

16 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 with our further views on Clause 81 and 81(A) of the revised committee stage amendments (CB 2140/03-04(03)) to the Bill. We are afraid that the revised clauses fail to address the concerns we raised in our previous letter of 9 June.

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

16 June 2004

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

### **Land Titles Bill**

Further to our letter of 9 June 2004, we have obtained a copy of the Committee Stage Amendments (CB(1) 2140/03-04(03)) to clauses 81 and 81A of the Bill.

#### Rectification under Clause 81

We note that Clause 81(3) provides that as a condition for rectification of the Title Register, the innocent owner who was deprived of his title as a result of a void instrument or a false entry must still show that he did not “by his act or lack of proper care, substantially contribute to the fraud”.

Such a provision effectively imposes a positive duty on the part of the former innocent registered owner to prevent fraud. An innocent owner can lose his property through negligence, even though he was not a party to and did not cause the fraud.

We would like to again voice our strong objection to equating negligence with fraud. Our position is that an innocent owner who is merely negligent remains innocent. The policy, as we understand it, is that an innocent owner should always be entitled to have the Title Register rectified to restore his title.

#### **Rectification after 12 Years and limitation under Clause 81A**

The new clause 81A fails to address our concerns for the following reasons :-

1. The savings in section 81A(2) and (3) provides that the period of limitation under section 81A(1) “*may*” be extended or postponed in the same manner as sections 22 and 26 of the Limitation Ordinance. Since the word “*may*” is used, a discretion is conferred on someone and, presumably, that someone is the Registrar. What are the criteria to be adopted by the Registrar in deciding whether the limitation period should be extended? Why should he be given a

discretion if, pursuant to sections 22 or 26 of the Limitation Ordinance, the right of action has not been barred?

2. The date when a right of action accrues for the purposes of determining the commencement of the limitation period under the Limitation Ordinance may not coincide with the date when an entry was made in the Title Register. How do we reconcile the two when there is a difference?
3. Section 22 (extension in case of disability) and section 26 (postponement in case of fraud, concealment or mistake) are only two of the instances where the limitation period may be extended or postponed. There are other instances where the normal 12-year limitation period does not apply. For example, under section 20(1) of the Limitation Ordinance, no period of limitation prescribed under that Ordinance shall apply to an action by a beneficiary under a trust, being an action in respect of any fraud or fraudulent breach of trust or recovery of trust property from a trustee. Why should an owner be barred from making an application for the restoration of his title to the Title Register in circumstances other than those covered by sections 22 and 26 of the Limitation Ordinance when his claim is not yet barred?
4. Clause 81A effectively creates a new category of limitation without recognising the complexity of the law on limitation.

We remain strongly of the view that clause 81A should be deleted or amended so that a person is only barred from making an application for rectification of the Title Register by reason of delay if, but only if, his claim is barred either under statute, at law or in equity.

We are copying this letter to the Chairman of the Bills Committee for consideration by the Committee.

Yours sincerely

Louis Loong  
Secretary General

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