

**Bills Committee on Land Titles Bill
Seventeenth meeting on 28 October 2003**

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

Implied covenants

1. In relation to clause 43, please take the following actions:
 - (a) Members note that the new land title registration system (LTRS) is different from the existing deeds registration system (DRS) in the sense that it is a system focusing on registration of interests but not registration of documents. Under the LTRS, implied covenants would come into effect upon registration of the relevant interest transferred but not upon registration of the relevant document. Members therefore consider it not appropriate for clause 43(a) to provide that the provisions of the Bill shall not prejudice the operation of section 35 (Implied covenants) of the Conveyancing and Property Ordinance (CPO) (Cap. 219). In this connection:
 - (i) Please consider amending clause 43(a) and other relevant clauses in the Bill to rectify the situation; and
 - (ii) Please liaise with the Assistant Legal Adviser on how the drafting of clause 43 could be improved to clearly spell out the policy intent that implied covenants would come into effect upon registration of the relevant interest transferred.
 - (b) Section 35(2) of CPO provides that the covenants implied under section 35 may be excluded, varied or extended in the assignment or legal charge. Members are concerned how implied covenants which have been excluded, varied or extended will be dealt with under the LTRS. Noting that clause 43(b) provides that no reference to a covenant implied under section 35 of CPO shall be entered in the Title Register, members request the Administration to clarify whether implied covenants which have been excluded, varied or extended will be entered in the Title Register, and whether there is any express provision in the Bill in this regard.

- (c) Please consider issuing guidelines on how implied covenants will be dealt with under the LTRS for reference of legal practitioners.

Wrongful registration of cautions

- 2. Please take the following actions in response to the concerns and views of members about wrongful registration of cautions:
 - (a) Please ensure the consistency between clause 73 of the Bill and the common law. In this connection:
 - (i) Please research into case law in Hong Kong and overseas places, and advise whether, according to the principles in relation to tort under the common law, a person who suffers loss from wrongful registration of cautions may claim damages. If so, please set out with examples the circumstances under which such claims may be made;
 - (ii) Please explain in detail the Administration's view that clause 73 clarifies, but not changes, the existing law; and
 - (iii) Please clarify whether the phrase "wrongfully and without reasonable cause" in clause 73 is a new condition imposed on claim for damages.
 - (b) Please ensure the consistency between the existing DRS and the new LTRS, as the two systems would operate in parallel for some time after enactment of the Bill. In this connection, please consider the need to amend the relevant provisions in the Land Registration Ordinance (Cap. 128).
 - (c) Please ensure the consistency between the Chinese and English versions of the terms "wrongful" ("錯誤的") and "wrongfully" ("錯誤地") in clause 73. Please introduce appropriate amendments to address members' concern that the Chinese version does not accurately reflect the meaning of the two terms.
 - (d) Please consider whether clause 73, as presently drafted, is sufficiently clear to reflect the policy intent.

Part 11 of the Bill — Miscellaneous

3. In the paper on the substance and general policy issues on clause 92 (Determination of lot boundaries) to be provided by the Administration, please set out the policy intent, views of the concerned parties (such as surveyors) and the Administration's response to the views.
4. Please advise whether the meaning of the phrase "opportunity of being heard" as provided for in clause 94 is in any way different from that provided for in other ordinances, such as the Securities and Futures Ordinance (Cap. 571).
5. Noting the Administration's advice that clause 95 (Application to Court of First Instance by person other than Registrar) of the Bill is an improved procedure modelled on section 12 of CPO (Application to court by vendor and purchaser), members are concerned that the scope of the former is much wider than that of the latter. In this connection:
 - (a) Please provide the background and justifications for the expanded scope of clause 95, including:
 - (i) the justifications for the application of clause 95 to "a person interested in registered land, a registered charge or a registered long-term lease" instead of "a vendor or purchaser of land" as provided for in section 12 of CPO;
 - (ii) the justifications for the application of clause 95 to "any question relating to the title to the land, charge or lease or an interest in the land, charge or lease" instead of "any question arising out of or connected with any contract for the sale or exchange of land" as provided for in section 12 of CPO; and
 - (iii) the views of the Law Society of Hong Kong in this regard.
 - (b) Please provide a paper to address the following concerns of members -
 - (i) It is not clear who will be regarded as "a person interested in registered land" in clause 95. It may not cover a purchaser, or a title owner subject to certain restrictions or charges. The ambiguity may give rise to disputes on whether a person has interest in registered land and whether he may apply to the Court of First Instance under clause 95; and

- (ii) The reference to "petition" in clause 95 does not fit present day circumstances, as people rarely apply to the Court of First Instance in respect of questions of title by petition.
 - (c) Please consider the need to amend section 12 of CPO for improving the existing procedure.
 - (d) Please make rules on the procedures under clause 95.
6. In relation to clause 96, please take the following actions:
- (a) Please explain how the different levels of penalty under clause 96(1) to (6) have been fixed, and describe how they compare with those fixed for other offences.
 - (b) Please improve the drafting of the Chinese version of clause 96(1) to address members' view that the Chinese words "尋求將" are redundant.
7. In relation to clause 100, please take the following actions:
- (a) Clause 100(1)(zi) provides that the Land Registrar may be empowered by regulations to manage, borrow and invest the moneys of the indemnity fund. Please consider whether it is appropriate to empower the Registrar to borrow moneys of the indemnity fund and amend the subclause accordingly.
 - (b) Clause 100(1)(zm) provides that the Secretary for Housing, Planning and Lands (SHPL) may make regulations for procedures for instituting court proceedings for claiming indemnity. Please clarify and provide justifications for this provision.
 - (c) Please explain the reasons for empowering SHPL under clause 100(3)(a) to grant exemptions from the regulations.
 - (d) Please provide explanations for other provisions in clause 100 where necessary.