

LEGISLATIVE COUNCIL BRIEF

Land Titles Bill

INTRODUCTION

At the meeting of the Executive Council on 26 November 2002, the Council ADVISED and the Chief Executive ORDERED that the Land Titles Bill (the Bill), at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. The enactment of the Bill is essential for the introduction of a land title registration system. Under the system, it will no longer be necessary to look behind the title register and review the historical title deeds to establish title as at present. This will give greater security to property interests and simplify conveyancing.

3. The main features of the proposed title registration system are as follows :-

- *Certainty of Title*

The title register will be conclusive evidence of title to property. The registration of a person as the owner of land shall vest the title of the land in him.

- *Security of Title*

When a purchaser acquires a property for value and in good faith and is registered as the owner in the title register, he will be

recognized by law as the owner, and his title will not be defeasible.

- ***Gradual Conversion***

When the Bill comes into operation, property will be brought under the title registration system upon registration on -

- (i) first sale of the property after implementation of the Bill; or
- (ii) new issue of Government lease of the property; or
- (iii) voluntary application by an owner.

Properties which are not brought under the title registration system will remain on the existing deeds registration system.

- ***Indemnity Fund***

A person suffering loss of ownership because of fraud, or loss due to mistake or omission of Land Registry staff, will be eligible for compensation, unless he contributed to the fraud. A self-financing indemnity fund will be established for this purpose, based on a levy on each registration. An upper limit will be set on any indemnity payment due to fraud affecting ownership.

- ***Overriding Interests***

Overriding interests are unregistered rights that can affect land. Examples are rights of way, Chinese custom or customary rights, rights of adverse possession or statutory rights for resumption. The Bill will limit and clearly define what overriding interests may be asserted over property.

- ***Land Boundaries***

An avenue is provided for lot owners to apply to the Director of Lands to have their lot boundaries determined and registered in the Land Registry. However, land boundaries will not be guaranteed.

Paragraphs 4 to 14 below set out the main issues arising from discussions with interested parties on how to improve the Bill that lapsed in the Legislative Council in 1995.

(a) Security of Title

4. We have received representations that the principle of indefeasibility of title should be diluted to protect an innocent former owner. We now propose to allow the Court to order rectification of the register if failure to do so would be unjust. The Court may take into account the acts of the parties and the hardship to the parties when considering whether to rectify the title register where a fraud has occurred. This should go some way towards meeting calls for clear and definitive statutory criteria in the event of a consideration by the Court.

5. We do not agree with the suggestion that the Court should make no intervention but that the register should automatically be rectified in favour of an innocent owner defrauded of his property. Automatic restitution to an innocent owner is not necessarily the right course in every case. Giving the Court the power to consider restitution to the former owner already weakens the protection given to an innocent purchaser, and derogates from the principle of indefeasibility of ownership. It would be unjust to remove all protection for an innocent purchaser.

(b) Gradual Conversion

6. Previously we proposed to effect a midnight conversion from the deeds registration system to the title registration system. There was then a clear preference among legislators for a gradual conversion. Developments since indicate a difference of opinion within the legal profession. The Law Society supports automatic conversion while the Bar Association welcomes gradual conversion.

7. Automatic conversion would minimize possible confusion from the operation of two systems of land registration in parallel, and reduce the resources and expenses required. At the same time, it would extinguish certain rights enforceable under the existing system. A gradual conversion allows an orderly and systematic conversion and provides time for the public and legal

practitioners to familiarize themselves with the new system. On balance, we propose a gradual process of conversion from the current deeds registration system to the new title registration system.

8. We propose to revisit the idea of automatic conversion some time after title registration is introduced and when people have become accustomed to it. This was also the approach taken in the United Kingdom.

(c) Indemnity Fund

9. The Bill provides for the imposition of a cap on the indemnity payable in fraud cases. This upper limit has been an area of contention. In 1994, when the Land Titles Bill was first introduced in the Legislative Council, the indemnity limit was proposed to be \$20 million. We now propose to revise this limit to \$30 million per claim. This would cover 99.6% of all transactions.

10. Some interested parties consider that it is unfair to the high-value property owners and wrong in principle to deprive a person of his property without due compensation. It is also true that other jurisdictions, such as the United Kingdom and Australia, do not cap their indemnity. In our view, it would be unreasonable and unfair to impose the insurance cost for a minority of very high-value properties upon the majority of property owners. The owners of high-value properties would not be deprived of the means to recover their losses in case of fraud. They would still be able to pursue through the courts claims against anyone who manages to defraud them, and they would stand to benefit through the proposed indemnity scheme for up to the first \$30 million of their claim – a safeguard that they do not have at present.

(d) Overriding Interests

11. Some have argued that the categories of overriding interests to be protected under the title registration system should be reduced to the minimum, or even deleted in their entirety. They are concerned that overriding interests which are not registered would affect the certainty of the title.

12. We agree that the categories of overriding interests to be protected should be kept to the minimum. We propose to protect only those that are neither practical nor feasible to register, such as squatter's rights or

short term tenancies. By providing a clear limit on the overriding interests that will be accepted and removing the claim of any other unregistered interests, greater clarity and certainty will be provided.

(e) Land Boundaries

13. Some interested parties have argued that guarantee of land boundaries should be part of the title registration system. This presents great complications given the past history of land boundary survey in Hong Kong. Only boundaries surveyed since the establishment of the Geodetic Datum in 1980 could be assured immediately. These, however, represent only about 7% of properties.

14. On balance, we do not propose to provide any form of guarantee for land boundaries under the proposed title registration system. Nonetheless, we propose to provide an avenue for lot owners to apply to the Director of Lands to have their lot boundaries determined and registered in the Land Registry. As the number of properly surveyed lots in Hong Kong builds up in future, we may revisit the issue and consider providing a guarantee of land boundaries in due course.

THE BILL

15. The Bill has the following main provisions:-

(a) Certainty of Title

Clauses 14 and 21 provide that registration of any person as owner of the land shall vest the legal estate or equitable interest in the land or the undivided share in the land in him.

(b) Security of Title

(i) Clause 81(2) stipulates that the Title Register shall not be rectified to affect the title of an owner who is in possession of the land and has acquired the land for valuable consideration unless he has knowledge of the fraud or has caused such fraud.

- (ii) Clause 81(3) provides that where the transfer of ownership was made as a result of fraud and the current registered owner is not a party to the fraud, the Court may rectify the Title Register on application by an innocent former owner to restore his ownership if the Court is satisfied that failure to do so would be unjust. In exercising its discretion, the Court may consider such factors as the acts of the parties and hardship to the parties.

(c) Gradual Conversion

Clause 12 sets out the events upon which conversion will occur. They are : the first assignment of the property after the commencement of the Bill, new issue of the Government lease or on voluntary application by an owner.

(d) Indemnity

- (i) Clause 82 provides that indemnity is payable under the Bill to a person who has suffered loss by reason of an entry in or omission from the Title Register because of the fraud of any person affecting ownership of the land and that there is a court order on rectification of the Title Register or because of any mistake or omission of the Land Registry staff.
- (ii) Clause 83 specifies how to determine the indemnity. In a case involving fraud, the indemnity shall be the value of the property immediately before the date of the Court order on rectification of the Title Register or the upper limit as gazetted, whichever is the lesser. In an indemnity claim for mistake or omission of the Land Registry staff, the indemnity shall be the value of the property immediately before the discovery of the mistake or omission or if there is a court order, the date of the order.

(e) **Overriding Interests**

Clause 24 lists out the types of overriding interests which, though not registered, will still affect registered land.

(f) **Land Boundaries**

Clause 92 provides that a lot owner may apply to the Director of Lands for determination of the lot boundary of lots that have not been subdivided by a person other than the Government and for lots not held under a block Government lease. The determination shall only add the bearings, boundary dimensions and co-ordinates wherever applicable in the process of updating the boundary of the land boundary plan. The Director of Lands shall not make a determination of the lot boundary if the boundary plan changes the boundaries or area or measurement of a land boundary plan in the land title record or any Government lease or on the ground. After determination, the land boundary plan may be registered in the Land Registry.

LEGISLATIVE TIMETABLE

16. The legislative timetable of the Bill will be –

Publication in the Gazette	6 December 2002
First Reading and commencement of the Second Reading Debate	18 December 2002
Resumption of the Second Reading Debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

17. The Bill has economic and financial and civil service implications as set out at Annex B.

18. The proposal is in conformity with the Basic Law, including the

provisions concerning human rights. The provisions of the Bill do not have any binding effect on the State.

19. The proposal does not have significant sustainability implications, but would help to provide certainty of title and bring our land registration system more in line with similar systems in other jurisdictions. It has no productivity or environmental implications.

PUBLIC CONSULTATION

20. The Land and Building Advisory Committee and the Legislative Council Panel on Planning, Lands and Works were consulted on the proposals of the Bill on 25 June and 5 July 2002 respectively. Both were supportive.

21. The legal profession was consulted in early 2002 on the revised proposals. The Law Society prefers the former midnight conversion approach with a long lead-in period to enable interested parties to prepare for the change. They suggest that the categories of overriding interests should be restricted as far as possible and the grounds for rectification of the Title Register should be made more specific.

22. The Bar Association favours gradual conversion. They propose that there should be clear statutory guidelines and limitations imposed on the Court's power of rectification. They also advocate that there should be no upper limit on the indemnity.

PUBLICITY

23. A press release will be issued when the Bill is gazetted on 6 December 2002. A spokesman will be available to answer media enquiries.

ENQUIRIES

24. Enquiries on this brief may be directed to Mr D. Li, Assistant Secretary (Buildings)/Housing, Planning and Lands Bureau at telephone

number 2848 6290 or fax number 2899 2916.

HOUSING, PLANNING AND LANDS BUREAU
December 2002

LAND TITLES BILL

ANNEXES

Annex A - Land Titles Bill

Annex B - Financial and Civil Service, and Economic Implications

LAND TITLES BILL

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A BILL

To

Provide for a system of registration of title to land, and to provide for matters incidental thereto or connected therewith.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Land Titles Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires -
"appeal" (上訴) means an appeal under section 89(1);

"application" (申請), in relation to the registration of any matter,
means an application in the specified form;

"applications record" (申請紀錄) means an applications record kept and
maintained under section 5(2)(c);

"authorized land surveyor" (認可土地測量師) has the meaning assigned to
it by section 2 of the Land Survey Ordinance (Cap. 473);

"block Government lease" (集體政府租契) means a Government lease of old schedule lots;

"caution" (警告書) means a consent or non-consent caution;

"charge" (押記) -

(a) subject to paragraph (b), means a transaction whereby registered land or a registered long term lease is made security for -

(i) the payment of money or money's worth; or

(ii) the fulfilment of a condition or obligation, and includes a charge provided for under any other enactment whereby registered land or a registered long term lease is made such security (other than a charging order); and

(b) does not include a mortgage of an equitable interest in registered land or a registered long term lease except where -

(i) a condition precedent in the Government lease of the land has not been complied with; and

(ii) the mortgagor or owner of the equitable interest is entitled to exclusive possession of the whole or part of a completed building where the statutory requirements for occupation have been complied with;

"chargee" (承押記人) means the owner of a charge;

"charging order" (押記令) means an order of a court imposing on registered land, or a registered long term lease, specified in the order a charge for securing the payment of any money due or to become due under a judgment or order of the court;

"chargor" (押記人) means the owner of registered land, or the lessee of a registered long term lease, which is subject to a charge;

"commencement day" (生效日期) means the day appointed under section 1(2) for the commencement of section 14;

"company" (公司) means a body corporate -

- (a) incorporated under the Companies Ordinance (Cap. 32);
- (b) incorporated under any other enactment; or
- (c) incorporated or established outside Hong Kong;

"consent caution" (同意警告書) means a caution referred to in section 70(1) and (2);

"current" (當時有效), in relation to any matter, means the matter has not ceased to have effect;

"date of first registration" (首次註冊日期) means the date determined in accordance with section 15;

"dealing" (交易) means disposition and transmission;

"disposition" (處置) means an act by the owner of registered land or a registered charge, or the lessee of a registered long term lease, whereby his rights in or over the land, charge or lease, as the case may be, are affected, but does not include -

- (a) an agreement to transfer;
- (b) an agreement to charge;
- (c) an agreement to grant a long term lease; or
- (d) an agreement to grant an easement,

and "dispose", "disposal" and "disposed" (處置) shall be construed accordingly;

"document" (文件) includes, in addition to a document in writing -

- (a) a map, plan or drawing;
- (b) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and
- (c) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;

"entry" (記項), in relation to the Title Register, means a note, notice or other entry in the Title Register, and "enter" and "entered" (記入) shall be construed accordingly;

"first registration" (首次註冊), in relation to land, means the first registration of the land under this Ordinance as determined in accordance with the provisions of section 12;

"fraud" (欺詐) includes dishonesty and forgery;

"image" (影像) or "image record" (影像紀錄) means a record produced using the imaging method and, where the context permits, includes a record in a legible form;

"imaging method" (影像處理方法) means a method by which documents in a legible form or in the form of microfilm are scanned by a scanner and the information recorded therein is converted into electronic images, which are then stored on electronic storage media capable of being retrieved and reproduced in a legible form;

"inhibition" (制止令) means an order made under section 74(1);

"instrument" (文書) -

(a) includes -

(i) a deed, conveyance, judgment, decree, order or other document -

(A) requiring or capable of registration;

or

(B) specified in any other enactment as a document which may be registered under this Ordinance;

(ii) a memorial registered or delivered for registration under the Land Registration Ordinance (Cap. 128) which supports a current entry in the Title Register;

- (b) does not include a will except a will which is the subject of a memorial referred to in paragraph (a)(ii);

"land" (土地) -

- (a) includes -
 - (i) land covered by water; and
 - (ii) a thing attached to land or permanently fastened to a thing attached to land;
- (b) does not include an interest in or over land other than -
 - (i) an undivided share in land; and
 - (ii) such an interest vested in a person by virtue of the operation of section 14(1), 21(1) or 22(1);

"land boundary plan" (土地界線圖) has the meaning assigned to it by section 2 of the Land Survey Ordinance (Cap. 473);

"land title record" (土地業權紀錄) means -

- (a) any memorial which supports a current entry in the Title Register;
- (b) the documents, if any, accompanying a memorial referred to in paragraph (a);
- (c) any application for the registration of a matter where -
 - (i) the matter has been registered; and

(ii) the application supports a current entry in the Title Register;

(d) the documents, if any, accompanying an application referred to in paragraph (c);

"lease" (租契) includes an agreement for a lease but does not include a Government lease;

"lessee" (承租人), in relation to a registered long term lease, means the person named in the Title Register as the lessee of the lease;

"liquidator" (清盤人) has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap. 32);

"lis pendens" (待決案件) means -

(a) any action or proceeding pending in a court or tribunal that relates to land; or

(b) a bankruptcy petition;

"long term lease" (長期租契) means a bona fide lease -

(a) granted on or after the date of first registration by the owner of registered land of the right to exclusive possession of the land for a term of not less than 21 years;

(b) not at rack rent; and

(c) in respect of which a premium has been paid,

but does not include any lease the unexpired term of which is less than 21 years at the time it is registered;

"long term lease register" (長期租契註冊紀錄) means the register opened under sections 47 and 48;

"lot" (地段) includes a section and subsection of a lot;

"lot number" (地段編號) means -

(a) in the case of a lot, the designation and number by which the lot is described in the Government lease under which it is held from the Government; and

(b) in the case of a section or subsection of a lot, the designation and number by which the section or subsection, as the case may be, is described in the instrument by which it came into existence as such;

"matter" (事項) means the subject of any application delivered for registration;

"memorial" (註冊摘要) means a memorial registered under the Land Registration Ordinance (Cap. 128);

"non-consent caution" (非同意警告書) means a caution referred to in section 70(3), (4), (5) and (12);

"old schedule lot" (舊批約地段) has the meaning assigned to it by section 2 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515);

"overriding interest" (凌駕性權益) means an interest referred to in section 24(1);

"owner" (擁有人), in relation to -

(a) registered land, means the person named in the Title Register as -

(i) the owner, lessee or holder (or words to the like effect) of a Government lease of the land; or

(ii) the owner or holder (or words to the like effect) of an undivided share in the land;

(b) a registered charge, means the person named in the Title Register as the person in whose favour the charge is made;

(c) registered land to which Part II of the New Territories Ordinance (Cap. 97) applies, includes any clan, family or t'ong;

"ownership register" (擁有權註冊紀錄) means the register opened under section 13;

"personal representative" (遺產代理人) means -

(a) the executor of the will; or

(b) the administrator of the estate,

of the deceased owner of registered land or a registered charge, or the deceased lessee of a registered long term lease;

"present" (呈遞) includes produce, deliver and lodge;

"professional indemnity insurer" (專業彌償保險人) means an insurer,

scheme or fund (whether or not established by or under any law) by or from which claims are payable, being claims made by

persons suffering loss owing to the fraud, mistake or omission of a person carrying on business in a particular profession, trade or calling;

"record" (紀錄) includes not only a written record but a record conveying information or instructions by any other means;

"register" (註冊) means to make, remove, alter or add to an entry in the Title Register, and "registered" (註冊), "unregistered" (沒有註冊) and "registration" (註冊) shall be construed accordingly;

"registered charge" (註冊押記) means a charge registered in respect of registered land or a registered long term lease;

"registered land" (註冊土地) means land registered under section 13(1);

"registered long term lease" (註冊長期租契) means a long term lease registered under sections 47 and 48;

"registered matter" (註冊事項) does not include any matter which has ceased to have any effect;

"Registrar" (處長) means the Land Registrar;

"remove" (刪除), in relation to an entry in the Title Register, includes delete by any means which, in the opinion of the Registrar, is appropriate in respect of that entry;

"restriction" (限制令) means an order made under section 77(1);

"right" (權利) includes such ancillary rights as are necessary for effective enjoyment of the right;

"search" (查冊) means a search under section 27(1);

"Secretary" (局長) means the Secretary for Housing, Planning and
Lands;

"solicitor" (律師) means a solicitor within the meaning of section
2(1) of the Legal Practitioners Ordinance (Cap. 159);

"specified" (指明), in relation to a form, means specified under
section 97;

"title certificate" (業權證明書) means a certificate issued under
section 26(1);

"title number" (業權編號), in relation to a Title Register, means the
number assigned to the Title Register under section 10(2);

"Title Register" (業權註冊紀錄) means the ownership register and the
long term lease register;

"transfer" (轉移) means the registration of a matter to effect the
passing of the title to registered land, a registered charge or
a registered long term lease from one person to another person
otherwise than by operation of law, and includes the instrument
providing for such passing;

"transmission" (傳轉) means the registration of a matter to record
the passing of the title to registered land, a registered charge
or a registered long term lease from one person to another
person by operation of law, and includes the instrument
providing for such passing;

"trustee" (受託人) includes a personal representative;

"valuable consideration" (有價代價) means money or money's worth, but does not include a nominal consideration;

"working day" (工作日) means any day other than a public holiday or a black rainstorm warning day or a gale warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) It is hereby declared that -

- (a) subject to paragraph (b), no matter shall be registered unless the matter is the subject of an application presented to the Registrar for the registration of that matter, and whether or not -
 - (i) there is any reference in this Ordinance to that matter; or
 - (ii) any reference in this Ordinance to the registration of that matter is accompanied by a reference to such an application;
- (b) the title to land is registered by virtue of there being a Title Register of the title to that land, and references in this Ordinance to registered land shall be construed accordingly;
- (c) each application for the registration of any matter shall be verified -
 - (i) both as to the application and the matter;

- (ii) by -
 - (A) a solicitor; or
 - (B) any public officer who has prepared the application acting in his capacity as a public officer; and
- (iii) in accordance with regulations made under section 100;
- (d) the registration of any matter is effected when the application for the registration of that matter is registered by virtue of an entry in the Title Register which refers to that application, that matter or any document accompanying that application, or any combination thereof, and references in this Ordinance to the registration of any matter (howsoever expressed) shall be construed accordingly; and
- (e) any reference to "register in the Land Registry", or words to the like effect, in any other enactment shall be construed to mean register under the Land Registration Ordinance (Cap. 128) or this Ordinance, as the case may require.

3. Application

- (1) This Ordinance applies to land held under a Government lease.

(2) Where land is vested in a person under the provisions of another enactment and there is any conflict or inconsistency between the provisions of this Ordinance and the provisions of that enactment in relation to that land, then the provisions of that enactment shall, in relation to that land and to the extent of that conflict or inconsistency, as the case may be, prevail over the provisions of this Ordinance.

(3) Where there is any conflict or inconsistency between the provisions of this Ordinance and the provisions of another enactment in relation to the validity of a transfer (including an agreement to transfer), then the provisions of that enactment shall, in relation to the land to which the transfer relates and to the extent of that conflict or inconsistency, as the case may be, prevail over the provisions of this Ordinance.

(4) Where -

- (a) any provisions of any other enactment purport to provide that any legal or equitable interest in land or in a charge shall not be created, extinguished, transferred, varied or affected (or words to the like effect) except by an instrument (howsoever described) referred to in those provisions; and
- (b) by virtue of the provisions of this Ordinance, such interest may only be created, extinguished, transferred, varied or affected, as the case may be, by the registration under this Ordinance of an application providing therefor,

then -

- (c) without prejudice to any other ground on which the instrument may be void or voidable and notwithstanding any law, that instrument shall not be void or voidable on the ground that it does not, of itself, create, extinguish, transfer, vary or affect, as the case may be, such interest;
- (d) the provisions referred to in paragraphs (a) and (b) shall be construed to require that instrument to accompany that application; and
- (e) any reference to the instrument in -
 - (i) any other provisions of that enactment;
 - (ii) any provisions of any other enactment; or
 - (iii) any other provisions of this Ordinance, shall, without prejudice to the operation of section 2A of the Stamp Duty Ordinance (Cap. 117), be construed to take account of the operation of this subsection.

4. Matters capable of being registered

No matter shall be capable of being registered unless -

- (a) the registration of the matter is expressly provided for in this Ordinance or any other enactment;
- (b) where paragraph (a) is not applicable, the matter is a dealing in registered land, a registered charge or a registered long term lease;

- (c) where neither paragraph (a) nor (b) is applicable, the matter is an order -
 - (i) affecting registered land, a registered charge or a registered long term lease; and
 - (ii) issued or made for the purpose of enforcing a judgment; and
- (d) in any other case, the matter affects registered land, a registered charge or a registered long term lease and the Registrar permits it to be registered.

PART 2

ORGANIZATION AND ADMINISTRATION

5. Land Registry

(1) The Land Registry shall be a public office for the registration of matters as provided for in this Ordinance in respect of registered land, registered charges or registered long term leases.

(2) There shall be kept and maintained in the Land Registry, in relation to the land to which this Ordinance applies -

- (a) a Title Register in the specified form of the title to or other interest in each parcel of land;
- (b) subject to section 60, land title records in the specified form; and
- (c) an applications record -

- (i) in the specified form; and
- (ii) recording all applications for the registration of any matter.

6. Functions and powers of Registrar

(1) The Registrar shall -

- (a) be responsible for the general administration of the Land Registry in accordance with the provisions of this Ordinance;
- (b) supervise compliance with the provisions of this Ordinance; and
- (c) perform such other functions as are imposed on him under this Ordinance or any other enactment.

(2) The Registrar may do all such things as are necessary for, or incidental or conducive to, the better performance of his functions and in particular but without prejudice to the generality of the foregoing, may -

- (a) require a person to present to him any document relating to registered land or a registered long term lease;
- (b) require a person to appear before him and give any information or explanation in respect of -
 - (i) any matter relating to registered land or a registered long term lease; or

- (ii) any document relating to registered land or a registered long term lease;
- (c) require a person to verify, on oath or by statutory declaration, any proceedings, information or explanation affecting registration and, for that purpose, administer the oath or take the declaration;
- (d) refuse to proceed with any registration if -
 - (i) any document, or any information or explanation, required to be presented or given is withheld;
 - (ii) any act required to be performed under this Ordinance is not performed;
 - (iii) without prejudice to the generality of subparagraph (ii), any fee payable in respect of the registration (including any additional fee payable under section 31) has not been paid; or
 - (iv) the provisions of this Ordinance or of any other enactment relating to the registration of a matter have not been complied with;
- (e) where he is of the view that a matter is not registrable, refuse to register the matter;
- (f) subject to subsection (3), order that the costs, charges and expenses incurred by him or another person in connection with an inquiry, investigation or hearing held by the Registrar for the purposes of this

Ordinance shall be borne and paid by such persons and in such proportions as the Registrar thinks fit; and (g) exercise such other powers as are conferred on him under this Ordinance or any other enactment.

(3) The Registrar shall not make an order under subsection (2)(f) except after giving the persons to be affected by the order, and such other interested persons as the Registrar thinks fit, an opportunity of being heard in accordance with section 94.

7. Delegation of powers

(1) Subject to subsection (2), the Registrar may, with or without restrictions as he thinks fit, delegate in writing any of his functions or powers under this Ordinance to any public officer.

(2) The Registrar shall not delegate any of his functions and powers under -

- (a) subsection (1);
- (b) any provisions of this Ordinance specified in Schedule 1; and
- (c) any provisions of any regulations made under this Ordinance which are specified in the regulations as provisions which shall not be subject to subsection (1).

(3) A delegate of the Registrar -

- (a) shall perform the delegated functions and may exercise the delegated powers as if the delegate were the Registrar himself; and

- (b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of evidence to the contrary.

8. Immunity

(1) No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.

(2) The Government shall not be liable in damages for either -

- (a) any act or default referred to in subsection (1); or

- (b) any other act done or default made -

- (i) by a person, to whom that subsection applies, not acting in good faith; and

- (ii) in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance,

unless that act or default gives rise to an indemnity under Part 9 and, in any such case, the liability shall not exceed the amount of the indemnity provided under that Part in respect of that act or default.

- (3) The persons to whom subsection (1) applies are -
- (a) the Registrar; and
 - (b) any public officer assisting the Registrar in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.

9. Seal of Land Registry

(1) The Land Registry shall have a seal of office having inscribed in the margin of the seal -

- (a) the words "Land Registrar, Hong Kong Special Administrative Region" in the English language and "香港特別行政區土地註冊處處長" in the Chinese language; or
- (b) such other words as the Registrar may from time to time specify by notice published in the Gazette.

(2) For the purposes of any proceedings, whether under this Ordinance or otherwise, an instrument -

- (a) purporting to bear the imprint of the seal referred to in subsection (1); and
- (b) purporting to be signed and issued by a person referred to in section 8(3),

shall be received in evidence in those proceedings upon its production without further proof and, in the absence of evidence to the contrary, it shall be presumed -

- (c) where the instrument purports to be so signed, that the signature is that of the person referred to in that section; and
- (d) where the instrument purports to be so issued, that it was issued by or under the direction of the Registrar.

10. Title Register

(1) For the purposes of this Ordinance, there shall be kept and maintained Title Registers of all registered land and registered long term leases.

(2) The Registrar shall assign a number (which may also include letters) to each Title Register.

(3) Subject to section 11, each Title Register shall contain particulars of -

- (a) its title number;
- (b) the lot number of the land held under the Government lease to which the Title Register relates;
- (c) the undivided shares, if any, in the land;
- (d) the location or address, if any, of the land;
- (e) the date of commencement of the term of the Government lease;
- (f) the name of the owner of the land or the lessee of the long term lease;
- (g) the capacity in which the land is owned or held, whether as sole owner, tenants in common, joint tenants, trustee, long term lessee or otherwise;

- (h) all instruments which support a current entry in the Title Register;
- (i) the date of registration of each of the instruments referred to in paragraph (h);
- (j) such entries as are required by this Ordinance to be contained in the Title Register; and
- (k) such other entries as the Registrar is of the opinion should be contained in the Title Register.

11. Transitional provisions in respect of Title Register, etc.

(1) Subject to subsection (2), where a register (howsoever described) has been kept and maintained under the Land Registration Ordinance (Cap. 128), then, on the opening of a Title Register in relation to the land to which the register relates, the priority of all interests in the Title Register -

- (a) existing immediately before the date of first registration; and
- (b) in respect of which a memorial of an instrument within the meaning of the Land Registration Regulations (Cap. 128 sub. leg.) has been registered under the Land Registration Ordinance (Cap. 128),

shall be determined in accordance with the provisions of the Land Registration Ordinance (Cap. 128), and the provisions of this Ordinance shall be construed accordingly.

(2) Where an interest referred to in subsection (1) is entered, in a register maintained under the Land Registration Ordinance (Cap. 128), as a lis pendens or a charging order, then the interest shall, until the expiration of 5 years from the date of the last registration of the interest under the Land Registration Ordinance (Cap. 128), be deemed to be protected as if, on the date of first registration -

(a) an application for the registration of a non-consent caution in respect of the interest had been presented to the Registrar under section 70(3) by the person who would, apart from this subsection, be entitled to present that application; and

(b) the Registrar had registered the non-consent caution, and the provisions of this Ordinance shall be construed accordingly.

(3) Where an interest referred to in subsection (1) is entered in a register maintained under the Land Registration Ordinance (Cap. 128) as -

- (a) an agreement for sale and purchase;
- (b) a provisional agreement for sale and purchase;
- (c) a sub-agreement for sale and purchase;
- (d) a nomination; or
- (e) an equitable mortgage,

then the interest shall be deemed to be protected as if, on the date of first registration -

(f) an application for the registration of a consent caution in respect of the interest had been presented to the Registrar under section 70(1) by the person who would, apart from this subsection, be entitled to present that application; and

(g) the Registrar had registered the consent caution,

and the provisions of this Ordinance shall be construed accordingly.

(4) In subsection (3), "equitable mortgage" (衡平法按揭) -

(a) includes an equitable mortgage of the interest in a sale and purchase agreement of uncompleted building units or a building mortgage of an uncompleted building; and

(b) excludes a mortgage of an equitable estate of land held under a Government Lease without a certificate of compliance.

12. Application for first registration of land

(1) Subject to subsection (2), an application for a first registration of land -

(a) shall be made -

(i) by the assignee of the land upon the first assignment on or after the commencement day;

or

(ii) by the Government lessee upon the issue of the Government lease concerned on or after the commencement day; or

(b) may be made upon applications by the owners named in the register (howsoever described) kept and maintained under the Land Registration Ordinance (Cap. 128).

(2) An application under subsection (1)(a)(i) or (b) shall be accompanied by a certificate of good title -

(a) in the specified form; and

(b) signed by the solicitor acting for the party or parties concerned.

(3) A solicitor shall not sign a certificate of good title in respect of the land to which the certificate relates unless he has examined and found the owner of the land has good title to the land.

(4) In this section -

"assignment" (轉讓), in relation to land, means an assignment of the interest in land held under a Government lease with or without valuable consideration, but does not include -

(a) an agreement for sale and purchase of the interest;

(b) any passing of title to land by operation of law; or

(c) a vesting order by a court;

"Government lease" (政府租契) does not include -

(a) a new Government lease deemed to be granted under section 5 of the Government Leases Ordinance (Cap. 40); or

- (b) an extension of the term of a lease under section 6 of the New Territories Leases (Extension) Ordinance (Cap. 150);

"land" (土地) does not include any part of a lot where -

- (a) the lot has been subdivided into undivided shares; or
- (b) an undivided share in land has not been allocated to that part.

(5) For the avoidance of doubt, it is hereby declared that the lessee of a long term lease is ineligible to make an application for a first registration of the land to which the lease relates.

13. Bringing land under this Ordinance

(1) The Registrar may register land the subject of an application made under section 12(1) -

- (a) if the Registrar is satisfied that the application complies with the provisions of this Ordinance applicable to it; and
- (b) by opening an ownership register of the land specifying that the applicant or the Government lessee, as the case may require, is the first owner of the land.

(2) The Registrar shall not exercise his power under subsection (1) in the case of an application made under section 12(1)(a) or (b) if there are any instruments relating to the land which have been delivered for registration under the Land Registration Ordinance

(Cap. 128) but which have not been registered at the time the application is scrutinized by the Registrar.

14. Effect of first registration of land on ownership

(1) Subject to subsections (2) and (4) and sections 23 and 81, where land is registered under section 13, the registration of any person as a first owner of the land shall vest in the person -

(a) where paragraph (a)(i) of the definition of "owner" in section 2(1) is applicable and the land is held under a Government lease or an agreement for a Government lease in respect of which a Government lease is deemed to have been issued under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -

(i) the legal estate in the land held under the Government lease or the agreement for the Government lease (but excluding any case where the person does not hold the full unexpired term of the lease of the land);
and

(ii) all rights attaching to the land which may be exercised by virtue of that legal estate;

(b) where paragraph (a)(i) of the definition of "owner" in section 2(1) is applicable and the land is held under an agreement for a Government lease in respect of which any condition precedent has not been complied

with or has not been deemed to have been complied with under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -

(i) the equitable interest in the land held under that agreement (but excluding any case where the person does not hold the full unexpired term of the agreement for lease); and

(ii) all rights attaching to the land which may be exercised by virtue of that equitable interest;

(c) where paragraph (a)(ii) of the definition of "owner" in section 2(1) is applicable and the land is held under a Government lease or an agreement for a Government lease in respect of which a Government lease is deemed to have been issued under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -

(i) the legal estate of the undivided share in the land (but excluding any case where the person does not hold the full unexpired term of the lease of the land); and

(ii) all rights attaching to the land which may be exercised by virtue of that legal estate;

(d) where paragraph (a)(ii) of the definition of "owner" in section 2(1) is applicable and the land is held under an agreement for a Government lease in respect of which any condition precedent has not been complied with or has not been deemed to have been complied with under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -

(i) the equitable interest of the undivided share in the land (but excluding any case where the person does not hold the full unexpired term of the lease of the land); and

(ii) all rights attaching to the land which may be exercised by virtue of that equitable interest,

free from all other interests and claims.

(2) The operation of subsection (1) in respect of land shall not affect -

(a) any covenants, exceptions, reservations, stipulations, provisos or declarations contained in the Government lease or the agreement for a Government lease of the land;

(b) any registered matter affecting the land;

(c) any overriding interest affecting the land; and

(d) subject to subsection (3), in the case of a first registration in respect of an application made under section 12(1)(a)(i) which is an assignment without valuable consideration, or a first registration in respect of an application made under section 12(1)(b), any interest -

- (i) existing immediately before the date of first registration;
- (ii) affecting the land;
- (iii) which was not registered under the Land Registration Ordinance (Cap. 128) (and whether or not it was capable of registration under that Ordinance); and
- (iv) which was, immediately before the date of first registration, enforceable against the land.

(3) An interest mentioned in subsection (2)(d) in relation to land shall not be enforceable against the land after the sale of the land to a purchaser for valuable consideration after the date of first registration.

(4) Nothing in this section shall relieve the owner of land from a duty to which he is subject as trustee.

15. First registration

Upon the completion of the registration of land under section 13, the date of first registration of the land shall be the day on

which the application for the first registration was delivered to the Land Registry.

16. Manner of registration

(1) The first registration of land held under a Government lease shall be effected by the preparation by the Registrar of a Title Register in the specified form.

(2) After the preparation of a Title Register in accordance with subsection (1), the registration of any matter which subsequently affects the registered land to which the Title Register relates shall be effected -

- (a) by an entry by the Registrar in the Title Register;
- (b) by the removal or appropriate alteration by the Registrar of the entry, if any, in the Title Register which the entry referred to in paragraph (a) replaces or affects, as the case may be.

17. Removal of obsolete entries

The Registrar may remove an entry in the Title Register which in his opinion has ceased to have any effect.

18. New editions of Title Register

The Registrar may -

- (a) close a Title Register; and
- (b) open a new edition of the closed Title Register -

- (i) showing, or referring to, only entries in the closed Title Register which were current at the time it was closed; and
- (ii) omitting all entries in the closed Title Register that in his opinion have ceased to have any effect.

19. Boundaries

(1) For the purposes of this Ordinance, a plan (and notwithstanding that it is a land title record) shall be treated as only indicating -

- (a) the approximate situation; and
- (b) the approximate boundaries,

of the registered land to which the plan relates.

(2) For the avoidance of doubt, it is hereby declared that the fact that a plan is a land title record shall not constitute a warranty as to the accuracy of the plan, or a guarantee, by a person referred to in section 8(3) or the Government.

20. Combinations and divisions

(1) Where the Registrar is presented with an application from the owner of contiguous parcels of registered land for the combination of that land, the Registrar may combine the parcels by closing the Title Registers relating to the parcels and opening a new Title Register or Title Registers in respect of the registered land resulting from the combination of the parcels.

(2) Where any new building is or is to be situated on any land consisting of 2 or more lots (and whether or not the owner or owners of the respective lots is or are the same person or persons), then the Registrar shall refuse to proceed with the registration of any matter relating to an undivided share with an exclusive right to use and occupy a part of the building unless and until an application for the combination of those lots has been registered.

(3) Subject to section 42, where the Registrar is presented with an application from the owner of registered land for the division of the land, the Registrar may, if he considers it expedient to do so, effect the division by -

- (a) closing the Title Register relating to that land;
- (b) opening new Title Registers in respect of the parcels of land resulting from the division; and
- (c) recording in the new Title Registers all relevant current entries in the Title Register referred to in paragraph (a).

(4) Subject to section 42, where the Registrar is presented with an application for the division of registered land by a person who -

- (a) is to be the purchaser of one or more of the parcels of land to result from the division; and
- (b) has the consent of the owner of the land to make the application,

the Registrar may, if he considers it expedient to do so, effect the division upon the registration of that application by -

- (c) closing the Title Register relating to the land;
- (d) opening new Title Registers in respect of the parcels of land resulting from the division; and
- (e) recording in the new Title Registers all relevant current entries in the Title Register referred to in paragraph (c).

(5) The Registrar shall refuse to register any matter relating to an undivided share in registered land with an exclusive right to use and occupy a part of a building unless and until an application for the division of the land into undivided shares has been registered showing or specifying such rights to the use and occupation of the land, or part thereof, as may be appurtenant to the ownership of that share.

(6) In this section, "new building" (新建築物) means a building in respect of which -

- (a) an occupation permit under section 21 of the Buildings Ordinance (Cap. 123) has been issued after the commencement of this section;
- (b) there may be issued an occupation permit under section 21 of the Buildings Ordinance (Cap. 123);
- (c) a certificate of exemption under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) has been issued but the building has not been completed; or

- (d) there may be issued a certificate mentioned in paragraph (c).
- (7) For the avoidance of doubt, it is hereby declared that -
 - (a) subsection (1) shall not of itself operate to authorize the amalgamation or unification of Government leases of contiguous parcels of registered land which have been combined under that subsection; and
 - (b) this section shall not authorize anything to be done which would be inconsistent with the other provisions of this Ordinance or of any other enactment.

PART 3

EFFECT OF REGISTRATION, ETC.

21. Effect of registration

(1) Subject to subsections (2) and (3) and sections 23, 62, 65, 66, 67, 69 and 81, after a Title Register of land has been opened under section 13, a transfer or transmission shall, when registered, vest in the person becoming the owner of the land -

- (a) where paragraph (a)(i) of the definition of "owner" in section 2(1) is applicable and the land is held under a Government lease or an agreement for a Government lease in respect of which a Government lease is deemed to have been issued under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -

- (i) the legal estate in the land held under the Government lease or the agreement for the Government lease (but excluding any case where the person does not hold the full unexpired term of the lease of the land);
and
 - (ii) all rights attaching to the land which may be exercised by virtue of that legal estate;
- (b) where paragraph (a)(i) of the definition of "owner" in section 2(1) is applicable and the land is held under an agreement for a Government lease in respect of which any condition precedent has not been complied with or has not been deemed to have been complied with under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -
 - (i) the equitable interest in the land held under that agreement (but excluding any case where the person does not hold the full unexpired term of the agreement for lease);
and
 - (ii) all rights attaching to the land which may be exercised by virtue of that equitable interest;
- (c) where paragraph (a)(ii) of the definition of "owner" in section 2(1) is applicable and the land is held under a Government lease or an agreement for a

Government lease in respect of which a Government lease is deemed to have been issued under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -

- (i) the legal estate of the undivided share in the land (but excluding any case where the person does not hold the full unexpired term of the lease of the land); and
 - (ii) all rights attaching to the land which may be exercised by virtue of that legal estate;
- (d) where paragraph (a)(ii) of the definition of "owner" in section 2(1) is applicable and the land is held under an agreement for a Government lease in respect of which any condition precedent has not been complied with or has not been deemed to have been complied with under section 14 of the Conveyancing and Property Ordinance (Cap. 219) -

- (i) the equitable interest of the undivided share in the land (but excluding any case where the person does not hold the full unexpired term of the lease of the land); and
- (ii) all rights attaching to the land which may be exercised by virtue of that equitable interest,

free from all other interests and claims.

(2) The operation of subsection (1) in respect of land shall not affect -

- (a) any covenants, exceptions, reservations, stipulations, provisos or declarations contained in the Government lease or the agreement for a Government lease of the land;
- (b) any registered matter affecting the land; and
- (c) any overriding interest affecting the land.

(3) Nothing in this section shall relieve the owner of land from a duty to which he is subject as trustee.

22. Effect of registration of long term lease

(1) Subject to subsections (2) and (4) and sections 23, 62, 65, 66, 67, 69 and 81, immediately upon registration of a person as the lessee (within the meaning of the definition of "lessee" in section 2(1)) of a registered long term lease, there shall vest in the person -

- (a) the interest in the lease; and
- (b) all rights attaching to the land which may be exercised by virtue of that interest,

free from all other interests and claims.

(2) The operation of subsection (1) in respect of a long term lease shall not affect -

- (a) any covenants, exceptions, reservations, stipulations, provisos or declarations contained in the Government lease of the land or the long term lease;

- (b) any registered matter affecting the land;
- (c) any overriding interest affecting the land; and
- (d) subject to subsection (3), in the case of a relevant lease registered as a long term lease under section 48, any interest -
 - (i) existing immediately before the date of registration of that lease under that section;
 - (ii) affecting the land;
 - (iii) which was not registered under the Land Registration Ordinance (Cap. 128) (and whether or not it was capable of registration under that Ordinance); and
 - (iv) which was, immediately before the date of registration of that lease under that section, enforceable against the land.

(3) An interest mentioned in subsection (2)(d) in relation to land shall not be enforceable against the land after the sale of the land to a purchaser for valuable consideration after the date of registration of that lease under section 48.

(4) Nothing in this section shall relieve the lessee of a long term lease from a duty to which he is subject as trustee.

23. Voluntary transfer

(1) Subject to subsection (2), the provisions of this Ordinance shall operate in relation to the owner of registered land or a

registered charge, or the lessee of a registered long term lease, who has acquired the land, charge or lease by transfer without valuable consideration as if the transfer had been for valuable consideration.

(2) The owner of registered land or a registered charge, or the lessee of a registered long term lease, referred to in subsection (1) shall hold the land, charge or lease subject to -

- (a) the provisions of the Bankruptcy Ordinance (Cap. 6);
- (b) Part V of the Companies Ordinance (Cap. 32);
- (c) section 33(9) of the Buildings Ordinance (Cap. 123);
and
- (d) any unregistered interests (including any matter referred to in section 14(2)(d) or 22(2)(d)) subject to which the immediately preceding transferor held the land, charge or lease.

24. Overriding interests

(1) Registered land shall be subject to such of the following interests as affect the land notwithstanding that the interests are not the subject of an entry in the Title Register -

- (a) if Part II of the New Territories Ordinance (Cap. 97) applies to the land, any Chinese custom or customary right affecting the land;
- (b) any public rights;
- (c) any -

- (i) easements provided for in any instrument within the meaning of the Land Registration Regulations (Cap. 128 sub. leg.) in respect of which a memorial within the meaning of those Regulations has been either registered, or accepted for registration, under the Land Registration Ordinance (Cap. 128);
 - (ii) rights of way;
 - (iii) rights of water; or
 - (iv) covenants which run with the land, existing on the date of first registration of the land;
- (d) any easements (whether existing before, on or after the commencement of this section) which -
- (i) are continuous and apparent;
 - (ii) have been passed to the transferee following the -
 - (A) division of the land; and
 - (B) transfer of the parcel of land resulting from the division which is benefitted thereby;
 - (iii) are not expressly provided for in an instrument;
 - (iv) are necessary for the reasonable enjoyment of the land benefitted thereby; and

- (v) were at the time of the transfer being used for the benefit of that land;
- (e) any easements of necessity (whether existing before, on or after the commencement of this section);
- (f) any -
 - (i) rights (whether of the Government or any other person) under the Government lease under which the land is held;
 - (ii) rights, under an enactment, of the Government -
 - (A) of resumption, closure, entry, search, inspection, investigation, user, repair, alteration, removal, demolition, marking, naming or planning of buildings or development, redevelopment or reinstatement of land;
 - (B) to extinguish rights or to create easements or other rights;
 - (C) relating to costs, standards or specifications of any building, street or engineering works; or
 - (D) affecting land or any interest in land, and any notices, orders and certificates relating to any such rights;

- (g) any first charge under -
 - (i) section 18(1) of the Estate Duty Ordinance (Cap. 111) if, but only if -
 - (A) the instrument which gave rise to the charge was registered under the Land Registration Ordinance (Cap. 128) before the date of first registration;
 - (B) not more than 3 years have elapsed since the date of that instrument; and
 - (C) the charge has not been registered under section 18(2) of the Estate Duty Ordinance (Cap. 111); or
 - (ii) section 67 of the Stamp Duty Ordinance (Cap. 117);
- (h) any lease -
 - (i) for a term not exceeding 3 years (but excluding any option to renew or extend the term of the lease);
 - (ii) at the best rent which can reasonably be obtained without a premium; and
 - (iii) where the lessee is to take possession forthwith under the lease;
- (i) any rights acquired, or in the course of being acquired, in the land where, by virtue of the Limitation Ordinance (Cap. 347), the title of the

registered owner has been extinguished or will after the expiry of the appropriate period be extinguished;

- (j) any rights under an enactment for the erection, construction or laying of (and including the use of) -
- (i) electricity supply lines;
 - (ii) telephone lines or poles;
 - (iii) telegraph lines or poles;
 - (iv) pipelines (including sewage tunnels);
 - (v) aqueducts;
 - (vi) canals;
 - (vii) wires;
 - (viii) dams; or
 - (ix) telecommunications facilities.

(2) Subject to subsections (3) and (5), the Registrar may, as he thinks fit, register an overriding interest.

(3) The Registrar shall, on application presented to him by the relevant authority established or referred to in an enactment referred to in subsection (1)(f)(ii), register a notice, order or certificate referred to in that subsection.

(4) The Court of First Instance may order the registration of an overriding interest in such manner as it thinks fit and specified in the order.

(5) The Registrar shall give effect to an order referred to in subsection (4) and, for that purpose, shall have such powers (whether or not conferred on him under this Ordinance) as are necessary to so give effect to the order.

(6) The Registrar may, on -

(a) application presented to him by a person -

(i) affected by an overriding interest which has been registered; or

(ii) who, in the opinion of the Registrar, is otherwise concerned with the interest; and

(b) proof to his satisfaction that the interest has, for whatever reason, ceased to affect the registered land concerned,

remove the entry in the Title Register referring to that interest.

25. Entries in Title Register to constitute notice

A person acquiring registered land, a registered charge or a registered long term lease shall be deemed to have had notice of every entry in the Title Register which -

(a) affects the land, charge or lease; and

(b) is current at the time of the acquisition of the land, charge or lease.

PART 4

CERTIFICATES AND SEARCHES

26. Title certificates

(1) The Registrar may, on application presented to him by the owner of registered land or the lessee of a registered long term lease, issue to the owner or lessee a certificate in the specified

form showing, or referring to, all current entries in the Title Register affecting the land or lease.

(2) Where only part of the registered land or interest in the registered long term lease the subject of a title certificate is dealt with in a transfer or transmission -

- (a) the title certificate shall accompany the application for registration of the transfer or transmission; and
- (b) the Registrar shall cancel that title certificate upon the registration of the application.

(3) A title certificate shall be admissible as evidence of the matters contained in the certificate as on the date of its issue.

(4) Notwithstanding what is shown, or referred to, in a title certificate, the Title Register shall be conclusive evidence of the title to the registered land and interest in the registered long term lease and the other matters shown on the Title Register.

(5) If a title certificate has been issued for registered land or a registered long term lease, a transfer or transmission shall not be registered in respect of the land or lease unless the certificate is returned for cancellation.

(6) After the Registrar has issued a title certificate for registered land or a registered long term lease, he -

- (a) shall make a note in the Title Register that the certificate has been issued; and
- (b) shall not issue another title certificate in respect of the land or lease unless the first certificate is cancelled.

(7) A new title certificate may be issued, in accordance with regulations made under section 100, in place of a title certificate which has been lost or destroyed.

(8) For the avoidance of doubt, it is hereby declared that a title certificate is subject to -

(a) any overriding interest; and

(b) any subsequent entry in the Title Register, affecting the registered land or the lease to which the certificate relates.

27. Searches

(1) Subject to subsection (2), a person may -

(a) on the presentation to the Registrar of an application for a search or inspection; and

(b) in accordance with regulations made under section 100, have made available any thing required under section 5(2) to be kept and maintained in the Land Registry.

(2) Subsection (1) shall not operate to entitle a person to -

(a) have made available any thing referred to in section 5(2) in a way not expressly permitted under the regulations referred to in that subsection (or, where more than one way is so permitted, in any one such way as the Registrar decides);

(b) have made available, in respect of the application concerned, any document for the purposes of, or as a result of, the search to which the application relates

other than any such document expressly permitted to be so made available under the regulations referred to in that subsection.

28. Evidence

(1) Notwithstanding any other enactment, a document purporting to be a copy, print or extract -

(a) of or from -

- (i) the Title Register (including any part thereof);
- (ii) any land title records (including any part thereof);
- (iii) any applications record (including any part thereof);
- (iv) any prescribed form (including any part thereof);
- (v) any other document (including any part thereof) which -
 - (A) is filed or deposited in the Land Registry under the provisions of any other enactment; or
 - (B) otherwise belongs to the Land Registry;or
- (vi) any endorsement on, or any microfilm, image or other record of, the Title Register or any records, record, form or document

referred to in subparagraph (ii), (iii),
(iv) or (v); and

(b) bearing a certificate, with the signature or the printed signature of the Registrar, or of any other person authorized by him in that behalf, certifying that the document is a true copy, print or extract, shall, subject to the Stamp Duty Ordinance (Cap. 117), and to the same extent as the original of the document, be admissible in evidence in any proceedings before any court on its production without further proof and, in the absence of evidence to the contrary, the court shall presume that -

- (c) the signature or the printed signature and certification to the document is that of the Registrar or a person authorized by him in that behalf; and
- (d) the document is a true and correct copy, print or extract.

(2) No solicitor, trustee or other person in a fiduciary position shall be liable in damages for any loss occasioned by the inaccuracy of a document first-mentioned in subsection (1).

(3) Subject to subsection (4), no process for compelling the production of any thing referred to in paragraph (a)(i), (ii), (iii), (iv), (v) or (vi) of subsection (1) shall be issued from any court -

- (a) except with the leave of the court; and
- (b) unless the process has a statement on it to the effect that it is issued with the leave of the court.

(4) A court shall not grant leave for a process referred to in subsection (3) to be issued if it is satisfied that a document first-mentioned in subsection (1) is sufficient for the purposes of the process.

(5) Nothing in this section shall prejudice the admissibility of any evidence which would be admissible apart from the provisions of this section.

PART 5
DISPOSITIONS

29. Dealings

(1) No disposition of registered land or a registered long term lease or any interest in or over land or a registered long term lease shall be effectual to create, extinguish, transfer, vary or affect the land or lease or any interest in or over the land or lease unless and until the disposition is registered.

(2) Subject to subsection (3), nothing in this section shall be construed as preventing an unregistered instrument from operating as a contract if -

- (a) the instrument is capable of registration; and
- (b) apart from this section, the instrument can so operate.

(3) Subsection (2) shall not operate to limit, restrict, or qualify the operation of any other provisions of this Ordinance.

(4) The death of a person by or on behalf of whom an instrument has been executed shall not of itself affect the validity of the instrument where -

(a) the death occurred after the instrument was executed;
and

(b) the instrument was valid at the time it was executed,
and, accordingly, the instrument may be presented to the Registrar for registration as if the death had not occurred.

30. Protection of persons dealing in registered land, etc.

Where a trustee in that capacity is registered as the owner of registered land, a registered charge or a registered long term lease, he shall, in dealing with the land, charge or lease, be deemed to be the owner of the land, charge or lease, and no disposition that amounts to a breach of trust by the trustee to a bona fide purchaser for valuable consideration without notice of the breach shall be defeasible by reason of the fact of that breach.

31. Additional fee for delayed registration

(1) Subject to subsections (2) and (3), where an application for the registration of any matter is presented to the Registrar for registration later than 3 months after the date of the instrument supporting the application, then, in addition to the prescribed fee payable in respect of the application, an additional fee equal to that prescribed fee shall be payable for each month or part of a month which has elapsed since the date of that instrument.

(2) No additional fee payable under subsection (1) in respect of the registration of a matter shall exceed 10 times the prescribed fee that would have been payable in respect of the application which relates to the matter if that matter had been registered on the date of the instrument supporting the application.

(3) The Registrar may remit, either in whole or in part, any additional fee payable under subsection (1) where to do so is in his opinion just and equitable in all the circumstances of the case.

32. Power to compel registration

(1) Where the Registrar is satisfied that a person, through that person's wilful default, has failed to present to the Registrar an application for the registration of a matter, the Registrar may, by notice in writing served on the person, require that person to present the application to the Registrar not later than 30 days after the notice is so served.

(2) Where an application the subject of a notice under subsection (1) -

(a) is presented to the Registrar on a date on or before the expiration of 30 days after the service of the notice -

- (i) the prescribed fee payable in respect of the application; and
- (ii) any additional fee payable under section 31 in respect of the application,

shall become due and payable on that date;

(b) is not presented to the Registrar on a date on or before the expiration of 30 days after the service of the notice -

(i) the prescribed fee payable in respect of the application; and

(ii) any additional fee payable under section 31 in respect of the application,

shall become due and payable on the day immediately following the expiration of those 30 days.

33. Priority of registered matters

(1) Subject to subsections (3), (4), (5) and (6) and sections 24(6) and 71(1)(b), matters appearing in the Title Register shall have priority according to the order in which the applications which led to their registration were presented to the Registrar, irrespective of the dates of the applications (including the dates of the instruments, if any, supporting the applications) and notwithstanding that the actual entry in the Title Register may be delayed.

(2) Where a first charge under the provisions of any enactment is not an overriding interest, then, in so far as the charge relates to land, and notwithstanding those provisions or the fact that the term "first charge" is used therein, that charge shall have priority as determined in accordance with subsection (1).

(3) Any first charges arising under section 67(2) of the Stamp Duty Ordinance (Cap. 117) shall have priority according to the order in which the instruments to which they respectively relate were registered under the Land Registration Ordinance (Cap. 128), irrespective of the order in which any such charges are registered under this Ordinance and notwithstanding the operation of section 67(4) of the Stamp Duty Ordinance (Cap. 117).

(4) Where a first assignment effecting a first registration of land under section 12(1)(a) is registered within one month from the date of that assignment, then the priority of an instrument concerned (other than a charging order or lis pendens) -

- (a) dated before the date of assignment and registered within one month from the date of that instrument; and
- (b) submitted for registration after the submission of the first assignment,

shall be determined in accordance with the provisions of the Land Registration Ordinance (Cap. 128).

(5) Where a first assignment effecting a first registration of land under section 12(1)(a) is registered after the expiration of one month from the date of that assignment, then the priority of an instrument concerned (other than a charging order or lis pendens) -

- (a) dated before the date of delivery of the assignment; and
- (b) registered within one month from the date of that instrument,

shall be determined in accordance with the provisions of the Land Registration Ordinance (Cap. 128).

(6) In a first registration of land in respect of an application made under section 12(1)(b), the priority of an instrument concerned (other than a charging order or *lis pendens*) -

(a) dated before the presentation of the application under that section and registered within one month from the date of that instrument; and

(b) submitted for registration after the submission of the application under that section,

shall be determined in accordance with the provisions of the Land Registration Ordinance (Cap. 128).

(7) It is hereby declared that -

(a) without prejudice to the generality of section 71(1)(b), where an application is presented to the Registrar for the registration of a dealing the subject of a consent caution, the priority of the dealing, if registered, relates back to, and takes effect from, the priority of the first consent caution in respect of the same dealing as determined in accordance with subsection (1) or, where applicable, that subsection as read with paragraph (b);

(b) without prejudice to the generality of section 71(1)(b), where -

- (i) a consent caution ("first consent caution") referred to in section 70(2) has been registered in respect of a dealing;
- (ii) the provisional agreement for sale and purchase or agreement for sale and purchase to which the first consent caution relates is stamped under the Stamp Duty Ordinance (Cap. 117); and
- (iii) another consent caution ("second consent caution"), accompanied by that stamped provisional agreement for sale and purchase or agreement for sale and purchase, as the case may be, is registered in respect of that dealing not later than 30 days after the registration of the first consent caution,

then the priority of the second consent caution relates back to, and takes effect from, the priority of the first consent caution as determined in accordance with subsection (1);

- (c) where an application is presented to the Registrar for the registration of an interest the subject of a non-consent caution (including any interest arising from a winding-up petition the subject of a non-consent caution), the priority of the interest, if registered, relates back to, and takes effect from, the priority

of the non-consent caution as determined in accordance with subsection (1); and

- (d) neither paragraph (a) nor (c) shall operate to affect the priority of a caution as determined in accordance with subsection (1).

34. Charging orders and lis pendens

(1) Subject to subsections (2), (3) and (4), where a charging order has been registered, the registration of the order shall cease to have effect upon the expiration of 5 years from the date of registration, but the order may be re-registered from time to time and, if so re-registered, shall have effect for 5 years from the date of re-registration.

(2) The operation of subsection (1) in respect of a charging order shall be subject to any express stipulation to the contrary contained in the order except any such stipulation which purports to provide that the registration of the order shall have effect for a period longer than 5 years from the date of registration.

(3) The variation of a registered charging order shall be effected by the registration of an order of a court providing for the variation.

(4) The discharge of a registered charging order shall be effected by the removal of the entry in the Title Register referring to the order consequent upon the presentation to the Registrar of an order of a court providing for the discharge.

(5) Without prejudice to the generality of any other provisions of this Ordinance under which the registration of a lis pendens may be removed or withdrawn, subsections (1) and (2) shall apply to a lis pendens as they apply to a charging order.

35. Form and effect of charges

(1) A charge on registered land or a registered long term lease shall be effected by -

- (a) its registration as an incumbrance; and
- (b) the registration of the person in whose favour it is made as its owner.

(2) Where, in relation to a registered charge which is a charge to which Part III of the Companies Ordinance (Cap. 32) applies, there is any conflict or inconsistency between the provisions of this Ordinance and the provisions of that Part, then the provisions of that Part (including that Part as read with any other provisions of the Companies Ordinance (Cap. 32) to which it is subject) shall, to the extent of the conflict or inconsistency, as the case may be, prevail over the provisions of this Ordinance.

(3) For the avoidance of doubt, it is hereby declared that a registered charge shall not operate as a transfer of the registered land or the registered long term lease the subject of the charge but shall have effect as a security only.

36. Second or subsequent charges

The owner of registered land or the lessee of a registered long term lease subject to a registered charge may effect a second or subsequent registered charge in the same manner as a first registered charge and -

- (a) subject to paragraph (b), for that purpose the provisions of this Ordinance which apply to a first registered charge shall apply to a second or subsequent registered charge in the same manner as those provisions apply to a first registered charge; and
- (b) any power of sale expressed or implied in a second or subsequent registered charge shall be subject to all prior registered charges which have not been discharged.

37. Charge on registered charge

The owner of a registered charge may effect a charge on any interest he has in the registered charge and any charge so effected may be registered as an incumbrance specifying the person in whose favour it is made as the owner.

38. Discharge or partial discharge of registered charge

A discharge or partial discharge of a registered charge shall be effected by -

- (a) in the case of a discharge, the removal of the entry in the Title Register referring to the charge;
- (b) in the case of a partial discharge, the removal of the entry -
 - (i) referring to the charge; and
 - (ii) in the Title Register to which the discharge relates.

39. Satisfaction of registered charge

Notwithstanding section 38, on proof to the satisfaction of the Registrar -

- (a) that all money or money's worth due under a registered charge has been paid to the chargee or by his direction;
- (b) that there has been fulfilment of all the conditions to which a registered charge relates;
- (c) that part of money or money's worth due under a registered charge has been paid to the chargee or by his direction ("partial payment"); or
- (d) that there has been fulfilment of some of the conditions to which a registered charge relates ("partial fulfilment"),

the Registrar shall -

- (e) in the case of paragraph (a) or (b), remove from the Title Register the entry referring to the charge;

- (f) in the case of paragraph (c) or (d), remove from the Title Register to which that partial payment or partial fulfilment, as the case may be, relates the entry referring to the charge.

40. Floating charge

(1) Subject to subsection (3), an instrument providing for a floating charge, whether or not it specifically identifies any registered land or registered long term lease charged, shall not be registrable as a charge.

(2) An instrument providing for a floating charge becomes -

- (a) an instrument providing for a fixed charge on the registered land or the registered long term lease intended to be affected; and

(b) registrable as a charge on that land or lease, upon crystallization of that charge as evidenced by a certificate signed by or on behalf of the chargee.

(3) An instrument providing for a fixed charge and a floating charge shall be registrable as a charge on the registered land or the registered long term lease which is subject to the fixed charge.

41. Transfer

(1) A transfer of registered land, a registered charge or a registered long term lease shall be effected by the registration of the transferee as -

- (a) the owner of the registered land;
- (b) the chargee of the registered charge; or
- (c) the lessee of the registered long term lease,

as the case may be.

(2) The transferee of a registered charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer, and the chargor shall comply with that requirement accordingly.

42. Divisions, etc.

(1) Subject to subsections (2) and (3), the Registrar shall not accept an application the registration of which will effect a division of registered land unless, in respect of each of the parcels of land to result from the division, the instrument accompanying the application and providing for the division is accompanied by a land boundary plan -

- (a) showing and delineating those parcels; and
- (b) subject to subsection (4), signed and certified by an authorized land surveyor.

(2) Without prejudice to the generality of subsections (3) and (4) -

- (a) subject to paragraph (b), it shall not be necessary for an instrument referred to in subsection (1) to be accompanied by a land boundary plan referred to in subsection (1) where the division of registered land concerned is provided for by a will or judgment and

that instrument is the grant of probate in respect of the will, or the judgment, as the case may be;

- (b) it shall be necessary for an instrument accompanying an application presented for the registration of a dealing to effect the passing of title to any parcel of land resulting from that division to be accompanied by such a land boundary plan.

(3) It shall not be necessary for an instrument referred to in subsection (1) or (2)(b) to be accompanied by a land boundary plan referred to in that subsection if the instrument was executed before the commencement of section 30 of the Land Survey Ordinance (Cap. 473).

(4) It shall not be necessary for a land boundary plan -

- (a) accompanying an instrument referred to in subsection (1) or (2)(b); and

- (b) which has been prepared by the Government,

to be signed and certified by an authorized land surveyor.

43. Covenants for title

For the avoidance of doubt, it is hereby declared that -

- (a) the provisions of this Ordinance shall not prejudice the operation of section 35 of the Conveyancing and Property Ordinance (Cap. 219); and

- (b) no reference to a covenant implied under that section shall be entered in the Title Register.

44. Provisions as between vendor and purchaser

(1) On a sale of registered land or a registered long term lease to a purchaser, other than a lessee or chargee -

(a) the vendor shall, subject to any stipulation to the contrary, provide the purchaser with -

(i) a copy of the current entries in the Title Register;

(ii) a copy, print or extract of or from any instrument referred to in any such entry;
and

(iii) a copy, print or extract of or from any plan which is referred to in any such entry or instrument,

so far as any such entries, instrument or plan respectively affect the land or lease (except registered incumbrances which are to be discharged at or prior to completion of the sale);

(b) the vendor shall, subject to subsection (2) and to any stipulation to the contrary, at his own expense provide the purchaser with particulars of any overriding interests affecting the land or lease of which he has, or ought reasonably to have, knowledge of; and

(c) where the vendor is not the owner of the land or of a registered charge giving a power of sale over the

land, or the lessee of the lease, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, procure -

- (i) the registration of himself as the owner of the land or charge or the lessee of the lease; or
- (ii) a disposition of the land, charge or lease from the owner to the purchaser.

(2) Where, on the first assignment effecting a first registration of land under section 12(1)(a) on or after the commencement day, the vendor has, or ought reasonably to have, knowledge of an overriding interest which might affect the land -

- (a) the vendor shall, notwithstanding any stipulation to the contrary, and whether under subsection (1)(b) or otherwise, at his own expense provide the purchaser of the land with full particulars of the interest; and
- (b) the purchaser shall include the particulars provided to him under paragraph (a) in the application presented to the Registrar for the first registration of the land.

(3) Where an owner of land named in the register (howsoever described) kept and maintained under the Land Registration Ordinance (Cap. 128) makes an application for a first registration of land under section 12(1)(b), he shall include the particulars of any overriding interest which might affect the land which he has, or ought reasonably to have, knowledge of in the application.

45. Transfer subject to lease

A transfer of registered land or a registered long term lease which is subject to a lease shall be valid without the lessee of the last-mentioned lease acknowledging the transferee as lessor, but nothing in this section shall -

- (a) affect the validity of any payment of rents made by the lessee to the transferor; or
- (b) render the lessee liable, on account of his failure to pay rents to the transferee, for any breach of agreement to pay rents,

before a notice of the transfer is given to the lessee by the transferee.

46. Leases

(1) The Registrar shall register -

- (a) the grant of a lease;
- (b) any transaction concerning a lease where the lessee's interest in the lease is or is to be affected by the transaction.

(2) In this section, "lease" (租契) does not include a lease -

- (a) which is an overriding interest; or
- (b) of any land which is not registered land.

47. Long term leases

(1) An application in the specified form for the registration of a long term lease shall be made by the first lessee of the long term lease granted by the owner of the registered land on or after the date of first registration of the land.

(2) Where, on the grant of a long term lease by the owner of the registered land on or after the date of first registration of the land, the owner has, or ought reasonably to have, knowledge of an overriding interest which might affect the long term lease -

(a) the owner shall, notwithstanding any stipulation to the contrary, at his own expense provide the first lessee of the long term lease with full particulars of the interest; and

(b) the first lessee shall include the particulars provided to him under paragraph (a) in the application presented to the Registrar under subsection (1).

(3) The Registrar may register a long term lease the subject of an application under subsection (1) -

(a) if the Registrar is satisfied that the application complies with the provisions of this Ordinance applicable to it; and

(b) by opening a long term lease register specifying that the applicant is the lessee of the long term lease.

48. Special provisions applicable to certain leases granted before date of first registration

(1) After an ownership register of the land has been opened, an application in the specified form may be made by the lessee for the registration of a relevant lease (and notwithstanding that the lease is already registered) as a long term lease.

(2) An application made under subsection (1) shall be accompanied by -

- (a) a certificate in the specified form signed by a solicitor certifying that he has examined and found the lessee to have good title to the relevant lease; and
- (b) the particulars of any overriding interests which may affect the lease and which the applicant has, or ought reasonably to have, knowledge of.

(3) The Registrar may register a relevant lease as a long term lease the subject of an application made under subsection (1) -

- (a) if the Registrar is satisfied that the application complies with the provisions of this Ordinance applicable to it; and
- (b) by opening a long term lease register specifying that the applicant is the lessee of the long term lease.

(4) Where a relevant lease is registered as a long term lease, the relevant lease shall thereupon be deemed to be a long term lease, and the other provisions of this Ordinance shall apply accordingly.

(5) In this section, "relevant lease" (有關租契) -

- (a) subject to paragraph (b), means a lease which would be a long term lease but only for the fact that it was granted before the date of first registration of the registered land to which the lease relates;
- (b) does not include a lease of any land which is not registered land.

49. Easements

(1) An instrument creating, or evidencing the existence of, an easement shall specify -

- (a) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment;
- (b) the registered land or the registered long term lease burdened by the easement and, if required by the Registrar, the particular part of the land so burdened; and
- (c) the registered land or the registered long term lease which enjoys the benefit of the easement and, if required by the Registrar, the particular part of the land so benefitted.

(2) The registration of an easement shall be effected by the entering in the Title Register of particulars of the instrument creating, or evidencing the existence of, the easement both in respect of the registered land or the registered long term lease

burdened and the registered land or the registered long term lease benefitted by the easement.

50. Covenants

(1) Where an instrument, other than a lease or charge, provides for a covenant (whether positive or restrictive in effect) -

- (a) which relates to registered land or a registered long term lease of the covenantor;
- (b) the burden of which is expressed or intended to run with the registered land or the registered long term lease of the covenantor; and
- (c) which is expressed and intended to benefit the registered land or the registered long term lease of the covenantee and his successors in title or persons deriving title to that land or lease under or through him or them,

the registration of the covenant shall be effected by the entering in the Title Register of particulars of that instrument both in respect of the registered land or the registered long term lease burdened and the registered land or the registered long term lease benefitted by the covenant (and notwithstanding that the covenantor and the covenantee may be joint tenants or tenants in common of the registered land or the registered long term lease burdened and the registered land or the registered long term lease benefitted by the covenant).

(2) Subject to section 24, an instrument providing for a covenant shall not affect registered land or a registered long term lease unless particulars of the instrument are entered in the Title Register.

(3) In this section, "covenant" (契諾) does not include a deed of mutual covenant within the meaning of section 51.

(4) For the avoidance of doubt, it is hereby declared that this section shall not prejudice the operation of section 43.

51. Deeds of mutual covenant

(1) The registration of a deed of mutual covenant shall be effected by -

- (a) its registration as an incumbrance; and
- (b) the entry in the Title Register of particulars of the deed.

(2) On proof to the satisfaction of the Registrar that a registered deed of mutual covenant has been extinguished or otherwise terminated, the Registrar shall remove from the Title Register the entry referring to the deed.

(3) In this section -

"deed of mutual covenant" (公契) means a document which, if it was registered, would be a registered deed of mutual covenant;

"registered deed of mutual covenant" (註冊公契) means a deed of mutual covenant within the meaning of section 2 of the Building

Management Ordinance (Cap. 344), and includes any alteration or addition thereto which is registered.

(4) For the avoidance of doubt, it is hereby declared that the registration of a deed of mutual covenant effects the registration of any easement, right or covenant provided for in the deed which affects the registered land or the registered long term lease the subject of the deed.

52. Termination of leases

Where a registered lease is terminated (whether by surrender, forfeiture, re-entry or otherwise), the Registrar shall remove the entry in the Title Register referring to the lease on the presentation of an application to the Registrar therefor together with -

- (a) the instrument, if any, providing for the termination;
- or
- (b) such other evidence as satisfies the Registrar that the lease has been terminated.

53. Release and extinguishment of registered easements and covenants

(1) On the registration of an executed release in respect of a registered easement or covenant -

- (a) the easement or covenant is thereupon extinguished;
- and
- (b) the Registrar shall remove the entry in the Title Register referring to that easement or covenant.

- (2) The Registrar shall, on -
- (a) application presented to him by a person affected by a registered easement or covenant; and
 - (b) proof to his satisfaction that -
 - (i) the period for which the easement or covenant was intended to exist has expired; or
 - (ii) the event upon which the easement or covenant was intended to determine has occurred,

remove the entry in the Title Register referring to that easement or covenant.

54. Modification or partial extinguishment of registered easements and covenants

The Registrar shall register an application for the modification or partial extinguishment of a registered easement or covenant where -

- (a) the application is accompanied by an instrument providing for the modification or partial extinguishment; and
- (b) the Registrar is satisfied that each owner of the registered land or each lessee of the registered long term lease burdened or benefitted by the easement or covenant consents to the modification or partial extinguishment.

55. Saving of certain rights

Nothing in this Ordinance shall be construed as altering any rule of law which implies in the grant or reservation of an easement such ancillary rights as are necessary for effective enjoyment of the easement.

56. Registration of more than one owner

(1) An instrument providing for a transfer made in favour of 2 or more persons shall not be registered unless it shows, in respect of the registered land or the registered long term lease to which it relates -

(a) whether the persons are joint tenants or tenants in common; and

(b) where the persons are tenants in common, the share of each owner or lessee.

(2) The entry made in the Title Register to effect the registration of an instrument referred to in subsection (1) shall show the particulars required to be shown in that instrument under paragraphs (a) and (b) of that subsection.

57. No interference with rights of succession

Nothing in this Ordinance shall be construed as affecting -

(a) a right which the owner of registered land or a registered charge, or the lessee of a registered long term lease, has to make a will, under the law relating

to testamentary disposition, disposing of the land, charge or lease on his death;

- (b) the law of intestate succession; or
- (c) a right of succession to land under Part II of the New Territories Ordinance (Cap. 97)(including that Part as read with section 12 of the New Territories Land (Exemption) Ordinance (Cap. 452)).

PART 6

INSTRUMENTS

58. Form of instruments

(1) A disposition of registered land, a registered charge or a registered long term lease, or the grant or reservation of an easement over registered land or a registered long term lease, may be made in any manner as could have been done prior to the date of first registration, or the date of registration of the long term lease under section 47 or 48, except where -

- (a) such a disposition, grant or reservation is required to be made by an instrument in the specified form and there is such a specified form; or
- (b) notwithstanding that such a disposition, grant or reservation is not required to be made by an instrument in the specified form, the Registrar has exercised his power under section 97 to specify the form of such an instrument.

(2) An instrument, where applicable, shall contain a true statement of the amount or value of any purchase price or loan or other consideration.

59. Stamping

(1) No instrument required by law to be stamped shall be accepted for registration of any matter unless it is stamped in accordance with the requirements of the Stamp Duty Ordinance (Cap. 117).

(2) No caution, inhibition or restriction shall be registered for the purpose of protecting an interest -

(a) in registered land, a registered charge or a registered long term lease; and

(b) supported by an instrument required by law to be stamped,

unless the instrument is stamped in accordance with the requirements of the Stamp Duty Ordinance (Cap. 117).

60. Retention of land title records, etc.

(1) The Registrar shall, in respect of each land title record, retain it, or a microfilm, image or other record of it, in the Land Registry.

(2) Where a microfilm, image or other record has been made and retained in the Land Registry of a land title record, the Registrar may -

- (a) destroy or otherwise dispose of the land title record;
or
- (b) return the land title record to the person by whom it
was delivered.

(3) Where pursuant to this Ordinance a microfilm record, image record (including an image record of a microfilm record) or other record is made of a document, the microfilm record, image record or other record, as the case may be, shall be treated for all purposes as the original document.

61. Minors

(1) Nothing in this section enables a minor to deal with registered land, a registered charge or a registered long term lease or an interest in registered land, a registered charge or a registered long term lease by virtue of being the owner of the land or charge, or the lessee of the lease to which the land, charge or lease is subject.

(2) Where a disposition by a minor of registered land, a registered charge or a registered long term lease has been registered and -

- (a) the person to whom the disposition is made acted in good faith and for valuable consideration; and
- (b) 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.

(3) For the avoidance of doubt, it is hereby declared that the name of a minor may be entered in the Title Register as the owner of registered land or a registered charge, or the lessee of a registered long term lease, with the addition after the minor's English name of the words "a minor" and with the addition after his Chinese name of the words "未成年人".

PART 7

TRANSMISSIONS AND TRUSTS

62. Transmission on death of joint tenant

(1) Subject to subsection (2), where one of 2 or more joint tenants of registered land, a registered charge or a registered long term lease dies, the Registrar, on proof to his satisfaction of the death, shall remove the name of the deceased from the Title Register concerned but the remaining joint tenant or tenants shall be subject to any interests -

- (a) subject to which the deceased joint tenant held the land, charge or lease immediately prior to his death;
- (b) which are unregistered; and
- (c) which are enforceable against the land or lease.

(2) The Registrar shall not comply with subsection (1) in the case of any deceased unless he is satisfied that -

- (a) estate duty is not payable under the Estate Duty Ordinance (Cap. 111) on the deceased's interest in

registered land, the registered charge or the registered long term lease concerned; or

- (b) where such estate duty is payable on such interest, the estate duty has been paid or its payment postponed in accordance with the provisions of that Ordinance.

63. Transmission on death of sole owner or tenant in common

(1) Where a sole owner or tenant in common of registered land or a registered charge dies, or a sole lessee of or a lessee of lessees holding as tenants in common a registered long term lease dies, his personal representative shall, on the presentation to the Registrar of the grant concerned, be entitled to be registered by transmission as the owner of the land or charge, or as the lessee of the lease, in the place of the deceased, with the addition after the personal representative's English name of the words "as executor of the will of deceased" or "as administrator of the estate of deceased", as the case may be, and after the personal representative's Chinese name of the words "作為死者.....的遺囑執行人" or "作為死者.....的遺產管理人", as the case may be.

(2) Where a sole owner or tenant in common of registered land or a registered charge dies, or a sole lessee of or a lessee of lessees holding as tenants in common a registered long term lease dies, the Registrar may, on the presentation to him of the grant concerned by the personal representative of the deceased owner or lessee, and without requiring the personal representative to be

registered in accordance with subsection (1), register by transmission -

- (a) a transfer of the land, charge or lease by the personal representative; or
- (b) a discharge of the charge by the personal representative.

(3) Where under section 17 of the New Territories Ordinance (Cap. 97) as read with section 12 of the New Territories Land (Exemption) Ordinance (Cap. 452) any registered land is vested in any person as a successor, that person shall, on the presentation to the Registrar of evidence which satisfies the Registrar that the land has so vested, be entitled to be registered by transmission as the owner of the land in place of the deceased person concerned.

(4) In this section, "grant" (授予承辦證明) means -

- (a) the grant of the probate of the will;
- (b) the grant of letters of administration of the estate; or
- (c) evidence of the summary administration, under section 15 of the Probate and Administration Ordinance (Cap. 10), of the estate,

of the deceased owner of registered land or a registered charge, or the deceased lessee of a registered long term lease, and includes the resealing of the grant.

64. Transmission on death of trustee

Where a trustee who in that capacity is registered as the owner of registered land or a registered charge dies, or where a trustee who in that capacity is registered as the trustee of a registered long term lease dies, his personal representative or any surviving or newly appointed trustee shall, on the presentation to the Registrar of such evidence as the Registrar requires, be entitled to be registered by transmission as the owner of the land or charge, or as the lessee of the lease, in the place of the deceased, with the addition after his English name of the words "as trustee" and with the addition after his Chinese name of the words "作為受託人".

65. Effect of transmission on death

(1) A personal representative who in that capacity is registered as the owner of registered land or a registered charge, or as the lessee of a registered long term lease shall -

(a) be subject to any interests -

(i) subject to which the deceased owner of the land, charge or lessee of the lease held the land, charge or lease immediately prior to his death;

(ii) which are unregistered; and

(iii) which are enforceable against the land or lease;

(b) without prejudice to paragraph (a), for the purposes of any dealing in the land, charge or lease, be deemed

to have been registered as the owner of the land or charge, or as the lessee of the lease, with -

- (i) unrestricted power of sale over the land, charge or lease;
- (ii) all the rights conferred under this Ordinance or any other enactment on the owner of registered land or a registered charge, or the lessee of a registered long term lease, as the case may be, who has acquired the land, charge or lease for valuable consideration.

(2) The deemed registration under subsection (1)(b) of a personal representative as the owner of registered land or a registered charge, or as the lessee of a registered long term lease, shall relate back to, and take effect from, the date of the death of the owner of the land or charge, or of the lessee of the lease, in respect of whom the personal representative is acting in that capacity.

66. Transmission on bankruptcy

(1) A trustee in bankruptcy shall, on the presentation to the Registrar of a sealed copy of the order of the Court of First Instance -

- (a) adjudging the owner of registered land or a registered charge bankrupt, or the lessee of a registered long term lease bankrupt; or

(b) directing that the estate of the deceased owner of registered land or a registered charge, or the deceased lessee of a registered long term lease shall be administered according to the law of bankruptcy, be entitled to be registered by transmission as the owner of the land or charge, or as the lessee of the lease, in the place of the bankrupt or deceased owner or lessee, with the addition after the English name of the trustee in bankruptcy of the words "as trustee of the property of a bankrupt", and with the addition after the Chinese name of the trustee in bankruptcy of the words "作為破產人.....的財產的受託人".

(2) A trustee in bankruptcy who in that capacity is registered as the owner of registered land or a registered charge, or as the lessee of a registered long term lease shall -

(a) be subject to -

- (i) any restrictions (including any rights) provided for in the Bankruptcy Ordinance (Cap. 6) or any other enactment; and
- (ii) any interests -
 - (A) subject to which the bankrupt or deceased owner of the land, charge or lessee of the lease held the land, charge or lease immediately prior to his bankruptcy or death;
 - (B) which are unregistered; and

(C) which are enforceable against the land
or lease;

(b) without prejudice to paragraph (a), for the purposes
of any dealing in the land, charge or lease, have -

(i) unrestricted power of sale over the land,
charge or lease;

(ii) all the rights conferred under this
Ordinance or any other enactment on the
owner of registered land or a registered
charge, or the lessee of a registered long
term lease, as the case may be, who has
acquired the land, charge or lease for
valuable consideration.

67. Transmission on liquidation

(1) Where a company is being wound up -

(a) the liquidator of the company shall present to the
Registrar the resolution or order under which he holds
his appointment as liquidator; and

(b) on the presentation of the resolution or order, the
Registrar shall enter the appointment in the Title
Register in respect of any registered land, registered
charge or registered long term lease of which the
company is the owner or lessee.

(2) An instrument executed by or on behalf of a company being
wound up presented to the Registrar for registration after the

appointment of the liquidator of the company has been entered in the Title Register shall -

- (a) in the case of a company required by law to have a common seal, be sealed with the common seal of the company and attested by the liquidator;
- (b) in any other case, be signed by the liquidator.

(3) Where an order has been made under section 198 of the Companies Ordinance (Cap. 32) vesting in the liquidator of a company any registered land, registered charge or registered long term lease of which the company is the owner or lessee -

- (a) the liquidator shall present the order to the Registrar; and
- (b) on the presentation of the order, the Registrar shall register the liquidator as the owner or lessee, as the case may be, of the land, charge or lease.

(4) Where under subsection (3) the liquidator of a company is registered as the owner of registered land or a registered charge, or as the lessee of a registered long term lease, the liquidator shall be subject to -

- (a) any restrictions (including any rights) provided for in the Companies Ordinance (Cap. 32) or any other enactment; and
- (b) any interests -
 - (i) subject to which the company held the land, charge or lease immediately prior to the order made under section 198 of the

Companies Ordinance (Cap. 32) by virtue of which the land, charge or lease was vested in the liquidator;

- (ii) which are unregistered; and
- (iii) which are enforceable against the land or lease.

68. Transmission in other cases

Where a person has become entitled to registered land, a registered charge or a registered long term lease under an order of the Court of First Instance or under an enactment, the Registrar shall, on the presentation to him by the person of the order or, in the case of the enactment, such other evidence as the Registrar requires, register the person so entitled as the owner of the land or charge or as the lessee of the lease.

69. Trusts not to be entered in Title Register

(1) A person acquiring registered land, a registered charge or a registered long term lease, or creating and holding a registered charge, as a trustee (other than as a personal representative or trustee in bankruptcy) may be described by that capacity in the instrument of acquisition or instrument providing for the charge, as the case may be, and, if so described, shall be registered with the addition of the words "as trustee" and "作為受託人", but the Registrar

shall not enter particulars of the trust concerned in the Title Register.

(2) Where the owner of registered land or a registered charge, or the lessee of a registered long term lease, makes a declaration of trust in respect of the land, charge or lease, or otherwise comes to hold the land, charge or lease as a trustee (other than as a personal representative or trustee in bankruptcy), the Registrar shall, on the presentation of an application for the registration of a transfer of the land, charge or lease supported by the declaration or other instrument by virtue of which the owner comes to hold the land, charge or lease as a trustee, add the words "as trustee" after that person's English name and add the words "作為受託人" after that person's Chinese name in the Title Register concerned, but the Registrar shall not enter particulars of the trust concerned in the Title Register.

(3) A trustee who in that capacity is registered under this section as the owner of registered land or a registered charge, or as the lessee of a registered long term lease shall -

(a) be subject to any interests which -

(i) the land, charge or lease is subject by virtue of the instrument creating the trust concerned;

(ii) are unregistered; and

(iii) are enforceable against the land or lease;

(b) without prejudice to paragraph (a), for the purposes of any dealing in the land, charge or lease, be deemed

to be the owner of the land, charge or lease with all the rights conferred under this Ordinance or any other enactment on the owner of registered land or a registered charge, or the lessee of a registered long term lease, as the case may be, who has acquired the land, charge or lease for valuable consideration.

(4) No breach of the terms of the trust to which the person, land, charge or lease referred to in subsection (3) is subject shall create any right or indemnity under this Ordinance.

PART 8

CAUTIONS AND RESTRAINTS ON DISPOSITION

70. Registration of cautions

(1) A person who in good faith and for valuable consideration intends to effect a dealing in registered land, a registered charge or a registered long term lease may, with the consent in the specified form of -

- (a) where the land, charge or lease is not affected by any prior consent caution, the owner of the land or charge or the lessee of the lease;
- (b) in any other case, the cautioner in respect of the prior consent caution which affects the land, charge or lease (or, where there is more than one such consent caution and, without prejudice to the

generality of section 33, the last such consent caution which was registered), present to the Registrar an application for the registration of a consent caution in respect of the dealing.

(2) Where an instrument which is a provisional agreement for sale and purchase or an agreement for sale and purchase in respect of registered land or a registered long term lease has been presented for stamping under the Stamp Duty Ordinance (Cap. 117), then a consent caution in respect of that dealing may be registered if, but only if, the application for the registration of the consent caution is accompanied by a statutory declaration by the purchaser under the dealing to the effect that the instrument has been so presented.

(3) A person who -

(a) claims any interest, whether contractual or otherwise, in; or

(b) has presented a winding-up petition against the owner of,

registered land or a registered charge, or a registered long term lease may present to the Registrar an application for the registration of a non-consent caution in respect of the interest or petition, as the case may be (and whether or not that person is the owner of that land or the lessee of that lease).

(4) The reference to interest in subsection (3)(a) shall include -

(a) in any case where proceedings are brought by virtue of section 147(3) of the Companies Ordinance (Cap. 32), a

first charge under section 148(1) of that Ordinance which may arise by virtue of those proceedings;

- (b) in any case where a gift inter vivos of any property is made where estate duty would be payable by virtue of section 6(1)(c) of the Estate Duty Ordinance (Cap. 111), a first charge under section 18(1) of that Ordinance which may arise by virtue of the gift.

(5) A transfer in registered land or a registered long term lease which is not for valuable consideration shall not be registered unless there is registered at the same time a non-consent caution to the effect that, in consequence of that transfer, the land or lease is or may become subject to a first charge under section 18(1) of the Estate Duty Ordinance (Cap. 111).

(6) For the purposes of subsection (5), an application for the registration of a transfer referred to in that subsection shall be accompanied by an application for the registration of a non-consent caution referred to in that subsection where, subject to subsection (7), the cautioner is the person who intends to effect that dealing.

(7) The Commissioner, within the meaning of the Estate Duty Ordinance (Cap. 111), shall be entered in the Title Register as the cautioner in respect of a non-consent caution referred to in subsection (6) which has been registered, and the other provisions of this Ordinance (including section 72) shall be construed accordingly.

(8) The Registrar may require the person presenting an application for the registration of a caution to support the application by such evidence as the Registrar requires.

(9) Subject to subsections (10) and (11), the Registrar shall register a caution.

(10) The Registrar may refuse to register a caution -

(a) which he considers unnecessary; or

(b) the purpose of which he considers can be effected by an entry in the Title Register other than an entry referring to a caution.

(11) An instrument providing for a floating charge, whether or not it specifically identifies any registered land or registered long term lease charged, shall not be treated as providing for a matter registrable as a caution.

(12) A lis pendens shall be treated as providing for a matter registrable as a non-consent caution.

(13) A caution shall not affect registered land, a registered charge or a registered long term lease until the caution has been registered.

71. Effect of cautions, etc.

(1) Where a consent caution has been registered in respect of registered land, a registered charge or a registered long term lease -

(a) subject to section 70(1)(b) and without prejudice to the generality of section 6(2), the consent caution shall not of itself prohibit the making of entries in the Title Register affecting the land, charge or lease;

(b) section 33(1) shall not operate to prevent any matter registered subsequent to the consent caution from having priority over the dealing the subject of the consent caution if, but only if -

(i) that dealing is dependent on that matter having such priority; or

(ii) the cautioner in respect of the consent caution consents thereto.

(2) Where a non-consent caution has been registered in respect of registered land, a registered charge or a registered long term lease, the non-consent caution shall not of itself prohibit the making of entries in the Title Register affecting the land, charge or lease.

(3) For the avoidance of doubt, it is hereby declared that the registration of a non-consent caution shall not -

(a) of itself affect the validity or otherwise of the interest or winding-up petition the subject of the non-consent caution; and

(b) without prejudice to the generality of paragraph (a), constitute a warranty, or a guarantee, as to the validity of the interest or winding-up petition by a person referred to in section 8(3) or the Government.

72. Withdrawal and removal of cautions

(1) A caution may be -

- (a) withdrawn by the cautioner by presenting to the Registrar an application for the withdrawal of the caution; or
- (b) removed on the presentation to the Registrar of an application for its removal -
 - (i) in any case, by a person who has obtained an order of the Court of First Instance for its removal;
 - (ii) in the case of a consent caution, by the owner of the registered land or the registered charge, or the lessee of the registered long term lease, affected by the caution if, but only if, the Registrar is satisfied that the cautioner has agreed to its removal; or
 - (iii) in the case of a non-consent caution, by the owner of the registered land or the registered charge, or the lessee of the registered long term lease, affected by the caution if, but only if, the Registrar is satisfied that -
 - (A) the owner or lessee has provided a copy of the application to the cautioner not less than 14 days before the presentation of the application to the Registrar; and

(B) either -

- (I) the caution was wrongfully registered; or
- (II) the ground on which the caution was registered no longer exists.

(2) Where the subject of a non-consent caution is a first charge under section 18(1) of the Estate Duty Ordinance (Cap. 111), then the Registrar may be satisfied for the purposes of subsection (1)(b)(iii)(B) if the application referred to in that subsection is accompanied by -

- (a) a statutory declaration made by the donor concerned, not less than 3 years after the date on which the gift concerned was made, that he is still alive;
- (b) a death certificate showing a date of death of the donor concerned which is a date not less than 3 years after the date on which the gift concerned was made;
- (c) any other evidence proving that the donor concerned is or was alive not less than 3 years after the date on which the gift concerned was made; or
- (d) papers proving that -
 - (i) the estate duty (including any interest thereon) to which the charge relates has been paid; or

(ii) no estate duty is required to be paid in respect of the land or lease to which the charge relates.

(3) The Registrar may require the owner of registered land or a registered charge, or the lessee of a registered long term lease, presenting an application for the removal of a caution under subsection (1)(b)(ii) or (iii) to support the application by such evidence as the Registrar requires.

(4) A person with an interest in registered land, a registered charge or a registered long term lease affected by a caution may apply by petition or originating summons to the Court of First Instance for the removal of the caution and the Court of First Instance may make such order on the petition or originating summons and as to costs as to the Court of First Instance appears just.

(5) On the registration of a person as the owner of registered land following a transfer of the land, or on the creation of a registered charge, or on the registration of a person as the lessee of a registered long term lease, the Registrar shall remove a consent caution, if any, which protected the priority of that transfer, charge or lease, as the case may be.

(6) On the withdrawal or removal of a caution -

(a) the Registrar shall remove the entry in the Title Register referring to the caution; and

(b) any liability of the cautioner previously incurred under section 73 shall not be affected by the removal of that entry.

(7) The Registrar shall give effect to an order under subsection (1)(b)(i) or (4) (except in so far as the order relates to costs) and, for that purpose, shall have such powers (whether or not conferred on him under this Ordinance) as are necessary to so give effect to the order.

73. Wrongful cautions

A person who -

- (a) maintains, or causes to be maintained, a consent caution; or
- (b) presents or maintains, or causes to be presented or maintained, a non-consent caution,

wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of a person who has thereby sustained damage, to pay such compensation to that second-mentioned person as to the Court of First Instance appears just.

74. Power of Court of First Instance to inhibit dealings

(1) The Court of First Instance may make an order inhibiting the registration of any dealing in registered land, a registered charge or a registered long term lease -

- (a) for a particular period;
- (b) until the occurrence of a particular event; or
- (c) generally until the making of a further order by the Court.

(2) The person who has obtained an inhibition shall present to the Registrar an application for the registration of the inhibition, supported by a copy of the inhibition under seal of the Court of First Instance, and on such presentation the Registrar shall register the inhibition.

(3) An inhibition shall not affect registered land, a registered charge or a registered long term lease until the inhibition has been registered.

75. Effect of inhibitions

While an inhibition remains registered, no dealing which is inconsistent with it shall be registered.

76. Removal of inhibitions

The registration of an inhibition shall not be removed except on the presentation to the Registrar of an application for the removal of that registration on one or more of the following grounds -

- (a) on the expiration of the period limited by the inhibition;
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event specified in the inhibition;
- (c) on the registered land or the registered charge affected by the inhibition being sold by a chargee, unless such sale is itself inhibited; or
- (d) by order of the Court of First Instance.

77. Restrictions by Registrar

(1) The Registrar may, in respect of registered land, a registered charge or a registered long term lease, and -

(a) after an application being presented to him by a person interested in the land, charge or lease;

(b) after -

(i) directing such inquiries to be made and notices to be served; and

(ii) hearing such persons,

as he thinks fit; and

(c) after being satisfied that the powers of the owner of the registered land or the registered charge, or of the lessee of the lease, to deal in the land, charge or lease should be restricted,

make an order prohibiting -

(d) all dealings in the land, charge or lease;

(e) such dealings in the land, charge or lease as do not comply with conditions specified in the order.

(2) A restriction may be expressed to endure -

(a) for a particular period;

(b) until the occurrence of a particular event; or

(c) generally until the making of a further order by the Registrar.

(3) The Registrar shall register an order made under subsection (1).

(4) A restriction shall not affect registered land, a registered charge or a registered long term lease until the restriction has been registered.

78. Notice and effect of restrictions

(1) The Registrar shall, as soon as reasonably practicable, give notice in writing of a restriction to the owner of the registered land or the registered charge, or the lessee of the registered long term lease, affected by the restriction.

(2) Subject to section 24(2), while a restriction remains registered, no dealing in registered land, a registered charge or a registered long term lease the subject of the restriction which is inconsistent with the restriction shall be registered except -

- (a) with the consent of the Registrar; or
- (b) by order of the Court of First Instance.

79. Removal and variation of restrictions

(1) The Registrar may, in respect of a restriction -

- (a) on application for the removal or variation of the restriction presented to him by -

- (i) the owner of registered land or a registered charge, or the lessee of a registered long term lease, affected by the restriction; or
- (ii) any other interested person; and

- (b) after giving the persons affected by the restriction an opportunity of being heard in accordance with section 94,

remove or vary the entry in the Title Register referring to the restriction.

(2) The Court of First Instance may, in respect of a restriction -

- (a) on application made to it by the owner of registered land or a registered charge, or the lessee of a registered long term lease, affected by the restriction or any other interested person; and

- (b) after notice of the application referred to in paragraph (a) has been given to the Registrar,

order the restriction to be removed or varied, or make such other order as to the Court of First Instance appears just, and may make an order as to costs.

(3) The Registrar shall give effect to an order under subsection (2) requiring a restriction to be removed or varied and, for that purpose, shall have such powers (whether or not conferred on him under this Ordinance) as are necessary to so give effect to the order.

PART 9

RECTIFICATION AND INDEMNITY

80. Rectification by Registrar

(1) The Registrar may rectify any error in or omission from the Title Register -

- (a) in the case of errors or omissions not materially affecting the interest of the registered owner of registered land or a registered charge, or the registered lessee of a registered long term lease; or
- (b) in any other case with the consent of all persons interested.

(2) The Registrar shall -

- (a) on application presented to him by a person stating that there has been a change in his name; and
- (b) on proof to his satisfaction of that change,

make an entry in the Title Register to record the change if that person's former name is the subject of an entry in the Title Register.

81. Rectification by Court of First Instance

(1) Subject to subsections (2) and (3), the Court of First Instance may order rectification of the Title Register by directing that an entry therein or omitted therefrom be removed, amended or entered, as the case may be, where it is satisfied that the entry has been obtained, made or omitted, as the case may be, by -

(a) the fraud, mistake or omission, as the case may be, of any person; or

(b) without prejudice to the operation of section 3(4)(c), means of a void or voidable instrument,

and whether or not the entry was obtained, made or omitted, as the case may be, before, on or after the date of first registration in respect of the registered land concerned.

(2) Subject to subsection (3), the Title Register shall not be rectified under subsection (1) so as to affect the title of the registered owner of registered land, or the title of the registered lessee of a registered long term lease, who is in possession of the land and has acquired the land or lease for valuable consideration unless the owner or the lessee -

(a) had knowledge of -

(i) the fraud, mistake or omission; or

(ii) the voidness or voidability of the instrument,

in consequence of which the rectification is sought;

or

(b) caused such fraud, mistake, omission, voidness or voidability or substantially contributed to it by his act, neglect or default.

(3) The Court of First Instance may, on application by a former registered owner of registered land or a former registered lessee of a registered long term lease to rectify the Title Register to restore his title of the land or lease on the ground that an entry on

ownership or registration as the lessee of the long term lease has been made by fraud, order rectification of the Title Register if the Court is satisfied that -

(a) it would be unjust not to rectify the Title Register against the registered owner or registered lessee;

(b) the former registered owner or former registered lessee has neither -

(i) knowledge of the fraud; nor

(ii) caused such fraud or substantially contributed to it by his act, neglect or default; and

(c) the registered owner or registered lessee is in possession of the land and has acquired the land or lease for valuable consideration and has neither -

(i) knowledge of the fraud; nor

(ii) caused such fraud or substantially contributed to it by his act, neglect or default.

(4) The Court of First Instance may, in exercising its discretion under subsection (3), consider such factors, including the acts of the parties and hardship to the parties, as it thinks fit in all the circumstances of the case.

(5) In any rectification case not involving any mistake or omission on the part of any person referred to in section 8(3), if the Registrar is joined as a party, the Registrar shall not (and notwithstanding any other law) pay -

- (a) costs incurred by the parties in the proceedings; and
- (b) damages suffered by any parties in the proceedings.

(6) The Registrar shall give effect to an order under subsection (1) or (3) and, for that purpose, shall have such powers (whether or not conferred on him under this Ordinance) as are necessary to so give effect to the order.

(7) In this section, "possession" (管有), in relation to land, includes receipt of rents, or the right, if any, to receive rents, in respect of the registered land or the registered long term lease concerned.

82. Indemnity

(1) Subject to subsections (2), (4)(b) and (c) and (5) and sections 83 and 85, a person suffering loss by reason of an entry in or omission from the Title Register, where such entry has been obtained, made or omitted, as the case may be, by or as the result of -

- (a) fraud -
 - (i) on the part of any person;
 - (ii) which affects the ownership of the registered land concerned or the registration of a person as the lessee of a registered long term lease; and
 - (iii) to which an order under section 81(1) or (3) relates (and whether or not the order grants

or refuses the relevant application for
rectification); or

- (b) any mistake or omission on the part of any person referred to in section 8(3),

shall be entitled to be indemnified by the Government in respect of that loss.

(2) No indemnity shall be payable under subsection (1) to a person who -

- (a) has himself caused or substantially contributed to the loss by his fraud or negligence; or
- (b) derives title (otherwise than under a registered disposition made in good faith and for valuable consideration) from a person who so caused or substantially contributed to the loss.

(3) In this section, "omission" (遺漏) does not include a failure to deliver an application for registration.

(4) For the avoidance of doubt, it is hereby declared that -

- (a) nothing in this Ordinance shall affect the validity or otherwise of any claim made under section 23A of the Land Registration Ordinance (Cap. 128) before the date of first registration in respect of the registered land concerned;
- (b) no indemnity shall be payable under subsection (1) in respect of any fraud, mistake or omission discovered (whether in proceedings before any court or otherwise) -

- (i) subject to subparagraph (ii), before the date of first registration in respect of the registered land concerned and irrespective of whether any claim in respect thereof has been, or could have been, or could not have been, made under section 23A of the Land Registration Ordinance (Cap. 128) before that date; or
 - (ii) before the date of registration of the lease as a long term lease in respect of the registered long term lease concerned and irrespective of whether any claim in respect thereof has been, or could have been, or could not have been, made under section 23A of the Land Registration Ordinance (Cap. 128) before that date;
- (c) no indemnity shall be payable under subsection (1) in respect of any fraud, mistake or omission which occurred -
- (i) subject to subparagraph (ii), before the date of first registration in respect of the registered land concerned and is discovered (whether in proceedings before any court or otherwise) on or after that date; or

(ii) before the date of registration of the lease as a long term lease in respect of the registered long term lease concerned and is discovered (whether in proceedings before any court or otherwise) on or after that date.

(5) Notwithstanding any law, a professional indemnity insurer shall not be entitled to be subrogated to any rights or remedies of any person against the Government under subsection (1).

(6) Subject to subsections (2), (4)(b) and (c) and (5) and sections 83 and 85, for the avoidance of doubt, it is hereby declared that where the Title Register is rectified under section 81(1) or (3), the registered owner of the land or the registered lessee of the long term lease who is deprived of the property in consequence of the rectification may make a claim for indemnity.

83. Amount of indemnity

(1) The amount of any indemnity payable under section 82(1) shall not exceed, in respect of each entry referred to in that section in respect of which an indemnity is payable -

(a) in the case of any such entry obtained, made or omitted by or as the result of fraud by any person -

(i) the value of the interest in the land or the long term lease concerned immediately before the date of the order under section 81(1) or (3) which relates to the fraud; or

(ii) the amount from time to time determined under subsection (3) for the purposes of this subsection as such amount is in force immediately before the discovery of the fraud,

whichever is the lesser;

(b) in any other case, the value of the interest in the land or the long term lease concerned immediately before the discovery of the mistake or omission concerned.

(2) Where any order is made in respect of an application under section 81(1) in respect of any mistake or omission referred to in subsection (1)(b), the discovery of that mistake or omission, as the case may be, shall, for the purposes of that subsection, be taken to be the date on which that order is so made.

(3) The Financial Secretary may, by notice published in the Gazette, determine an amount for the purposes of subsection (1)(a)(ii).

(4) For the avoidance of doubt, it is hereby declared that a notice under subsection (3) is subsidiary legislation.

84. Procedure for claiming indemnity

(1) The Registrar shall, on application in the specified form made to him by an interested person -

- (a) determine whether a right of indemnity has arisen under this Part; and
- (b) if he determines that a right of indemnity -
 - (i) has arisen under this Part, offer an indemnity to the person of such value which, in the opinion of the Registrar, satisfies the right;
 - (ii) has not arisen under this Part, refuse the application.

(2) The Court of First Instance shall, on application made to it by an interested person who has made an application under subsection (1) and who has rejected an offer mentioned in subsection (1)(b)(i) or who has had the application refused under subsection (1)(b)(ii) -

- (a) determine whether a right of indemnity has arisen under this Part; and
- (b) if it determines that a right of indemnity has arisen under this Part, determine the amount of the indemnity in accordance with section 83 and award the indemnity accordingly together with, as to the Court of First Instance appears just, any costs and expenses properly incurred in relation to the matter.

(3) No proceedings may be commenced in the Court of First Instance for the purposes of determining whether a right of indemnity has arisen under this Part except by a person mentioned in subsection (2).

(4) A person who has accepted an offer under subsection (1)(b)(i) shall not commence any proceedings in the Court of First Instance under this Part.

85. Time limit for claiming indemnity

A liability to pay an indemnity under this Part shall be deemed to be a simple contract debt and, for the purposes of section 4 of the Limitation Ordinance (Cap. 347), the cause of action shall be deemed to arise at the time when the claimant knows or, but for his own default, might have known, of the existence of his claim.

86. Recovery of indemnity paid

(1) Where any amount is paid by way of indemnity under this Part, the Government shall be entitled -

- (a) to recover that amount by legal proceedings or otherwise from the persons who caused or substantially contributed to the loss by their fraud or, subject to section 8, negligence in proportion to their respective contributions to the loss; and
- (b) to enforce, in relation to that amount, any express or implied agreement or other right whether of subrogation or otherwise, and whether against a professional indemnity insurer or otherwise, which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which that amount has been paid.

(2) For the avoidance of doubt, it is hereby declared that subsection (1) shall not operate to prevent a person to whom an indemnity has been paid under this Part from taking any legal proceedings or enforcing any right in respect of so much of any damages that he has not recovered -

- (a) in relation to the matter in respect of which the indemnity has been paid; and
- (b) by virtue of the operation of section 83(1)(a).

87. Discrepancy in area and boundary

As between the Government and the owner of registered land, no claim to indemnity under this Part shall arise, and no legal proceedings in respect thereof shall be commenced or maintained, on account of -

- (a) any surplus or deficiency in the area or measurement of the land disclosed by a survey (whether or not by an authorized land surveyor referred to in section 42) showing an area or measurement differing from the area or measurement -
 - (i) disclosed on any subsequent survey of the land; or
 - (ii) shown in the Title Register, on any plan which is a land title record or on any Government lease;

- (b) any boundary of the land disclosed by a survey (whether or not by an authorized land surveyor referred to in section 42) showing a boundary differing from any boundary -
 - (i) disclosed on any subsequent survey of the land; or
 - (ii) shown in the Title Register, on any plan which is a land title record or on any Government lease; and
- (c) any discrepancy in the area or measurement of the boundaries, whether upon a survey or otherwise, arising from the application or the determination of the boundaries of the lot under section 92.

PART 10

APPEALS

**88. Application to Court of First Instance
by Registrar**

In any case of doubt or difficulty or in any matter not provided for under this Ordinance, the Registrar may apply to the Court of First Instance for directions on principles of law.

**89. Appeals against decisions made
by Registrar**

(1) A person aggrieved by a decision made by the Registrar under this Ordinance (except a decision relating to a claim for

indemnity) may appeal to the Court of First Instance against the decision by serving on the Registrar a notice of appeal -

- (a) in the specified form; and
- (b) not later than 30 days after the decision has been made or such further period -

- (i) as the Registrar permits in any particular case; or

- (ii) as to the Court of First Instance appears just in any particular case.

(2) Where the Registrar receives a notice of appeal under subsection (1), he shall prepare and send a brief statement of the question in issue to -

- (a) the Court of First Instance;
- (b) the appellant; and
- (c) any other person appearing to the Registrar from the Title Register to be affected by the appeal.

(3) On the hearing of an appeal -

- (a) the appellant;
- (b) the Registrar; and
- (c) any other person who, in the opinion of the Court of First Instance, is affected by the appeal,

may, subject to any rules of court, appear and be heard in person or by a counsel.

(4) The Court of First Instance may make such order on an appeal as the circumstances may require together with, as to the Court appears just, any costs and expenses properly incurred in relation to the appeal.

(5) The Registrar shall give effect to an order referred to in subsection (4) in so far as it relates to him and, for that purpose, shall have such powers (whether or not conferred on him under this Ordinance) as are necessary to so give effect to the order.

(6) In subsection (1), "decision" (決定) includes a direction, order, requirement, determination and refusal.

90. Effect of appeal on disposition

An appeal shall not affect a disposition -

- (a) made in good faith and for valuable consideration; and
- (b) registered at any time before the notice of appeal under section 89(1) is made the subject of a non-consent caution.

91. Appeal rules, etc.

The Chief Justice may make rules for regulating appeals, and applications made under this Ordinance to the Court of First Instance, and for the fees to be paid in respect of appeals and such applications.

PART 11

MISCELLANEOUS

92. Determination of lot boundaries

(1) Subject to the terms and conditions of the Government lease concerned and to subsection (2), the owner of registered land may make an application in the specified form -

(a) to the Director of Lands; and

(b) for a determination of the boundaries of -

(i) the lot; or

(ii) a portion of the lot after the rest of the lot has been surrendered to or resumed by the Government.

(2) The Director of Lands shall not make a determination under subsection (1) in respect of -

(a) any subdivision of a lot which is made by a person other than the Government;

(b) a lot held under a block Government lease;

(c) where the application concerned does not have the consent of all the owners of the lot.

(3) Subject to subsection (4), the Director of Lands shall make a determination of the boundaries of a lot the subject of an application under subsection (1) by -

(a) causing searches to be done to ascertain whether a land boundary plan prepared by the Director of Lands already exists ("existing plan");

- (b) if there is an existing plan, deciding whether or not the existing plan is acceptable for the determination of the boundaries of the lot;
- (c) if the Director of Lands decides that the existing plan is so acceptable, then, with the consent of the owner of the lot and upon payment of the relevant fee, causing the existing plan to be registered;
- (d) if there is no existing plan or the existing plan is not acceptable, advising the owner of the lot to appoint an authorized land surveyor to conduct a land boundary survey of the lot in accordance with the code of practice approved under the Land Survey Ordinance (Cap. 473) and to deliver the resultant land boundary plan ("new plan") certified by the authorized land surveyor and accompanied by the relevant fee to the Director of Lands;
- (e) deciding whether or not the new plan, if any, is acceptable;
- (f) if the Director of Lands decides that the new plan is so acceptable, then, with the consent of the owner of the lot and upon payment of the relevant fee, causing the new plan to be registered.

(4) The Director of Lands shall not make a determination of the boundaries of a lot under this section if the existing plan or new plan changes the boundaries or area or measurement of that lot shown

on a land boundary plan which is a land title record or on any Government lease or on the ground.

(5) The Director of Lands may authorize in writing a person to perform any function or exercise any power imposed or conferred on the Director under this section.

(6) In this section, "determination" (釐定), in relation to a boundary, means adding the bearings, boundary dimensions and coordinates wherever applicable in the process of updating the boundary.

93. Address for service

The Registrar may, by notice in writing served on a person who -

(a) presents an application for the registration of any matter; or

(b) is the owner of registered land or a registered charge, or the lessee of a registered long term lease,

require the person to provide to the Registrar a notice in writing -

(c) specifying an address in Hong Kong for service on that person; and

(d) within the period specified in the requirement.

94. Meaning of "opportunity of being heard"

(1) Where under this Ordinance a thing is to be or may be done after giving a person an opportunity of being heard, that person shall be deemed to have been given such an opportunity 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 notice in writing specifying the nature of the thing to be done and appointing a day and time not less than 12 working days after service of the notice at which he will, if he attends before the Registrar, be heard.

(2) Where a person or a solicitor or other agent on his behalf attends before the Registrar concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to a notice referred to in subsection (1)(c), the Registrar may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, if he thinks fit, hear such person at any time.

(3) Where under this Ordinance all persons interested or affected are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any current entry in the Title Register, appear to be so interested or affected, are given such an opportunity.

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

(1) 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 where the interest is -

(i) registered or registrable; or

(ii) expressed by this Ordinance not to require registration,

and the Court of First Instance may make such order on the petition or originating summons and as to costs as to the Court of First Instance appears just.

(2) The Registrar shall give effect to an order referred to in subsection (1) and, for that purpose, shall have such powers (whether or not conferred on him under this Ordinance) as are necessary to so give effect to the order.

96. Offences

(1) A person commits an offence and is liable on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 14 years if he fraudulently -

- (a) issues or makes, or causes the issue or making of, any application for the registration of any matter;
- (b) presents, or causes the presentation, to the Registrar of any application for the registration of any matter;
- (c) makes, or causes the making of, any erasure or alteration to any application for the registration of any matter;
- (d) verifies any application required by section 2(2)(c) to be verified;
- (e) makes, or causes the making of, any erasure or alteration to any microfilm, image or other record of any application for the registration of any matter;
- (f) procures the issue of a title certificate;
- (g) issues, or causes the issue of, a certificate of good title;
- (h) makes, or causes the making of, any erasure or alteration to -
 - (i) the Title Register;
 - (ii) any land title records;
 - (iii) any applications record;
 - (iv) any endorsement on, or any microfilm, image or other record of, any thing referred to in subparagraph (i), (ii) or (iii); or
 - (v) any copy, print or extract of or from any thing referred to in subparagraph (i), (ii) or (iii) or of or from any endorsement on,

or any microfilm, image or other record of,
any such thing; or

(i) removes, or causes the removal, from the Land Registry
of all or any part of -

(i) any thing referred to in paragraph (h)(i),
(ii) or (iii);

(ii) any endorsement on, or any microfilm, image
or other record of, any such thing;

(iii) any copy, print or extract of or from any
such thing or of or from any endorsement on,
or any microfilm, image or other record of,
any such thing.

(2) Any person who, without lawful authority or reasonable
excuse, does any act referred to in paragraph (a), (b), (c), (d),
(e), (f), (g), (h) or (i) of subsection (1) commits an offence and is
liable on conviction on indictment to a fine of \$500,000 and to
imprisonment for 3 years.

(3) Any person who knowingly misleads or deceives any person
referred to in section 8(3) -

(a) when that second-mentioned person is acting in the
capacity referred to in that section; and

(b) in respect of -

(i) registered land, a registered charge or a
registered long term lease; or

(ii) an interest in registered land, a registered
charge or a registered long term lease,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(4) Any person who, without reasonable excuse, fails to comply with any requirement made under section 6(2)(a), (b) or (c) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a daily penalty of \$1,000.

(5) Any person who, without reasonable excuse, fails to comply with a requirement made under section 32(1) commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a daily penalty of \$1,250.

(6) Any person who, without reasonable excuse, fails to comply with a requirement made under section 93 within the period specified in the requirement commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a daily penalty of \$1,000.

(7) In this section -

“alteration” (更改) includes making an entry;

“application for the registration of any matter” (尋求將任何事項註冊的申請) includes any document accompanying the application;

“daily penalty” (每日罰款) means a penalty for each day on which the offence concerned is continued after conviction therefor;

“erasure” (塗抹) includes defacement, obliteration and mutilation.

97. Power of Registrar to specify forms

(1) Subject to subsections (2) and (3), the Registrar may specify the form of any document required under this Ordinance to be in the specified form and the form of such other documents (including conveyancing documents) required for the purposes of this Ordinance as he thinks fit.

(2) The Registrar's power under subsection (1) shall be subject to any express requirement under this Ordinance for a form, whether specified or otherwise, to comply with that requirement, but that requirement shall not restrict the exercise of that power in respect of that form to the extent that, in the opinion of the Registrar, his exercise of that power in respect of that form does not contravene that requirement.

(3) Without prejudice to the generality of subsection (2), the Registrar shall not specify under subsection (1) the form of any conveyancing document unless he has first consulted the Collector of Stamp Revenue appointed under section 3 of the Stamp Duty Ordinance (Cap. 117).

(4) A form specified under this section shall be -

- (a) completed in accordance with such directions and instructions as are specified in the form;
- (b) accompanied by such documents (including instruments, certificates, duplicates of the form and statutory declarations) as are specified in the form; and

- (c) if the completed form is required to be provided to the Registrar or any other person, so provided in the manner, if any, specified in the form.

(5) For the avoidance of doubt, it is hereby declared that the Registrar's power under subsection (1) may be exercised in such a way as to -

- (a) include in the specified form of any document referred to in that subsection a statutory declaration -
 - (i) to be made by the person completing the form; and
 - (ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;
- (b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Registrar thinks fit;
- (c) require, to the extent practicable, the person completing the form to identify any entries in the Title Register to which the form relates which have ceased to have effect; and
- (d) where registered land or registered long term lease the subject of a deed of mutual covenant, within the meaning of section 51, is also the subject of a registered deed of mutual covenant within the meaning of that section, require an application for the

registration of that first-mentioned deed to be accompanied by an application for the removal from the Title Register of the entry referring to that second-mentioned deed.

98. Regulations relating to fees and levy

(1) The Financial Secretary may by regulation prescribe fees and levy to be paid to the Registrar in respect of -

- (a) any application for the registration of any matter (including any such application which may be, or is required to be, made pursuant to the provisions of any other enactment);
- (b) any verification under section 2(2)(c) of any application for the registration of any matter;
- (c) receiving for registration any matter withheld from registration;
- (d) the registration of any matter (including any such registration which may be, or is required to be, made pursuant to the provisions of any other enactment);
- (e) the deposit or filing of any matter;
- (f) any application for satisfaction of a registered charge;
- (g) any application for the making, removal or variation of a restriction;

- (h) the provision (including inspection) of any thing (including any information) required to be or which may be kept and maintained in the Land Registry (whether under section 5(2) or otherwise), or of a copy, print or extract of or from any such thing or of or from a microfilm, image or other record of any such thing;
- (i) the official signature of any person referred to in section 8(3) to any document, whether such signature is requested or required under the provisions of this Ordinance or any other enactment or otherwise;
- (j) the issuance, cancellation or replacement of a title certificate or any other service or facility relating thereto;
- (k) the levy for any application for registration;
- (l) the provision of any other service or facility connected with registration or any other matter to which this Ordinance relates.

(2) The amount of any fee or levy prescribed in regulations made under subsection (1) shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to providing the service, facility or matter to which such fee or levy relates and different fees or levies may be so prescribed for the same service, facility or matter in order to provide for particular circumstances or particular cases specified in the regulations.

(3) Without prejudice to the generality of subsection (2), the Financial Secretary may, in exercising his power under subsection (1), take account of the indemnification required to be provided by the Government under section 82(1).

99. Unpaid fees, etc.

(1) The Registrar may act notwithstanding that a prescribed fee or levy or part of a prescribed fee or levy has not been paid, but the Registrar shall make an entry in the Title Register recording the unpaid fee or levy or part of a fee or levy.

(2) The Registrar may refuse to register a disposition of registered land, a registered charge or a registered long term lease in respect of which fees or levies are unpaid.

(3) Unpaid fees, levies, costs, charges or expenses required to be paid to the Registrar shall constitute a debt due to the Government and shall be recoverable summarily as a civil debt within the meaning of the Magistrates Ordinance (Cap. 227).

(4) Unpaid costs, charges or expenses the subject of an order under section 6(2)(f) which are required to be paid to a person other than the Registrar shall constitute a debt due to that person and shall be recoverable summarily as a civil debt within the meaning of the Magistrates Ordinance (Cap. 227).

100. Regulations - general powers

(1) The Secretary may make regulations for all or any of the following matters -

- (a) fixing the hours during which the Land Registry or any part of the Land Registry shall be open to the public and empowering the Registrar to vary such hours;
- (b) the manner of verification of an application for the first registration of land or the registration of any other matter;
- (c) the size, form and colouring of plans attached to or endorsed on an instrument accompanying an application for the first registration of land or the registration of any other matter;
- (d) the size and form of, and the particulars to be contained in, instruments accompanying applications for the first registration of land or the registration of any other matter;
- (e) the manner in which an application for the first registration of land or the registration of any other matter is made and the procedures to be followed for the presentation of the application;
- (f) the numbering of applications for the first registration of land or the registration of any other matter;

- (g) the particulars to be entered in an applications record and the Title Register;
- (h) without prejudice to the generality of paragraph (g), the manner in which the names of persons are to be entered in an applications record and the Title Register in the case of individuals and companies;
- (i) the form of Title Registers and the title number;
- (j) the circumstances and the procedures for opening, closing or rectification of the Title Register;
- (k) the scrutiny of applications for the first registration of land or the registration of any other matter;
- (l) the procedure to be followed in order to effect the registration of any matter;
- (m) the procedure to be followed where an application is withheld from registration by the Registrar or upon the request of the person who delivered the application;
- (n) the circumstances in which an application for the first registration of land, or the registration of any other matter, accompanied by an instrument which is stamped under section 13(2) of the Stamp Duty Ordinance (Cap. 117) shall be accompanied by an application for the registration of a charge in respect of any stamp duty payable or to be payable on the instrument (including any stamp duty and penalty

payable under section 13(7)(b), or additional stamp duty payable under section 13(10), of that Ordinance on that instrument);

- (o) the procedure to be followed where an application for the registration of any matter is rejected, including the grounds of such rejection and the presentation again of any such application;
- (p) the date on which the first registration of land or the registration of any other matter shall take effect;
- (q) the notice to be given where the registration of any matter is effected or an application for the registration of any matter is rejected;
- (r) prescribing the use of conveyancing forms in transactions;
- (s) the power to refuse to enter improper instruments or forms;
- (t) the manner of registration of a long term lease;
- (u) the manner of registration, withdrawal or removal of a caution and the form of consent under a caution;
- (v) the manner of registration and removal of an inhibition;
- (w) the manner of registration, removal or variation of a restriction;

- (x) the manner of an application for a title certificate, the cancellation of a title certificate and the procedures to be followed in the event of the loss of a title certificate;
- (y) the procedure for filing an incorporated document and the effect of the filing;
- (z) the manner of giving notice by the Registrar;
- (za) the safekeeping of any thing referred to in section 5(2);
- (zb) the purposes of, and the manner (including the form) in which any thing referred to in section 5(2) shall be made available for, any search;
- (zc) the manner (including the form) in which any thing (including any historical records) which may be kept and maintained in the Land Registry may be provided (including inspected);
- (zd) regulating the conduct of persons in the Land Registry;
- (ze) enabling any person to be refused entry to the Land Registry and the removal from the Land Registry of any person;
- (zf) regulating admission to the Land Registry or any part of the Land Registry and the use of any equipment, facilities or material in the Land Registry by members of the public;

- (zg) the manner (including the form) in which any document required under the provisions of any other enactment to be filed or deposited in the Land Registry shall be so filed or deposited;
- (zh) the establishment, funding, management, investment, and the keeping of accounts of, and the processing of claims in respect of, an indemnity fund established for the purposes of indemnities payable under Part 9;
- (zi) the power of the Registrar to manage, borrow and invest the moneys of the indemnity fund;
- (zj) the charging of levy for any application for registration;
- (zk) payments into and out of the indemnity fund;
- (zl) the procedures for claiming indemnity, processing of claims, investigation, settlement and refusal of claims;
- (zm) the procedures for instituting court proceedings for claiming indemnity;
- (zn) prescribing anything that is required or permitted to be prescribed under this Ordinance;
- (zo) providing for the better carrying into effect of this Ordinance;
- (zp) providing for such incidental, consequential, evidential, transitional, savings and supplemental provisions as are necessary or expedient for the purpose of giving full effect to this Ordinance.

(2) Any regulations made under subsection (1)(zb) or (zc) may specify that a thing referred to in that subsection may be made available or provided, as the case may be, in such form and by such method as the Registrar thinks fit.

(3) Any regulations made under this section may -

- (a) empower the Secretary to grant exemptions from the regulations, either generally or in a particular case;
- (b) make different provisions for different circumstances and provide for a particular case or class of case;
- (c) be made so as to apply only in such circumstances as are prescribed by the regulations.

(4) Without prejudice to section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), any regulations made under this section may include regulations which provide for transitional or savings provisions in respect of any of the enactments repealed or amended by this Ordinance.

(5) Any regulations made under this section may prescribe offences in respect of contraventions of the regulations, and may provide for the imposition in respect of any such offence of a fine at level 3 and of imprisonment for a period not exceeding 2 years.

101. Amendment of Schedule 1

The Secretary may, by notice published in the Gazette, amend Schedule 1.

102. Consequential amendments

(1) The enactments specified in Schedule 2 are amended as set out in that Schedule.

(2) The Secretary may, by notice published in the Gazette, amend Schedule 2.

SCHEDULE 1

[ss. 7 & 101]

SPECIFIED PROVISIONS FOR PURPOSES OF SECTION 7

Sections 6(1)(a), 31(3), 39, 79(1), 88 and 97(1).

SCHEDULE 2

[s. 102]

CONSEQUENTIAL AMENDMENTS

Specification of Public Offices

1. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg.) is amended -

(a) by repealing -

"Secretary for Home
Affairs

New Territories
Ordinance (Chapter
97), section 9(2),
for the purposes of
section 19.";

Rules of the High Court

3. Special rules as to the sale of immovable property

Order 47, rule 7(4)(b) of the Rules of the High Court (Cap. 4 sub. leg.) is amended by repealing "in the Land Registry under the Land Registration Ordinance (Cap. 128)" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require".

4. Discharge, etc., of charging order

Order 50, rule 7(2) is amended by adding "under the Land Registration Ordinance (Cap. 128), or the application number, of any relevant charge registered under the Land Titles Ordinance (of 2002), as the case may require," after "registered".

Bankruptcy Rules

5. Registration of petition under Land Registration Ordinance or Land Titles Ordinance

Rule 53 of the Bankruptcy Rules (Cap. 6 sub. leg.) is amended by repealing "a memorial of the petition in the Land Registry against any property registered therein" and substituting "the petition under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) against any property registered under that Ordinance".

6. Registration of petition under Land Registration Ordinance or Land Titles Ordinance against partner

Rule 54 is amended by repealing "a memorial of the petition in the Land Registry against any property registered" and substituting "the petition under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) against any property registered under that Ordinance".

7. Registration of bankruptcy order under Land Registration Ordinance or Land Titles Ordinance

Rule 73 is amended by repealing "a memorial of such bankruptcy order in the Land Registry against any property registered therein" and substituting "the bankruptcy order under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) against any property registered under that Ordinance".

8. Registration of bankruptcy order under Land Registration Ordinance or Land Titles Ordinance against partner

Rule 74 is amended by repealing "a memorial thereof in the Land Registry against any property registered" and substituting "the bankruptcy order under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) against any property registered under that Ordinance".

9. **Disclaimer of lease**

Rule 130(3) is amended by repealing "in the Land Registry, register a memorial of such disclaimer in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), register such disclaimer under that Ordinance".

Bankruptcy (Forms) Rules

10. **Forms**

The Schedule to the Bankruptcy (Forms) Rules (Cap. 6 sub. leg.) is amended -

- (a) in Form 67, by repealing "vacated upon the application of the debtor under the Land Registration Ordinance (*Chapter 128*)" and substituting "vacated or removed upon the application of the debtor under the Land Registration Ordinance (*Chapter 128*) or the Land Titles Ordinance (of 2002), as the case may require";
- (b) in Forms 128 and 129, by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Landlord and Tenant (Consolidation) Ordinance

11. Registration under the Land Registration Ordinance or Land Titles Ordinance of order under section 4

Section 7(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

12. Restriction on order for possession for rebuilding

Section 53A(3) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

13. Interpretation

Section 115 is amended by adding -

"(4) No notice or application under this Part shall be registrable under the Land Titles Ordinance (of 2002).".

14. Additional provisions regarding opposition on ground of intention to rebuild

Section 119F(3) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance

(Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

Land (Miscellaneous Provisions) Ordinance

15. Vesting of private streets in the Government

Section 14 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) is amended -

- (a) in subsection (2), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,";
- (b) in subsection (3), by repealing "under subsection (2) in the Land Registry" and substituting ", pursuant to subsection (2), under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Companies (Winding-up) Rules

16. Disclaimer

Rule 63(2) of the Companies (Winding-up) Rules (Cap. 32 sub. leg.) is amended -

- (a) by repealing "in the Land Registry" where it first appears and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require";
- (b) by repealing "in the Land Registry" where it secondly appears and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

Government Leases Ordinance

17. Interpretation

Section 2 of the Government Leases Ordinance (Cap. 40) is amended, in the definition of "section", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

18. Person entitled to renew

Section 6 is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

19. New Government rent to be entered in Land Register

Section 10 is amended -

- (a) in subsection (1)(b), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128), or entered in the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require";
- (b) by repealing subsection (2)(b) and substituting -
 - "(b) the Land Registrar shall cause -
 - (i) the amount of the new Government rent noted in the register of such lot or section kept under the Land Registration Ordinance (Cap. 128), or entered in the Title Register of such lot or section kept under the Land Titles Ordinance (of 2002), to be deleted; and
 - (ii) the increased new Government rent to be noted or entered therein."

20. Correction of clerical or arithmetical errors

Section 11(2) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or entered in the Title Register of the lot or section kept under the Land Titles Ordinance (of 2002), as the case may require".

21. Evidence of renewal

Section 12 is amended by repealing "in the Land Registry" and substituting "kept under the Land Registration Ordinance (Cap. 128), or in the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require,".

22. Collection of new Government rent

Section 13(4) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

23. New Government leases subject to encumbrances and interests

Section 15 is amended -

(a) in paragraph (a), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128)";

(b) by adding -

"(aa) any registered charge within the meaning of the Land Titles Ordinance (of 2002);".

24. Government lease plan

Section 16(2) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

25. Plan as approved or amended to be delivered to Land Registry

Section 22(b) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

Transfer of Businesses (Protection of Creditors) Ordinance

26. Interpretation

Section 2(1) of the Transfer of Businesses (Protection of Creditors) Ordinance (Cap. 49) is amended, in the definition of "registered charge", by adding -

"(aa) the Land Titles Ordinance (of 2002);".

Antiquities and Monuments Ordinance

27. Interpretation

Section 2 of the Antiquities and Monuments Ordinance (Cap. 53) is amended by repealing the definition of "Land Registry".

28. Declaration of proposed monuments etc. and plans thereof

Section 2A(4)(b)(i) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require".

29. Declaration of monuments and plans thereof

Section 3(4)(b) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require".

Legal Aid Ordinance

30. Charge on property recovered

Section 18A(3A) of the Legal Aid Ordinance (Cap. 91) is amended by adding "or the Land Titles Ordinance (of 2002), as the case may require," after "Land Registration Ordinance (Cap. 128)".

New Territories Ordinance

31. Registration of manager of "t'ong", etc.

Section 15 of the New Territories Ordinance (Cap. 97) is amended by repealing the last sentence and substituting "Such re-entry, in the case of any such lease, shall be effected by the registration under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require, of an instrument of re-entry presented to the Land Registrar by the Secretary for Home Affairs."

32. Power to appoint trustees for minors

Section 18 is amended -

- (a) by adding "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require," after "shall be registered";
- (b) by adding "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)" after "registering".

33. Certification of memorials

Section 19 is repealed.

34. Land Registrar not required to keep index

Section 20 is repealed.

35. Certified copies receivable in evidence

Section 43 is repealed.

36. Part not to affect Government, etc.

Section 44 is amended by adding ", or caused to be done or made," after "made".

Tramway Ordinance

37. Attachment

Section 6(7) of the Tramway Ordinance (Cap. 107) is repealed and the following substituted -

"(7) For the purpose of this section, "owner" (擁有人) means the person who is registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) as the owner or holder of the land on which the house or building in question is built and any mortgagee of such land who is registered under either Ordinance."

Estate Duty Ordinance

38. Charge of estate duty on property

Section 18 of the Estate Duty Ordinance (Cap. 111) is amended -

(a) in subsection (2) -

- (i) by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,";
- (ii) by adding ", within the meaning of the Land Registration Regulations (Cap. 128 sub. leg.), or an application, within the meaning

of section 2(1) of the Land Titles Ordinance
(of 2002)," after "a Memorial";

(b) by adding -

"(2A) A non-consent caution, within the
meaning of the Land Titles Ordinance (of
2002), to the effect that the registered land
within the meaning of that Ordinance to which it
relates is or may become subject to a first
charge under subsection (1), and which has been
registered under that Ordinance, shall be deemed
to be notice referred to in the proviso to that
subsection -

(a) in relation to the property the
subject of the caution; and

(b) whether or not the event which
gave rise to the estate duty
concerned occurred before, on or
after the purchase of the
property.";

(c) by repealing subsection (3) and substituting -

"(3) A notice in writing of any charge under
subsection (1) or (2) may be registered under the
Land Registration Ordinance (Cap. 128) or the
Land Titles Ordinance (of 2002), as the case
may require."

Inland Revenue Ordinance

39. Joint owners and co-owners

Section 56A(1) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing "in the Land Registry under the Land Registration Ordinance (Cap. 128)" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

Stamp Duty Ordinance

40. Section added

The Stamp Duty Ordinance (Cap. 117) is amended by adding -

"2A. Instruments affected by Land Titles Ordinance

Where an instrument in relation to registered land within the meaning of the Land Titles Ordinance (of 2002)(including any instrument the form of which is specified under section 97 of that Ordinance) -

(a) falls into any of the following cases -

- (i) is chargeable with stamp duty;
- (ii) would be chargeable with stamp duty but for any provisions of the Land Titles Ordinance (of 2002); or

(iii) if the Land Titles Ordinance (of 2002) had never been enacted, would be chargeable with stamp duty but for any provisions of Part V; and

(b) would create, extinguish, transfer, vary or affect any legal or equitable interest in land but for any provisions of the Land Titles Ordinance (of 2002),

then, for the purposes of this Ordinance, the instrument shall -

(c) without prejudice to any other ground on which it may be void or voidable and notwithstanding any law, not be void or voidable on the ground that it does not, of itself, create, extinguish, transfer, vary or affect, as the case may be, such interest;

(d) where -

(i) paragraph (a)(i) is applicable, continue to be so chargeable;

(ii) paragraph (a)(ii) is applicable, be so chargeable;

(iii) paragraph (a)(iii) is applicable, continue to be so chargeable but for any provisions of Part V,

notwithstanding any provisions of the Land Titles Ordinance (of 2002); and

(e) accompany the application, within the meaning of section 2(1) of the Land Titles Ordinance (of 2002), for the registration under that Ordinance of the matter which would, if so registered, create, extinguish, transfer, vary or affect, as the case may be, such interest."

41. Non-admissibility etc. of instruments not duly stamped

Section 15(3)(a) is amended by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)".

42. Section added

The following is added -

"67. Transitional provisions for purposes of Land Titles Ordinance

(1) In this section, "date of first registration" (首次註冊日期), "dealing" (交易) and "registered land" (註冊土地) have the meanings respectively assigned to them by section 2(1) of the Land Titles Ordinance (of 2002).

(2) Where an instrument -

(a) has either been registered , or delivered for registration (including any case where a memorial of such an instrument has been redelivered for registration on or after the date of first

registration) under the Land Registration Ordinance (Cap. 128); and

(b) is stamped under section 13(2) but is not stamped under section 13 with a stamp denoting that it is not chargeable with stamp duty or that it is duly stamped,

then the stamp duty, if any, chargeable on the instrument shall be a first charge on the registered land the subject of the dealing to which the instrument relates.

(3) The charge under subsection (2) in respect of registered land shall expire on the 1st anniversary of the date of first registration of the land.

(4) Where a first charge under this section is registered under the Land Titles Ordinance (of 2002) at any time before the 1st anniversary of the date of first registration, then subsection (2), as in force immediately before that day, shall continue to operate in relation to that charge as if subsection (3) had never been enacted.

(5) For the avoidance of doubt, it is hereby declared that a first charge under this section may be registered under the Land Titles Ordinance (of 2002) notwithstanding that the amount of the charge has not been determined.".

Buildings Ordinance

43. Interpretation

Section 2(1) of the Buildings Ordinance (Cap. 123) is amended by repealing the definition of "Land Registry".

44. Dangerous buildings

Section 26(2A) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

45. Defective buildings

Section 26A(4A) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

46. Dangerous hillsides, etc.

Section 27A(2D)(a) and (b) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

**47. Water pipes, drains or sewers laid
in slopes, etc.**

Section 27C(6) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

48. Drainage

Section 28(6A) is amended by repealing "by memorial in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

**49. Recovery of costs of works by
Building Authority**

Section 33 is amended -

(a) in subsection (9) -

- (i) by repealing "a memorial of";
- (ii) by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,";
- (iii) in paragraph (a), by adding "kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land

Titles Ordinance (of 2002)" after "Land Registry register";

- (iv) in the proviso, by repealing "memorial thereof" and substituting "certificate under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";

(b) in subsection (10) -

- (i) by repealing "Upon" and substituting "Where the certificate is registered under the Land Registration Ordinance (Cap. 128), upon";
- (ii) by repealing "any memorial" and substituting "any certificate";

(c) by adding -

"(11) If the certificate is registered under the Land Titles Ordinance (of 2002), upon the recovery of any sum under this section, the Building Authority shall cause the registration, if any, of the certificate concerned referred to in subsection (1) to be discharged by registering under that Ordinance an appropriate instrument of satisfaction against the certificate.".

Lands Resumption Ordinance

50. Interpretation

Section 2 of the Lands Resumption Ordinance (Cap. 124) is amended, in the definition of "owner", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

51. Purchase by agreement

Section 4A is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

52. Compensation

Section 6(1)(a) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Government Rent and Premium (Apportionment) Ordinance

53. Interpretation

Section 2 of the Government Rent and Premium (Apportionment) Ordinance (Cap. 125) is amended, in the definitions of "existing building" (paragraph (c)), "owner" (paragraphs (a) and (b)), "relevant interest" and "section", by repealing "in the Land

Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

54. Apportionment of Government rent

Section 6(1)(b) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

55. Apportionment of premium on section

Section 7(1)(a) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

56. Area of lot or section

Section 10(1) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

**57. Cases in which Government rent
or premium to be treated as
apportioned in registered
instrument**

Section 11(a) and (b) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

58. Apportionment of Government rent on relevant interest

Section 13(1)(a) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

59. Apportionment of premium on relevant interest

Section 14(1)(a) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

60. Notice of determined Government rent and determined annual instalment of premium

Section 22(1)(b) and (2)(b) is amended by adding "kept under the Land Registration Ordinance (Cap. 128) or registered under the Land Titles Ordinance (of 2002), as the case may require," after "Land Registry records".

61. Covenants between owners not to be affected

Section 25 is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Government Rights (Re-entry and Vesting Remedies) Ordinance

62. Interpretation

Section 2 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) is amended -

- (a) in the definition of "former owner", by repealing "in the Land Registry of a memorial" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) of an instrument";
- (b) in the definitions of "owner" (paragraphs (a) and (b)), "relevant interest" and "vesting notice", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

63. Instrument of re-entry

Section 4 is amended -

- (a) in subsection (1) -
 - (i) by repealing "a memorial of";
 - (ii) by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require";

- (b) in subsection (2), by repealing "a memorial" and substituting "an instrument".

64. Notice of registration of instrument of re-entry

Section 5 is amended by repealing "a memorial" and substituting "an instrument".

65. Power to vest relevant interest in The Financial Secretary Incorporated

Section 7(1), (1A), (2) and (3) is amended by repealing "in the Land Registry" wherever it appears and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

66. Right to apply for relief against re-entry or vesting

Section 8 is amended -

- (a) in subsection (1), by repealing "a memorial of re-entry has been registered under section 4 in the Land Registry" and substituting "an instrument of re-entry has been registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) under section 4";
- (b) in subsection (2), by repealing "under section 7 in the Land Registry" and substituting "under the Land

Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) under section 7";

- (c) in subsection (3), by repealing "of the memorial" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) of the instrument".

67. Power of Chief Executive or Chief Executive in Council to order cancellation of instrument of re-entry or vesting notice

Section 9(1)(a) and (2)(a) is amended by repealing "memorial" and substituting "instrument".

68. Powers of Court of First Instance in respect of application for relief

Section 10 is amended by repealing "memorial" and substituting "instrument".

69. Cancellation of instrument of re-entry

Section 11 is amended -

- (a) in subsection (1) -

- (i) by repealing "A memorial" and substituting "An instrument";
- (ii) by repealing "the memorial" where it twice appears and substituting "the instrument";

- (b) in subsection (2) -
 - (i) by repealing "a memorial" and substituting "an instrument";
 - (ii) by adding "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require," after "registered";
- (c) in subsection (3), by repealing "a memorial" and substituting "an instrument of re-entry".

70. Cancellation of vesting notice

Section 12 is amended -

- (a) in subsection (1), by repealing "the memorial of";
- (b) in subsection (2) -
 - (i) by adding "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require," after "or registered";
 - (ii) by repealing "registered at the Land Registry" and substituting "so registered".

Land Registration Ordinance

71. Section added

The Land Registration Ordinance (Cap. 128) is amended by adding immediately after section 1A -

"1B. Application

This Ordinance shall not apply to land registered under the Land Titles Ordinance (of 2002).".

72. Obligation of Land Registrar to register

Section 23 is amended -

(a) in subsection (1), by repealing "subsection (2)" and substituting "subsections (1A), (1B) and (2)";

(b) by adding -

"(1A) The Land Registrar shall not register a first assignment of land to which section 12 of the Land Titles Ordinance (of 2002) applies or any subsequent application for registration in relation to the land unless -

(a) a solicitor has certified that he has examined and found that the owner does not have good title to the land and that a certificate of good title, within the meaning of section 12 of that Ordinance, cannot be issued in respect of the land;

(b) there are any instruments relating to the land which have been delivered for registration under this Ordinance but which have not

been registered before the time of execution of the first assignment of land mentioned in this section; or

- (c) an application for first registration of the land under that Ordinance has been rejected.

(1B) The Land Registrar shall not register any instrument under this Ordinance to the extent that the instrument relates to registered land in respect of which a Title Register has been opened under the Land Titles Ordinance (of 2002).".

73. **Section added**

The following is added -

"23B. Procedure applicable where application for first registration of land under Land Titles Ordinance has been rejected

Where -

- (a) an application for first registration of land has been rejected under the Land Titles Ordinance (of 2002); and
- (b) the Land Registrar is satisfied that the instrument in writing, or judgment, in support of the application for first registration, or any subsequent application for registration under the

Land Titles Ordinance (of 2002) in respect of the land, may be registered under this Ordinance,

then -

- (c) the provisions of this Ordinance shall apply to and in relation to any application mentioned in paragraph (b) as if it were delivered for registration under this Ordinance if and only if, not later than 14 days after the date on which the applicant was notified of the rejection, the applicant provides the Land Registrar with all the documents and fees which, in the opinion of the Land Registrar, are necessary to enable the application to be processed as an instrument delivered for registration under this Ordinance;
- (d) notwithstanding regulation 5 of the Land Registration Regulations (Cap. 128 sub. leg.), the date of receipt of the application for registration under this Ordinance shall be deemed to be the date of presentation of the application for registration under the Land Titles Ordinance (of 2002);
- (e) for the purposes of regulation 14(1)(a) and (c) of the Land Registration Regulations (Cap. 128 sub. leg.) -

- (i) the memorial number to be entered by the Land Registrar shall be the application number allocated in respect of the application for first registration, or any subsequent application for registration, under the Land Titles Ordinance (of 2002); and
 - (ii) the date of registration to be entered shall be the deemed date of receipt of the application as determined under paragraph (d); and
- (f) notwithstanding regulation 16 of the Land Registration Regulations (Cap. 128 sub. leg.) -
- (i) the registration of an instrument shall take effect from the deemed date of receipt of the application as determined under paragraph (d); and
 - (ii) that application, together with the certificate of registration mentioned in regulation 14(2) of the Land Registration Regulations (Cap. 128 sub. leg.), shall be evidence of the registration of the instrument and its date of registration."

74. Regulations

Section 28(1) is amended by adding -

- "(aa) the manner in which any first assignment of land and subsequent instruments which relate to the land may be registered after the commencement day within the meaning of the Land Titles Ordinance (of 2002);".

Town Planning Ordinance

75. Enforcement on land within a development permission area

Section 23 of the Town Planning Ordinance (Cap. 131) is amended -

- (a) in subsection (4A), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require";
- (b) in subsection (4B), by repealing everything after "or (4A)" and substituting "may be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require.".

Public Health and Municipal Services Ordinance

76. Recovery of cost of works done or services rendered by public officers or public bodies

Section 130 of the Public Health and Municipal Services Ordinance (Cap. 132) is amended -

(a) in subsection (9) -

- (i) by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,";
- (ii) by repealing "a memorial of";
- (iii) by repealing "Land Registry register" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002)";
- (iv) in the proviso, by repealing "before the registration of the memorial" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) before the registration";

- (b) in subsection (10), by repealing everything after "shall" and substituting "register under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) an appropriate instrument of satisfaction against any certificate issued under the provisions of subsection (1) and registered pursuant to subsection (9).".

**Public Cleansing and Prevention of
Nuisances Regulation**

77. Interpretation

Section 3 of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg.) is amended, in the definition of "common parts", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

New Territories Leases (Extension) Ordinance

78. Interpretation

Section 3(1) of the New Territories Leases (Extension) Ordinance (Cap. 150) is amended -

- (a) by repealing the definition of "Land Registry register" and substituting -

“Land Registry register” (土地註冊處註冊紀錄冊)

means so much of the land register that is kept, under the Land Registration Ordinance (Cap. 128), or so much of the Title Register that is kept, under the Land Titles Ordinance (of 2002), in respect of land that is the subject of a New Territories lease;”;

- (b) in the definition of “New Territories lease” and “lease”, by repealing “or on behalf of the Governor” and substituting “the Government”.

79. **Burdens and covenants**

Section 7(1) is amended by repealing “in the Land Registry” and substituting “under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)”.

New Territories (Renewable Government Leases) Ordinance

80. **Interpretation**

Section 2 of the New Territories (Renewable Government Leases) Ordinance (Cap. 152) is amended, in the definition of “section”, by repealing “in the Land Registry” and substituting “under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)”.

81. New Government leases deemed to be granted on 1st July 1973

Section 4(4)(a) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Legal Practitioners Ordinance

82. Unqualified person not to prepare certain instruments, etc.

Section 47(1)(b) of the Legal Practitioners Ordinance (Cap. 159) is repealed and the following substituted -

"(b) draws or prepares any document for the purposes of the Land Registration Ordinance (Cap. 128), the Land Titles Ordinance (of 2002), or the New Territories Ordinance (Cap. 97), or makes any application or lodges any testimony for registration under any of those Ordinances at the Land Registry,".

Solicitors (General) Costs Rules

83. First Schedule amended

The First Schedule to the Solicitors (General) Costs Rules (Cap. 159 sub. leg.) is amended, in Part III, in paragraphs 4 and 6, by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Domestic Violence Ordinance

84. Injunctions not to be registered

Section 10 of the Domestic Violence Ordinance (Cap. 189) is amended by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)".

Crimes Ordinance

85. Section substituted

Section 153M of the Crimes Ordinance (Cap. 200) is repealed and the following substituted -

"153M. Registration of notices and orders relating to premises

(1) Where the Land Registrar receives a notice sent to him under section 145A, 153C(6) or 153H(4), or a copy of an order sent to him under section 153A(2), 153I(8) or 153K(5), he shall as soon as reasonably practicable register under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require, the notice or copy of the order.

(2) A failure to register under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) a notice or copy of an order referred to in subsection (1) shall not, save as is provided in section 153C, affect its validity as against any person."

Prevention of Bribery Ordinance

86. Restraining orders

Section 14C(3A) of the Prevention of Bribery Ordinance (Cap. 201) is amended by repealing everything after "property," and substituting "the order may be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require."

Conveyancing and Property Ordinance

87. Interpretation

Section 2 of the Conveyancing and Property Ordinance (Cap. 219) is amended -

(a) by renumbering it as section 2(1);

(b) by adding -

"(2) For the avoidance of doubt, it is hereby declared that references in this Ordinance to -

(a) an assignment include a transfer;

and

(b) a legal charge include a charge, within the meaning of the Land Titles Ordinance (of 2002)."

88. Proof of title and recitals

Section 13 is amended by adding -

"(6) This section shall not apply to land which is registered land within the meaning of the Land Titles Ordinance (of 2002).".

89. Conversion of equitable interest to legal estate where right to Government lease

Section 14(3) is amended -

(a) in paragraphs (a) and (b), by repealing "in the Land Registry under the Land Registration Ordinance (Cap. 128)" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";

(b) by repealing paragraph (c) and substituting -

"(c) upon the entry in the land register relating to the land kept under the Land Registration Ordinance (Cap. 128) or the Title Register relating to the land kept under the Land Titles Ordinance (of 2002), of a note to the effect that those conditions have been complied with.".

90. Construction of words and expressions

Section 15(d) is repealed and the following substituted -

"(d) Chinese words and terms shall be construed according to Chinese language and custom; and".

91. What an assignment is deemed to include

Section 16 is amended -

- (a) in subsection (1), by adding "and if the land is registered land under the Land Titles Ordinance (of 2002), upon the registration under that Ordinance of the assignee as the owner of the land," after "with the land,";
- (b) in subsection (2), by repealing "This" and substituting "Subject to the provisions of the Land Titles Ordinance (of 2002), this".

92. Assignment passes whole estate

Section 17 is amended by adding ", and if the land is registered land under the Land Titles Ordinance (of 2002), upon the registration under that Ordinance of the assignee as the owner of the land," after "assigned".

93. Standard forms

Section 37 is amended by repealing "A" and substituting "Subject to sections 58 and 97 of the Land Titles Ordinance (of 2002), a".

94. **Enforcement of covenants**

Section 41 is amended -

(a) by repealing subsection (1) and substituting -

“(1) This section applies -

(a) in the case of registered land within the meaning of the Land Titles Ordinance (of 2002), to a covenant which is -

- (i) an overriding interest within the meaning of that Ordinance; or
- (ii) registered under that Ordinance;

(b) in the case of any other land, to -

- (i) an express covenant; or
- (ii) a covenant implied by or under this Ordinance or any other law.”;

(b) in subsection (3), by adding “and the Land Titles Ordinance (of 2002)” after “subsection (5)”.

95. **Saving of covenants, terms and conditions**

Section 42 is amended -

(a) in subsection (2) -

(i) by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)";

(ii) by repealing "Land Registry registers" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require,";

(b) by adding -

"(4) This section shall be subject to the provisions of the Land Titles Ordinance (of 2002).".

96. Discharge of mortgage by signed receipt

Section 56 is amended by adding -

"(7) This section shall not apply to land which is registered land within the meaning of the Land Titles Ordinance (of 2002).".

97. Section substituted

Section 64 is repealed and the following substituted -

"64. Amendment of Schedules

(1) The Legislative Council may by resolution amend the First, Second or Fourth Schedule.

(2) The Land Registrar may, by notice in the Gazette, amend the Third Schedule."

98. Covenants and Conditions which may be incorporated by reference

The Second Schedule is amended, in Part A, in clause 10 -

- (a) by repealing "in the Land Registry, to register at the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128), to register under that Ordinance";
- (b) by adding "or, if a consent caution has been registered under the Land Titles Ordinance (of 2002), to remove the caution in accordance with the provisions of that Ordinance" after "sale of the property".

99. Forms

The Third Schedule is amended, in Form 1, in clause 3 of Form 4 and in clause 2(a) of Form 5, by repealing "in the Land Registry by Memorial No." and substituting "under the Land Registration Ordinance (Cap. 128) by Memorial No. or under the Land Titles Ordinance (of 2002) by Application No."

Land Transactions (Enemy Occupation) Ordinance

100. Interpretation

Section 2 of the Land Transactions (Enemy Occupation) Ordinance (Cap. 256) is amended by repealing the definition of "Land Registry registers" and substituting -

"“Land Registry registers” (土地註冊處註冊紀錄冊) means the land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002).”.

101. Proceedings in relation to disputes

Section 6(4) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

Mass Transit Railway (Land Resumption and Related Provisions) Ordinance

102. Interpretation

Section 2 of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) is amended, in the definition of "mortgage", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

103. **Chief Executive may order resumption of land**

Section 4(5) is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

104. **Chief Executive may order creation of easements or rights**

Section 6(8) is amended by repealing "register of the land affected thereby kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

Housing Ordinance

105. **Interpretation**

Section 2 of the Housing Ordinance (Cap. 283) is amended -

- (a) in the definition of "common parts", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";
- (b) by repealing the definition of "Land Registry";

- (c) in the definition of "registered mortgagee", in paragraph (a), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Hong Kong Airport (Control of Obstructions) Ordinance

106. Orders by Chief Executive in Council relating to heights of buildings

Section 3(3) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) is repealed and the following substituted -

"(3) An order under subsection (1)(c) shall be served upon the owner of the premises affected, and may be registered -

(a) under the Land Registration Ordinance (Cap. 128) against the land affected by delivering to the Land Registry a memorial thereof signed by the Clerk to the Executive Council and containing the full terms of the order;

(b) under the Land Titles Ordinance (of 2002) by delivering a copy thereof to the Land Registrar containing a declaration signed by the Clerk to the Executive Council to the effect that it is a true and correct copy of the order."

107. **Recovery of cost of works by Director of Buildings**

Section 16(9) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

Registered Trustees Incorporation Ordinance

108. **Vesting of land**

Section 7 of the Registered Trustees Incorporation Ordinance (Cap. 306) is amended by repealing "Land Registry register" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002)".

Air Pollution Control (Fuel Restriction) Regulations

109. **Interpretation**

Regulation 2 of the Air Pollution Control (Fuel Restriction) Regulations (Cap. 311 sub. leg.) is amended, in the definition of "Sha Tin fuel restriction area", by repealing "Office" and substituting "Registry".

District Court Ordinance

**110. Provisions supplementary to sections
52A and 52B**

Section 52AB of the District Court Ordinance (Cap. 336) is amended -

(a) in subsection (2), by adding "and the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)";

(b) by adding -

"(6) Where an order under subsection (4) has been made discharging a charging order registered under the Land Titles Ordinance (of 2002), the Land Registrar -

(a) shall, on the presentation to him of an application for the purpose together with an office copy of the order under that subsection, enter a discharge of the charging order in the Title Register;

(b) may issue certificates of such entry."

Rules of the District Court

111. Special rules as to the sale of immovable property

Order 47, rule 7(4)(b) of the Rules of the District Court (Cap. 336 sub. leg.) is amended by repealing "in the Land Office under the Land Registration Ordinance (Cap. 128)" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require".

112. Discharge, etc., of charging order

Order 50, rule 7(2) is amended by adding "under the Land Registration Ordinance (Cap. 128), or the application number, of any relevant charge registered under the Land Titles Ordinance (of 2002), as the case may require," after "registered".

Demolished Buildings (Re-development of Sites) Ordinance

113. Interpretation

Section 2(1) of the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337) is amended by repealing the definition of "Land Registry".

114. Premises made subject to Ordinance

Section 3(2) is repealed and the following substituted -

"(2) The Director shall cause -

- (a) a copy of such notice to be served on any person appearing from the land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002) to have an interest in such property; and
- (b) such notice to be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require."

115. Order for re-development

Section 4(2) is repealed and the following substituted -

"(2) Where an order is served under subsection (1) -

- (a) the order shall within one month of such service be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require; and
- (b) a copy of the order shall also be served on any person appearing from the land register kept under the Land Registration Ordinance (Cap. 128), or the Title Register kept under the Land Titles Ordinance (of 2002), to have an interest in such property."

116. Assessment of incremental value

Section 6(2) is amended by repealing "Land Registry registers" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002)".

117. Payment of compensation

Section 9(1) is amended by repealing "in the Land Registry by a memorial thereof signed" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

118. Charge for compensation awarded

Section 12(1) is amended by repealing "in the Land Registry under" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002) pursuant to".

Building Management Ordinance

119. Interpretation

Section 2 of the Building Management Ordinance (Cap. 344) is amended -

- (a) in the definition of "common parts", in paragraph (a), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";

- (b) in the definition of "deed of mutual covenant", in paragraph (b), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";
- (c) by repealing the definition of "Land Registry";
- (d) in the definition of "owner", in paragraph (a), by repealing "records at the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002)";
- (e) in the definition of "registered mortgagee", in paragraph (a), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

120. Notice of and voting at meetings

Section 5(5)(c)(iii) is amended by repealing "register kept at the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require,".

121. Corporation may sell or register charges against flat in certain circumstances

Section 19(1) is amended by repealing "a charge against such interest in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require, a charge against such interest".

122. Determination of owner's shares

Section 39(a) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

123. Jurisdiction of tribunal in relation to building management

Section 45(3) and (4)(j) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

124. Meetings and procedure of corporation

The Third Schedule is amended, in paragraph 3(5)(a), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

125. **Terms added if consistent with deed of mutual covenant**

The Eighth Schedule is amended, in paragraph 13(c)(iii), by repealing "register kept at the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require,".

Electricity Networks (Statutory Easements) Ordinance

126. **Interpretation**

Section 2 of the Electricity Networks (Statutory Easements) Ordinance (Cap. 357) is amended, in the definition of "owner", in paragraphs (a) and (b), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

127. **Easements not to have effect until order registered**

Section 5(1) and (2) is amended by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)".

128. **Registration of order to be advertised in press**

Section 6 is amended -

- (a) in subsections (1) and (2)(a), by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)";
- (b) in subsection (2)(b), by adding "or the number of the application" after "memorial".

129. Rectification etc. of approved scheme

Section 7(3) is amended by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)".

130. Compensation for diminution of value of land

Section 10(1) is amended by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)".

Water Pollution Control Ordinance

131. Recovery of costs

Section 40B(9) and (10) of the Water Pollution Control Ordinance (Cap. 358) is amended by adding "or the Land Titles Ordinance (of 2002)" after "Land Registration Ordinance (Cap. 128)".

Water Pollution Control (Sewerage) Regulation

132. Compensation Rights and Assessment

Schedule 1 to the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub. leg.) is amended, in Part II, in section 2, in the definition of "owner", in paragraph (b), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Roads (Works, Use and Compensation) Ordinance

133. Interpretation

Section 2(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370) is amended -

- (a) in the definition of "mortgage", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";
- (b) in the definition of "owner", in paragraph (b), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

134. **Governor may order resumption of land**

Section 13(5) is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

135. **Governor may order creation of easements and other rights**

Section 15(8) is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

136. **Surrender of title documents**

Section 35 is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

Drug Trafficking (Recovery of Proceeds) Ordinance

137. Restraint orders

Section 10(11) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is repealed and the following substituted -

"(11) Where any property specified in a restraint order is immovable property, the order may be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require."

**Drug Trafficking (Recovery of Proceeds)
(Designated Countries and Territories) Order**

**138. Drug Trafficking (Recovery of Proceeds)
Ordinance as modified**

Schedule 2 to the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) is amended by repealing section 10(11) and substituting -

"(11) Where any property specified in a restraint order is immovable property, the order may be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require."

Sewage Tunnels (Statutory Easements) Ordinance

139. Interpretation

Section 2 of the Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438) is amended by repealing the definition of "Land Registry".

140. Publication of plans

Section 4(2)(d) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

141. Objections

Section 5(1) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

142. Orders under section 6 or 7

Section 8 is amended by adding -

"(4) An order made under section 6 or 7 and applying in respect of any land to which the Land Titles Ordinance (of 2002) applies may be registered under that Ordinance."

143. Deposit of plan and registration of order

Section 9(b) is amended by adding "or the Land Titles Ordinance (of 2002), as the case may require" after "Land Registration Ordinance (Cap. 128)".

Land Drainage Ordinance

144. Interpretation

Section 2 of the Land Drainage Ordinance (Cap. 446) is amended -

- (a) by repealing the definition of "Land Registry";
- (b) in the definition of "mortgage", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";
- (c) in the definition of "owner", in paragraph (b), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

145. Resumption of land on application

Section 37(7)(a) is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

146. Surrender of title documents

Section 44 is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept

under the Land Titles Ordinance (of 2002), as the case may require,".

Bedspace Apartments Ordinance

147. Recovery of cost of works by Authority

Section 25 of the Bedspace Apartments Ordinance (Cap. 447) is amended -

- (a) in subsections (2) and (8), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,";
- (b) in subsection (10), by repealing everything after "the Authority" and substituting -

"shall -

- (a) lodge or cause to be lodged in the Land Registry under the Land Registration Ordinance (Cap. 128) an appropriate memorial of satisfaction against any certificate registered by him under that subsection; or
- (b) cause the certificate to be discharged by registering under the Land Titles Ordinance (of 2002) an appropriate instrument of

satisfaction against the
certificate,
as the case may require.".

Organized and Serious Crimes Ordinance

148. Restraint orders

Section 15(11) of the Organized and Serious Crimes Ordinance (Cap. 455) is repealed and the following substituted -

"(11) Where any property specified in a restraint order is immovable property, the order may be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require.".

Land Survey Ordinance

149. Interpretation

Section 2 of the Land Survey Ordinance (Cap. 473) is amended by repealing the definition of "Land Registry".

150. Disciplinary offences

Section 20(1) is amended by repealing "section 30(6) or (8)" and substituting "section 30(6) or (8) or 30A(7) or (9)".

151. **Land boundary plans for subdivisions**

Section 30 is amended by adding -

"(11) This section shall not apply to land for which the Title Register within the meaning of the Land Titles Ordinance (of 2002) has been opened."

152. **Section added**

The following is added -

**"30A. Land boundary plans for
subdivision of registered
land**

(1) Subject to subsections (2) and (3), where there is presented to the Land Registrar any application -

(a) within the meaning of the Land Titles Ordinance (of 2002); and

(b) the registration of which under that Ordinance will effect a division of registered land,

then the instrument accompanying the application and providing for the division shall, in respect of each of the parcels of land to result from the division, be accompanied by a land boundary plan -

(c) showing and delineating those parcels; and

(d) subject to subsection (4), signed and certified by an authorized land surveyor in the specified form.

(2) Without prejudice to the generality of subsections (3) and (4) -

(a) subject to paragraph (b), it shall not be necessary for an instrument referred to in subsection (1) to be accompanied by a land boundary plan referred to in subsection (1) where the division of registered land concerned is provided for by a will or judgment and that instrument is the grant of probate in respect of the will, or the judgment, as the case may be;

(b) it shall be necessary for an instrument accompanying an application presented for the registration under the Land Titles Ordinance (of 2002) of a dealing to effect the passing of title to any parcel of land resulting from that division to be accompanied by such a land boundary plan.

(3) It shall not be necessary for an instrument referred to in subsection (1) or (2)(b) to be accompanied by a land boundary plan referred to in that subsection if the instrument was executed before the commencement of section 30.

(4) It shall not be necessary for a land boundary plan -

(a) accompanying an instrument referred to in subsection (1) or (2)(b); and

(b) which has been prepared by the Government, to be signed and certified by an authorized land surveyor.

(5) An authorized land surveyor who certified a land boundary plan referred to in subsection (1) or (2)(b) shall deposit with the Authority a duplicate of the land boundary plan and the survey record plan of the relevant land boundary survey both signed and certified in the specified form, not later than 7 days after the application referred to in that subsection to which the land boundary plan relates was presented to the Land Registrar.

(6) A prescribed fee shall be payable to the Authority by the authorized land surveyor who deposits a duplicate land boundary plan and a survey record plan.

(7) The Authority may by notice in writing require any authorized land surveyor who has undertaken a land boundary survey or any part of such survey to deliver to the Authority for his inspection within such time as may be specified in the notice the following documents or things used in connection with or produced from the survey as may be specified in the notice -

- (a) the report of calibration of survey instruments;
- (b) the survey instruments;
- (c) field notes; and
- (d) the report in relation to the land boundary definition.

(8) The Authority shall return any document or thing delivered under subsection (7) as soon as it is practicable after inspection.

(9) The Authority may by notice in writing require an authorized land surveyor who deposited with the Authority under subsection (5) a duplicate land boundary plan and a survey record plan to amend the duplicate land boundary plan or the survey record plan or both so deposited with respect to the new boundary line created by a division of land and shown and delineated thereon in such manner as specified in the notice to make them comply with any code of practice approved under the Land Survey Ordinance (Cap. 473) within such time as specified in the notice.

(10) For the purposes of this section -
"judgment" (判決) includes a judgment or order of the Court of First Instance, the District Court or the Lands Tribunal;
"registered land" (註冊土地) has the meaning assigned to it by section 2(1) of the Land Titles Ordinance (of 2002).

(11) For the avoidance of doubt, it is hereby declared that a land boundary plan referred to in subsection (1) shall not have effect other than the effect it has by virtue of its being a plan attached to or endorsed on or accompanying an instrument delivered into the Land Registry for registration under the Land Titles Ordinance (of 2002).

(12) This section shall apply to land for which a Title Register within the meaning of the Land Titles Ordinance (of 2002) has been opened."

Marine Parks and Marine Reserves Regulation

153. **Interpretation**

Section 2 of the Marine Parks and Marine Reserves Regulation (Cap. 476 sub. leg.) is amended by repealing the definition of "Land Registry".

Environmental Impact Assessment Ordinance

154. **Recovery of costs**

Section 25 of the Environmental Impact Assessment Ordinance (Cap. 499) is amended -

(a) in subsection (9), by adding "or the Land Titles Ordinance (of 2002), as the case may require," after "Land Registration Ordinance (Cap. 128)";

(b) by adding -

"(11) On the recovery of all of the costs certified under this section, the Director shall, if there has been registration against land or premises under subsection (9) or under the Land Titles Ordinance (of 2002), register under that Ordinance an appropriate instrument of satisfaction against the certificate.".

**Government Rent (Assessment and
Collection) Ordinance**

**155. Exemption from liability to pay
Government rent**

Section 4(13)(a) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) is amended by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

156. Deed of mutual covenant overridden

Section 38(4) is amended, in the definitions of "common parts" and "deed of mutual covenant" (in paragraph (b)), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)".

Railways Ordinance

157. Interpretation

Section 2 of the Railways Ordinance (Cap. 519) is amended -

- (a) in the definition of "mortgage", by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002)";
- (b) in the definition of "owner", in paragraph (b), by repealing "registered in the Land Registry".

158. **Resumption order**

Section 18(4) is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

159. **Chief Executive may order creation of easements and rights**

Section 20(8) is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

160. **Surrender of title documents**

Section 40 is amended by repealing "register of the land kept in the Land Registry" and substituting "land register kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require".

Mutual Legal Assistance in Criminal Matters Ordinance

**161. Enforcement, etc. of external
confiscation orders**

Schedule 2 to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is amended by repealing section 7(10) and substituting -

"(10) Where any property specified in a restraint order is immovable property, the order may be registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require."

Land (Compulsory Sale for Redevelopment) Ordinance

162. Interpretation

Section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) is amended by repealing the definition of "lis pendens" and substituting -

"lis pendens" (待決案件) means a lis pendens -

- (a) within the meaning of section 1A of the Land Registration Ordinance (Cap. 128) and which is registered under that Ordinance; or
- (b) within the meaning of section 2(1) of the Land Titles Ordinance (of 2002) and which is registered under that Ordinance;"

163. Application to Tribunal for compulsory sale of lot

Section 3(3)(b) is amended by adding "or the Land Titles Ordinance (of 2002), as the case may require," after "Land Registration Ordinance (Cap. 128)".

164. Determination of application

Section 4(13) is amended by adding "or removed under the Land Titles Ordinance (of 2002), as the case may require" after "Land Registration Ordinance (Cap. 128)".

165. Registration of order for sale, etc.

Section 7 is amended -

(a) in subsections (1) and (2), by adding "or the Land Titles Ordinance (of 2002), as the case may require," after "Land Registration Ordinance (Cap. 128)";

(b) in subsection (3), by adding "or removed under the Land Titles Ordinance (of 2002), as the case may require" after "Land Registration Ordinance (Cap. 128)".

Broadcasting Ordinance

166. **Domestic free television programme
service supplementary provisions**

Schedule 4 to the Broadcasting Ordinance (Cap. 562) is amended, in Part 2, in section 9(8), by repealing "by memorial" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2002), as the case may require,".

Fire Safety (Buildings) Ordinance

167. **Registration of fire safety compliance
order, etc. in the Land Registry**

Section 14(1) and (2) of the Fire Safety (Buildings) Ordinance (Cap. 572) is amended -

- (a) by repealing "by memorial";
- (b) by adding "kept under the Land Registration Ordinance (Cap. 128) or the Title Register kept under the Land Titles Ordinance (of 2002), as the case may require," after "land register".

Explanatory Memorandum

The object of this Bill is to gradually replace the present system under the Land Registration Ordinance (Cap. 128) of registering instruments affecting land with a new system of registering the title to land and the interests in the land subject to which the title is held. The principal benefit of this new system

is that it provides certainty both as to the ownership of land and the interests in that land because, subject to certain exceptions specified in the Bill, no matter may affect land unless the matter is registered.

2. Part 1 (clauses 1 to 4) is preliminary. Clause 2(1) defines the terms used in the Bill. The definition of "Government lease" in the Interpretation and General Clauses Ordinance (Cap. 1) and the definition of "land" in clause 2(1), as read with clause 3(1), identify the land to which the Bill will apply. The definition of "Title Register" should, in particular, be noted, as it is the term used to describe the register of the ownership of land and the register of long term leases (see the definition of "long term lease" in clause 2(1)). The definitions of "transfer" and "transmission" specify the two ways in which the title to registered land, a registered charge or a registered long term lease may be passed from one person to another. Clause 2(2)(a) and (d) contains provisions which, in particular, should be noted, because paragraph (a) provides that no matter may be registered unless it is the subject of an application for registration while paragraph (d) specifies how that registration is effected. Clause 4 identifies the matters capable of registration under the Bill.

3. Part 2 (clauses 5 to 20) relates to the organization and administration of the Land Registry. Clause 5(2) specifies the matters required to be kept and maintained in the Land Registry (paragraph (a) of that clause should, in particular, be noted). Clause 6 specifies the functions and powers of the Land Registrar

("the Registrar"). His powers at clause 6(2)(a), (b), (c) and (d) are of particular importance, as they enable him to require persons to provide documents and information in relation to registered land or registered long term leases and to refuse to proceed with any registration if any such document or information is not provided. Clause 7 provides for the power of the Registrar to delegate his functions and powers under the Bill.

4. Clause 8 protects the Registrar, and public officers assisting him, from any liability in damages where they have acted in good faith in the performance or exercise of their functions and powers under the Bill. The clause also provides that the only act or default for which the Government may be liable in damages is an act or default which gives rise to an indemnity under Part 9. Clause 9 provides that the Land Registry shall have a seal of office and contains evidentiary provisions in respect of instruments purporting to bear the imprint of the seal.

5. Clause 10(1) provides that there shall be kept and maintained Title Registers of all registered land and registered long term leases. Each Title Register will be assigned a title number (see clause 10(2)). Clause 10(3) specifies the particulars to be contained in each Title Register.

6. Clause 11 is a transitional provision. It specifies that when a Title Register is opened for any land for which a register has been kept and maintained under the Land Registration Ordinance (Cap. 128), then the priority of all interests in the Title Register existing immediately before the date of first registration of the land under

the Bill shall be determined in accordance with the provisions of the Land Registration Ordinance (Cap. 128). The clause also provides that certain of these interests existing immediately before the date of first registration shall be deemed to be protected by consent or non-consent cautions beginning on the date of first registration (see the definitions of "consent caution", "first registration" and "non-consent caution" in clause 2(1)).

7. Clause 12 provides that land will be brought under the Bill on the first assignment of the land on or after the commencement day (see the definition of "commencement day" in clause 2(1)), or on the issue of a Government lease in respect of the land, or at the instigation of the owner or owners of the land as named in the register concerned kept and maintained under the Land Registration Ordinance (Cap. 128). Except in the case of the issue of a Government lease, applications for a first registration of the land will need to be accompanied by a certificate of good title signed by a solicitor (see clause 12(2)). Clause 13 specifies that the Registrar may register land the subject of an application made under clause 12 by opening an ownership register of the land specifying that the applicant or the Government lessee, as the case may be, is the first owner of the land.

8. Clause 14 specifies the effect of the first registration of land under clause 13 - that is, the title that is thereby vested in the registered owner of the land (see the definition of "owner" in clause 2(1)). Clause 14(2) specifies the matters which will not be affected by this vesting.

9. Clause 15 specifies the date that shall be taken as the date of first registration of land under the Bill. Clause 16(1) provides that the first registration of land held under a Government lease shall be effected by the preparation of a Title Register in respect of the land. Clause 16(2) provides that the registration of any matter which subsequently affects that land shall be effected by an entry in that Title Register. Clause 17 empowers the Registrar to remove any entry in the Title Register which in his opinion has ceased to have any effect. Clause 18 empowers the Registrar to open new editions of a Title Register. Clause 19 makes it clear that a plan that is a land title record (see the definition of "land title record" in clause 2(1)) is to be treated as only indicating the approximate situation and the approximate boundaries of the registered land to which it relates. Clause 20 relates to combining and dividing registered land.

10. Part 3 (clauses 21 to 25) relates to the effect of registering matters affecting registered land. Clause 21(1) is of particular importance as it specifies the title, subject to the provisions of the Bill referred to in that clause, that, after a Title Register of land has been opened under clause 13, immediately vests in a person upon the person becoming the owner of registered land following a transfer or transmission. Clause 22 provides that the interest in the lease, subject to the provisions of the Bill referred to in that clause, shall be vested in a person upon the registration of the person as the lessee of the long term lease. Clause 23 provides that a person who has acquired registered land, a registered charge or a

registered long term lease without valuable consideration shall hold the land, charge or lease subject to all the matters specified in subclause (2) of that clause. Clause 24(1) specifies the interests which will still affect registered land notwithstanding that the interests are not the subject of any entry in the Title Register (described in the Bill as "overriding interests"). Clause 25 provides that a person acquiring registered land, a registered charge or a registered long term lease shall be deemed to have had notice of every entry in the Title Register which affects the land, charge or lease and is current at the time of the acquisition of the land, charge or lease.

11. Part 4 (clauses 26, 27 and 28) relates to certificates and searches. Clause 26 empowers the Registrar to issue a title certificate to the owner of registered land or the lessee of a registered long term lease showing, or referring to, all current entries in the Title Register affecting the land or lease. Clause 27 specifies that a person may have made available for search any thing required under clause 5(2) to be kept and maintained in the Land Registry. Clause 28 is an evidentiary provision applicable to documents purporting to be copies, prints or extracts of or from the Title Registers and other records required to be kept in the Land Registry.

12. Part 5 (clauses 29 to 57) relates to dispositions of registered land, a registered charge or a registered long term lease. Clause 29 provides that no disposition is effected unless it is registered in accordance with the provisions of the Bill. Clause 30 provides,

inter alia, that where a trustee in that capacity is registered as the owner of registered land, a registered charge or a registered long term lease, he shall, in dealing with the land, charge or lease, be deemed to be the owner of the land, charge or lease. Clause 31 provides for additional fees where an application for the registration of a matter is presented later than 3 months after the date of the instrument supporting the application. Clause 32 empowers the Registrar to require a person to present an application for the registration of a matter where he is satisfied that such application has not been presented through that person's wilful default.

13. Clause 33 provides that matters appearing in the Title Register shall have priority according to the order in which the applications which led to their registration were presented to the Registrar. Clause 34 provides, subject to certain exceptions, that the registration of charging orders made by courts and of *lis pendens* shall cease to have effect upon the expiration of 5 years after their date of registration but may be re-registered.

14. Clauses 35 to 57 largely relate to how various forms of disposition will be effected under the Bill, in particular charges, divisions, covenants, transfers, leases and easements. Clause 40(1) provides that an instrument providing for a floating charge shall not be registrable as a charge. Clause 42 requires land boundary plans to accompany certain applications for the division of registered land. Clause 43 makes it clear that the provisions of the Bill will not prejudice the operation of section 35 of the Conveyancing and

Property Ordinance (Cap. 219). Clause 47 provides for the registration of long term leases. Clause 48 provides a means whereby certain leases granted before the date of first registration of the land concerned may be treated as long term leases, and thus enjoy the protection afforded long term leases under clause 82.

15. Part 6 (clauses 58 to 61) relates to instruments (see the definition of "instrument" in clause 2(1)). Clause 58(1) provides that a disposition of registered land, a registered charge or a registered long term lease, or the grant or reservation of an easement over registered land or a registered long term lease, may be made in any manner as could have been done prior to the appointed day unless the Registrar has exercised his power under clause 97 to specify the form of the instrument of such disposition, grant or reservation. Clause 59 provides, in effect, that no instrument required by law to be stamped in accordance with the requirements of the Stamp Duty Ordinance (Cap. 117) shall be accepted for any registration purposes under the Bill unless it is so stamped. Clause 60 provides that land title records must be retained in the Land Registry, either in their original form or in microfilm, imaged or other form. Clause 61 provides that the name of a minor may be entered in the Title Register as the owner of registered land or a registered charge, or the lessee of a registered long term lease, and that a disposition by a minor whose minority has not been disclosed to a purchaser acting in good faith and for valuable consideration shall not of itself cause the disposition to be set aside.

16. Part 7 (clauses 62 to 69) relates to transmissions and trusts. Clause 62 provides for the passing of the title to registered land, a registered charge or a registered long term lease to the remaining joint tenant or tenants upon the death of a joint tenant. Clause 63 enables, inter alia, the personal representative of a deceased sole owner or tenant in common of registered land or a registered charge, or a deceased lessee of a registered long term lease to be registered, in that capacity, as the owner of the land or charge or as the lessee of the lease. Clause 64 provides for transmission on the death of a trustee. Clause 65 specifies the interests subject to which a personal representative holds registered land, a registered charge or a registered long term lease together with the rights which he may exercise in respect of the land, charge or lease. Clauses 66 and 67 provide for transmission on bankruptcy and liquidation respectively. Clause 68 provides for transmission under an order of the Court of First Instance or under an enactment. Clause 69 relates, inter alia, to persons acquiring registered land, a registered charge or a registered long term lease as a trustee (other than as a personal representative or trustee in bankruptcy). It should be noted that no particulars of the trust concerned are to be entered in the Title Register.

17. Part 8 (clauses 70 to 79) relates to cautions and restraints on disposition. There are two forms of caution which may affect registered land, a registered charge or a registered long term lease. The distinction between the two forms is that one requires the consent referred to in clause 70(1) before it can be registered

(described as a "consent caution" in the Bill) while the other does not (described as a "non-consent caution" in the Bill). The purpose of a consent caution is to protect the interest of a person who in good faith and for valuable consideration intends to effect a dealing in, inter alia, registered land. The purpose of a non-consent caution is to be a warning to persons proposing to deal with, inter alia, registered land that the cautioner either claims an interest in the land or has presented a winding-up petition against the owner of the land. (However, it should be noted that clause 71(3) makes it clear that the registration of a non-consent caution shall not of itself affect the validity or otherwise of the matter the subject of the non-consent caution). A person who maintains or presents a caution wrongfully may be liable for damages (see clause 73). There are two forms of restraint on disposition. The first is inhibitions, being orders of the Court of First Instance inhibiting the registration of dealings in registered land, a registered charge or a registered long term lease. The second is restrictions, being an order made by the Registrar, upon application by a person, prohibiting dealings in registered land, a registered charge or a registered long term lease, if he is satisfied that the powers of the owner of the registered land or the registered charge, or of the lessee of the lease, to deal in the land, charge or lease should be restricted. No caution, inhibition or restriction affects registered land, a registered charge or a registered long term lease unless it is registered (see clauses 70(13), 74(3) and 77(4)).

18. Part 9 (clauses 80 to 87) relates to the rectification of the Title Register and to the payment, in certain cases, of indemnity by the Government. Clause 80(1) empowers the Registrar to rectify the Title Register in the case of minor errors or omissions or with the consent of all persons interested. Clause 81(1) empowers the Court of First Instance to order the rectification of the Title Register where an entry appearing in or absent from the Title Register has been obtained, made or omitted by the fraud, mistake or omission of any person or by means of a void or voidable instrument. However, the Court's power is subject to the qualifications in clause 81(2) and (3). Clause 81(2) protects a person who is in possession of the land and has, inter alia, acquired the registered land or the registered long term lease concerned for valuable consideration. Clause 81(3) provides that the Court may order rectification of the Title Register if it is satisfied that the former registered owner or registered lessee has no knowledge of or has not caused or contributed to the fraud, that the present registered owner or registered lessee is in possession of the land and has acquired the land or lease for valuable consideration and has no knowledge of or has not caused or contributed to the fraud, and that it would be unjust not to rectify the Title Register. Clause 82(1) provides, subject to the provisions of the Bill referred to in that clause, that an indemnity is payable by the Government to a person who has suffered loss by reason of an entry in or omitted from the Title Register because of fraud on the part of any person or because of any mistake or omission on the part of any person referred to in clause

8(3). It should be noted that clause 82(5) prevents professional indemnity insurers from being entitled to be subrogated to any rights or remedies of any person against the Government under clause 82(1). Clause 83 specifies how the amount of the indemnity to be paid shall be determined in particular cases. Clause 84 provides that the procedure for claiming an indemnity shall be, first, to the Registrar and, second, by application to the Court of First Instance if the person concerned is not satisfied with the Registrar's determination. Clause 85 specifies when the time limit for claiming an indemnity begins to run. Clause 86(1) sets out the Government's rights to recover any amount paid by way of indemnity from, inter alia, persons who have caused or substantially contributed to the loss in respect of which the indemnity was paid. Clause 87 provides that no claim to indemnity shall arise between the Government and the owner of registered land in respect of any surplus or deficiency of land disclosed by a survey showing an area or measurement differing from the area or measurement shown in the Title Register or on any plan which is a land title record.

19. Part 10 (clauses 88 to 91) relates to appeals. Clause 89 empowers any person aggrieved by a decision of the Registrar to appeal to the Court of First Instance. However, any order of the Court of First Instance on the appeal cannot affect a disposition made in good faith and for valuable consideration and registered at any time before the notice of appeal is made the subject of a non-consent caution (see clause 90).

20. Part 11 (clauses 92 to 102) contains miscellaneous provisions. Clause 92 provides for the determination of the boundaries of a lot by application to the Director of Lands. Clause 94 sets out what is the meaning of an "opportunity of being heard" for the purposes of clauses 6(3) and 79(1)(b). Clause 96 sets out the offences which may be committed under the Bill. Clause 97 empowers the Registrar to specify the form of any document required to be in the specified form and the form of such other documents (including conveyancing documents) required for the purposes of the Bill as he thinks fit. Clause 98 empowers the Financial Secretary to prescribe fees and levies for the purposes of the Bill. Clause 100 sets out the regulation-making powers of the Secretary for Housing, Planning and Lands. Clause 102 and Schedule 2 provide for the consequential amendments to other enactments necessitated by the Bill.

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Annex B

Land Tiles Bill Financial and Civil Service, and Economic Implications

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

Implementation of the title registration system is estimated to cost \$9 million in capital expenditure. Additional recurrent expenditure of \$13 million per annum has been projected for a net creation of 13 new posts for the implementation of the new system. These and the costs for the publicity effort will be met from the Land Registry Trading Fund.

2 The proposed indemnity fund is a self-financing fund which will be built up by a levy on application for registration under the title registration system. The reserve in the indemnity fund is proposed to be \$150 million to be accumulated in ten years to meet unexpected claims. Subject to the Finance Committee's approval, we propose to arrange a stand-by loan facility of \$150 million for the indemnity fund from the Government to meet claims before the reserve is built up. Approval from the Finance Committee of the Legislative Council for the loan facility will be sought after the Bill is enacted.

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ECONOMIC IMPLICATIONS

3. A title registration system would bring about reduced conveyancing costs and provide better assurance of title. The system would be more user-friendly by reducing title requisitions and would bring about a greater degree of confidence to property ownership in Hong Kong. The increased certainty and efficiency would thus be beneficial for property ownership and investment and generally to the economy as a whole.

4. Our present proposal of a gradual conversion could impose increased compliance cost initially on property owners due to the requirement for solicitors to issue certificates of good title to enable conversion on first sale and voluntary conversion cases. Some solicitors might demand fees over and above those that they currently charge for conveyancing. However, it is difficult to estimate accurately the likely charges at this stage. The issue of a certificate of good title is in any case a one-off requirement. With regard to Government charges, even with the addition of the proposed levy for the indemnity fund, these will remain a small proportion of transaction costs. The Land Registry is working through efficiency improvements to keep its charges low, particularly for the lower end of the market. Any increase in costs imposed by Government would arise from the levy for the indemnity fund, which can be viewed against the added protection provided by the fund as well as the other benefits conferred by the new system.