

Bills Committee on Land Titles Bill
Eleventh meeting on 31 July 2003

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

Matter arising from the meeting on 17 July 2003

1. In the paper to address the issues raised by the Assistant Legal Adviser at the meeting on 17 July 2003 on the Indemnity Fund (IF) and the Land Registry Trading Fund (LRTF), please describe the circumstances under which the LRTF will reimburse the IF for indemnity payments attributable to fraud of staff of the Land Registry.

Certificate of good title and solicitors' liability

2. Please liaise with the Law Society of Hong Kong (Law Soc) on the arrangements to be made to address solicitors' concerns about the issue of the certificate of good title, in particular the extent of solicitors' liability in the issue of such a certificate under the provisions in clause 96(1) and 96(2). Please report on the progress made in this regard to the Bills Committee in due course.
3. Please clarify the Administration's policy intent on solicitors' liability, i.e. whether a solicitor would be subject to criminal liability if he negligently issued, or caused the issue of, a certificate of good title. Please consider whether clause 96(1) and 96(2) reflect the policy intent, and clarify the meaning of "without lawful authority" in clause 96(2).
4. According to paragraph 13 of the paper on "Comparison between Proposed Land Titles Registration System for Hong Kong and other Jurisdictions" (LC Paper No. CB(1)2305/02-03(03)), the English Land Registry usually relies upon the submissions made by the solicitor for the applicant and warns that any error in the application may bar indemnity in case of loss as well as opening the solicitor to action for negligence. Please clarify whether "error" refers to error of law or erroneous information included in the submissions made by the solicitor, and whether the solicitor will be held responsible for any negligent error in the submissions to the extent that indemnity may be barred in case of loss.

Proposed indemnity scheme

5. According to Annex C to the paper on "Indemnity Scheme: Levy Rates and Miscellaneous Matters" (LC Paper No. CB(1)2207/02-03(06)), under the English title registration system, indemnity is payable for loss caused by an error in the register or the rectification of an error in the register, and there is no upper limit on each claim for indemnity. In other words, indemnity without an upper limit is payable to an owner who suffers the loss, even when the error is caused by fraud. Please make reference to the practice under the English system, and reconsider the application of the nemo dat rule under the proposed land title registration system (LTRS) in Hong Kong, taking into account the criticism that the Bill would amount to expropriation of private property rights.
6. Please elaborate under what circumstances the Administration would seek an interpretation of Articles 6 and 105 of the Basic Law from the Standing Committee of the National People's Congress under the following scenario mentioned in paragraph 2 of the paper on "Indemnity" (LC Paper No. CB(1)2305/02-03(05)):
 - After enactment of the Bill, a person who lost ownership of his \$10 billion land as a result of fraud by a third party is entitled to indemnity up to \$30 million. The person then challenges the cap on the indemnity in court, and the cap is subsequently ruled to be unconstitutional by the court.

Doctrine of notice

7. According to paragraph 9 of the paper on "Doctrine of Notice" (LC Paper No. CB(1)2305/02-03(07)), the Administration's policy intent is to abolish the doctrine of notice under the Bill. Please delete from the relevant clauses (e.g. clause 25) all references to the doctrine of notice so as to reflect its policy intent.
8. According to paragraph 6 of the paper on "Doctrine of Notice" (LC Paper No. CB(1)2305/02-03(07)), the Bill gives the holders or claimants of interests in land or property extensive means to have their interest or claim recorded on the register, e.g. to apply for registration of cautions under clause 70, to apply for an inhibition under clause 74, or to apply for a restriction under clause 77. Please provide a paper to cover the following points:

- (a) To protect the interests of an owner of a property held on trust where the owner is a minor or is away from Hong Kong, a mechanism should be put in place to ensure the registration of the relevant matters (e.g. cautions) when the title of the property concerned is registered and to provide sanctions for failure to register the relevant matters;
- (b) Please describe how various interests would be protected under the LTRS and highlight the relevant provisions in the Bill, and provide a comparison with the situation under the existing deeds registration system;
- (c) Please amend the phrase "a trustee in that capacity" in clause 30 to improve its clarity; and
- (d) Please explain about the operation mechanism in respect of clause 77, including whether an applicant for a restriction needs to prove himself as "a person interested in the land, charge or lease" (clause 77(1)(a)), the criteria for the Land Registrar to exercise his power under clause 77, whether an appeal channel is available for lodging appeal against the Land Registrar's decision, etc.

Deeds of mutual covenant

- 9. Please examine whether the present drafting of clause 51 could achieve the Administration's policy intent of not changing the current law on the validity and enforceability of covenants in a deed of mutual covenant (DMC); if not, please introduce appropriate amendments. In this connection, please take the following actions:
 - (a) Please incorporate the spirit of the wording of the present assignment into the assignment under the LTRS whereby the purchasers will be subject to and with the benefits of all covenants in the DMC; and
 - (b) Please make a consequential amendment to section 41(9) of the Conveyancing and Property Ordinance (CPO) (Cap. 219) to the effect that it will apply to covenants in instruments registered under the LTRS as well as to those registered under the existing deeds registration system.

Clause 4

10. Please arrange for a mock title registration before the Bills Committee completes scrutiny of the Bill, highlighting the types of interests and documents that need to be registered under the LTRS.

Clause 5

11. Please consider making an appropriate amendment to the Bill to make it clear that the Land Registry mentioned in clause 5 and other clauses in the Bill refers to the existing Land Registry established under the Land Registration Ordinance (LRO) (Cap. 128).

Clause 14

12. Please provide a paper to explain the provisions in clause 14(1)(b) and the need for registration of the equitable interest in the land involved, and advise the Bills Committee of the number of pieces of the land involved and their present status.

Clause 21

13. Please improve the drafting of clause 21(2) to make it clear that the documents and interests stated in the subclause will be binding on the purchaser after registration.

Clause 22

14. Given that the effect of registration is set out in clause 21, please examine the merits and demerits of setting out the effect of registration of long term lease in a separate clause (i.e. clause 22).

Clause 33

15. Please explain whether the manner in determining the priority of registered matters as provided for in clause 33 is different from the existing practice, and examine the implications of using the order of presentation of applications as the basis for determining the priority of

registered matters.

Clause 34

16. Please check whether the wording of clause 34 as presently drafted is the same as that of the relevant provision in LRO so as to ensure that the priority of a charging order will be retained upon its re-registration.

Other issues

17. Please consider adding schedules to the Bill to set out clearly the procedures, practices and forms of documents to be submitted for registration under the LTRS. Please make reference to the schedules to CPO in this regard.
18. Please consider how title deeds of the properties converted to the LTRS and relevant documents should be disposed of.

Council Business Division 1
Legislative Council Secretariat
18 August 2003