

**Bills Committee on Land Titles Bill  
Thirty-sixth meeting on 15 June 2004**

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

1. Please provide the following papers for the Bills Committee's consideration at the meeting on 18 June 2004:
  - (a) Administration's written response to the letter dated 14 June 2004 from Hon TAM Yiu-chung;
  - (b) Administration's written response to the submission dated 14 June 2004 from the Hong Kong Bar Association; and
  - (c) The Law Society of Hong Kong (Law Soc)'s written comments on the draft Committee Stage amendments (CSAs) proposed by the Administration.
  
2. In examining the proposed amendments to section 16 of the Conveyancing and Property Ordinance (CPO) (Cap. 219) set out in section 91 of Schedule 2 to the Bill (page 139 of the marked-up copy of Schedule 2 to the Bill (LC Paper No.CB(1)2109/03-04(02))), the Assistant Legal Adviser (ALA) opines that if the transfer of interests by registration has been sufficiently provided for under clauses 14 and 21 of the Bill, it should be stated in section 16 that it "shall not apply to land which is registered land within the meaning of the Land Titles Ordinance ( of 2002)", or else there would be confusion. The Administration agrees to amend section 16 of the CPO as proposed.
  
3. On section 17 of the CPO (section 92 of Schedule 2 to the Bill (page 140 of LC Paper No.CB(1)2109/03-04(02))), the Administration agrees to amend section 17 in accordance with the amendment to section 16 mentioned in item 2 above.
  
4. In examining the proposed amendment to section 37 of the CPO set out in section 93 of Schedule 2 to the Bill (page 141 of LC Paper No.CB(1)2109/03-04(02)), members note that the standard forms under the Bill would be similar to those under the CPO with some modifications. In this regard, ALA opines that the existing standard forms specified under the CPO should not be "subject to sections 58 and 97 of the Land Title Ordinance", as new forms for the implementation of the new land title registration system (LTRS) will be prescribed under the Bill. The Administration agrees to consider ALA's views.
  
5. In examining the draft proposed CSAs to section 42 of the CPO set out in section 95 of Schedule 2 to the Bill (page 144 of LC Paper No.CB(1)2109/03-04(02)), members note that the Administration will

propose a CSA to remove the amendment in the blue bill which adds the new subsection (4). ALA considers subsection (4) unnecessary but because the subsection provides that the section "shall be subject to the provisions of the Land Titles Ordinance ( of 2002)", there is no harm to keep the subsection. The Administration accepts ALA's views.

6. In examining the proposed amendments to Schedule 2 to the CPO set out in section 98 of Schedule 2 to the Bill (page 147 of LC Paper No.CB(1)2109/03-04(02)), ALA opines that the reference to the Land Titles Ordinance in the proposed amendment should be deleted. The Administration accepts ALA's views.
7. On the draft proposed CSAs to section 52AB of the District Court Ordinance (Cap. 336) set out in section 110 of Schedule 2 to the Bill (page 167 of LC Paper No.CB(1)2109/03-04(02)), the Administration confirms that the reference to certificates of removal would be deleted from the revised section 52AB(6).
8. On the draft proposed CSAs to Order 47 of the Rules of the District Court (Cap. 336H) set out in section 111 of Schedule 2 to the Bill (page 168 of LC Paper No.CB(1)2109/03-04(02)), the Administration confirms that as in the case of Order 47 of the Rules of the High Court (Cap. 4A) (item 21 of the list of follow-up actions to be taken by the Administration arising from the thirty-fifth meeting of the Bills Committee on 11 June 2004), the expression "shall be taken and deemed to be a valid transfer of such right, title and interest and" would be deleted from rule 7(4)(b) of Order 47.
9. In examining the draft proposed CSAs to section 2 of the Building Management Ordinance (BMO) (Cap. 344) set out in section 119 of Schedule 2 to the Bill (page 178 of LC Paper No.CB(1)2109/03-04(02)), ALA opines that the original and proposed revised definitions of "common parts" therein are not comprehensive enough to cover all relevant cases. For example, supplemental deeds of mutual covenant may not fall under this definition. The definitions may also fail to exclude the case where certain parts of the building are dedicated to public use and hence are not common parts. Since the proposed CSAs only seek to introduce consequential amendments to the BMO arising from the Bill, please relay ALA's comments to the Secretary for Home Affairs for his consideration of introducing amendments to the definition of "common parts".
10. In examining the draft proposed CSAs to section 40B(10) of the Water Pollution Control Ordinance (Cap. 358) set out in section 131 of Schedule 2 to the Bill (page 194 of LC Paper No.CB(1)2109/03-04(02)), members express concern about the expression "certificate of satisfaction". The Administration agrees to consider revising the wording.

11. In examining the proposed revised definition of "section" in section 2 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) set out in section 154A of Schedule 2 to the Bill (page 236 of LC Paper No.CB(1)2109/03-04(02)), ALA opines that the Administration should consider providing clearly in the Bill how mere division of land can be done under the LTRS. Please consider his views.
12. Please liaise with ALA to ensure that all other drafting comments he may have on Schedule 2 to the Bill would be properly addressed.
13. In examining the revised draft proposed CSAs to clause 2, ALA expresses concern that the term "equitable interest" in the revised paragraph (b) of the definition of "charge" is not defined in the Bill. Noting the Administration's advice that the term has the same meaning as that defined in the CPO, some members are concerned that the revised paragraph (b) of the definition of "charge" in the Bill may have a narrower scope than that in the CPO. Members request the Administration to confirm whether its policy intent is that the scope of the term "equitable interest" in the Bill should be the same as that in the CPO; if it is, please consider the need of referring in the Bill to the definition of "equitable interest" in the CPO.
14. In examining the revised draft proposed CSAs to clause 2, ALA is concerned that the words in brackets of the revised paragraph (a) of the definition of "owner" are redundant. Some members are concerned that the definition does not provide room for managers of t'ong to be registered as owners, and some other members are concerned that the definition does not cover t'so. Members are advised by the Administration that managers of t'ong would not be registered as owners in the Title Register under the LTRS, and that clause 57(d) provides that nothing in the Bill shall be construed as affecting the operation of section 15 or 18 of the New Territories Ordinance (NTO) (Cap. 97). Noting that section 15 of NTO only governs cases relating to clan, family or t'ong, members invite the Administration to consider outside the context of the Bill how cases relating to t'so should be dealt with.
15. In relation to the revised draft proposed CSAs to clause 5, a member opines that the reference in the Bill to the register kept under the existing deeds registration system (DRS), namely, "the land register kept in the Registry" or "the land register kept under the Land Registration Ordinance", should be simplified, and that the exercise should be carried out in the 2-year period between the enactment and commencement of the Bill. Please consider the member's views.
16. When examining the proposed new clause 5A, members note that the applications register under the LTRS is equivalent to the Memorial Day Book under the DRS but is less significant because the relating back provision would be taken out from the Bill. In this connection, a

member requests the Administration to consult the Law Society of Hong Kong on the applications register under the LTRS, so that legal practitioners would in future know how to deal with it. Please follow up in due course.

17. In examining the revised draft proposed CSAs to clause 6, members note that the Administration would make further revisions to subclauses (2) and (1)(c) to ensure consistency in the references to the exercise of power by the Land Registrar. A member points out that the proposed new clause 6A and other related clauses should be revised along the same line. Please take actions accordingly.
18. In examining the proposed new clause 15, ALA opines that it is not clear from the clause whether under the LTRS the initial registration of the Government lease itself would require an application. In response to ALA's comments, the Administration advises that there is no need to make such an application because, according to clause 3 of the proposed new Schedule 1A, "the Registrar shall register the title to new land by...making an entry in the Title Register to the effect that the Government lessee is the first owner of the land". Having regard that the above arrangement under clause 3 of Schedule 1A would be a permanent one, and that all permanent provisions should as a matter of drafting principle be placed in the main body of the Bill, members opine that the arrangement should be mentioned in clause 15. This proposed change can be effected by making reference to Schedule 1A in clause 15. The Administration agrees to amend clause 15 accordingly.
19. In examining the proposed new clause 15, ALA casts doubt on whether in the case of registration of caution, which involves a claim of interests, the relevant application can "be verified, both as to the application and the matter in question... by a solicitor" as required under subclause (2)(a)(i). In his view, unlike verification of documents, the solicitor may have difficulty in verifying a claim of interests. To allow time for the Administration to consider how the issue should be dealt with, ALA suggests that subclause (2)(a)(i) be revised to the effect that applications for registration are required to comply with the provisions of the relevant regulations. In this connection, some members highlight the importance of ensuring solicitors' role in such applications, e.g. by requiring every such application to be signed by a solicitor. Please consider the above views of members and ALA, and report back to the Bills Committee at its next meeting on 17 June 2004.