

2 July 2004

Mr. Hon. Tam Yiu Chung
Member of the Legislative Council

Re: Follow-up reply on written questions on Land Titles Bill

Thank you for your letter of 24 June 2004. Set out below are responses to your follow-up questions.

1. There are many types of property for which payment of premium to Government is necessary before sale. The categories change over time. Under the existing deeds registration system, no warning notice is put on the land register to alert purchasers of such obligation to pay premium. In practice, estate agents and solicitors inform potential purchasers of this obligation. The agents and solicitors are knowledgeable about such obligations and we have not had report of any problems arising from this practice.

The Administration intends that the same practice will continue under the land title registration system.

2. The rights acquired by adverse possession come by virtue of the Limitation Ordinance. They will be an overriding interest even if no statutory declaration of a claimant's rights is registered in the incumbrances side of the Title Register. The purchaser can have knowledge of these rights by inspection of the property. This is the same as under the existing law.
3. If any application for title certificate is made by the owner's attorney pursuant to a power of attorney, then the applicant is required to submit the relevant documents to the Land Registrar to prove the power of attorney. The types of such relevant documents will be dealt with in the regulations.

4. The term “any stipulation to the contrary” means any contrary contractual provisions agreed by the vendor and purchaser. If there are such contrary contractual provisions, the duty of the vendor to provide documents is to be determined according to those contractual provisions.

If there are no contrary contractual provisions, the vendor is under statutory duty to provide the documents stated in Cl. 44(1) to the purchaser. The purchaser is entitled to rescind the sale and purchase agreement before completion if the vendor fails to provide all the required documents stated under Cl. 44(1).

Under the existing law, the vendor can also by contrary provision in the sale and purchase agreement vary his duty to provide title deeds for proof of title of land under Section 13 of the Conveyancing and Property Ordinance. There are standard forms of provisional sale and purchase agreements from the estate agents which do not contain contracting out provisions on proof of title. We shall further liaise with the Estate Agents Authority to ensure that the purchasers will be aware of the effect of Cl. 44(1) under the new system after enactment of the Bill.

5. The Administration is of the view that it is clearly stated in Section 2(3)(a) of Schedule 1A that the date of first registration of LRO land is the date of actual registration of the instrument specified in Section 2(2)(a) of Schedule 1A. No amendment is required for stating that the one month relation back will not apply.

Only the date of first registration of LRO land is determined according to the actual date of registration of the instrument specified under Section 2(2)(a) of Schedule 1A. The one month relation back rule still applies to the priority of a relevant stopped deed or other instruments lodged before the date of first registration of the land.

Examples for illustration are listed in the Annex for your reference.

(Kim Salkeld)
Land Registrar

- c.c. SHPL (Attn: Ms. Olivia Nip, DS) [Fax: 2899 2916]
The Honourable Margaret Ng,
Chairman of the Bills Committee on Land Titles Bill [Fax: 2801 7134]
Clerk to Bills Committee on Land Titles Bill (Attn: Ms Sarah Yuen)
[Fax: 2869 6794]

**Table showing application of Section 2(3)(a) of Schedule 1A
of Land Titles Bill and priority of instruments**

Date of conversion of LRO land: 1.1.2008

**(1) Case where conversion is delayed due to stopped deed submitted prior to
1.1.2008**

	Date of execution	Date of delivery for registration	Actual date of registration
(a) 1st instrument (stopped deed) under LRO	24.11.2007	18.12.2007	18.1.2008
Date of First Registration of the land	The actual date of registration on 18.1.2008 will be the 'date of first registration' of the land, upon which the land is converted to be registered land		
Priority ¹ of registration of the 1st instrument	Relating back to 24.11.2007 because of the LRO one-month relation-back.		
(b) 2nd instrument	20.12.2007	3.1.2008	6.1.2008
Priority of registration of the 2nd instrument	Relating back to 20.12.2007. The land remains LRO land on 3.1.2008. The LRO one month relation-back is still applicable.		

¹ The stopped deed prevented the LRO land from being converted into registered land until its completion of registration on 18.1.2008.

(2) Case where no delay in conversion upon 1.1.2008

Land converted to be LTB land on 1.1.2008	Date of execution	Date of Delivery for registration	Actual Date of registration
(a) 1st Instrument	20.12.2007	29.12.2007	2.1.2008
Priority under LRO (if submitted before 1.1.2008)	20.12.2007 (one month relation back still applicable)		
(b) Second instrument (if submitted on or after 1.1.2008)	20.12.2007	3.1.2008	6.1.2008
Date of registration (under LTB)	3.1.2008** (LRO one month relation back not applicable under LTB)		

** A solicitor handling a transaction during the last month before the conversion day must submit the instruments for registration as soon as practicable after its execution. Upon the conversion day, the LRO one month relation back cannot work any more.