

## **Bills Committee on Land Titles Bill**

### **RESPONSE TO MISCELLANEOUS ISSUES**

#### **Purpose**

This paper provides responses to various issues raised by Members at the 11<sup>th</sup> Bills Committee meeting.

#### **Background**

2. At the 11<sup>th</sup> Bills Committee meeting on 31 July 2003, Members asked the Administration to, inter alia:-

- (a) arrange for a mock title register before the Bills Committee completes scrutiny of the Bill, highlighting the types of interests and documents that need to be registered under the Land Titles Registration System;
- (b) given that the effect of registration is set out in clause 21, examine the merits and demerits of setting out the effect of registration of long term lease in a separate clause (i.e. clause 22);
- (c) 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;
- (d) check whether the wording of clause 34 as presently drafted is the same as that of the relevant provision in the Land Registration Ordinance so as to ensure that the priority of a charging order will be retained upon its re-registration;
- (e) consider adding schedules to the Bill to set out clearly the procedures, practices and forms of documents to be submitted for registration under the Land Titles Registration System and make reference to the schedules to the Conveyancing and Property Ordinance in this regard; and

- (f) consider how title deeds of properties converted to the Land Titles Registration System and relevant documents should be disposed of.

### **Mock title registers**

3. In respect of paragraph 2(a), the mock title registers are set out at Annexes 1 and 2.

- (a) *Ownership Register*

This is a register to record the particulars of the property, owner (lessee of the Government Lease) and the incumbrances. An applications record setting out the details of any applications pending registration forms part of the register.

- (i) Matters registrable under “owners particulars”

These are matters which will change the ownership of the land such as transfers, transmissions on death of owner or trustee, bankruptcy, liquidation and court orders, inhibitions and restrictions.

- (ii) Matters registrable under “incumbrances”

These are matters which will affect the land. Examples are charges, consent cautions (sale and purchase agreements), non-consent cautions (lis pendens), deeds of mutual covenant, easements, covenants, overriding interests, charging orders and leases.

- (b) *Long-term Lease Register*

This is a register to record the particulars of the long term lease, the lessee and the incumbrances. An applications record setting out the details of any applications pending registration forms part of the register.

(i) Matters registrable under “the lessee particulars”

These are matters which will change the interest in the long-term lease. Examples are transfers of the long term lease, transmissions on death of the lessee or trustee, bankruptcy, liquidation and court orders, inhibitions and restrictions.

(ii) Matters registrable under “incumbrances”

These are matters which will affect the long term lease. Examples are charges, consent cautions, non-consent cautions, deeds of mutual covenant, easements, covenants, overriding interests, charging orders and sub-leases.

### **Long term lease**

4. In respect of paragraph 2(b), clause 21 sets out the effect of registration of a person as an owner of the registered land, that is, the lessee of a Government lease or an owner of an undivided share in the land. Clause 22, on the other hand, sets out the effect of registration of a person as the lessee of a registered long term lease. This person is the person who leases the land from the registered owner of the land for a term of over 21 years but shorter than the term under the Government lease. The effect is that the interest in the long-term lease and all rights attaching to the land thereto will be vested in that person. Since clauses 21 and 22 deal with different situations, clause 22 is necessary.

### **Priority**

5. In respect of paragraph 2(c), the priority of instruments registered under the existing Land Registration Ordinance are as follows.

- (a) The priority of the registered instruments is determined according to the dates of registration which are the dates of delivery for registration (Section 3(1)).
- (b) All instruments which are registered within one month after the time of execution and all judgments which are registered within one month after the recording shall be entitled to priority as from the time of execution or dates of the judgments respectively (Section 5).

- (c) A charging order or lis pendens shall have priority from the day following the date of its registration (Section 5A).
6. The priority of matters registered under the Bill will be as follows.
- (a) Registered matters will have priority according to the order of presentation for registration (clause 33(1)).
  - (b) If a consent caution is registered, the priority of the subsequent registered dealing (the subject of the caution) relates back to and takes effect from the priority of that consent caution (clause 33(7)(a)). An example is where a consent caution is registered in respect of a sale of a property and supported by the sale and purchase agreement. The subsequent registered transfer will relate back and take priority from the order of registration of the consent caution.
  - (c) If a non-consent caution is registered and the interest (the subject of a non-consent caution) is registered, the priority of that interest will relate back to and take effect from the priority of the non-consent caution (clause 33(7)(c)). An example is where a lis pendens supported by a writ of summons claiming some interests in the land is registered as a non-consent caution, a court order declaring the existence of such interests when registered will relate back and take priority from the non-consent caution.
  - (d) Clauses 33(4) to (6) are transitional provisions regulating the priority of an instrument dated before the date of the first assignment or voluntary application for first registration and registered within one month from the date of that instrument to be determined in accordance with the provisions of the Land Registration Ordinance.
7. The differences between the priority under the existing system and the proposed Bill are as follows.
- (a) The priority under the existing system is determined in accordance with the date of registration whereas the priority under the Bill is determined in accordance with the order of presentation for registration.

- (b) The one month relation back rule under the existing system is abolished under the Bill. Any person dealing with the property will not be subject to any uncertainty as to whether there would be any subsequent instruments registered but related back to the time of execution which takes priority over his transaction.
- (c) A charging order or lis pendens will have priority from the order of registration under the Bill instead of the next day.
- (d) Under the Bill, the priority of dealings which are the subject of the consent and non-consent cautions can relate back to and take effect from the date of registration of those cautions.

8. The implications of using the order of presentation of applications as the basis for determining the priority of registered matter are as follows.

- (a) The application of the matters must be prepared in advance of the execution of the matters
- (b) The application of the matters must be presented for registration as soon as possible to preserve the priority.

### **Charging order**

9. In respect of paragraph 2(d), a charging order has to be re-registered every 5 years under Section 17 of the Land Registration Ordinance. Clause 34(1) incorporates this requirement into the Bill and the charging order if re-registered will have effect for 5 years from the date of re-registration. The wording used in clause 34(1) is the same as Section 17 of the Land Registration Ordinance.

### **Schedules**

10. In respect of paragraph 2(e), our intention is that -

- (a) the forms of conveyancing documents will be specified by way of regulations to be made under the Bill and the drafting will take into account the forms in the schedules of the Conveyancing and Property Ordinance; and

- (b) as the procedures and practice will have to be amended as necessary, they will not be specified in the schedules to the Bill. Rather, they will be issued as guidelines to solicitors and users from time to time.

### **Disposal of documents**

11. In respect of paragraph 2(f), the title deeds of properties converted to the new system may be retained by the owners or mortgagee, as the case may be. The supporting instruments for registration of the matters will be returned to the lodging party for their disposal.

*September 2003*  
*Housing, Planning and Lands Bureau*

## FORMAT OF TITLE REGISTER業權註冊紀錄的樣式

## 擁有權註冊紀錄 OWNERSHIP REGISTER

### 物業資料 Property Particulars

業權編號  
Title No.:  
地段編號  
Lot No.:  
土地不分割份數  
Undivided share in land:  
地址/位置  
Address/Location:

批約  
Held under:  
年期  
Lease Term:  
開始日期  
Commencement of Lease Term:  
每年地稅  
Rent per annum:  
物業備註  
Remarks:  
首次註冊日期  
Date of 1st registration:

### 業主資料 Owners Particulars

業主姓名 Name of Owner	身分(如非唯一擁有人) Capacity (if not sole owner)	交易性質 Nature of Dealing	申請編號 Application No.	支持文書日期 Date of Supporting Instrument	註冊日期 Date of Registration	成交價錢 Consideration	備註 Remarks
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### 產權負擔 Incumbrances

申請編號 Application No.	文書/合約/呈請/命令等 日期 Date of Instrument/Contract/ Petition/Order etc.	註冊日期 Date of Registration	交易/申請性質 Nature of Dealing/Application	文書/合約/呈請/命令等 性質 Nature of instrument/ Contract/Petition/Order etc.	受益方/申請人/有關各方的姓 名/名稱 Name of Party in favour of/ Applicant/Relevant Parties	成交價錢 Consideration	備註 Remarks
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**申請紀錄**  
**Applications Record**  
**(Applications Pending Registration等待註冊的申請)**

申請編號 Application No.	附連文書日期 Date of accompanying instrument	呈遞日期 Date of Presentation	交易/申請性質 Nature of Dealing/Application	附連文書性質 Nature of accompanying instrument	有關各方姓名/名稱 Name of parties	成交價錢 Consideration
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## FORMAT OF TITLE REGISTER業權註冊紀錄的樣式

## 長期租契註冊紀錄 LONG TERM LEASE REGISTER

### 物業資料 Property Particulars

業權編號  
Title No.:  
地段編號  
Lot No.:  
土地不分割份數  
Undivided share in land:  
地址/位置  
Address/Location:  
長期租契資料  
Particulars of long term lease:  
日期  
Date:  
年期  
Term:

批約  
Held under:  
年期  
Lease Term:  
開始日期  
Commencement of Lease Term:  
每年地稅  
Rent per annum:  
物業備註  
Remarks:  
首次註冊日期  
Date of 1st registration:

### 承租人資料 Lessee Particulars

承租人姓名 Name of Lessee	身分(如非唯一擁有人) Capacity (if not sole owner)	交易性質 Nature of Dealing	申請編號 Application No.	支持文書日期 Date of Supporting Instrument	註冊日期 Date of Registration	成交價錢 Consideration	備註 Remarks
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