments on the proposed changes as follows:

#### Unwritten Equities

Noted.

#### Adverse Possession

We note that you will be making recommendations for changes in due course.

#### Rectification under clause 81

We note that Clause 81(2) provides that the Title Register shall not be rectified so as to affect the title of the registered owner unless the registered owner had knowledge of the fraud, mistake or omission or the voidness or voidability of the instrument in question.

Clause 81(2) is however silent as to what is the relevant time when the registered owner had the knowledge. We assume that the relevant time is the time when the owner acquired his interest. If this assumption is correct, then the relevant provisions should read "... has acquired the land or lease for valuable consideration unless at the time of the acquisition the owner or the lessee - ...".

Clause 81(3) provides that a former registered owner is entitled to have the Title Register rectified so as to restore his title but he must satisfy the court that he has neither :-

- (1) knowledge of the fraud at all material times during which the fraud was perpetrated; nor
- (2) caused such fraud or substantially contributed to it by his act, neglect or default.

We strongly object to the condition that the former owner must not contribute to the fraud by his “act, neglect or default”. This is because such a provision effectively imposes a positive duty on the part of the former registered owner to prevent fraud. In other words, an innocent owner can lose his property through negligence when he is not a party to and did not cause the fraud. This is unacceptable. The policy is that an innocent owner should always be entitled to have the Title Register rectified to restore his title. An innocent owner who is merely negligent remains innocent. He is not fraudulent. Negligence should not be equated with fraud.

#### No Rectification after 12 years - Clause 81A

Clause 81A provides that no application for rectification of the Title Register shall be made 12 years after an entry in the Title of Register has been obtained.

We strongly object to this new provision because :-

- (1) Clause 81A in effect creates a new category of limitation period so that an innocent owner will be deprived of his property if the name of another person is registered as the new owner through a forged document and 12 years have expired since the entry was made, even though the innocent owner’s title may not have been extinguished under the Limitation Ordinance.
- (2) As we understand it, the Bill was never intended to effect any change in the law regarding limitation. You have said in your letter that the Bill was never intended to change the law with respect to adverse possession. Adverse possession is a creature of the Limitation Ordinance.
- (3) An innocent owner should not be precluded from seeking rectification of the Title Register unless his title has been extinguished under the Limitation Ordinance.

Clause 81A should be deleted.

Cap on Indemnity

Our view remains the same as that set out in our letter of 1 March 2004.

As these proposed changes have been sent to the Bills Committee, we are also copying this letter to the Chairman of the Bills Committee for their consideration.

Yours sincerely

Louis Loong  
Secretary General

c.c. Secretary for Housing, Planning & Lands (Attn: Ms. Olivia Nip)  
Hon Margaret Ng, Chairman of the Bills Committee

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24 May 2004

Mr Louis LOONG

Secretary General

The Real Estate Developers' Association of Hong Kong

Room 1403 Worldwide House

19 Des Voeux road Central

Hong Kong

A handwritten signature in cursive script that reads "Mr Louis Loong".

**Land Titles Bill**

Gunter's mark-up

bill V14

[20.5.04]

Further to your letter of 1 March 2004 I am writing to enclose a copy of the Land Titles Bill with all changes we propose to make marked up on it for ease of reference.

In response to points raised in your letter, I would like to draw your attention to the following :

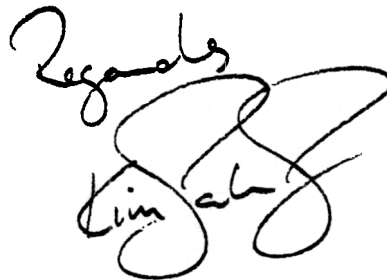
- (a) Rights under unwritten equities will not be extinguished at the end of 12 years. The crucial date is the date on which a sale to a bona fide purchaser for value takes place after the property has come under the title registration system. If the claimant has not taken action before then to secure registration of their interest (by amendment of the ownership register) or to give notice of their claim (by a caveat or non-consent caution) then they will no longer have a claim against the land. Their rights to in personam claims will remain. There will be an extensive publicity programme, locally and overseas, to prepare the public for this change.
- (b) the present bill has never intended to change the law with respect to adverse possession. I have taken note of the comments of the Association and other parties on this point, however, and will be making recommendations for changes for consideration in subsequent legislation.

With respect to rectification, please see the revised Clause 81. We have not used the term 'forgery' but 'void instrument' as being a more familiar term in land law. Reference to 'hardship of parties' has been removed. The discretion of the courts has been limited.

Where a void instrument or a false entry in the register has been procured to effect a change of ownership, rectification must be given to an innocent former owner, irrespective of an innocent purchaser having been entered as owner on the register. In any other case, an innocent purchaser must left in possession.

I note your points on the cap on indemnity payment. It remains the Administration's position that a cap is necessary. the mechanism and the level of the cap will be reviewed as experience is gained with the operation of the title registration system in Hong Kong.

The changes proposed to the Bill have been sent to the Legislative Council for consideration by the Bills Committee. They may be subject to further modification arising from discussion in committee and from our own reviews to improve the clarity and organization of the Bill. It remains our intent to try to secure enactment of the Bill within this session. In the interim I would be pleased to address any further questions or to receive any further comments that you may have.

A handwritten signature in black ink, appearing to read 'Kim Salkeld', with a large, stylized flourish extending from the end of the signature.

( Kim Salkeld )  
Land Registrar

Encl.

c.c. Secretary for Housing, Planning and Lands (Attn: Ms Olivia Nip)