

HPLB/LTB Paper 53/03

Bills Committee on Land Titles Bill

Implied Covenants – Supplementary Paper

Purpose

This paper provides supplementary information to address the Bills Committee's concern raised in the 17th Meeting as to how implied covenants which have been excluded, varied or extended will be dealt with under the title registration system and to consider issuing guidelines on this issue for reference of legal practitioners. (see Supplementary Response to Miscellaneous Issues (Implied Covenants) Paper (LC No. CB(1) 149/03-04(02)).

Section 35(2) of CPO and the Bill

2. Section 35(2) of the Conveyancing and Property Ordinance (“CPO”) states that the covenants implied under that section may be excluded, varied or extended in the assignment or legal charge.
3. Clause 43(a) of the Bill preserves the operation of section 35 of the CPO. Clause 43(b) puts it beyond doubt that the implied covenants need not be entered in the Title Register.
4. The Administration intends that excluded, varied or extended covenants and any new covenants should be registered with the transfer or charge that gives rise to them. The fact that there are exclusions, variations or extensions of the implied covenants provided for by S.35(2) of the CPO would be noted in the remarks column of the transfer or the legal charge. Sample remarks are set out in the Annex.

5. There is at present no express provisions for the above mechanism. The Administration will propose CSAs that provide explicitly for this mechanism. The aim will be to ensure that if several registrable matters are provided for in one instrument, registration of the principal matter supported by that instrument will effect the registration of other matters in that instrument which also affect the registered land, registered charge or registered long term lease.

6. The Administration will issue guidelines to solicitors on how implied covenants will be dealt with under the title registration system. In particular it will be made clear that solicitors can deal with the registration of covenants, easements or other matters affecting registered land, charges or long term leases contained within instruments for transfer or charging in the same application as that for the principal transfer or charge.

December 2003

Housing, Planning and Lands Bureau

FORMAT OF TITLE REGISTER業權註冊紀錄的樣式

擁有權註冊紀錄
OWNERSHIP REGISTER

物業資料
Property Particulars

<p>業權編號 Title No.: A1234</p> <p>地段編號 Lot No.: 內地段第789號 Inland Lot No.789</p> <p>土地不分割份數 Undivided share in land: —</p> <p>地址/位置 Address/Location: 10 Peak Road Hong Kong</p>	<p>批約 政府租契 Held under: Government lease</p> <p>年期 999年 Lease Term: 999 years</p> <p>開始日期 1850年1月1日 Commencement of Lease Term: 1/1/1850</p> <p>每年地稅 Rent per annum: \$10.00</p> <p>物業備註 Remarks:</p> <p>首次註冊日期 2005年10月1日 Date of 1st registration: 1/10/2005</p>
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業主資料
Owners Particulars

業主姓名 Name of Owner	身分(如非唯一擁有人) Capacity (if not sole owner)	交易性質 Nature of Dealing	申請編號 Application No.	註冊日期 Date of Registration	成交價錢 Consideration	備註 Remarks
ABC有限公司		轉移	56789	2006年3月1日	\$10,000,000	根據 "物業轉易及財產條例" 第35(2)條，隱含的契諾被改變/摒除/擴大。
ABC Company Limited		TRANSFER		1/3/2006		Implied covenants under s.35(2) of Conveyancing Property Ordinance are varied/excluded/extended.

產權負擔
Incumbrances

申請編號 Application No.	註冊日期 Date of Registration	交易/申請性質 Nature of Dealing/Application	文書/合約/呈請/命令等 性質 Nature of instrument/ Contract/Petition/Order etc.	受益方/申請人/有關各方的姓 名/名稱 Name of Party in favour of/ Applicant/Relevant Parties	成交價錢 Consideration	備註 Remarks
66833	2006年3月1日	押記	押記	DE銀行	所有款項	根據 "物業轉易及財產條例" 第35(2)條，隱含的契諾被改變/摒除/擴大。
	1/3/2006	Charge	Charge	DE Bank	All monies —	Implied covenants under s.35(2) of Conveyancing Property Ordinance are varied/excluded/extended.

申請紀錄
Applications Record
(Applications Pending Registration 等待註冊的申請)

申請編號 Application No.	呈遞日期 Date of Presentation	交易/申請性質 Nature of Dealing/Application	附連文書性質 Nature of accompanying instrument	有關各方姓名/名稱 Name of parties	成交價錢 Consideration
72233	2007年2月3日 3/2/2007	押記令 Charging Order	押記令 Charging Order	FG銀行及嚴艾力 FG Bank and Eric Yim	—