

## **Bills Committee on Land Titles Bill**

### **Part 11 - Miscellaneous Provisions**

#### **Purpose**

This paper outlines the miscellaneous provisions set out in Part 11, i.e., Clauses 92 to 102, of the Land Titles Bill. It also answers some of the points that the Bills Committee raised in relation to this part at its 17<sup>th</sup> meeting.

#### **Determination of lot boundaries**

2. Clause 92 provides that the owner of registered land may apply to the Director of Lands (“the Director”) for a determination of the boundaries of the lot or, a portion of the lot after the rest of the lot has been surrendered to or resumed by the Government. Determination of the boundaries means adding the bearings, boundary dimensions and coordinates in the process of updating the boundary.

3. Upon such application, the Director shall –

- (a) search whether a land boundary plan prepared by the Director already exists and, if there is such a plan, whether or not it is acceptable for determination of the lot boundaries; or
- (b) if there is no existing plan or the existing plan is not acceptable, advise the owner to appoint an authorized land surveyor to conduct a land boundary survey in accordance with the code of practice approved under the Land Survey Ordinance and to deliver the new plan certified by him to the Director.

If the Director decides that the existing plan (for (a)) or new plan (for (b)) is acceptable, he will, with the owner’s consent and payment of the relevant fee, register the plan in accordance with the Bill.

4. The Director shall not make a determination under this clause under the following circumstances –

- (a) if the existing plan or new plan changes the boundaries or area or measurement of the lot shown on a land boundary plan which is a land title record or on any Government lease or on the ground;
- (b) where the subdivision of a lot has been made by a person other than the Government;
- (c) where a lot is held under a block Government lease; or
- (d) where the application concerned does not have the consent of all the owners of the lot.

#### **Address for Service**

5. Under Clause 93, the Land Registrar is empowered to require an applicant for registration or an owner of registered land or a registered charge, or the lessee of a registered long term lease to provide an address for service in writing.

#### **Meaning of “opportunity of being heard”**

6. Two provisions of the Bill require an opportunity of being heard to be given to interested persons before an action may be taken. First, Clause 6(3) states that the Land Registrar shall not make an order for payment of costs and expenses in an inquiry, investigation or hearing held by the Registrar unless an opportunity of being heard is given to the person to be affected by the order. Second, Clause 79(1) requires an opportunity of being heard to be given to any person affected by a restriction before the Land Registrar removes or varies the restriction.

7. Similar provisions are found in Sections 198(1) and 218(5) of the Securities and Futures Ordinance (Cap.571) and Section 8(2) of the Securities and Futures (Investor Compensation – Claims) Rules. The term used is “a reasonable opportunity of being heard”. Rule 32(2) of the Matrimonial Causes Rules (Cap.179A) also states that the judge shall give

the parties an opportunity of being heard on the question of transfer to the Court of First Instance and for that purpose the registrar may give the parties a notice of a date, time and place at which the question will be considered. Copies of the relevant sections are at the Annex.

8. Clause 94 defines the meaning of an opportunity of being heard. The opportunity is deemed to be given to a person if he –

- (a) attends before the Registrar personally or by a solicitor or other agent, and is given such an opportunity;
- (b) intimates, personally or by a solicitor or other agent, that he does not wish to be heard; or
- (c) has been served with a written notice specifying the nature of the action and appointing a day and time not less than 12 working days after the service of notice at which he will be heard.

### **Application to Court of First Instance by person other than Registrar**

9. Under Clause 95, a person interested in registered land, a registered charge or a registered long term lease may apply by petition or originating summons to the Court of First Instance in respect of any question relating to –

- (a) the title to the land, charge or lease; or
- (b) an interest in the land, charge or lease.

10. Members have asked about the manner for beginning proceedings in the Court of First Instance. At present, Clause 95 provides that such proceedings may be started by either an originating summons or a petition. Every originating summons must contain a statement of the questions on which the plaintiff seeks the determination of the Court or a concise statement of the relief or remedy claimed with sufficient particulars to identify the cause of action. The plaintiff will have to file with the Court the affidavit evidence on which he intends to rely. The defendant can file his own affidavit evidence with the Court and the plaintiff may file further evidence in reply. A hearing can then be fixed. An originating summons is

used in proceedings in which the principal question at issue is one of construction of any written law or of any instrument or some other question of law or in which there is unlikely to be any substantial dispute of fact.

11. Clause 95 is modelled on Section 12 of the Conveyancing and Property Ordinance (CPO), which reads as follows -

“(1) A vendor or purchaser of land may apply by petition or by originating summons to the court in respect of any question arising out of or connected with any contract for the sale or exchange of land (not being a question affecting the existence or validity of the contract or relating to compensation payable by the Government or a public body), and the court may make such order upon the petition or originating summons and as to costs as to the court appears just.

(2) In this section, “court” (法院) means the Court of First Instance unless the vendor and purchaser submit to the jurisdiction of the District Court.”

12. The major difference between Section 12 of the CPO and Clause 95 of the Bill is that the coverage of Clause 95 is wider as it is not limited to questions arising out of contract for sale or exchange of land.

13. Rules for regulating applications made to the Court of First Instance are a matter for the Chief Justice (Clause 91). These rules will be prepared after enactment of the Bill.

14. As petition is rarely used for CPO Section 12 procedure, the Administration agrees that the reference to petition may be deleted from Clause 95. We will prepare the necessary amendments in due course.

## **Offences**

15. Clause 96 provides for various offences. Clause 96(1) deals with fraudulent acts in relation to, for example, applications for registration, title certificates and entries in the Title Register. Clause 96(2) relates to acts done without lawful authority or reasonable excuse. Clause 96(3) to Clause 96(4) deal with such matters as misleading Land Registry staff and failure to

present documents or comply with the Land Registrar's requirements. The penalties provided range from a fine of \$5 million and imprisonment for 14 years for fraudulent acts to a fine of \$10,000 for failure, without reasonable excuse, to comply with the Land Registrar's requirement to provide a written address.

16. The Bills Committee has asked how the penalties under the Bill for fraudulent acts compare with those for other similar offences. The penalties prescribed under the Theft Ordinance are imprisonment for 14 years for fraud and forgery and imprisonment for 10 years in respect of obtaining property or pecuniary advantage by deception. The Administration considers that the penalties proposed under the Bill are appropriate given the importance of real property to owners. They are intended to preserve the integrity of the Title Register and deter fraudulent acts so that the public can enter into property transactions with greater confidence and safety.

### **Power of Registrar to specify forms**

17. Under Clause 97, the Land Registrar is empowered to specify the form of any document required for the purposes of the Bill. These forms include the application forms and conveyancing documents.

### **Regulations relating to fees and levy**

18. Clause 98 empowers the Financial Secretary to prescribe fees and levy by regulation in respect of various applications made or services provided under the Bill, e.g., registrations, restrictions and title certificates.

### **Unpaid Fees**

19. Under Clause 99, the Land Registrar may register a matter notwithstanding a prescribed fee or levy or part thereof has not been paid. This is intended to facilitate registration of the subsequent matters. In this case, the Land Registrar will make an entry in the Title Register recording the unpaid fee. However, the Land Registrar is also entitled to refuse registration if there are unpaid fees.

## **Regulations – general powers**

20. The Secretary for Housing, Planning and Lands may by regulations provide for procedural matters under Clause 100. The more significant provisions are as follows –

- (a) the form of Title Registers and the title number (Clause 100(1)(i));
- (b) prescribing the use of conveyancing forms in transactions (Clause 100(1)(r));
- (c) the application for a title certificate, the cancellation and the procedures to be followed in the event of the loss of a title certificate (Clause 100(1)(x));
- (d) the procedure for filing an incorporated document and the effect of the filing (Clause 100(1)(y)); and
- (e) operation of the indemnity fund (Clause 100(1)(zh), (zi), (zj), (zk), (zl) and (zm)).

## **Amendment of Schedule 1**

21. Clause 101 provides that the Secretary for Housing, Planning and Lands may, by Gazette notice, amend Schedule 1, that is, the provisions of the Ordinance under which the Land Registrar shall not delegate any of this functions and powers.

## **Consequential amendments**

22. Clause 102 provides for consequential amendments, which are set out in Schedule 2. The Secretary for Housing, Planning and Lands may by Gazette notice amend Schedule 2.

## **Other Issues**

23. We will address other points raised by the Bills Committee in relation to Part 11 not covered above separately.

*November 2003*

*Housing, Planning and Lands Bureau*

## Section of Enactment

<b>Chapter:</b>	<b>571</b>	<b>Title:</b>	<b>SECURITIES AND FUTURES ORDINANCE</b>	<b>Gazette Number:</b>	<b>L.N. 12 of 2003</b>
<b>Section:</b>	<b>198</b>	<b>Heading:</b>	<b>Procedural requirements in respect of exercise of powers under Part IX</b>	<b>Version Date:</b>	<b>01/04/2003</b>

### Division 3-Miscellaneous

- (1) The Commission shall not exercise any power under section 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2) without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard.
- (2) The Commission shall not exercise any power under section 196(1) or (2) or 197(1) or (2) unless it has first consulted the Monetary Authority.
- (3) Where the Commission decides to exercise any power under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include-
- (a) a statement of the reasons for which the decision is made;
  - (b) the time at which the decision is to take effect;
  - (c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;
  - (d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and
  - (e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect as a specified decision under section 232) within which it is required to be paid.

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Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	218	Heading	Proceedings before Tribunal	Version Date:	01/04/2003

(1) After an application for review has been made, the Tribunal shall review the specified decision to which the application relates.

(2) Following the review of a specified decision under subsection (1), the Tribunal may-

- (a) confirm, vary or set aside the decision, and, where the decision is set aside, substitute for the decision any other decision which the Tribunal considers appropriate;
- (b) remit the matter in question to the relevant authority with the directions it considers appropriate, which may include a direction to the relevant authority to make a decision afresh in respect of any matter specified by the Tribunal.

(3) Where the Tribunal varies, or substitutes any decision for, a specified decision under subsection (2)(a), the decision as varied or the decision substituting for the specified decision (as the case may be) may be any decision (whether more or less onerous) that the relevant authority had power to make in respect of the person making the application for review in question, whether or not under the same provision as that under which the specified decision has been made.

(4) Without limiting the generality of subsections (2)(a) and (3) but subject to subsection (6)-

- (a) where the specified decision in question is a specified decision described in column 2 of Division 2 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Monetary Authority had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division; and
- (b) where the specified decision in question is a specified decision described in column 2 of Division 3 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Commission had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division.

(5) Notwithstanding anything in this section, the Tribunal shall not determine a review without first giving the parties to the review a reasonable opportunity of being heard.

(6) Without limiting the generality of subsection (5), the Tribunal shall not exercise any power pursuant to subsection (4)(a) or (b) without first giving a reasonable opportunity of being heard to—

- (a) in the case of subsection (4)(a), the Monetary Authority; or
- (b) in the case of subsection (4)(b), the Commission.

(7) Subject to section 221(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

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Chapter:	571T	Title:	SECURITIES AND FUTURES (INVESTOR COMPENSATION-CLAIMS) RULES	Gazette Number:	L.N. 215 of 2002; L.N. 12 of 2003
Section:	8	Heading:	Notice of determination	Version Date:	01/04/2003

(1) Subject to subsection (2), where the Commission makes a determination under section 7, it shall issue a notice of determination to the claimant as soon as practicable thereafter.

(2) The Commission shall not issue a notice of determination specifying a provisional amount of compensation that is less than the compensation claimed unless it has given the claimant a reasonable opportunity of being heard and, where the Commission decides to issue such a notice, it shall give its reasons in the notice of determination.

(3) Where the Commission determines that compensation should be paid to a claimant, it shall specify the following in the notice of determination-

- (a) the name of the person found to be in default;
- (b) the date of the default;
- (c) the provisional amount of compensation as determined under section 7;
- (d) any relevant specified securities or futures contracts or related assets; and
- (e) the amount of compensation payable under these Rules.

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Chapter:	79A	Title:	MATRIMONIAL CAUSES RULES	Gazette Number:	L.N. 54 of 2002
Rule:	32	Heading:	Order for transfer of cause	Version Date:	26/04/2002

(1) The court may order that a cause or application pending in the District Court be transferred to the Court of First Instance, where, having regard to all the circumstances including the difficulty or importance of the cause or application or of any issue arising therein, the court thinks it desirable that the cause or application should be heard and determined in the Court of First Instance.

(2) An order under paragraph (1) may be made by the judge of his own motion or on the application of a party, but before making an order of his own motion the judge shall give the parties an opportunity of being heard on the question of transfer and for that purpose the registrar may give the parties notice of a date, time and place at which the question will be considered.

(3) Any cause or application transferred to the Court of First Instance under paragraph (1) may be re-transferred to the District Court at any stage of the proceedings if the Court of First Instance thinks it desirable.

(L.N. 217 of 1987; 25 of 1998 s. 2; L.N. 26 of 2002)

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