

Bills Committee on Land Titles Bill
Sixteenth meeting on 21 October 2003

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

Part 6 — Instruments

1. Clause 61(2) provides that where a disposition by a minor of registered land has been registered and the person to whom the disposition is made acted in good faith and for valuable consideration and the minority of that minor was not disclosed to that person at any time before the registration of the disposition, that disposition shall not be set aside only on the ground of that minority. Members note that this arrangement is different from the existing law under which the disposition concerned could be set aside. To facilitate the Bills Committee's consideration of the issue, please advise how disposition by a minor is dealt with under the English system, in particular whether an arrangement similar to that under clause 61(2) has been adopted.
2. In examining clause 61(2), members express the view that there should be a clause in the Bill setting out clearly in simple terms that once a person is registered as the owner of a property, his title is absolute except in certain circumstances, e.g. in cases where the purchaser knows that the person selling the property is a minor. Noting the Administration's view that clause 61 is related to clause 21 (Effect of registration), members express concern that clause 21 is not sufficiently self-contained for the purpose and it is, as presently drafted, repetitive and clumsy. To address members' concerns, please consider how the structure and drafting of the relevant provisions could be improved so that the effect of registration and any exceptions will be clearly set out in simple terms in a single clause.

Part 7 — Transmissions and Trusts

3. According to clause 62, where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease dies, the Land Registrar, on proof to his satisfaction of the death, shall remove the name of the deceased from the Title Register concerned. To facilitate the

Bills Committee's consideration of whether the name of the deceased should be removed from the Title Register or retained in the Title Register as a historical record, please take the following actions:

- (a) Please explain by way of an example how transmission on death of a joint tenant is done, and provide a sample to show what the Title Register would look like in such a case. Please also examine whether the proposed arrangement is clearly reflected in clause 62.
- (b) Noting the Assistant Legal Adviser's view that a registered charge involving a deceased joint tenant/chargor shall continue to take effect after his death and the name of the deceased should be traceable through the Title Register, members are concerned how the actual process will work whenever there is a change to the particulars in the Title Register. Please provide a few examples to show how the actual process will work and samples of Title Register to show how the changes will be presented in the Register within the confines of clause 10. In this connection, please also provide another sample to show how a case involving more complicated transfers, such as inhibitions, trust documents, etc. will be presented in the Title Register. If in producing the samples the Administration notices that there are things which are not yet set in stone, please draw the Bills Committee's attention to them.
- (c) Clause 62(1) provides that where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease dies, the remaining joint tenant or tenants shall be subject to any interests subject to which the deceased joint tenant held the land, charge or lease immediately prior to his death; which are unregistered; and which are enforceable against the land or lease. Please confirm whether it is the policy intent that the remaining joint tenant or tenants shall be subject to the same rights and incumbrances as those before the death of the deceased joint tenant. In other words, transmission on death of a joint tenant will not change the status quo apart from the change in ownership, and the remaining joint tenant would hold the land subject to exactly the same rights and incumbrances as before without any alterations. If it is so, please improve the drafting of clause 62(1) to set out clearly the policy intent.

- (d) In relation to clause 62(2)(b), please explain how the purchaser of a property could come to know that the payment of estate duty has been postponed in accordance with the provisions in the Estate Duty Ordinance (Cap. 111), and how such postponement would affect registration of the property and the interests of the purchaser under the land title registration system (LTRS), in particular where there is a charge on the property as a result of the postponed payment. Please also consider the Assistant Legal Adviser's view that the registered charge is not an interest in land chargeable to estate duty and hence may not need to be mentioned in clause 62(2)(a).
- 4. Please improve the drafting of clause 65 in the same way as clause 62(1) so as to clearly set out the policy intent that transmission on death will not change the status quo apart from the change in ownership. In other words, upon death of the owner of registered land, the personal representative to be registered as the owner would hold the land subject to exactly the same rights and incumbrances as before without any alterations.
- 5. In relation to clause 67 which provides for the transmission on liquidation, please consider how receivership should be dealt with under the LTRS.
- 6. Please examine the need to cover in clause 68 a person who has become entitled to registered land as a trustee under a court order.
- 7. In relation to clause 69, please take the following actions:
 - (a) Please amend the heading of clause 69 to make it clear that particulars of trusts, but not the trusts themselves, are not to be entered in the Title Register.
 - (b) Clause 69(1) and (2) provide that the Land Registrar shall not enter particulars of the trust in the Title Register. As restrictions are the exceptions, please consider amending the two subclauses to make it clear that they are subject to the provisions on restrictions in the Bill. Please also provide a sample to show how restrictions are entered in the Title Register.

Part 9 — Rectification and Indemnity

8. Please consider adding a new item (c) to clause 80(1) to provide for other circumstances not covered by item (a) or (b) in the same subclause. For example, according to the Administration, where there is a typographical error in relation to the name of the registered owner which materially affects the interests of the owner (hence not covered by clause 80(1)(a)), the Land Registrar may rectify the error if the rectification is justified by relevant supporting documents. In the circumstance, there is no need to seek the consent of all persons interested (hence not covered by clause 80(1)(b)).
9. To facilitate the Bills Committee's examination of clause 81 (Rectification by Court of First Instance), please provide a paper on the substance of and issues relating to the clause. In this connection, the Bills Committee notes that the procedure for seeking rectification has been set out in the paper on "Mistake, Rectification and Indemnity — Supplementary Paper" (LC Paper No. CB(1)2305/02-03(04)).

Part 10 — Appeals

10. Clause 88 provides that "in any case of doubt or difficulty or in any matter not provided for under this Ordinance", the Land Registrar may apply to the Court of First Instance for directions on principles of law. Please take the following actions:
 - (a) As the scope of "any matter not provided for under this Ordinance" is very broad, please explain the policy intent behind and the justifications for clause 88, and define the scope of powers of the Land Registrar under the clause.
 - (b) Please advise whether any other Government officials in a similar position have powers comparable to those of the Land Registrar under clause 88.
 - (c) As clause 88 is included in Part 10 of the Bill on appeals, please clarify whether the Land Registrar would only exercise his power provided for in the clause in dealing with appeal cases.