

Bills Committee on Land Titles Bill

Response to Drafting Issues

Purpose

This paper sets out the Administration's response to the drafting issues set out in paragraphs 7, 8(c), 9(a), 9(b), 11, 13 & 16 of the List of Follow-up Actions to 11th Meeting ("FUA") (LC Paper No. CB(1) 2462/02-03(1)).

Questions and Responses

Clause 5 (Land Registry) - Para 11 of List of FUA

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

3. Response: There does not appear to be any real risk of ambiguity that requires amendment. There is only one public office known as the Land Registry in Hong Kong. For as long as the Land Registration Ordinance remains on the statute books the Land Registry will perform the functions required by that Ordinance. As and when the Land Titles Bill is enacted the Land Registry will also be the public office designated to perform the functions required under the new legislation.

Clause 21 (Effect of Registration) - Paragraph 13 of List of FUA

4. The Issue : 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.

5. Response: Clauses 14(2), 21(2), 22(2) and 23(2) ought to be considered together under this issue.

6. The Administration will amend Clause 21(2) to make it clear that upon registration of a transfer or transmission under Clause 21, the various interests stated in Clause 21(2) will be binding on the purchaser.

7. We also intend to make similar amendments to **Clauses 14(2) and 22(2)** with suitable modification.

Clause 25 (Entries in Title Register to constitute notice) - Paragraph 7 of List of FUA

8. The Issue : Given the Administration's policy intent to abolish the doctrine of notice under the Bill, the Administration was requested to delete from the relevant clause (e.g. Clause 25) all references to the doctrine of notice as to reflect its policy intent.

9. Response : It is the Administration's intention that the doctrine of notice will be abolished once the land or long term lease is registered on a Title Register under the Bill. The effect of registration of land or long term lease and its transfer and transmission are now set out in Clauses 14 (first registration), 21 (transfer or transmission after open of register), 22 (registration of long term lease), and 23 (voluntary transfer) of the Bill. The land or long term lease shall be free from all interests and claims except those expressly preserved under the respective provisions.

10. Registered matters affecting land and overriding interests are expressly preserved under Clauses 14, 21, 22 and 23. Clause 24 lists out the 'overriding interests' and provides that the registered land shall be subject to them notwithstanding the overriding interests are not the subject of an entry in the Title Register. The Administration's intention has already been clearly reflected in those provisions.

11. The purpose of abolishing the doctrine of notice with respect to properties brought under the title register is to protect persons engaging in transactions from matters that have not been registered and which create uncertainty that investigations cannot be relied upon to resolve. Clause 25 is the counter-part to this, making it absolutely clear that a person acquiring property cannot claim that he does not know about any matter that is entered in the Title Register.

Clause 30 (Protection of persons dealing in registered land) - Paragraph 8(c) of List of FUA

12. The Issue : Please amend the phrase "a trustee in that capacity" in clause 30 to improve its clarity.

13. Response : Suitable amendments will be made to Clause 30 to provide a linkage with Clause 69 in order to improve its clarity.

14. The phrase "without notice of the breach" in Clause 30 will be deleted.

Clause 34 (Charging orders and lis pendens) - Paragraph 16 of List of FUA

15. The Issue : Please check whether the wording of clause 34 as presently drafted is the same as that of the relevant provision in Land Registration Ordinance so as to ensure that the priority of a charging order will be retained upon its re-registration.

16. Response : Under the current case law on registration there is an English House of Lord's decision in Shaw v Neale (1856) 6 H.L. Case 581 (English Report Vol.10 at p.1422) to the effect that if a second encumbrance was registered within the 5 years' validity of the first encumbrance, then the first encumbrance is protected as against the second encumbrance even though there is no re-registration of the first encumbrance after the expiry of the 5 years' period. No relation-back provision is required for the current s.17 of LRO.

17. For the avoidance of doubt, the Administration proposes to make appropriate amendments to Clause 34 to state clearly that re-registration of a charging order or lis pendens shall have a priority relating back to its first registration.

Clause 51 (Deed of Mutual Covenants) - Paragraph 9 of the List of FUA

18. The Issue : 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 present assignment into the assignment under the LTRS whereby the purchasers will be subject to and with the benefit 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.

19. Response :

As to Paragraph 18(a)

20. The present standard Assignment (Form 1 of Third Schedule) prescribed under s.37 of CPO contains the phrase "*subject to and with the benefit of the Deed of Mutual Covenant*" in its operative part. A dealing in the standard assignment form will take effect to assign the property subject to and with the benefit of the DMC provisions. Even if the standard assignment form is not used, Section 41(9) of CPO may impose on a new purchaser the obligations under a DMC.

21. Clause 58 of the Bill provides that a disposition of registered land or long term lease *may be made in any manner as could have been done prior to the date of first registration* unless a new form has been specified for that purpose under the Bill. So if no assignment form is specified under the Bill, the current CPO assignment form remains applicable both to registered and unregistered land after the passing of the Bill. If a specified form of assignment is introduced under the Bill, the Administration will incorporate a clause similar to that in the present CPO assignment form.

As to Paragraph 18(b)

22. The Administration proposes to amend s.41(9) of CPO to the effect that a covenant in the DMC registered under the Land Titles Ordinance shall bind the successor in title or the covenantor and the persons deriving title under or through him or them whether or not they had notice of the covenant.

23. Clause 51 of LTB will be amended to clarify that nothing in that clause will affect the operation of Sections 39, 40 and 41 of the CPO except to the extent as amended by the Bill.

24. Item 94 of the Schedule 2 (consequential amendments) of the Bill will be amended to give effect to this proposal accordingly.

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Housing, Planning and Lands Bureau