

**Bills Committee on Land Titles Bill
Thirty-seventh meeting on 17 June 2004**

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

1. On the revised draft proposed Committee Stage amendments (CSAs) to add the new clause 15, some members have expressed concern that under the proposed subclause (2), each application for the registration of any matter shall be verified by a solicitor and in accordance with the regulations. The Administration confirms that in the case of application for the registration of a caution, the solicitor would not be required to verify the claim. The Administration agrees that the proposed subclause (2) be amended to the effect that each application for registration of any matter shall be verified as required by regulations, and that the details of the regulations will be worked out after enactment of the Bill in consultation with the Law Society of Hong Kong (Law Soc).
2. On the revised draft proposed CSAs to clause 20, the Assistant Legal Adviser (ALA) highlights the need to include in the Bill provisions on the severance of joint tenancy. Members note the Administration's advice that a notice of severance, which can be issued under section 8 of the Conveyancing and Property Ordinance (CPO) (Cap. 219), can be registered under clause 4(d) (i.e. the new clause 14(d) in the revised marked-up copy of the Bill) as a matter affecting land to effect severance of joint tenancy in respect of registered land. Members consider such an arrangement undesirable and request the Administration to consider whether specific provisions should be provided in the Bill for the procedures for effecting severance of tenancy under the new land title registration system (LTRS).
3. On the revised draft proposed CSAs to clause 20, ALA opines that the phrase "building in respect of which...an occupation permit may be issued" in subclause (6) creates uncertainty because of the use of the words "may be" therein. In response to his views, the Administration agrees to improve the drafting of the subclause as far as practicable.
4. On the revised draft proposed CSAs to clause 21, the Administration confirms that subclause (1) would be amended to read "Subject to sections 23 and 81, the registration of a person as the owner upon a transfer of land shall vest in the person who is registered as the owner of the land... in subsection (2)"

5. On the revised draft proposed CSAs to clause 22, the Administration advises that further CSAs may be introduced to subclause (2)(a) and (b) to address Law Soc's concern that it is unclear as to whether the covenants and registered matters mentioned therein refer to those that are existing at the time the person concerned acquires the registration of the long term lease.
6. On the revised draft proposed CSAs to clause 24, the Administration confirms that pursuant to the Hong Kong Bar Association's suggestion, the phrase "or rights" would be inserted after "any easements" in subclause (1)(d).
7. On the revised draft proposed CSAs to clause 24, the Administration agrees to delete the words "of the Government" from subclause (1)(fa) in response to ALA's view that there are statutory easements other than those of the Government.
8. On the revised draft proposed CSAs to clause 26, the Administration undertakes to put in place before the commencement of the Bill the regulations to provide for the circumstances under which the requirement under subclause (5) to return the title certificate for cancellation can be exempted.
9. In connection with item (8) above, the Administration also undertakes to provide a list setting out the regulations that need to be put in place before the commencement of the Bill for incorporation into the report of the Bills Committee to the House Committee.
10. On the revised draft proposed CSAs to clause 33, the Administration confirms that further CSAs would be made to subclause (1).
11. On the revised draft proposed CSAs to clause 33, the Administration confirms that the phrase "under a provisional agreement for sale and purchase or an agreement for sale and purchase" would be deleted from subclause (8). Noting such, ALA cautions that the proposed deletion may have the effect of bringing the relation back provision into the Bill again so that, for example, a mortgagee can register an agreement to mortgage to defeat a subsequent charging order. Please examine subclause (8) again to ensure that it would not have the effect apprehended by ALA. If the Administration is satisfied that the subclause would not have the above effect, please explain why it would not. If the Administration finds that it may have the effect, please examine how to remedy the situation. In this connection, ALA further comments that the Administration should likewise examine the provisions on non-consent caution to ensure that they would not have the above effect.

12. On the revised draft proposed CSAs to clause 34, ALA opines that the proposed addition of the phrase "of competent jurisdiction" to subclauses (3) and (4) is unnecessary because the term "court" has already been defined in the Interpretation and General Clauses Ordinance (Cap. 1). He further comments that it is not clear from the clause how registration of a judgment, order or lis pendens is to be effected. He therefore suggests that a new subclause (6) be added to provide that the above should comply with the relevant regulations, so that the details can be carefully worked out later. Please consider ALA's views.
13. On the draft proposed CSAs to clause 35, the Administration confirms that further CSAs may be introduced to it to address Law Soc's concern that it may not suffice just to provide in subclause (3) that a registered charge "shall have effect as a security only".
14. On the draft proposed CSAs to clause 43, the Administration agrees that in consideration of ALA's view that implied covenants should take effect upon registration and not when the relevant transfer is signed, clause 43 should be reviewed after enactment of the Bill.
15. On the revised draft proposed CSAs to clause 44(1), the Administration assures members that it will discuss with Law Soc after enactment of the Bill on what documents need to be kept under the LTRS and prescribe them by regulations.
16. On the revised draft proposed CSAs to clause 44(3), ALA opines that the subclause may have the effect of overriding the restrictions contained in the conditions of sale for a sale of land by auction or tender on the purchaser's right to require production by the vendor of documents. Please consider ALA's views.
17. On the revised draft proposed CSAs to clause 47, the Administration confirms that subclause (5) would be simplified to read "[t]he date of first registration of a long term lease **registered** under this section...".
18. On the revised draft proposed CSAs to clause 51, ALA opines that the definition of "deed of mutual covenant" in subclause (3) is not comprehensive enough. Members note the Administration's response that the definition is the same as that provided in the Building Management Ordinance (Cap. 344). Members suggest that the Administration should review in due course whether the definition is comprehensive enough.
19. On the revised draft proposed CSAs to clause 81, the Administration advises that further CSAs may be introduced to it to address Law Soc's concern that as presently drafted, subclause (2)(a) cannot clarify that the fraud, mistake or omission referred to therein means the fraud, mistake or

omission committed in the transaction by which the present registered owner has become the registered owner.

20. On the revised draft proposed CSAs to clause 81, members express concern about how the proposed expressions "substantially contribute" and "lack of proper care" in subclauses (2)(b) and (3)(c) would be interpreted by the court. They are also concerned about what is expected of the owner to free himself from the liabilities concerned. Please consider members' views.
21. On the revised draft proposed CSAs to add the new clause 81A, the Administration advises that further CSAs may need to be introduced to the new clause to address the concern of The Real Estate Developers Association of Hong Kong about the limitation period as stated in its submission dated 9 June 2004 (LC Paper No. CB(1)2120/03-04(01)).
22. On the revised draft proposed CSAs to clause 86, the Administration confirms that subclauses (1) and (2) would be recast along the line of the relevant provisions of the English Land Registration Act 1925.
23. In examining the revised draft proposed CSAs to the Bill, members note that there are certain issues which the Administration has agreed to resolve with Law Soc after enactment of the Bill. The Administration is invited to resolve these issues before commencement of the Bill.