

Bills Committee on Land Titles Bill
Thirty-fourth meeting on 8 June 2004

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

1. In discussing the submission from The Hong Kong Institute of Surveyors (HKIS) (LC Paper No. CB(1)1899/03-04(03)), members note that, in response to the request of HKIS to address the problem of unclear lot boundaries in the New Territories (NT), the Administration proposes to remove clause 92(2)(b) to enable the Director of Lands (D of Lands) to, upon application, make a determination of the boundaries of a lot held under a block Government lease. In this connection, the Administration is invited to provide, before the meeting on 15 June 2004, a paper on the following issues related to clause 92:
 - (a) Existing practice for determination of lot boundaries for urban land and NT land, and the role of the D of Lands in this regard;
 - (b) How D of Lands would process the applications for determination of lot boundaries for urban land and NT land under clause 92, the time required to process such an application and the fees involved;
 - (c) Whether lot owners may apply for determination of lot boundaries under clause 92 immediately after commencement of the Bill; and
 - (d) How the problem of plan rectification in the NT would be dealt with; in this connection, please respond to a member's view that the problem may be addressed under clause 92 by empowering the D of Lands to effect plan rectification without the need to seek agreement from all the lot owners concerned.
2. In connection with item 1 above, please liaise with HKIS in due course on the consequential amendments that have to be made as a result of the removal of clause 92(2)(b).
3. On clause 24, please liaise with the Assistant Legal Adviser (ALA) on how to address his concern about subclauses (1)(c)(i), (1)(d), (1)(e) (that the relevant draft proposed Committee Stage amendments (CSAs) may have the effect of excluding easements acquired by usage) and (4)(b) (that the scope of removal thereunder is not precise enough).

4. In examining the draft proposed CSAs to clause 26, members note that notwithstanding subclause (5), which provides that “if a title certificate has been issued for registered land or a registered long term lease, a transfer or transmission shall not be registered in respect of the land or lease unless the certificate is returned for cancellation”, the requirement to return a title certificate for cancellation would be exempted under certain circumstances. For example, when filing an application for dealing, a statutory declaration is made that the certificate has been lost. Please specify in the relevant regulations the circumstances under which the exemption would be made.
5. On the draft proposed CSAs to clause 29(1) and (2), please liaise with ALA on how the drafting could be amended to achieve the policy intention of preserving equitable interests.
6. In examining the draft proposed CSAs to clause 33(7), ALA casts doubt on whether an agreement for sale and purchase (ASP) covers provisional ASPs as provided therein. ALA points out that a provisional ASP and an ASP are treated separately under the Stamp Duty Ordinance (Cap. 117) and other ordinances. Please check whether this is the case and consider the need to revise the draft proposed CSAs.
7. Please liaise with ALA on how to address his comments on the draft proposed CSAs to clause 34, namely, subclauses (1)(b), (1)(c) (that given the Administration’s agreement to apply the doctrine of notice to deal with the priority issue under the new land title registration system (LTRS), the expression “relates back” in the subclauses may cause misunderstanding) and (1)(d) (that the subclause is not straightforward).
8. In examining clause 35, members note that the Administration has decided to retain the term “charge” therein instead of, as suggested by ALA, replacing it by the term “legal charge” as used in the Conveyancing and Property Ordinance (CPO) (Cap. 219) to ensure consistency with CPO (paragraph 6 of the list of follow-up actions to the thirty-first meeting of the Bills Committee on 11 May 2004 (LC Paper No. CB(1)1917/03-04(01))). The reason given is that the term “charge” has a broader meaning than the term “legal charge”. Please check whether this is really the case and consider the need to achieve consistency of

terminology between CPO and the Bill.

9. In examining the draft proposed CSAs to clause 43, members note the different views expressed by ALA and the Administration on when implied covenants should take effect. While ALA opines that under the LTRS, which is a system for registration of interests, implied covenants should take effect upon registration, the Administration, out of practical considerations, considers that such should take effect when the relevant Transfer is signed. Please liaise with ALA and explore the possibility of catering for the views of both sides, such as by mandating in the relevant Transfer the time implied covenants should take effect.
10. In examining the draft proposed CSAs to clause 44, members note ALA's view that given the Administration's proposal to amend clause 81 to provide for the rectification of Title Register in favour of an innocent former owner where title has been transferred as a result of forgery, there is a need to facilitate detection of forgery by requiring the provision of the originals of the documents in subclause (1)(a)(ii) and (iii) instead of their copies as presently drafted. Members note that the Administration is still discussing with the Law Society of Hong Kong (Law Soc) on the documents to be retained under the LTRS. After the documents to be retained have been decided upon, the Administration is invited to respond to ALA's views above, and to explicitly specify such in the regulations referred to in subclause (1)(a)(iv).
11. On the draft proposed CSAs to clause 51, ALA suggests that the expression "subject of the deed" in subclause (4)(a) be amended and that a provision be added to stipulate that the registration of a deed of mutual covenant does not reflect the validity of any easement, right or covenant provided for in the deed. Please consider ALA's views.
12. On clause 61, the Administration agrees to amend subclause (1) to address ALA's concern about the need for clarification and to amend subclause (3) to make the addition after the minor's English name of the words "a minor" a mandatory requirement.
13. In examining the proposed new clause 61A, members note that the Administration is considering ALA's views about the relationship between the proposed new clause with other clauses in Part 7. Please report the

outcome to the Bills Committee in due course.

14. In examining the draft proposed CSAs to clause 62, members express concern about whether and how a surviving joint tenant, who can sign a conditional ASP, could register such under the LTRS. Please provide an information paper on this subject.
15. In examining the draft proposed CSAs to clause 65, the Administration is invited to take the following actions:
 - (a) Please provide information on whether, before securing a document of title to certify the transfer upon death of an owner of registered land, an intended personal representative (PR) could sign a conditional ASP, a conditional tenancy agreement, or an equitable charge, and have such registered under the LTRS;
 - (b) Please delete the phrase “deemed to have been registered” in subclause (1)(b) because in the first part of subclause (1), it has already been stated that the PR “who in that capacity is registered as the owner of registered land”; and
 - (c) Please liaise with ALA on how to address his concern about the drafting of subclause (1)(a) (concern about the phrase “immediately prior to his death” therein and hence the uncertainty of what would happen during the time gap between death of the deceased owner and registration of the PR).
16. In examining the draft proposed CSAs to clause 69, members note that the Administration is liaising with ALA on how the drafting issues of clause 69(1)(b) and (c) could be addressed. Please report the outcome to the Bills Committee in due course.
17. In examining the draft proposed CSAs to clause 70, the Administration agrees to take the following actions:
 - (a) To amend subclause (1)(b) to improve the clarity of the provision;
 - (b) To amend subclause (2) in line with any amendments to clause 33 pursuant to ALA’s views in item 6 above;
 - (c) To liaise with ALA on how to address his comments on subclause (5) (need to justify the need to register a non-consent caution) and subclause (6) (need to amend the subclause to enable the donee, who as presently drafted under the Bill cannot register a non-consent caution, to do so); and

- (d) To delete the proposed new subclause (14).
18. In examining the draft proposed CSAs to clause 72, ALA expresses concern about the legal effect of the removal of caution in subclause (5) on priority and on the tracing of the chain of title. Members express concern that the trigger point of the removal, namely, “registration of a dealing relating to the subject of a caution”, may be too loose. To address the above concerns, the Administration agrees to delete subclause (5), and to rely on clause 17 (Removal of obsolete entries) to empower the Land Registrar to remove a caution where justified.
19. In examining the draft proposed CSAs to clause 73, members and ALA opine that the scope of the expression “a person who has thereby sustained damage” in subclauses (1) and (2) is too broad, and that not any person who has sustained damage should be allowed to claim compensation. Instead, the right to claim compensation should be restricted to those who have an interest in land. Please consider the above views.

Council Business Division 1
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