

Bills Committee on Land Titles Bill
Fifteenth meeting on 14 October 2003

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

1. Please consider making it clear to the public, in particular solicitors, that they may search properties by owners' names provided that they comply with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486).
2. Please further consider the details of the format of title register(s) and consult the Bills Committee before implementation of the land title registration system (LTRS).
3. Please seek the views of the Law Society of Hong Kong (the Law Soc) on whether the Administration's proposal for a separate register for long-term lease could address its concern, and report the outcome of the discussion to the Bills Committee in due course.
4. According to the sample register under the English system in Annex 2 of the paper on "Format of Title Registers" (LC Paper No. CB(1)38/03-04(04)), there is a restriction in the "Proprietorship Register" where it is stated that "Except under an order of the registrar no disposition by the proprietor(s) of the land is to be registered without the consent of the proprietor(s) of the Charge". In this connection, please consider the following concerns raised by members:
 - (a) The legal charge or mortgage normally contains a provision stipulating that the borrower shall not cause or permit any second or further legal charge or mortgage to be effected on the property concerned without the prior written consent of the lender. Members are concerned that while a second mortgage made without such consent is registrable under the existing deeds registration system, it may not be registrable under the LTRS because of the restriction imposed by the legal charge.

- (b) The restriction stated in the sample register under the English system seems to have the effect of restricting transaction of the property concerned because no disposition of the property is to be registered without the consent of all the proprietors of a charge.

Please address members' concerns in items (a) and (b) above and confirm whether there is any policy change under the LTRS; if there is, please provide the reasons for the change and explain how the two scenarios could be dealt with under the LTRS.

- 5. Whilst having no objection to the provision of the "date of registration" in the Title Register (sample attached in Annex 1 to the paper on "Format of Title Registers" (LC Paper No. CB(1)38/03-04(04)), members note that according to clause 33, matters appearing in the Title Register shall have priority according to the order in which the applications which led to their registration were presented to the Land Registrar. Please consider whether it is more appropriate to replace the "date of registration" in the Title Register by other terms, such as "date of presentation for registration" or "date of delivery of application for registration". If the "date of registration" is to be retained in the Title Register, please consider the need to make it clear to the public that upon registration of a dealing, the date of registration shall be the date of presentation of that dealing (paragraph 6 of the paper on "Format of Title Registers").
- 6. Please consider the Assistant Legal Adviser's view that the English system has three separate registers, namely the property register, proprietorship register and charges register, which is a clearer arrangement to avoid any possible confusion.
- 7. According to paragraph 3 of the paper on "Response to Miscellaneous Issues" (LC Paper No. CB(1)38/03-04(05)), 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. Members note that under clause 32(1), the Registrar may, by notice in writing served on the person concerned, require the person to present the application to the Registrar not later than 30 days after the notice is served. If the application is not presented to the Registrar

within the 30-day period, please confirm whether the Registrar will merely refuse the application for registration of the agreement for sub-sale and purchase or take any other action.

8. Please advise whether a purchaser in a sub-sale of a property may apply for the registration of the agreement for sub-sale and purchase as a non-consent caution under clause 70(3). Please also consider how restrictive a non-consent caution should be, taking into account the need for certainty of ownership and the development of electronic application.
9. Please seek Law Soc's views on whether clauses 70(2) and 33(7)(b), if read together, could provide for the proposed arrangement in relation to 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 as elaborated in paragraph 4 of the paper on "Response to Miscellaneous Issues" (LC Paper No. CB(1)38/03-04(05)).
10. Please provide a copy of section 35 of the Conveyancing and Property Ordinance (Cap. 219) to facilitate the Bills Committee's consideration of the purpose of clause 43 as mentioned in paragraph 9 of the paper on "Response to Miscellaneous Issues" (LC Paper No. CB(1)38/03-04(05)).

Council Business Division 1
Legislative Council Secretariat
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