

**Bills Committee on Land Titles Bill
Thirty-eighth meeting on 18 June 2004**

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

1. On the revised draft proposed Committee Stage amendments (CSAs) to clause 33, the Administration confirms that it would consult the Law Society of Hong Kong (Law Soc) on the Assistant Legal Adviser (ALA)'s concern that the proposed deletion of the phrase "under a provisional agreement for sale and purchase or an agreement for sale and purchase" in the new subclause (8) may have the effect of bringing the relation back provision into the Bill again (item 11 of the list of follow-up actions to be taken by the Administration arising from the thirty-seventh meeting of the Bills Committee on 17 June 2004).
2. On the revised draft proposed CSAs to clause 70, the Administration confirms that further CSAs would be introduced to address the following concerns of Law Soc:
 - (a) It is not sufficiently clear from the proposed subclause (1) as to whom a person who intends to effect a dealing in registered land should approach for consent to effect registration of a consent caution; and
 - (b) It is not sufficiently clear from the proposed subclause (1) that the owner of a property or a consent cautioner can give as many consent cautions to other people as he wishes, and he is not bound to deal with only one person.

Please report back to the Bills Committee at its meeting on 21 June 2004 on how the proposed subclause (1) should be amended.

3. On the revised draft proposed CSAs to clause 77, the Administration confirms that the phrase "the making of" would be deleted from subclause (1)(a).
4. In examining the definition of "interested person" in the proposed new subclause (5) of clause 77, members invite the Administration to put in place the regulations prescribing the class of persons referred to in paragraph (c) of the definition before the commencement of the Land Titles Ordinance (LTO). The Administration agrees to do so. The Administration also indicates that it would make reference to the relevant provisions in the UK Land Registration Rules in drafting the above regulations.

5. In connection with item 4 above, members request the Administration:
 - (a) to put in place all the relevant regulations before the commencement of LTO; and
 - (b) to consult the LegCo Panel on Planning, Lands and Works in due course on the proposed commencement date of LTO before the commencement notice for the Ordinance is published in the Gazette.Members also consider that the commencement notice should be subsidiary legislation subject to the vetting of the Legislative Council. The Administration undertakes to follow up accordingly.

6. On the revised draft proposed CSAs to clause 81, the Administration is invited to consider, in consultation with Law Soc, the following views expressed by a member and ALA:
 - (a) ALA expresses reservation about the expression "or voidable" in subclauses (1) and (2). He points out that the state of being "voidable" does not mean it is void, and that a voidable instrument would not be void until it is avoided. In his view, by defining "a void instrument" as an instrument which is void or has become void at the date of application, the need to make reference to "voidable" can be obviated;
 - (b) ALA is concerned that with the expression "or voidable" in subclauses (1) and (2), an owner may act according to his own interests, so that he may deliberately cause an instrument to be voidable by his own default so as to defeat a transaction he has entered into;
 - (c) ALA points out that while the expression "or voidable" is used in subclauses (1) and (2), only "void instrument" is mentioned in subclause (3); and
 - (d) A member finds the inclusion of the expression "or voidable" in subclauses (1) and (2) agreeable because the expression would enable the court to exercise discretion and take all circumstances into consideration in deciding whether to rectify the Title Register. This would have the effect of ensuring that no person would be inadvertently and unfairly precluded from applying for rectification.

7. On the revised draft proposed CSAs to clause 81, members reiterate their 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 (item 20 of the list of follow-up actions to be taken by the Administration arising from the thirty-seventh meeting of the Bills Committee on 17 June 2004).
 - (a) Noting as explained by the Administration that Law Soc is satisfied with the proposed expressions but The Real Estate Developers Association of Hong Kong (REDA) has expressed its concern, members request the Administration to ascertain whether the Hong Kong Bar Association (the Bar) is agreeable to the proposed expressions; and

- (b) Noting as explained by the Administration that the proposed expressions are adopted from relevant provisions in the UK and that there is relevant case law in the UK on how the court interprets the expression "lack of proper care", members invite the Administration to provide the relevant UK case law in due course.
8. On the revised draft proposed CSAs to clause 81, ALA opines that because of the reference to "the entry in the Title Register" in subclause (4), it is not clear whether a fraud or voidable transaction that would give rise to a claim for rectification in relation to land which was registered under the Land Registration Ordinance (LRO) (Cap.128) can be rectified after the commencement of LTO. The Administration agrees to consider after enactment of the Bill how to address ALA's concern.
 9. On the revised draft proposed CSAs to clause 81, ALA opines that subclause (8) can be interpreted to mean that the Land Registrar does not need to bear the cost at all. To address ALA's view, the Administration assures members that it would clarify that indemnity payments made under clause 82(1)(b) and costs connected with such payments would be reimbursed by the Land Registry Trading Fund.
 10. On the revised draft proposed CSAs to add the new clause 81A, the Administration reaffirms that further CSAs would be introduced to the new clause to address REDA's concern about the limitation period as stated in its submission dated 9 June 2004 (LC Paper No. CB(1)2120/03-04(01)).
 11. On the revised draft proposed CSAs to clause 82, members are concerned that the reference to "fraud or negligence" in subclause (2)(a) seems to be inconsistent with other clauses of the Bill. The Administration agrees to consider how this concern could be addressed.
 12. On the revised draft proposed CSAs to clause 82, ALA points out that subclause (4)(d), as presently drafted, would not exclude LRO land affected by fraud before the first registration. He suggests that the Administration should consider whether to tighten up or to delete the subclause if subclause (4)(c) is considered sufficient.
 13. On the revised draft proposed CSAs to clause 92, the Administration advises that in the light of the comments of the Director of Lands, the words "or area or measurement" in subclause (4) will be retained and the proposed CSAs to subclause (6) will be withdrawn. The Administration would review the provisions in clause 92 after introducing a similar provision in a suitable ordinance that will apply to land not yet registered under LTO.

14. On the revised draft proposed CSAs to clause 98, the Administration confirms that the word "made" would be added after the word "whether" in subclause (1)(a).
15. On the revised draft proposed CSAs to clause 100, the Administration confirms that it has to review the whole clause in the light of the proposed CSAs to other clauses.
16. On the proposed new clause 20A (draft CSAs tabled at the meeting), ALA points out that the proposed definition of "new land" would have the effect that title registration would only apply to land granted under a Government lease. The Administration confirms that title registration would not apply to some categories of land, such as the Government land held by the Kowloon-Canton Railway Corporation. Noting such, members consider that the above policy intention should be clearly made known to the public. The Administration confirms that it would consider amending clause 3 for the purpose.
17. On the proposed new clause 20B (draft CSAs tabled at the meeting), ALA is concerned that it is not specified in the proposed new clause when the Land Registrar shall register the title to new land. Please consider how this concern could be addressed.
18. In connection with the proposed new clause 20B (draft CSAs tabled at the meeting), the Administration confirms that it would add the phrase "Except as otherwise expressly provided for in this Ordinance" at the beginning of clause 15 to link it with the proposed new Part 2B, in particular the proposed new clause 20B, so as to achieve the effect that no application will be required for registration of new land.
19. In examining clause 1 of the proposed new Schedule 1A (draft CSAs tabled at the meeting), ALA is concerned that the definition of "relevant lease" seems to have been drafted on the assumption that long term leases granted before the date of first registration are not long term leases. Please consider how this concern could be addressed.
20. In examining clause 8 of the proposed new Schedule 1A (draft CSAs tabled at the meeting), the Administration agrees to redraft subclauses (2) and (3) so that the detailed provisions will be set out in the relevant regulations to address ALA's concern that the subclauses are not comprehensive enough. In this connection, the Administration also undertakes to ensure that the entries in the register under the deeds registration system would fit in under the new land title registration system.
21. In examining clause 9 of the proposed new Schedule 1A (draft CSAs tabled at the meeting), the Administration agrees to redraft subclauses (2)

and (3) so that the detailed provisions will be set out in the relevant regulations to address ALA's concern that the subclauses are not comprehensive enough.

22. On the proposed new section 21B of LRO (the proposed new Schedule 3), the Administration confirms that the phrase "does not confer" in subclause (3) would be amended to "does not prejudice" pursuant to Law Soc's request.
23. On the proposed new section 21H of LRO (the proposed new Schedule 3), the Administration confirms that subsection (4) would be amended in the same way as the proposed new section 21B(3) of LRO as described in item 22 above. In the light of this proposed change, ALA points out that there is also a need to amend subsection (5).
24. On the proposed new section 21J of LRO (the proposed new Schedule 3), the Administration advises that the word "the" would be inserted between "of" and "registration" in subsections (4), (5) and (6).
25. On item 1 of the paper on "Responses to Bills Committee on Outstanding Matters" provided by the Administration (LC Paper No. CB(1)2182/03-04(05)), the Administration confirms that it will reply to Heung Yee Kuk shortly and will then provide the Bills Committee with a copy of the reply.

Council Business Division 1
Legislative Council Secretariat
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