

Bills Committee on Land Titles Bill
Thirty-fifth meeting on 11 June 2004

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

1. In discussing the submission dated 9 June 2004 from The Real Estate Developers Association of Hong Kong (REDA) (LC Paper No. CB(1)2120/03-04(01)), the Administration agrees to address REDA's concerns highlighted therein in the context of further Committee Stage amendments (CSAs) to clause 81. The Administration also agrees to provide a written response to REDA's submission as far as practicable.
2. In examining the draft proposed CSAs to clause 77, members and the Assistant Legal Adviser (ALA) express the following views:
 - (a) The phrase "application for the making of an order under this section" in subclause (1)(a) can be simplified to "application for an order under this section". Similar phrases in the Bill should be so simplified as far as possible;
 - (b) Subclause (5)(c) is unnecessary because the general law already provides for the same. The subclause may have the effect of broadening the category of "interested person"; and
 - (c) All the instances of "in relation to" in the Bill should be tightened up where appropriate.Please consider the above views and introduce amendments as appropriate.
3. In examining the draft proposed CSAs to clause 80, members consider the expression "the Registrar shall comply with an application" in subclause (4) undesirable. Please improve the drafting of the subclause in the light of members' comment.
4. In examining the draft proposed CSAs to clause 81, members note that the Administration will introduce further CSAs to the clause to address REDA's concerns (item 1 above). Members also invite the Administration to introduce appropriate CSAs to address the following concerns:

- (a) The drafting of clause 81 could not reflect the objectives of the clause. In particular, it is not clear when the court shall or shall not rectify the Title Register.
 - (b) The Hong Kong Bar Association is concerned about whether a “knowledge test” should be adopted as the statutory criterion in determining whether the Title Register is subject to the Court of First Instance’s power of rectification.
 - (c) Clause 81(2)(a) provides that the Title Register should not be rectified so as to affect the title of the registered owner unless the owner had knowledge of the fraud, mistake or omission in relation to the transfer of ownership, or had knowledge of the voidness or voidability of the instrument in relation to such transfer. Given that "knowledge of the fraud" is one of the statutory criteria in determining whether the Title Register should be rectified, it should be clearly stipulated in the Bill that the time of knowledge is the time when the fraud was committed but not any point in time;
 - (d) The references to "knowledge of the voidness or voidability of the instrument" in clause 81(2)(a)(ii) and "caused voidness or voidability" in clause 81(2)(b) are not appropriate because ordinary people would not be able to judge whether an instrument is void or voidable; and
 - (e) Clause 81(2)(b) provides that the Title Register should not be rectified so as to affect the title of the registered owner unless the owner had substantially contributed to the fraud by his act, neglect or default. The expression "substantially contributed" gives rise to uncertainty. Please make reference to the relevant court case on the interpretation of this expression. As this expression implies active involvement, it is not fair to include the element of "neglect". A similar provision in clause 81(3) gives rise to the same concern.
5. In examining the proposed new clause 81A, ALA highlights REDA’s view that the new clause seems to be more restrictive than the Limitation Ordinance (Cap. 347) or the general law on limitation. The Administration has agreed to confirm whether the above is its policy intention.
 6. In examining the draft proposed CSAs to clause 82, members note that the Administration will propose a CSA to delete subclause (5) so as to address the concern of the Law Society of Hong Kong (Law Soc). Please explain

the reasons for and the effect of deleting subclause (5), and how far Law Soc's concern has been addressed.

7. In examining the draft proposed CSAs to clause 83, members note that the Administration will withdraw the proposed CSA to the first part of clause 83(1).
8. In examining the draft proposed CSAs to clause 83, members note that at the request of the Hong Kong Association of Banks, the Administration proposes a CSA to subclause (2) to provide that "where ... a registered charge ceases to be a registered charge ...; and ...the chargor in respect of the charge is entitled to be paid an indemnity ... in respect of loss suffered in relation to the registered land or registered long term lease which was the subject of the charge, then the Registrar shall cause ... the indemnity to be first applied towards discharging the charge". Members consider it essential for the Administration to balance the interests of banks and property owners, and to consider whether it is desirable to spell out the proposed arrangement in law to preclude any exercise of discretion under special circumstances. Some members also point out that banks may amend the provisions of a mortgage to put in place the proposed arrangement mentioned above. The Administration agrees to reconsider how the issue should be dealt with.
9. In examining the draft proposed CSAs to clause 83, members note that the proposed new subclause (2A)(d) provides that the Registrar shall cause the indemnity to be applied towards co-owners "proportionately to reflect the interests they respectively had in the land...". They opine that the Land Registrar should not take on such responsibilities and that the above subclause should be taken out.
10. In examining the draft proposed CSAs to clause 84, members note that the Administration will withdraw the proposed CSA to subclause (2)(b).
11. On the draft proposed CSAs to clause 92, the Administration confirms that subclause (2)(b) would be deleted as agreed at the meeting on 8 June 2004.
12. On the draft proposed CSAs to clause 95, the Administration agrees to introduce further CSAs as necessary to address ALA's drafting comments

- (e.g. the second half of subclause (2) is not necessary) and to ensure that the clause would not conflict with the rectification provisions in clause 81.
13. On the draft proposed CSAs to clause 98, the Administration confirms that it would redraft the clause to deal with fees and levy separately.
 14. In examining the draft proposed CSAs to clause 100, members note that the new subclause (1)(oa) has been added to empower the Secretary for Housing, Planning and Lands (SHPL) to make regulations to set out the circumstances in which the Land Registrar shall refuse to register any matter relating to any undivided share in registered land with an exclusive right to use and occupy a part of a building. The new subclause is added to clause 100 to address members' concern that clause 20(5) (which provides that the "Registrar..... unless and until an application for the division of the land into undivided shares has been registered showing or specifying such rights to the use and occupation of the land") relates to administrative arrangements only and has nothing to do with title, and that it may be more appropriate to include the provision in the Regulations. Members however opine that the new subclause should be linked to clause 20 to make the policy intention clearer.
 15. In examining the draft proposed CSAs to clause 100, members note that the new subclause (1)(ob) has been added to empower SHPL to make regulations on the documents relating to title to be retained under the new land title registration system (LTRS). Members opine that the new subclause, as presently drafted, is too wide, and that it should be linked to clause 44(1)(a)(iv) and any other relevant clauses. Members also opine that the new subclause is not clear enough and urge the Administration to improve it.
 16. In examining the draft proposed CSAs to clause 100, members note that the new subclause (1)(oc) has been added to empower SHPL to make regulations on the classes of persons who fall within paragraph (d) of the definition of "interested person" in the new subclause (5) of clause 77. In this regard, members consider it undesirable to defer defining the classes of persons under paragraph (d) of the definition of "interested person" until making of the relevant regulations because such an arrangement would make clause 77(5)(d) empty and unable to function before the regulations are in place. It should be ensured that even before

the making of the relevant regulations, a person who qualifies as “interested person” may go to the court to claim such status. In this connection, please consider a member’s suggestion that the new subclause (5)(d) of clause 77 be amended to read “who otherwise has a sufficient interest in the making of the application concerned under subsection (1)(a), **including a person** determined in accordance with regulations made under section 100(1)(oc)”.

17. In examining the draft proposed CSAs to clause 100, members note that the Administration proposes a CSA to subclause (1)(zi) to provide that SHPL 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. Members also note that the proposed CSA has not addressed ALA’s concern about the adequacy of providing such power in the regulations, 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. Members consider 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 SHPL under clause 100. The Administration agrees to amend clause 6 to address the above concerns.
18. Please liaise with ALA to ensure that his drafting comments on the draft proposed CSAs to clause 101 will be addressed.
19. Please liaise with ALA to ensure that his drafting comments on the draft proposed CSAs to clause 102 will be addressed.
20. In examining the proposed CSAs to section 20B of the High Court Ordinance (Cap. 4) set out in section 2 of Schedule 2 to the Bill (page 3 of the marked-up copy of Schedule 2 to the Bill (LC Paper No.CB(1)2109/03-04(02))), members note that section 20B(6) provides that “if an order...discharging the charging order is made, the Land Registrar shall, on the presentation to him of an application for the purpose accompanied by an office copy of the order, remove from the Title Register kept under the Ordinance the entry referring to the order, and may issue certificates of such removal”. Having regard that the LTRS should essentially be a system for the registration of interests and

not instruments, members consider it undesirable that in addition to the title certificate and the deed of mutual covenant, there should be additional instruments that would need to be dealt with under the LTRS. Please delete the last part of section 20B(6) starting with "and".

21. On the proposed CSAs to Order 47 of the Rules of the High Court (Cap. 4A) set out in section 3 of Schedule 2 to the Bill (page 4 of LC Paper No.CB(1)2109/03-04(02)), the Administration agrees to delete from rule 7(4)(b) of Order 47 the expression "shall be taken and deemed to be a valid transfer of such right, title and interest and".
22. On the proposed CSAs to section 2 of the Government Leases Ordinance (Cap. 40) set out in section 17 of Schedule 2 to the Bill (page 28 of LC Paper No.CB(1)2109/03-04(02)), the Administration agrees to provide a paper on how Government leases would be affected under the LTRS and by the proposed CSAs to address members' concerns about changes in this regard.
23. In examining the proposed CSAs to section 16(2) of the Government Leases Ordinance (Cap. 40) set out in section 24 of Schedule 2 to the Bill (page 37 of LC Paper No.CB(1)2109/03-04(02)), members note that the Administration may further revise section 16(1)(b), in particular the reference to "title record".
24. On the proposed new section 67 of the Stamp Duty Ordinance (Cap. 117) set out in section 42 of Schedule 2 to the Bill (page 62 of LC Paper No.CB(1)2109/03-04(02)), please liaise with ALA on how to address his drafting comments on sections 67(2) and 67(3) (on whether the charge in respect of registered land would be removed automatically upon expiry or upon application) and 67(4) (that the section was not necessary).
25. In examining the proposed CSAs to the consequential amendments to be made to the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) set out in section 65 of Schedule 2 to the Bill (page 101 of LC Paper No.CB(1)2109/03-04(02)), ALA considers it undesirable to continue registering vesting notice because, to make the Financial Secretary Incorporated holder of the land concerned, it would be better to draft the provisions in such a way as to provide that upon the Government exercising such right of re-entry, the Financial Secretary Incorporated

would be registered as the holder of the land. This would avoid giving people the impression that the LTRS would still be a system for the registration of instruments. The Administration agrees to consider ALA's views and report back to the Bills Committee.

26. In examining the proposed amendments to section 153M of the Crimes Ordinance (Cap. 200) set out in section 85 of Schedule 2 to the Bill (page 128 of LC Paper No.CB(1)2109/03-04(02)), members note that registration of notices and orders relating to premises thereunder would be dealt with under clause 4(a) of the Bill as a matter expressly provided for in other enactments. In this regard, ALA opines that there is a need for the Administration to consider the means by which such orders should be registered. The Administration agrees to consider his views and specify such in the regulations.
27. In examining the proposed amendments to section 2 of the Conveyancing and Property Ordinance (CPO) (Cap. 219) set out in section 87 of Schedule 2 to the Bill (page 132 of LC Paper No.CB(1)2109/03-04(02)), ALA opines that the proposed provisions that “an assignment include a transfer” and “a legal charge include a charge” in section 2(2) are inappropriate because it is very much in doubt whether such inclusions are proper, especially as the scope of a charge under the Bill is broader than that of a legal charge under CPO. Members opine that since the section concerned is essentially an avoidance of doubt section, if there are still doubts about the matters concerned, it may be better to take the section out. The Administration accepts members' views.
28. In examining the proposed CSAs to the consequential amendments to be made to CPO, members express concern about the compatibility of the CPO with the Bill, and the possible existence of loopholes in the Bill because of the many changes that have to be made to it within a short time. Given the time constraints and hence the difficulty in rectifying any such incompatibility, the Administration undertakes that it would ensure that any incompatible provision would be rectified during the 2-year period between the enactment and commencement of the Bill.