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17 June 2004

Mr Louis LOONG
Secretary General
The Real Estate Developers' Association of Hong Kong
Room 1403 Worldwide House
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Louis

Land Titles Bill

Thank you for your letters of 9th and 16th of June. I would like to respond to the combined points as follows:

Rectification under Clause 81

In your letter of 9th June you raised concern about what is meant by 'knowledge' in relation to the position of a registered owner. I believe that the revised draft that you have seen now addresses this concern by specifying that it means knowledge at the time his name is entered on the title register.

In both your letters you question the provision for a test of the bona fides of a former owner claiming rectification in a case where his name has been removed from the register due to a void instrument or false entry. I note your concern but the undertaking the Administration has given is that a former owner should be placed in the same position that he enjoys under the current law, not that he should be given a better position.

Under the current law, while it is the usual practice for a Court to return a property to the former owner in equivalent circumstances, it is not mandatory. The Courts do retain discretion to decide otherwise. If the former owner, while not having signed any document, knew about the threat to his position at a time when he could have acted to protect himself, yet failed to do so, then these are factors that a Court would take into account before making a determination, especially if an innocent third party had come into possession of the property since the fraud.


You have argued, and we have accepted, that the discretion of the Court should be kept to a minimum. It has also been accepted, in response to your representations, that it be mandatory that rectification be given to an innocent former owner in the cases of a void instrument or false entry. It is a necessary implication of this that the question of whether the owner is indeed innocent must also be raised by the Court. If not, the former owner's position will be stronger under the new system than at present and the risk of sophisticated frauds will be increased.

Clause 81A, Limitation

We are advised that it is necessary to have specific reference to limitation provisions within the Bill itself. This is because there may be uncertainty as to whether an application for rectification constitutes an action for the recovery of land that is covered by the Limitation Ordinance. That said, the intention is that the provisions for limitation on action contained in the Bill should not be less protective of a former owner, or of any other party, than the position under existing law. I have taken note of your concerns and of your reference to 20(1) of the Limitation Ordinance and am consulting the Department of Justice to ensure that any provision on limitation in the Bill does not diminish current protection for any party.

I would also like to point out that it is not for the Registrar to determine whether or not a period of limitation applies. Clause 81A applies to applications for rectification under Clause 81. All such applications are to the Court.

Yours sincerely



(Kim Salkeld)
Land Registrar

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