

**Bills Committee on the Land Titles Bill**

**RESPONSE TO  
MISCELLANEOUS ISSUES**

**(13<sup>th</sup> and 14<sup>th</sup> Bills Committee Meetings)**

**Purpose**

This paper provides responses to various issues raised by Members at the 13<sup>th</sup> and 14<sup>th</sup> Bills Committee meetings.

**Background**

2. At the 13<sup>th</sup> and 14<sup>th</sup> Bills Committee meetings held on 29 and 30 September 2003 respectively, Members asked the Administration to, inter alia :-

- (a) consider issuing guidelines in due course to set out clearly the circumstances under which the Land Registrar would exercise his power to compel registration as provided for in Clause 32;
- (b) examine whether the stamping requirement under Clause 70(2) is consistent with that under Clause 59;
- (c) review Clause 44(1)(b) and consider whether it is appropriate to require the vendor to provide the purchaser with particulars of any overriding interests affecting the land or lease; and
- (d) explain the purpose of Clause 43 (covenants for title) and the provisions of Section 35 of the Conveyancing and Property Ordinance (Cap.219) referred to in the clause.

**Guidelines for compelling registration**

3. We will issue guidelines on the circumstances under which the Land Registrar will exercise his power to compel registration under Clause 32. In essence, these guidelines will explain that to underline the objective of ensuring that all interests in the land are registered under the title registration system, the Registrar will require the registration of any unregistered matter that has come to his attention which he considers should be registered. An example is where a

consent caution supporting a sub-sale of property is presented for registration but no principal sale agreement has been registered. The Land Registrar will require the confirmor to register a consent caution on his own purchase agreement.

### **Consistency of Clause 70(2) with Clause 59**

4. Clause 70(2) provides for a mechanism to facilitate the registration and relation back of an interest created under a provisional agreement for sale and purchase or an agreement for sale and purchase during the stamping period of these instruments. When these instruments are presented for stamping, the purchaser can make a statutory declaration to support the application for registration of the consent caution (“the first consent caution”). Under Clause 33(7)(b), where such consent caution has been registered and another consent caution (“second consent caution”) accompanied by the stamped agreement is registered not later than 30 days after registration of the first consent caution, the priority of the second consent caution relates back to and takes effect from the priority of the first consent caution. In effect, the interest created under the agreement will be protected during the stamping period.

5. Clause 59 provides that no instrument required by law to be stamped should be accepted for registration of any matter unless it is stamped. Clause 70(2) deals with registration of a consent caution supported by a statutory declaration. The declaration itself does not have to be stamped. As they deal with different matters, there is no inconsistency between the two clauses.

### **Disclosure of overriding interests by the vendor under Clause 44**

6. Although overriding interests can have effect even if they are not registered the more that such interests can be identified and registered, the more useful the register becomes. The Administration remains of the view that it is an appropriate and not unduly onerous requirement on first registration to lay on the vendor or applicant a duty to disclose full particulars of any overriding interests which he has or ought reasonably to have knowledge of. It is the vendor (or voluntary applicant) who is in the best position to know about such interests if they exist. The reasonable knowledge test protects him from claims that he should have disclosed information that was not readily available from inspection of the ground, notice given to him or publicly available information. Under Clause 44(2), on the first assignment effecting a first registration of land under Clause 12(1)(a), the vendor shall at his own expense provide the purchaser of the land with full particulars of any overriding interest affecting the land which he has, or ought

reasonably to have, knowledge of. The purchaser should include these particulars in the application for first registration of the land.

7. The same requirements are stated in Clause 44(1)(b) for the vendor in subsequent sales of the property. However, this is “subject to any stipulation to the contrary” which means that the vendor can contract out of this requirement.

8. Similar provisions exist in Section 110(2) of the English Land Registration Act (1925). The vendor is under a statutory obligation to disclose the overriding interests to the purchaser.

### **Purpose of Clause 43 (Covenants for title)**

9. The covenants should pass to the purchaser upon transfer of ownership. Section 35 of the Conveyancing and Property Ordinance operates to imply the covenants into the transfer. Clause 43 aims to state clearly that this section applies to registered land. In other words, the implied covenants will still apply to registered land upon transfer and legal charge. It will, therefore, not be necessary to state these covenants expressly in the transfer. We consider that it is not necessary to make any amendments to Section 35 of the Ordinance or Clause 43 of the Bill.

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*Housing, Planning and Lands Bureau*