

Bills Committee on Land Titles Bill
Twelfth meeting on 19 September 2003

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

1. Annex A to the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03)) sets out the volume and value of transactions in Hong Kong over the last five years, including the value of assignments exceeding \$30 million. To facilitate the Bills Committee’s full understanding of the situation, please revise Annex A to the paper by adding information on the number of assignments exceeding \$30 million.
2. On the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03)), please confirm whether there is any provision in the Bill which gives effect to the statement in paragraph 15 of the paper that “the case of the Indemnity Fund (IF) having to borrow money to cover a payment for which the Land Registry is liable will not arise” and also the Administration’s proposed arrangement that the IF would be indemnified by payment out of the Land Registry Trading Fund (LRTF) in case of mistake or omission of Land Registry staff; if there is, please highlight the relevant clause(s); if there is not, please consider adding such a provision to make the situation clear and to define the ambit of the provisions to be set out in the Regulations on the operation of the IF.
3. According to paragraph 21 of the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03)), in general, fraud committed by anyone, including Land Registry staff, will be covered by clause 82(1)(a), and the LRTF will not be responsible for reimbursing the IF for indemnity payments so made. Please take the following actions:
 - (a) As a matter of law, please explain the position under the common law whether an employer is responsible for the fraud committed by his employee in the official capacity. As a matter of policy, please explain the general policy of the Government in this regard.

- (b) As regards this Bill, please explain why the Administration is taking the position mentioned in paragraph 21 of the paper and highlight the relevant provisions in the Bill.
 - (c) In response to members' view that the Land Registry should be responsible for all acts (including fraud) of its staff performed in their official capacity, please advise whether the Government would be vicariously liable for the fraud committed by its employee if the act is within the course of employment and whether the Bill changes the common law on this aspect. Please also advise whether the differentiation between a staff member of the Land Registry committing fraud in his official capacity and outside his duties is provided for in the Bill and whether it is practicable to make such a differentiation. Moreover, please consider whether the Land Registry would be responsible for the fraud committed under the following scenarios:
 - (i) Fraud committed by a staff member of the Land Registry through the negligence of his supervisor; and
 - (ii) Fraud committed by someone who conspires with the Land Registry staff.
 - (d) Please consider whether the existing provisions are sufficient to empower the Government to reimburse the IF from the LRTF for indemnity payments as proposed by the Administration.
4. In relation to the paper on "Roles of Registration Authority and Solicitors — Comparison with the English System" (LC Paper No. CB(1)2464/02-03(04)), please consider adopting the English system under which there is a shared responsibility between the Chief Land Registrar and solicitors on the examination of title prior to first registration of a property. Please also seek the views of the Law Society of Hong Kong (Law Soc) in this regard and draw up a workable system for the proposed land title registration system (LTRS) in Hong Kong.
5. On the proposed format of the "Ownership Register" and "Long Term Lease Register" attached in Annexes 1 and 2 to the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)2464/02-03(05)), please take the following actions:

- (a) Whilst appreciating that the proposal for a separate register for long-term lease is made by the Administration to address the concerns of the Law Soc about cases like the Robinson Place where the interest in the long-term lease and all rights attaching to the land thereto are vested in the person who leases the land from the registered owner of the land for a term over 21 years but shorter than the term under the Government lease, members are concerned about the need for such a separate register and the possible confusion arising from keeping two registers at the same time. Please take the following steps -
 - (i) Please merge the two registers into one and, using cases like the Robinson Place as examples, fill in details in the merged register to enable members to examine whether the merged register is viable and whether clause 22 is needed. Please also provide in the register a cross-reference to the relevant information, such as registration of consent cautions and non-consent cautions, if any; and
 - (ii) If the Bills Committee considers the merged register viable and that clause 22 is not needed, please consult the Law Soc on adopting the merged register and the deletion of clause 22.
- (b) Please reconsider the design of the title register in the light of the Assistant Legal Adviser's comments, as follows:
 - (i) The design of the title register is closely related to the operation of the LTRS which focuses on registration of interests. However, the format of the two registers in Annexes 1 and 2 to the paper focuses on the registration of documents. It is not clear how registration of covenants and easements is to be shown in the register;
 - (ii) The exclusive right to use the unit concerned and the date of presentation for registration should be provided in the title register;
 - (iii) The need for providing in the title register the date of registration and the date of the supporting instrument merits further consideration; and
 - (iv) Reference may be made to the English system under which separate registers for title, property and land charge are maintained to obviate the need to include too much property details in the title register and to promote clarity of the language of the legislation.

6. According to the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05)), the one-month relation back rule under the existing system will be abolished after the implementation of the LTRS. Please take the following actions:
 - (a) Please provide the justifications for the proposed abolition of the one-month relation back rule, including the problems encountered under the existing system.
 - (b) To address members’ concern that the proposed abolition of the one-month relation back rule may result in operational difficulties and possible confusion because the persons concerned may rush through all the procedures and documents involved in a property transaction in order to effect early registration, please examine how the proposed arrangement could be improved. For example, a shorter relation back period may be provided. In this connection, please take into account the normal time required for clearing bank cheques in a property transaction, and preparing a consent caution and the Sales and Purchase Agreement. Please also make reference to the practices adopted in other jurisdictions in this regard.
 - (c) Please provide a sample of the application form(s) for registration of consent cautions and non-consent cautions. Please also include in the application form(s) a cross-reference to the title register.
7. According to paragraph 11 of the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05)), the supporting instruments for registration of the matters will be returned to the lodging parties for their disposal. Please consider requiring the parties concerned to keep the documents for a certain period of time, say a period of six years, to enable examination of the original documents when there is a need to do so, e.g. when there is a need to determine whether the documents and/or signatures are authentic or forged.
8. According to paragraph 9 of the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05)), a charging order has to be re-registered every five years under section 17 of the Land Registration Ordinance (LRO) (Cap. 128), and clause 34(1) incorporates this

requirement into the Bill. Given the Administration's policy intent that the doctrine of notice will be abolished under the LTRS, the Assistant Legal Adviser is concerned that clause 34(1) is unable to ensure that the priority of a charging order will be retained upon its re-registration even though its wording is a replica of section 17 of the LRO. Please examine how this concern could be addressed.

Council Business Division 1
Legislative Council Secretariat
30 September 2003