

HPLB(B) 30/30/10 Pt.25

電話 Tel No. : 2848 6288
傳真號碼 Fax No. : 2899 2916

12 November 2002

Clerk to Panel
(Attn: Miss Salumi Chan)
LegCo Panel on Planning, Lands and Works
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Miss Chan,

**LegCo Panel on Planning, Lands and Works
Meeting on 8 November 2002**

**Agenda Item IV
Removal of Stopped Deeds**

In response to the request made by the Chairman of the LegCo Panel on Planning, Lands and Works at the Panel meeting on 8 November 2002 and having obtained the consent of the Law Society and the Bar Association, I enclose the following correspondence for Members' reference :-

Correspondence		Remarks
Annex 1	Letter dated 14 May 2002 from Land Registrar to Hong Kong Bar Association.	
Annex 2	Letter dated 14 June 2002 from Hong Kong Bar Association to Land Registrar enclosing Position Paper.	Note paras 7-12 on the question of whether the amendments should be made by Regulations.
Annex 3	Letter dated 19 June 2002 from Land Registrar to Law Society.	
Annex 4	Letter dated 9 July 2002 from Land Registrar to Law Society.	
Annex 5	Letter dated 12 August 2002 from Land Registrar to Hong Kong Bar Association.	Note the responses to paras 7-12 on p.2 of the letter.
Annex 6	Letter dated 12 August 2002 from Land Registrar to Law Society.	
Annex 7	Letter dated 20 August 2002 from Law Society to Land Registrar.	Note the Law Society's views on automatic removal.
Annex 8	Letter dated 21 August 2002 from Land Registrar to Law Society.	

In the interest of time, the English (i.e. original) version of the relevant correspondence is enclosed herewith. The Chinese translation of the correspondence will be forwarded to you once available early next week.

Yours sincerely,

(Parrish Ng)
for Secretary for Housing, Planning and Lands

c.c. LR

土地註冊處處長
香港金鐘道 66 號
金鐘道政府合署 28 樓
電話：(852) 2867 8001
圖文傳真：(852) 2596 0281

LAND REGISTRAR
QUEENSWAY GOVERNMENT OFFICES
28TH FLOOR
66 QUEENSWAY
HONG KONG
TEL.: (852) 2867 8001
FAX: (852) 2596 0281

(5) LR/HQ/101/20 Pt.2.4

14 May 2002

Mr. Alan Leong S.C.
Chairman
Hong Kong Bar Association
LG2 Floor, High Court
38 Queensway
Hong Kong

Dear *Mr Leung,*

Re: Land Registration (Amendment) Bill 2000

We last corresponded on the subject of the Land Titles Bill. One key precursor to introducing title registration – as well as being desirable in its own right - is reform of the organization, working practices and systems in the Land Registry. This reform is the fundamental objective of the Land Registration (Amendment) Bill now before the Legislature.

The Bill was introduced into the Legislative Council in January 2001. It contains amendments to provide for a Central Registration System for the Land Registry, a colour imaging system for plans and some revised procedures arising from an overall review of the Land Registration Ordinance and Regulations.

At its meeting on 13th May, the committee of the Legislative Council studying the Land Registration (Amendment) Bill has asked me to consult the Bar Association on proposals that have been developed in relation to powers to remove stopped deeds.

New power of removal of long outstanding stopped deeds

It is proposed to give a power to the Land Registrar to remove stopped deeds. Regulation 15 and 15A have been proposed for the new power. Attached at Annex 1 are the provisions of the new regulations. A short explanatory note is also attached at Annex 2 on the operation of the new provisions.

Proposed Regulation 15A(5)

Proposed Regulation 15A(5) provides that where the Land Registrar has removed any particulars on the register computer and the Court has allowed an application for review to be made outside the 60 days period and an assignment has been registered after the removal of the particulars but before the registration of the application for review, the Court shall not make an order which would require the Land Registrar to reinstate those particulars or register the stopped deed.

This is proposed because of the change of ownership. Since the stopped deed relates to the former owner, the new owner and all subsequently registered instruments should not be subject to the stopped deed.

Proposed Regulation 15A(8)

Proposed Regulation 15A(8) states that where the Land Registrar has removed any particulars on the register computer and the Court has allowed an application for review to be made outside the 60 day period, and the Land Registrar reinstates the particulars or registers the stopped deed pursuant to a Court order, the priority of the stopped deed upon registered will be as follows:

- (a) If no document has been registered after the removal of the particulars and before the registration of the application for

review, the stopped deed shall have the priority that it would have had if the Registrar had never removed those particulars. The proposals are stated in proposed Regulations 15A(8)(a), (b), (c), (d)(i) and (e).

The position will be the same whether or not any instruments are registered after the delivery of the stopped deed but before the actual removal of the particulars since the parties of these instruments already have notice of the stopped deeds at the time of their registration.

- (b) If there are instruments registered after the removal of the particulars and before the registration of the application for review, every instrument duly registered in the period commencing at the date of receipt of the stopped deed and ending with the time of registration of the application for review shall have priority over the stopped deed when duly registered. The proposals are stated in proposed Regulations 15A(8)(a), (b), (c), (d)(ii) and (f).

This proposal is made as the parties of those instruments had no notice of the stopped deed and the priority of those instruments should not be subject to the priority of the stopped deed. The priority of the instrument registered after the original date of delivery of the stopped deed but before the removal of the particulars of the stopped deed (preceding instrument) is also protected to preserve its priority over the deed registered after the removal of the particulars of the stopped deed but before the registration of the application for review (intervening instrument) as the priority of the intervening instrument is subject to the priority of the preceding instrument.

Bills Committee Deliberations

During the deliberations of proposed Regulations 15A(5) and 15A(8) in the Bills Committee, members discussed whether there was a change to the handling of priority and whether this could have any effect on property rights. Some members were uncertain as to whether the changes, if made, should be provided for in the regulations. They would appreciate the views of the Bar Association on these two issues.

The Administration's view

As regards whether this matter might be handled by way of amendment to the regulations, section 3 of the Land Registration Ordinance deals with the priority of registered instruments. That priority is, however, qualified by the words "Subject to this Ordinance" at the start of the section. Paragraph (c) of the definition of "Ordinance" in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1 states that "Ordinance" also means "any subsidiary legislation made under [the] Ordinance". Therefore, the words "Subject to this Ordinance" at the start of section 3(1) mean, in effect – subject to the other provisions of this Ordinance and the provisions of any subsidiary legislation made under this Ordinance.

The proposed regulations declare clearly the priorities in the scenario as described and provide for the non-reinstatement of the particulars of the stopped deed in the circumstances as described. Such a scenario is not covered under existing section 3 of the Land Registration Ordinance. This only deals with priority between registered instruments and the effect of non-registration.

We take the view that the qualification of section 3 in respect of the priority of the instruments in the particular scenario as described in proposed Regulation 15A(8) is properly contained in the Regulations. The wording of Section 3 of the Land Registration Ordinance makes it apparent

that it envisages that there may be other provisions in the main Ordinance or in the Regulations which deal with the priority of instruments.

Furthermore, proposed Regulation 15A(5) and 15A(8) properly belong in the Land Registration Regulations because their wording is contingent on the wording of the other provisions of the Land Registration Regulations as amended by the Bill. If the proposed regulations were moved to the main Ordinance, it would of necessity still have to refer to the other provisions of the Land Registration Regulations. This would mean that a Bill would be required every time an amendment was to be made to the other provisions which as a by-blow affected the meaning of the proposed regulations as moved to the main Ordinance. The Bill would be required for amendment to these provisions whilst the other provisions could be amended by way of regulations under section 28 of the Land Registration Ordinance. This is not satisfactory from a drafting point of view and would not assist in the interest of making expeditious amendments to regulations.

We do not see any principle at stake or any protection to the public that will be diminished if these amendments, if agreed, are made in the regulations rather than placed in the Ordinance.

As for the main issue of how to handle priority in case a court orders reinstatement and registration after the Land Registrar has removed a stopped deed, I appreciate that we are dealing with what might happen in a very small range of cases. But, even if the cases may be few, the exercise of the new power of removal of the long outstanding stopped deeds may affect certain parties. We must take care to give protection to such interests while keeping in mind the key objective of a public land register which is to give the greatest possible certainty to parties consulting the register. We consider that the proposals in proposed Regulation 15A(5) and Regulation 15A(8) would achieve this balance.

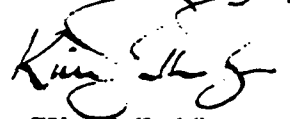
I would be most grateful for the views of the Bar Association as to whether the proposed Regulations 15A(5) and 15A(8) do achieve that balance we seek, whether they can be improved upon, or whether there are issues of weight that may arise from what we are proposing.

My first priority, however, is for your view on the time that the Bar Association will need in order to give reasonable consideration to this matter.

Time is of the essence in proceeding with the Land Registration (Amendment) Bill. If it is not enacted before the summer recess then a more than \$100 million contract for upgrading the Land Registry systems may have to be re-tendered and we will certainly not be able to meet customer demands for a central registration service and other improvements within 2003. Eight weeks remain before the recess. Several weeks are required for the procedures to bring a Bill back to the full Council for its committee stage amendments and final reading. I will need to decide by 27th May whether to proceed with the bill containing provisions on removal of stopped deeds or to take these out and deal with them as a separate legislative exercise.

I and my colleagues in the Land Registry legal team and in the Law Drafting Division of the Department of Justice will be happy to meet you or any committee of your association to discuss this matter at any time convenient to you. But, if you consider that your members will need more time to circulate, deliberate and discuss with us on this matter than is available before 27th May, please could you let me know right away.

Yours sincerely



(Kim Salkeld)

Land Registrar

c.c. Secretary for Planning and Lands (Attn. Miss S.H. Cheung)

Department of Justice (Attn. Mr. Geoffrey Fox)

Regulations 15 and 15A of the Land Registration Regulations (Cap. 128 sub. leg.) as amended by section 67 of the Schedule to the Land Registration (Amendment) Bill 2000 and the 21st draft of the CSAs to that Bill

15. Procedure where instrument is withheld from registration

(1) Where, in respect of any memorial, plan or instrument delivered for registration, either -

- (a) the Land Registrar is not satisfied as to any of the matters specified in section 23 of the Ordinance; or
- (b) the person who so delivered the instrument requests the Land Registrar to do so,

the Land Registrar shall, subject to paragraph (6), withhold the instrument from registration.

(2) Where under paragraph (1) an instrument is withheld from registration, the Land Registrar shall -

- (a) enter on a docket the reasons why such instrument has been withheld;
- (aa) keep a copy of the instrument, together with copies of the memorial and plans (if any) relating thereto, in such form and by such method as the Land Registrar thinks fit; and
- (b) either -
 - (i) send by post the instrument together with the memorial and plans (if any) relating

thereto and a notice that the instrument has been withheld from registration to the person by whom it was delivered; or

- (ii) at the request of the person who delivered the instrument, permit the person to collect the instrument in accordance with paragraph (3).

(3) Any person who collects an instrument withheld from registration shall -

- (a) at the same time collect the memorial and plans (if any) relating thereto;
- (b) acknowledge receipt of such instrument, memorial and plans (if any) by signing and dating in a book of record kept by the Land Registrar for the purposes of this regulation; and
- (c) collect and retain the docket.

(4) If an instrument collected by or sent by post to the person by whom it was delivered under paragraph (2) or (3) is redelivered for registration, such instrument, together with the memorial and plans (if any) relating thereto shall be scrutinized by the Land Registrar, and the Land Registrar shall -

- (a) if he is satisfied in respect of such instrument, memorial and plans (if any) as to the matters specified in section 23 of the Ordinance, proceed to register the instrument in accordance with regulation 14; or
- (b) if he is not so satisfied and subject to paragraph (6), withhold the instrument from registration.

(4A) The Land Registrar may destroy or otherwise dispose of any copy of an instrument kept under paragraph (2) (aa), together with copies of the memorial and plans (if any) relating thereto so kept -

(a) if the instrument -

(i) is redelivered for registration; or

(ii) is registered; and

(b) in such manner as the Land Registrar thinks fit.

(5) Paragraphs (2), (3), (4) and (4A) shall apply in respect of any instrument withheld under paragraph (4) (b).

(6) Where under paragraph (1), or under paragraphs (1) and (4) (b), as in force at any time (including at any time before the commencement of this paragraph), an instrument is withheld from registration for not less than 6 months commencing on the date it is delivered for registration (or such longer period as the Land Registrar thinks fit in all the circumstances of the case) -

(a) the Land Registrar may, as he thinks fit but subject to paragraph (7), on or after the expiration of the period of 60 days mentioned in regulation 15A(1) remove any particulars -

(i) entered in the portion of a register computer kept by him for the purposes of regulation 10(d) (i) for the land and premises affected by the instrument; and

(ii) which were so entered in consequence of such delivery of the instrument;

(b) the Land Registrar shall, as soon as is practicable after exercising his power under subparagraph (a),

give notice of the exercise of the power -

(i) by placing a prescribed notice on a notice board -

(A) maintained for the purposes of this paragraph;

(B) in a conspicuous place in the Land Registry; and

(C) for not less than 28 days; and

(ii) if practicable, by sending a prescribed notice by post to the persons concerned mentioned in paragraph (7) (a).

(7) Where the Land Registrar proposes to exercise his power under paragraph (6) (a), he shall -

(a) give the person who delivered the instrument concerned, the person who appears from the records of the Land Registry to be the last owner of the land and premises to which the instrument relates, and any other person who, in the opinion of the Land Registrar, may be affected by the exercise of that power, an opportunity of making written submissions;

(b) not exercise that power -

(i) subject to sub-subparagraph (ii), after he has been served with a writ, originating summons, originating motion or petition which relates to the registration of the instrument that would be affected by the exercise of that power;

(ii) until the conclusion of the proceedings on the writ, summons, motion or petition, as the case may be.

(8) For the purposes of paragraph (7) (a), a person shall be deemed to have been given an opportunity of making written submissions if -

(a) he intimates, personally or by a solicitor or other agent, that he does not wish to make any such submissions; or

(b) both -

(i) subject to paragraph (9), a notice in writing has been issued to him by post specifying the proposed exercise of the power under paragraph (6) (a) and a date, being a date not less than 28 days after the date of service of the notice, on or before which he may make any such submissions; and

(ii) a notice in writing specifying the name of the person, the proposed exercise of the power under paragraph (6) (a) and a date, being a date after the expiration of the period mentioned in sub-sub-subparagraph (C), on or before which he may make any such submissions has been placed on a notice board -

(A) maintained for the purposes of this paragraph;

(B) in a conspicuous place in the Land

Registry; and

(C) for not less than 28 days.

(9) Paragraph (8) (b) (i) does not need to be complied with in the case of a person in respect of whom the Land Registrar is satisfied that it is not practicable to comply with that paragraph and, in the case of that person, compliance with paragraph (8) (b) (ii) shall be deemed to be sufficient for the purposes mentioned in paragraph (8).

(10) After the expiry of the period for making any written submissions under this regulation, the Land Registrar shall, as soon as is practicable -

- (a) consider the submissions and make a decision on whether or not to implement the proposed exercise of his power under paragraph (6) (a); and
- (b) issue a notice in writing to the persons mentioned in paragraph (7) (a) specifying his decision.

(11) In this regulation, "prescribed notice" (訂明通知), in relation to an instrument delivered for registration, means a notice specifying -

- (a) the memorial number;
- (b) the date of the instrument;
- (c) the date of delivery;
- (d) the names of the parties or other persons concerned mentioned in paragraph (7) (a);
- (e) the name of the lodging party; and
- (f) the address of the land and premises to which the instrument relates.

- (12) For the avoidance of doubt, it is hereby declared that -
- (a) the Land Registrar may under paragraph (1) withhold an instrument from registration on the ground mentioned in subparagraph (a) of that paragraph notwithstanding that a request mentioned in subparagraph (b) of that paragraph has been made in relation to the instrument, and the other provisions of this regulation shall be construed accordingly;
 - (b) where the Land Registrar exercises his power under paragraph (6) (a) to remove particulars from a register computer, then, for all purposes, the register computer shall be regarded as never having had those particulars entered in it and, accordingly, the instrument to which those particulars relate shall, subject to regulation 15A(8), be treated as never having been delivered for registration.

15A. Application to Court by person aggrieved by decision mentioned in regulation 15(10)

- (1) A person aggrieved by a decision mentioned in regulation 15(10) may have the decision reviewed by making an application by originating summons or petition to the Court not later than 60 days after the notice of the decision has been issued under that regulation or within such further period as to the Court appears just in any particular case.
- (2) An applicant mentioned in paragraph (1) shall -
 - (a) serve the originating summons or petition concerned on

the Land Registrar; and

- (b) register that summons or petition, as the case may be, under the Ordinance.

(2A) Where an applicant mentioned in paragraph (1) complies with paragraph (2) (a) and (b) after the Court has exercised its discretion in paragraph (1) to permit the applicant to make the application to the Court after the expiration of the period of 60 days mentioned in paragraph (1), then the Land Registrar shall, as soon as is reasonably practicable after having been served with the originating summons or petition concerned, give notice of the application to -

- (a) the person who appears from the register computer to be the last owner of the land and premises to which the application relates; and
- (b) any other persons who, in the opinion of the Land Registrar, may be affected by the application.

(3) Subject to paragraph (5), the Court may make such order on an application under paragraph (1) as the circumstances may require together with, as to the Court appears just, any costs and expenses properly incurred in relation to the application.

(4) The Land Registrar shall give effect to an order referred to in paragraph (3) in so far as it relates to him and, for that purpose, shall have such powers (whether or not conferred on him under the Ordinance or these regulations) as are necessary to give effect to the order.

(5) Where -

- (a) the Land Registrar has exercised his power under regulation 15(6) (a) to remove any particulars entered

in the portion of the record of a register computer kept by him for the purposes of regulation 10(d) (i) for the land and premises affected by the instrument ("relevant instrument") to which those particulars relate;

(b) an applicant mentioned in paragraph (1) complies with paragraph (2) (a) and (b) after the Court has exercised its discretion in paragraph (1) to permit the applicant to make an application to the Court -

(i) in respect of the relevant instrument; and

(ii) after the expiration of the period of 60 days mentioned in paragraph (1); and

(c) an assignment has been registered in respect of all or part of that land and premises in the period -

(i) commencing at the time the Land Registrar so removed those particulars; and

(ii) ending at the time the applicant complied with paragraph (2) (a) and (b),

then the Court shall not make an order referred to in paragraph (3) which would require the Land Registrar to -

(d) reinstate those particulars; or

(e) register the relevant instrument,

insofar, but only insofar, as those particulars or the relevant instrument, as the case may be, relate or relates to such of that land and premises that is the subject of the assignment.

(6) In this regulation, "Court" (法院) means -

(a) if the rateable value determined in accordance with the

provisions of the Rating Ordinance (Cap. 116), or the annual value, whichever is the less, of the land and premises to which the decision mentioned in regulation 15(10) relates does not exceed \$240,000, a judge sitting in the District Court;

(b) in any other case, a judge sitting in the Court of First Instance.

(7) A person aggrieved by an order referred to in paragraph (3) (including any costs and expenses to which the order relates) may appeal to the Court of Appeal against the order.

(8) Where -

(a) the Land Registrar has exercised his power under regulation 15(6) (a) to remove any particulars entered in the portion of the record of a register computer kept by him for the purposes of regulation 10(d) (i) for the land and premises affected by the instrument ("relevant instrument") to which those particulars relate;

(b) an applicant mentioned in paragraph (1) complies with paragraph (2) (a) and (b) after the Court has exercised its discretion in paragraph (1) to permit the applicant to make an application to the Court -

(i) in respect of the relevant instrument; and

(ii) after the expiration of the period of 60 days mentioned in paragraph (1);

(c) pursuant to an order referred to in paragraph (3), or on the determination of an appeal under paragraph (7), the Land Registrar -

- (i) reinstates those particulars; or
- (ii) registers the relevant instrument; and
- (d) either -
 - (i) no deed, conveyance, or other instrument in writing, or judgment, mentioned in section 3 of the Ordinance has been registered in respect of that land and premises in the period -
 - (A) commencing at the time the Land Registrar so removed those particulars; and
 - (B) ending at the time the applicant complied with paragraph (2) (a) and (b); or
 - (ii) one or more deeds, conveyances, or other instruments in writing, or judgments, mentioned in section 3 of the Ordinance has or have been registered in respect of that land and premises in the period mentioned in sub-subparagraph (i),

then -

- (e) where subparagraph (d) (i) is applicable, the relevant instrument when duly registered shall have the priority that the relevant instrument would have had if the Land Registrar had never so removed those particulars;
- (f) where subparagraph (d) (ii) is applicable, every deed, conveyance, and other instrument in writing, and

judgment, mentioned in section 3 of the Ordinance that was duly registered in the period -

(i) commencing at the date (including the time) of receipt of the relevant instrument by the Land Registrar as recorded pursuant to regulation 10(c); and

(ii) ending at the time the applicant complied with paragraph (2) (a) and (b),

shall have priority over the relevant instrument when duly registered.

Annex 2

Note on power of removal of stopped deeds

At present, there is no provision under the Land Registration Ordinance and Regulations to remove from the land register a deed withheld from registration due to a mistake or other issue. These deeds, known as "stopped deeds", are now entered on the "Deeds Pending Registration" portion of the computer land register. As an instrument will be accorded priority according to the dates of registration under section 3 of the Land Registration Ordinance, a stopped deed still on the "Deeds Pending Registration" column does not have any priority under the Land Registration Ordinance as its registration is not completed. It is only on completion of registration of the stopped deed that it will be accorded priority under the Land Registration Ordinance.

There are more than 2000 deeds which have been withheld from registration, or stopped, for more than 6 months. These cause uncertainty for persons interested in property as it is not known when or whether the registration of these deeds will be completed. It is proposed in the Bill that power be given to the Land Registrar to remove the entries of the stopped deeds which have been pending registration for more than 6 months from the date of first delivery.

Under the proposed regulation, the Land Registrar must give notice of the proposed exercise of the power to the lodging party, the owner and others who in his opinion may be affected by the proposed removal and post a notice of this intention in the Land Registry. He must give the parties an opportunity of making written submissions within 28 days. After the expiry of 28 days, the Land Registrar may make a decision on the matter. After the decision, he must notify those persons who had been given notice of the proposed exercise of the power of his decision on the matter.

A person aggrieved by the Registrar's decision may have the decision reviewed by making an application to the Court not later than 60

days after the notice of decision. After the expiry of the 60-day period, the Land Registrar may then exercise his power to remove the particulars of the stopped deed from the computer land register. This means that during the 60-day period, the stopped deed particulars remain on the "Deeds Pending Registration" column of the land register and the actual removal from the land register only occurs after the expiry of the 60-day application for review period. Notice of exercise of the power of removal shall also be placed on a notice board maintained in a conspicuous place in the Land Registry and given to the persons who were given the opportunity to make written submissions. These provisions are contained in proposed Regulations 15(6), 15(7), 15(8), 15(9) and 15(10) of the proposed Land Registration Regulations.

It is also proposed that a person aggrieved by the decision of the Land Registrar may apply to the Court for a review of the decision. The originating summons or petition for the application for review should be served on the Land Registrar and registered under the Land Registration Ordinance. The provisions for the application to Court are contained in proposed Regulation 15A of the proposed Land Registration Regulations.

Land Registry

May 2002



HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong
DX-180053 Queensway | E-mail: info@hkba.org | Website: www.hkba.org
Telephone: 2869 0210 Fax: 2869 0159

Your Ref: (S) LR/HQ/101/20 Pt24

14 June 2002

Mr. Kim Salkeld
Land Registrar
Queensway Government Offices
23rd Floor
66 Queensway
Hong Kong

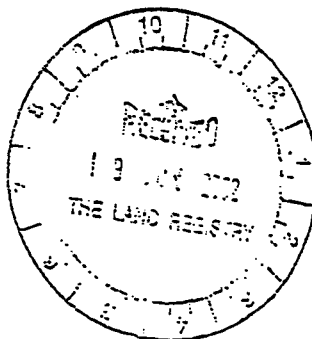
Dear *Mr. Salkeld*

Re: Land Registration (Amendment) Bill 2000

Thank you for your letter of 14 May 2002. I am pleased to enclose herewith the Bar's position paper on the captioned issue for your attention.

Yours sincerely,

Alan Leong, S.C.
Chairman



encl.

/rc

香港大律師公會

香港金鐘區三十八號高第街二樓

Chairman 主席:

Mr. Alan Leong, S.C. 梁國英

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Mr. Edward Chan, S.C. 陳國治

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HONG KONG BAR ASSOCIATION'S
Comments on the Land Registration (Amendment) Bill 2000

Introduction

1. We refer to the Land Registrar's letter of 14th May 2002 informing the Bar of provisions in the Land Registration (Amendment) Bill 2000 which seek to introduce a new power to be given to the Land Registrar to remove from the Land Register particulars concerning long outstanding stopped deeds by amending the Land Registration Regulations. We refer also to the copy of the proposed Regulations 15 and 15A enclosed for the Bar's consideration.
2. The Bar is told that when the Bill came before the Bills Committee of the Legislative Council, concerns have been raised as to whether the proposed changes would affect property rights through altering the existing rules on priority of registration and also whether such changes ought properly to be provided for by way of amending the Land Registration Ordinance itself rather than by way of amending the Regulations. We have therefore been asked to comment on these two issues.
3. We have also been asked to comment on whether the provisions in Regulation 15A allowing a party aggrieved by the Registrar's decision to apply to the Court for review and for reinstatement of the particulars removed by the Land Registrar strike the right balance between the need for certainty and the protection of private property rights.

Overview of the new provisions in Regulation 15 and 15A

4. Regulation 15(6) to (12) proposes to give the Land Registrar a discretion to remove from the Land Register particulars concerning long outstanding stopped deeds. Under the proposed scheme, the person who delivered the stopped deed in respect of which the Land Registrar proposes to exercise the power of removing the particulars would first be notified and be given an opportunity to make submissions against the proposed removal. If those submissions were rejected by the Land Registrar, a

further period of 60 days would elapse before the particulars of the stopped deed would be removed from the Land Register, during which period a person aggrieved by the Land Registrar's decision would have a right under Regulation 15A to apply to the Court for review of the decision of the Land Registrar.

5. Under Regulation 15A, an application for review of the Land Registrar's decision would normally have to be made within 60 days after the submissions against the proposed removal of the particulars of the stopped deed from the Land Register had been rejected. The application for review under Regulation 15A has to be served on the Land Registrar and registered with the Land Registry. Upon the Land Registrar's being served with the application, the particulars of the stopped deed would not be removed from the Land Register pending the outcome of the application. Hence in those cases where the Land Registrar is served with the application before the expiry of 60 days, the priority of registration would be unaffected by any decision of the Court.

6. However, it is possible that an application for review, though made within the time limit of 60 days, is not served upon the Land Registrar until after the 60 days had expired. Under Regulation 15A the Court is also given a discretion to allow an application to be made after the expiry of the normal time limit of 60 days. In all these cases, if the Court were to make a decision in the applicant's favour upon review of the Registrar's decision, it could only take effect by ordering the particulars of the stopped deed in question (which would already have been removed from the Land Register upon the expiry of 60 days) to be reinstated. A question then arises as to whether certain transactions carried out in the meantime. Under the proposed Regulations 15A(5) and 15A(3), no instrument registered between the time when the particulars of the stopped deed were removed from the Land Register and the time when the application for review was registered would be affected by any order for reinstatement of the particulars of a stopped deed.

Propriety of the proposed amendments to the Land Registration Regulations

7. We have noted the Administration's stance that it is unobjectionable for the proposed amendments to be made in the Regulations rather than placing them in the Ordinance. However, for the reasons set out below, we are doubtful as to the propriety of inserting the proposed Regulations 15 and 15A into the Land Registration Regulations.
8. The Administration has pointed out that priority of registered instruments under section 3 of the Land Registration Ordinance is expressed to be "Subject to this Ordinance". It is argued that because "ordinance" would include subsidiary legislation, section 3 permits changes to the existing order of priority of registered instruments to be effected by provisions in the Land Registration Regulations.
9. In our view, provisions which have the effect of altering substantive rights of priority must be distinguished from those which are merely procedural. We are unable to accede to the Administration's view that the qualification of section 3 allows changes to substantive rights of priority to be made under the Land Registration Regulations.
10. In this regard, it is important not to overlook that the Land Registration Regulations are subsidiary legislation made under the power conferred upon the Land Registrar under section 28 of the Land Registration Ordinance. Matters for which the Land Registrar has power to make regulations are limited to those set out in that section. Given that the removal of stopped deeds does not come within any of the matters listed in section 28, it is clear that the Land Registrar would have acted *ultra vires* if he had sought to introduce into the Land Registration Regulations provisions dealing with the removal of stopped deeds.
11. We have also considered the argument put forward by the Administration that the proposed Regulations 15 and 15A properly belong in the Land Registration Regulations because their wording is contingent on the wording of other provisions of the Land Registration Regulations and that if the proposed regulations were moved

to the main Ordinance, a Bill would be required every time an amendment was to be made to the other provisions which as a by-blow affected the meaning of the proposed regulations as moved to the main Ordinance. However, on the basis that the Land Registrar has no power to make regulations relating to the removal of stopped deeds, it would be difficult to see how the meaning of the proposed regulations could validly be altered by amendments made to the other provisions of the Land Registration Ordinance.

12. We understand the proposed regulations are sought to be introduced by way of primary legislation and thus technically, they would not be *ultra vires*. However, the objection remains that the Land Registration Regulations should not contain provisions outside the scope of section 28 of the Land Registration Ordinance. Moreover, it is clear that substantive rights of priority would be affected under the proposed Regulations 15A(5) and (8) in the event a Court were to find that the Land Registrar was wrong to have removed the particulars in the first place, since an instrument which ought to have been protected by registration would in certain circumstances lose its priority. We believe that as a matter of principle, provisions affecting substantive property rights as opposed to merely procedural matters ought not to be included in subsidiary legislation.

Proposed Regulation 15(6)

13. We wish to note in passing that the provisions relating to the giving of notice by the Land Registrar under the proposed Regulation 15(6)(b) is problematic. The provision that "the Land Registrar shall, as soon as is practicable *after exercising his power under subparagraph (a)*, give notice of the exercise of the power..." suggests that notice does not have to be given until after the particulars had been removed from the Land Register. If the intention is to give the party affected 60 days after receiving notice from the Land Registrar in which to lodge an application for review, the wording of Regulation 15(6)(b) as presently drafted would not achieve the objective.

14. Moreover, as we have pointed out in paragraph 6 above, it is possible that an application for review, though made within the normal time limit of 60 days allowed under the proposed Regulation 15A(1), is not served upon the Land Registrar until sometime later. In such cases, the requirement in the proposed Regulation 15(6)(a) for 60 days to elapse before the removal of the particulars from the Land Register would not be effective to prevent the potential loss of priority. If the intention is to limit the loss of priority resulting from wrongful removal of particulars to those exceptional cases where the Court allows an application for review to be made outside the ordinary time limit of 60 days, the proposed regulations as presently drafted would not achieve the objective.

Proposed Regulations 15A(5) and 15A(8)

15. The proposed Regulations 15A(5) and 15A(8) accord priority to instruments registered after the removal of the particulars but before the registration of the application for review. We fail to see the logic in according priority by reference to the date of registration as opposed to the date of execution.
16. It is important to remember that under section 5 of the Land Registration Ordinance, the priority of an instrument is governed by reference to its date of execution if it is registered within one month of the date of transaction. If the intention of the proposed regulations is to favour persons who *reasonably relied on the integrity of* the Land Register records, priority should be accorded by reference to the date of transaction rather than the date of registration. There is simply no reason why a transaction entered into before the date of removal of the particulars of a stopped deed from the Land Register but which is registered after that date should be given priority over the stopped deed whilst an instrument entered into before the date of registration of an application for review should lose priority because it is only registered after the date of registration of the application for review.
17. Under the proposed Regulations 15A(5) and 15A(8), all instruments registered after the removal of the particulars but before the registration of the application for review would enjoy priority regardless of whether or not they qualify as *bona fide purchases*

for value. In accordance with the ordinary principles of equity, we fail to see any reason why a volunteer or a person who had notice should take free from a stopped deed.

Loss of Priority

18. We are concerned that the effect which the proposed Regulations 15A(5) and (8) would have on substantive property rights and the absence of any provision for compensation in favour of a party who suffers losses as a result of those provisions.

19. A successful application for review of the Land Registrar's decision to remove a stopped deed under the proposed regulations would imply that the stopped deed in question should never have been refused registration in the first place. Thus a party may lose the protection afforded by registration through no fault of his own. As a matter of principle, a party who suffers a loss of property rights as a result of the Land Registrar's wrongful removal of particulars from the Land Register should be fully indemnified to the extent of his loss. In this connexion, we wish to remind the Government of its obligations under Articles 6 and 105 of the Basic Law under which the HKSAR has the duty of protecting private ownership of property in accordance with law. Where properties are deprived in accordance with law, there is a right to compensation for which the HKSAR has the duty to protect.

An Alternative Approach

20. We would in principle support legislation allowing for the removal of long outstanding stopped deeds. However, we believe the mechanism set out in the proposed regulations are unnecessarily cumbersome.

21. Whilst the circumstances giving rise to a stopped deed may vary, essentially an instrument tendered for registration is either properly so tendered or it is not. Under the Land Registration Ordinance the Land Registrar is duty-bound to register an instrument properly tendered for registration and his refusal to register an instrument is amenable to judicial review. On the other hand, if an instrument tendered for

registration is not properly registrable or is otherwise defective, there is no justification for allowing it to remain on the register indefinitely in the form of a stopped deed.

22. In our view, a possible alternative approach maybe that the Land Registration Ordinance be amended by simply providing for the automatic removal of the particulars of stopped deeds upon the expiry of a fixed period of time. It would then be incumbent on the affected party to remedy any defect in the instrument and re-tender the same for registration within the time limit and if necessary to apply for review of the Land Registrar's refusal to register.

Dated the 11th day of June 2002.

Hong Kong Bar Association



土地註冊處
香港金鐘道六十六號
金鐘道政府合署二十八樓
圖文傳真：2596 0281

THE LAND REGISTRY
QUEENSWAY GOVERNMENT OFFICES,
23TH FLOOR, 66 QUEENSWAY,
HONG KONG.
FAX: 2596 0281

覆函請註明本處檔號

In reply please quote this Ref.: (28) in LR/HQ/101/20 Pt. 23

來函檔號 Your Ref.: PPTY

電話 Tel.: 2867 8003

URGENT

19 June 2002

The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road
Central
Hong Kong
(Attn : Ms Christine Chu,
Assistant Director of Practitioners Affairs)

Fax No: 2845 0387

Dear Miss Chu,

Re: Land Registration (Amendment) Bill 2000

I refer to the above and the discussion at the Joint Standing Committee yesterday.

I enclose the comments from the Bar Association on the proposed provisions for removal of long standing stopped deeds for your reference. The comments have been tabled and copies have been given to the members of the Law Society at the Joint Standing Committee.

I also enclose the 22nd draft CSAs to the Land Registration (Amendment) Bill with the provisions on removal of stopped deeds taken away. For easy reference, I enclose revised Regulation 15 as proposed under the Bill. In proposed Regulation 15, the provisions for allowing temporary withdrawal - Regulation 15(1)(b) and for keeping copies of stopped deeds - Regulation 15(2)(aa) are included. Provisions for obtaining copies of the stopped deeds are proposed under Regulation 21(1)(aa) - see paragraph (aa) in page 9 of the CSAs.

Yours sincerely,

(Ms. May LEE)
Deputy Principal Solicitor
for Land Registrar

cc. Ms. Wendy Chow (Chairman of the Property Committee, Law Society)
SPL (Attn: Ms. Peggy Chan) Fax: 2839 2916 (with encl.)



HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong
DN-180053 Queensway 1 E-mail: info@hkba.org Website: www.hkba.org
Telephone: 2869 0210 Fax: 2869 0189

Your Ref: (5) LR/HQ/101/20 Pt.24

14 June 2002

Mr. Kim Salkeld
Land Registrar
Queensway Government Offices
28th Floor
66 Queensway
Hong Kong

Dear *Mr. Salkeld*

Re: Land Registration (Amendment) Bill 2000

Thank you for your letter of 14 May 2002. I am pleased to enclose herewith the Bar's position paper on the captioned issue for your attention.

Yours sincerely,

Alan Leong, S.C.
Chairman

encl.

/rc

香港大律師公會

香港金鐘道三十九號高等法院底層二樓

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Mr. Andrew Li 李樹培
Ms. Juliana Chow 周凱靈
Mr. Chua Guan Triak 蔡國輝
Mr. Andrew Mas 麥美成

Ms. Lisa Wong 黃國瑛
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Mr. Simon Leung 梁煥文
Mr. P.Y. Lo 羅沛然
Mr. Hector Pun 潘 熙
Mr. Herbert Au Yeung 曾 耀進
Ms. Janine Cheung 張玉燕
Mr. Jose Antonio Manguet 毛煥達
Mr. Leung Leo 梁健龍

HONG KONG BAR ASSOCIATION'S
Comments on the Land Registration (Amendment) Bill 2000

Introduction

1. We refer to the Land Registrar's letter of 14th May 2002 informing the Bar of provisions in the Land Registration (Amendment) Bill 2000 which seek to introduce a new power to be given to the Land Registrar to remove from the Land Register particulars concerning long outstanding stopped deeds by amending the Land Registration Regulations. We refer also to the copy of the proposed Regulations 15 and 15A enclosed for the Bar's consideration.
2. The Bar is told that when the Bill came before the Bills Committee of the Legislative Council, concerns have been raised as to whether the proposed changes would affect property rights through altering the existing rules on priority of registration and also whether such changes ought properly to be provided for by way of amending the Land Registration Ordinance itself rather than by way of amending the Regulations. We have therefore been asked to comment on these two issues.
3. We have also been asked to comment on whether the provisions in Regulation 15A allowing a party aggrieved by the Registrar's decision to apply to the Court for review and for reinstatement of the particulars removed by the Land Registrar strike the right balance between the need for certainty and the protection of private property rights.

Overview of the new provisions in Regulation 15 and 15A

4. Regulation 15(6) to (12) proposes to give the Land Registrar a discretion to remove from the Land Register particulars concerning long outstanding stopped deeds. Under the proposed scheme, the person who delivered the stopped deed in respect of which the Land Registrar proposes to exercise the power of removing the particulars would first be notified and be given an opportunity to make submissions against the proposed removal. If those submissions were rejected by the Land Registrar, a

further period of 60 days would elapse before the particulars of the stopped deed would be removed from the Land Register, during which period a person aggrieved by the Land Registrar's decision would have a right under Regulation 15A to apply to the Court for review of the decision of the Land Registrar.

5. Under Regulation 15A, an application for review of the Land Registrar's decision would normally have to be made within 60 days after the submissions against the proposed removal of the particulars of the stopped deed from the Land Register had been rejected. The application for review under Regulation 15A has to be served on the Land Registrar and registered with the Land Registry. Upon the Land Registrar's being served with the application, the particulars of the stopped deed would not be removed from the Land Register pending the outcome of the application. Hence in those cases where the Land Registrar is served with the application before the expiry of 60 days, the priority of registration would be unaffected by any decision of the Court.

6. However, it is possible that an application for review, though made within the time limit of 60 days, is not served upon the Land Registrar until after the 60 days had expired. Under Regulation 15A the Court is also given a discretion to allow an application to be made after the expiry of the normal time limit of 60 days. In all these cases, if the Court were to make a decision in the applicant's favour upon review of the Registrar's decision, it could only take effect by ordering the particulars of the stopped deed in question (which would already have been removed from the Land Register upon the expiry of 60 days) to be reinstated. A question then arises as to whether certain transactions carried out in the meantime. Under the proposed Regulations 15A(5) and 15A(3), no instrument registered between the time when the particulars of the stopped deed were removed from the Land Register and the time when the application for review was registered would be affected by any order for reinstatement of the particulars of a stopped deed.

Propriety of the proposed amendments to the Land Registration Regulations

7. We have noted the Administration's stance that it is unobjectionable for the proposed amendments to be made in the Regulations rather than placing them in the Ordinance. However, for the reasons set out below, we are doubtful as to the propriety of inserting the proposed Regulations 15 and 15A into the Land Registration Regulations.
8. The Administration has pointed out that priority of registered instruments under section 3 of the Land Registration Ordinance is expressed to be "Subject to this Ordinance". It is argued that because "ordinance" would include subsidiary legislation, section 3 permits changes to the existing order of priority of registered instruments to be effected by provisions in the Land Registration Regulations.
9. In our view, provisions which have the effect of altering substantive rights of priority must be distinguished from those which are merely procedural. We are unable to accede to the Administration's view that the qualification of section 3 allows changes to substantive rights of priority to be made under the Land Registration Regulations.
10. In this regard, it is important not to overlook that the Land Registration Regulations are subsidiary legislation made under the power conferred upon the Land Registrar under section 28 of the Land Registration Ordinance. Matters for which the Land Registrar has power to make regulations are limited to those set out in that section. Given that the removal of stopped deeds does not come within any of the matters listed in section 28, it is clear that the Land Registrar would have acted *ultra vires* if he had sought to introduce into the Land Registration Regulations provisions dealing with the removal of stopped deeds.
11. We have also considered the argument put forward by the Administration that the proposed Regulations 15 and 15A properly belong in the Land Registration Regulations because their wording is contingent on the wording of other provisions of the Land Registration Regulations and that if the proposed regulations were moved

to the main Ordinance, a Bill would be required every time an amendment was to be made to the other provisions which as a by-blow affected the meaning of the proposed regulations as moved to the main Ordinance. However, on the basis that the Land Registrar has no power to make regulations relating to the removal of stopped deeds, it would be difficult to see how the meaning of the proposed regulations could validly be altered by amendments made to the other provisions of the Land Registration Ordinance.

12. We understand the proposed regulations are sought to be introduced by way of primary legislation and thus technically, they would not be *ultra vires*. However, the objection remains that the Land Registration Regulations should not contain provisions outside the scope of section 28 of the Land Registration Ordinance. Moreover, it is clear that substantive rights of priority would be affected under the proposed Regulations 15A(5) and (8) in the event a Court were to find that the Land Registrar was wrong to have removed the particulars in the first place, since an instrument which ought to have been protected by registration would in certain circumstances lose its priority. We believe that as a matter of principle, provisions affecting substantive property rights as opposed to merely procedural matters ought not to be included in subsidiary legislation.

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14. Moreover, as we have pointed out in paragraph 6 above, it is possible that an application for review, though made within the normal time limit of 60 days allowed under the proposed Regulation 15A(1), is not served upon the Land Registrar until sometime later. In such cases, the requirement in the proposed Regulation 15(6)(a) for 60 days to elapse before the removal of the particulars from the Land Register would not be effective to prevent the potential loss of priority. If the intention is to limit the loss of priority resulting from wrongful removal of particulars to those exceptional cases where the Court allows an application for review to be made outside the ordinary time limit of 60 days, the proposed regulations as presently drafted would not achieve the objective.

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15. The proposed Regulations 15A(5) and 15A(8) accord priority to instruments registered after the removal of the particulars but before the registration of the application for review. We fail to see the logic in according priority by reference to the date of registration as opposed to the date of execution.
16. It is important to remember that under section 5 of the Land Registration Ordinance, the priority of an instrument is governed by reference to its date of execution if it is registered within one month of the date of transaction. If the intention of the proposed regulations is to favour persons who *reasonably relied on the integrity of* the Land Register records, priority should be accorded by reference to the date of transaction rather than the date of registration. There is simply no reason why a transaction entered into before the date of removal of the particulars of a stopped deed from the Land Register but which is registered after that date should be given priority over the stopped deed whilst an instrument entered into before the date of registration of an application for review should lose priority because it is only registered after the date of registration of the application for review.
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An Alternative Approach

20. We would in principle support legislation allowing for the removal of long outstanding stopped deeds. However, we believe the mechanism set out in the proposed regulations are unnecessarily cumbersome.

21. Whilst the circumstances giving rise to a stopped deed may vary, essentially an instrument tendered for registration is either properly so tendered or it is not. Under the Land Registration Ordinance the Land Registrar is duty-bound to register an instrument properly tendered for registration and his refusal to register an instrument is amenable to judicial review. On the other hand, if an instrument tendered for

registration is not properly registrable or is otherwise defective, there is no justification for allowing it to remain on the register indefinitely in the form of a stopped deed.

22. In our view, a possible alternative approach maybe that the Land Registration Ordinance be amended by simply providing for the automatic removal of the particulars of stopped deeds upon the expiry of a fixed period of time. It would then be incumbent on the affected party to remedy any defect in the instrument and re-tender the same for registration within the time limit and if necessary to apply for review of the Land Registrar's refusal to register.

Dated the 11th day of June 2002.

Hong Kong Bar Association

Appendix III

GFOX:DMA#38885v23

1st draft: 5.2.2001
2nd draft: 13.3.2001
3rd draft: 14.3.2001
4th draft: 26.3.2001
5th draft: 26.4.2001
6th draft: 26.4.2001
7th draft: 8.5.2001
8th draft: 10.5.2001
9th draft: 15.5.2001
10th draft: 23.5.2001
11th draft: 25.5.2001
12th draft: 25.5.2001
13th draft: 30.5.2001
14th draft: 29.8.2001
15th draft: 17.9.2001
16th draft: 19.11.2001
17th draft: 6.12.2001
18th draft: 18.1.2002
19th draft: 22.1.2002
20th draft: 15.3.2002
21st draft: 10.4.2002
22nd draft: 23.5.2002

LAND REGISTRATION (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Planning and Lands

Clause

Amendment Proposed

New

By adding -

**"1A. Copies of documents etc.
admissible in evidence**

Section 26A of the Land Registration Ordinance (Cap.

128) is amended by adding -

"(3) For the avoidance of doubt, it is hereby

declared that nothing in this section or any other provision of this Ordinance shall require the Land Registrar or a person mentioned in subsection (1) to provide a certificate mentioned in that subsection in relation to any copy, print or extract of or from any instrument, including any copies, prints or extracts of or from the memorial and plans (if any) relating thereto, withheld from registration pursuant to the Land Registration Regulations (Cap. 128 sub. leg.).".".

2 By deleting "of the Land Registration Ordinance (Cap. 128)".

Schedule (a) By adding immediately after section 44 -

**"Antiquities and Monuments (Declaration
of Historical Buildings)(No. 2)
Notice 2000**

**44A. Declaration of historical
building**

Paragraph 1(b) of the Antiquities and Monuments (Declaration of Historical Buildings)(No. 2) Notice 2000 (L.N. 368 of 2000) is amended by repealing "Tsuen Wan New Territories".

**Antiquities and Monuments (Declaration
of Historical Buildings) Notice 2001**

44B. Declaration of historical

building

Paragraph 1(a), (b) and (c) of the Antiquities and Monuments (Declaration of Historical Buildings) Notice 2001 (L.N. 272 of 2001) is amended by repealing "Yuen Long New Territories".

(b) In section 46 -

(i) in paragraph (q), by deleting the full stop and substituting a semicolon;

(ii) by adding -

"(r) in subparagraph (as), by repealing "Tsuen Wan New Territories".

(c) In section 63 -

(i) by deleting paragraph (a) and substituting -

"(a) in paragraph (1) -

(i) by repealing "An instrument" and substituting "Subject to paragraph (1A), an instrument (including a copy thereof)";

(ii) by repealing subparagraph (b) and substituting -

"(b) contain, where

practicable -

(i) in the case of an individual signing the instrument -

(A) his identity

card number if

he is the
holder of an
identity card;

(B) in any other
case,
particulars of
a travel
document of
which he is the
holder;

(ii) in the case of a
company executing
the instrument -

(A) the number by
which it is
registered
under the
Companies
Ordinance (Cap.
32);

(B) if that
Ordinance does
not apply,
particulars of
its
incorporation
or

establishment
sufficient to
identify the
company;" ;

(ii) by adding -

"(aa) by adding -

"(1A) A copy of an instrument
may only be delivered for
registration instead of the
instrument if -

- (a) the instrument
belongs to a class
of instruments
specified in
column 1 of the
Third Schedule and
the copy is
certified, by the
person or in the
manner, if any,
specified opposite
thereto in column 2
of that Schedule,
to be such a copy;
or

- (b) the Land Registrar
so permits in

writing and the
copy is certified,
by a person or in a
manner
satisfactory to
the Land Registrar,
to be such a copy.

(1B) The Land Registrar may,
by notice in the Gazette, amend the
Third Schedule."

(ab) in paragraph (2), by adding "(or a
copy thereof)" after
"instrument";".

(d) By adding -

**"64A. Keeping of temporary
index**

Regulation 11 is amended by repealing "or register
card".

(e) In section 67 -

(i) in the proposed regulation 15 -

(A) in paragraph (1), by deleting ", subject
to paragraph (6),";

(B) in paragraph (2) -

(I) in subparagraph (a), by
deleting "and";

(II) by adding -

"(aa) keep a copy of the

instrument,
together with
copies of the
memorial and plans
(if any) relating
thereto, in such
form and by such
method as the Land
Registrar thinks
fit; and";

(C) in paragraph (4)(b), by deleting "and
subject to paragraph (6)";

(D) by adding -

"(4A) The Land Registrar may destroy or
otherwise dispose of any copy of an
instrument kept under paragraph (2)(aa),
together with copies of the memorial and
plans (if any) relating thereto so kept -

(a) if the instrument -

(i) is redelivered

for

registration;

or

(ii) is registered;

and

(b) in such manner as the Land

Registrar thinks fit.";

(E) in paragraph (5), by deleting "and (4)" and substituting ", (4) and (4A)";

(F) by deleting paragraphs (6) to (12);

(ii) by deleting the proposed regulation 15A.

(f) By deleting section 72(a) and substituting -

"(a) by repealing subparagraph (a)(i) and substituting -

"(i) recorded on microfilm, by supplying a copy thereof in the form generally known as a reader-printer hard copy;"

(aa) by adding -

"(aa) in the case of an instrument, together with the memorial and plans (if any) relating thereto, to which regulation 15(2)(aa) applies and the registration of which has not been completed, by supplying the latest copy of the instrument, together with the latest copies of the memorial and plans (if any), kept under that regulation in such form and by such method as the Land Registrar thinks fit;"

(g) By adding -

"73A. **Schedule added**

The following is added -

"THIRD SCHEDULE

[reg. 9]

CLASSES OF INSTRUMENTS FOR WHICH
CERTIFIED COPIES MAY BE
SUBMITTED FOR
REGISTRATION

Column 1	Column 2
Class of instrument	Person who may certify copy of instrument and/or manner of certification
Certificate of Incorporation on Change of Name issued by the Companies Registry	Registrar of Companies of Hong Kong, a person authorized in writing by him or a solicitor
Death Certificate issued by the Births and Deaths Registry	Registrar of Births and Deaths of Hong Kong or a person authorized in writing by him
Certificate of Exemption from Estate Duty issued by the Estate Duty Office	Commissioner of Estate Duty of Hong Kong or a person authorized in writing by him
Certificate of Receipt of Estate Duty issued by the Estate Duty Office	Commissioner of Estate Duty of Hong Kong or a person authorized in writing by him
Probate granted by the High Court	Registrar of the High Court or a person authorized in writing by him
Letters of Administration granted by the High Court	Registrar of the High Court or a person authorized in writing by him
Occupation Permit issued by the Building Authority	Director of Buildings of Hong Kong or a person authorized in writing by him

Power of Attorney	Solicitor
Letter of determination or rescission of an agreement for sale and purchase	Solicitor
Notice of discontinuance of court action	Solicitor
Notice of severance of joint tenancy	Solicitor
Memorandum or Letter of Compliance of conditions precedent in Government Grant issued by the Lands Department	Nil
Notice or Letter of Compliance issued by the Building Authority confirming building works have been completed or building orders have been complied with	Nil".".

- (h) By deleting the subheading before section 89.
- (i) By deleting section 89.
- (j) By adding -

"Caritas - Hong Kong Incorporation Ordinance

106. First Schedule amended

The First Schedule to the Caritas - Hong Kong Incorporation Ordinance (Cap. 1092) is amended -

- (a) in item 8, by repealing "Tuen Mun District Land Registry by Memorial No. 197963" and substituting "Land Registry";

(b) in item 9, by repealing "Tsuen Wan District Land Registry by Memorial No. 82418" and substituting "Land Registry".

**Kadoorie Farm and Botanic Garden
Corporation Ordinance**

**107. Property to vest in
the Corporation**

The Schedule to the Kadoorie Farm and Botanic Garden Corporation Ordinance (Cap. 1156) is amended, in paragraphs 1 and 2, by repealing "Tai Po District".

**Regulation 15 of the Land Registration
Regulations (Cap.128 sub. leg.) as amended by
Section 67 of the Schedule to the Land
Registration (Amendment) Bill 2000 and the
22nd draft of the CSAs to that Bill**

15. Procedure where instrument is withheld from registration

(1) Where, in respect of any memorial, plan or instrument delivered for registration, either –

- (a) the Land Registrar is not satisfied as to any of the matters specified in section 23 of the Ordinance; or
- (b) the person who so delivered the instrument requests the Land Registrar to do so,

the Land Registrar shall withhold the instrument from registration.

(2) Where under paragraph (1) an instrument is withheld from registration, the Land Registrar shall –

- (a) enter on a docket the reasons why such instrument has been withheld;
- (aa) keep a copy of the instrument, together with copies of the memorial and plans (if any) relating thereto, in such form and by such method as the Land Registrar thinks fit; and
- (b) either –
 - (i) send by post the instrument together with the memorial and plans (if any) relating thereto and a notice that the instrument has been withheld from registration to the person by whom it was delivered;
 - or

- (ii) at the request of the person who delivered the instrument, permit the person to collect the instrument in accordance with paragraph (3).

(3) Any person who collects an instrument withheld from registration shall –

- (a) at the same time collect the memorial and plans (if any) relating thereto;
- (b) acknowledge receipt of such instrument, memorial and plans (if any) by signing and dating in a book of record kept by the Land Registrar for the purposes of this regulation; and
- (c) collect and retain the docket.

(4) If an instrument collected by or sent by post to the person by whom it was delivered under paragraph (2) or (3) is redelivered for registration, such instrument, together with the memorial and plans (if any) relating thereto shall be scrutinized by the Land Registrar, and the Land Registrar shall –

- (a) if he is satisfied in respect of such instrument, memorial and plans (if any) as to the matters specified in section 23 of the Ordinance, proceed to register the instrument in accordance with regulation 14; or
- (b) if he is not so satisfied, withhold the instrument from registration.

(4A) The Land Registrar may destroy or otherwise dispose of any copy of an instrument kept under paragraph (2)(aa), together with copies of the memorial and plans (if any) relating thereto so kept –

- (a) if the instrument –
 - (i) is redelivered for registration; or
 - (ii) is registered; and



(b) in such manner as the Land Registrar thinks fit.

(5) Paragraphs (2), (3), (4) and (4A) shall apply in respect of any instrument withheld under paragraph (4)(b).

Annex 4



土地註冊處處長
香港金鐘道 66 號
金鐘道政府合署 28 樓
電話：(852) 2867 8001
圖文傳真：(852) 2596 0281

LAND REGISTRAR
QUEENSWAY GOVERNMENT OFFICES
28TH FLOOR
66 QUEENSWAY
HONG KONG
TEL.: (852) 2867 8001
FAX: (852) 2596 0281

URGENT BY FAX
(Fax No. 2845 0387)

Our ref : LR/HQ/101/20 Pt. 25
Your ref. PPTY

Ms. Christine Chu
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road, Central
Hong Kong

9 July 2002

Re: Proposed Power of Removal of Long Standing Stopped Deeds

Further to our earlier letter of 19 June 2002 enclosing the Bar Association's letter dated 14 June 2002, I would like to seek the views of the Law Society on the points raised by the Bar Association that are important to the drafting of legislation.

Paras.7 - 12 of Bar Association's comments

2. We note the views of the Bar Association on the question of whether to place the provisions on removal of stopped deeds in the primary or the subsidiary legislation. But, this issue is not the primary concern at the moment. The key issues are the date for according priority (see para 6 below) and who is protected under Regs 15A(5) and (8) (see para 8 below) as these are critical to drafting the provisions. We would also be grateful for any views you have on the suggestion for automatic removal of stopped deeds (para 10 below).

Para 13 of Bar Association's comments

3. We are of the view that the Bar has overlooked that there are provisions for giving notice of the decision of the Land Registrar on the removal of the stopped deed particulars to the affected persons under Regulation 15(10)(b). We are responding to them pointing out this fact.

Para 14 of Bar Association's Comments

4. We note the Bar Association's query as to whether Regulation 15(6) as drafted would protect priority. We are of the view that the discretion given to the Registrar to withhold removal is sufficient to provide a safeguard in the circumstances described by the Bar.

5. An applicant for review of the decision of the Land Registrar on the removal is obliged under Regulation 15A(2) to serve the originating summons or petition on the Land Registrar and register the summons or petition in the Land Registry. It is in the interest of the applicant to comply with this duty as soon as possible because the stopped deed will lose priority in respect of any documents registered after the actual removal and before the service and registration of the originating summons – see Regulation 15A(8)(f). There may be cases where the application for review is not served upon the Registrar until later – even though made within the normal time limit of 60 days allowed under Regulation 15A(1). But, there would not be a long lapse of time from issuance of the application for review until the service because of the adverse consequences of failure to serve and to register the application. In those special cases where the applicant needs a little time after the expiry of 60 days in order to serve on the Registrar, he may inform the Land Registrar by letter of the circumstances of the case. In an appropriate case, the Registrar may hold up the actual removal for a short period as he is authorized to remove the particulars on or after 60 days under Regulation 15(6)(a).

Paras 15 and 16 of Bar Association's comments

6. The Bar proposes taking the date of execution as the point of reference for priority rather than the date of registration. The reasons for according priority by reference to the date of registration as opposed to the date of execution are –

- (a) In making the proposal for differentiating between the instruments to be protected, notice of what is on the register is one element to be considered. However we also need a certain and easy way to ascertain which of the documents are protected. The date of registration is not subject to any manipulation and is a fact which can be ascertained easily.

- (b) The cases which will trigger the operation of Regulation 15A(5) and 15A(8) are most exceptional. The decision of the Registrar must be that of removal; the aggrieved party must not have appealed within the statutory period; the Court must have granted their application for appeal out of time and the Court must have decided to either reinstate the particulars or has ordered the registration of the stopped deed. It is only on occurrence of all of the above events that the provisions of either proposed Regulation 15A(5) or 15A(8) are invoked. Under the proposed mechanism for removal of stopped deeds, the parties to the stopped deed have ample opportunities to protect their interests. They are given notice 3 times, once when the Registrar proposed to exercise his power – Regulation 15(7)(a); the second time after the Registrar has made a decision – Regulation 15(10)(b); the third time after the Registrar had exercised his power to remove the particulars after the expiry of 60 days – Regulation 15(6)(b).

7. We consider that with all the safeguards of the parties' interests that are provided and that as there are only exceptional cases where proposed Regulation 15A(5) and 15A(8) will be invoked, the simple and certain way of providing for the dividing line by reference to the date of registration is the better proposal. We would be grateful for the Law Society's comments on this.

Para 17 of Bar Association's comments

8. We have considered the proposal of giving protection only to the bona fide purchaser or mortgagee for valuable consideration. However, we are in agreement with the Law Society that the guiding principle for invoking the mechanism in Regulation 15A(5) and 15A(8) should be that a person should take subject to what is on the land register and free from what is not on the land register at the material time the particular transaction is registered. The uncertainty that would be created if we do not follow this principle will be significant. Subject to any observations you may wish to make, we intend to stand by this principle.

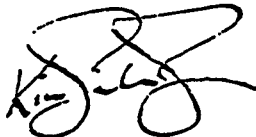
Paras 18 and 19 of Bar Association's comments

9. There are already provisions for compensation. The Land Registrar is liable to pay damages for failure to register under section 23A of the Land Registration Ordinance if he removes the particulars of the stopped deed wrongfully.

Paras 20-22 of the Bar Association's comments

10. We note the view of the Bar Association that the proposed system for dealing with the removal of stopped deeds appears cumbersome. This is due to the need to give notice and allow an avenue for appeal. It is not clear how these requirements would be avoided with an automatic removal system as suggested by the Bar. Does the Property Committee have any observations to make on this suggestion?

11. We would be grateful if your Property Committee would consider the above and let us have your comments thereon as soon as possible.

Yours sincerely


(Kim Salkeld)
Land Registrar

c.c. SHPL (Attn: Miss Cheung Siu-hing, DS(PL)2)

Fax: 2899 2916

土地註冊處處長
香港金鐘道 66 號
金鐘道政府合署 28 樓
電話：(852) 2867 8001
圖文傳真：(852) 2596 0281



LAND REGISTRAR
QUEENSWAY GOVERNMENT OFFICES
28TH FLOOR
66 QUEENSWAY
HONG KONG
TEL.: (852) 2867 8001
FAX: (852) 2596 0281

Our ref: LR/HQ/101/20 Pt. 25

Mr. Alan Leong, S.C.
Chairman
The Hong Kong Bar Association
LG2 Floor, High Court
38 Queensway
Hong Kong

12 August 2002

Dear Mr Leong,

Re: Removal of Stopped Deeds

I thank you for your letter of 14 June 2002 with the position paper on the removal proposals. I am grateful for the consideration that the Bar Association has given to this issue and appreciate your general support for action to remove long standing stopped deeds.

Given the questions over this proposed new power and to allow time for proper examination of your suggestions the provisions on stopped deeds were removed from the Land Registration (Amendment) Ordinance (20 of 2002) that was enacted on 11 July 2002. This issue will now be addressed through separate legislation.

If I may turn to your last point first – your suggestion for an alternative approach of automatic removal after a fixed period – I confess to considerable sympathy for this approach myself. The proposed mechanism to handle the removal of stopped deeds that has been developed over the last couple of years is complex. Clear and substantial guidelines will be needed for both the registry staff and conveyancing practitioners. But, as well as being advised that arrangements for giving notice and allowing appeals are essential if human rights and Basic Law requirements are to be met, I am mindful of the fact that we have allowed stopped deeds to remain untouched for over 30 years. Even if we could introduce an automatic removal procedure for stopped deeds submitted after the enactment of the enabling legislation, we would still have to contend with the 2,000 or so stopped deeds already submitted. These may require different arrangements, once again increasing complexity.

I tend to the view that it is preferable now to proceed with the proposals for handling removal of stopped deeds under the Land Registration Ordinance that have been carefully developed over the last couple of years rather than delay the introduction of such provisions through discussion of alternative arrangements. However, I am awaiting views from the Law Society on the suggestion for automatic removal and if they wish to pursue it then I am content to do so.

I am also awaiting comments from the Law Society on several other points in your position paper, but I think it helpful if I set out the Administration's position for your information.

Propriety of the proposed amendments to the Land Registration Regulations
(paras.7 to 12)

We have given careful consideration to the arguments advanced in favour of introducing the powers to remove stopped deeds by way of amendment to the principal ordinance. However, the advice I have been given is clear. Section 3(1) of the Land Registration Ordinance provides that "Subject to this Ordinance," instruments shall have priority according to the dates of registration. The expression "Subject to this Ordinance" means that subsidiary legislation can provide for an order of priority which may be different from that set out in s.3(1). "Ordinance" as defined in the Interpretation and General Clauses Ordinance includes subsidiary legislation.

Furthermore, the power given to the Land Registrar in Section 28(1)(a) of the Land Registration Ordinance, Cap.128 to make regulations for "the manner" in which entry and registration of memorials and instruments shall be effected is broad enough to give power to the Registrar to make regulations for removal of stopped deeds. Stopping, and removing, are part of the manner in which registration is carried out. None of the other advice we have been given suggests that implementing the removal powers by way of regulation would be beyond the scope of Section 28 of the Land Registration Ordinance.

We appreciate that substantive property rights might in some cases be affected by the proposed power to remove stopped deeds. But, substantial provisions would be put in place by the proposed regulations to afford parties opportunity to take action to protect those interests. These protections would not be increased by putting them in the principal ordinance, nor diminished by being dealt with in regulations. The Administration remains of the view that the power to remove stopped deeds can be properly introduced by way of regulation and intends to proceed accordingly.

Proposed Regulation 15(6) (para.13)

I refer to the provisions for giving notice of the decision of the Land Registrar on the removal of the stopped deed particulars to the affected persons under proposed Regulation 15(10)(b). The affected parties will be given notice of the decision before the actual removal of the particulars. This would appear to satisfy the concern raised in this paragraph.

Proposed Regulations 15(6)(para.14)

I note your query as to whether proposed Regulation 15(6) as drafted would protect priority. We are of the view that the discretion given to the Registrar to withhold removal is sufficient to provide a safeguard in the circumstances described in para 14 of your paper.

An applicant for review of the decision of the Land Registrar on the removal is obliged under proposed Regulation 15A(2) to serve the originating summons or petition on the Land Registrar and register the summons or petition in the Land Registry. It is in the interest of the applicant to comply with this duty as soon as possible because the stopped deed will lose priority in respect of any documents registered after the actual removal and before the service and registration of the originating summons – see proposed Regulation 15A(8)(f). There may be cases where the application for review is not served upon the Registrar until later – even though made within the normal time limit of 60 days allowed under proposed Regulation 15A(1). But, there would not be a long lapse of time from issuance of the application for review until the service because of the adverse consequences of failure to serve and to register the application. In those special cases where the applicant needs a little time after the expiry of 60 days in order to serve on the Registrar, he may inform the Land Registrar by letter of the circumstances of the case. In an appropriate case, the Registrar may hold up the actual removal for a short period as he is authorized to remove the particulars on or after 60 days under proposed Regulation 15(6)(a).

Proposed Regulations 15A(5) and 15A(8) (paras.15 and 16)

The reasons for according priority by reference to the date of registration as opposed to the date of execution are –

- In making the proposal for differentiating between the instruments to be protected, notice of what is on the register is one element to be considered. However we also need a certain and easy way to ascertain which of the documents are protected. The date of registration is not subject to any manipulation and is a fact which can be ascertained easily.

- The cases which will trigger the operation of proposed Regulation 15A(5) and 15A(8) are most exceptional. The decision of the Registrar must be that of removal; the aggrieved party must not have appealed within the statutory period; the Court must have granted their application for appeal out of time and the Court must have decided to either reinstate the particulars or to have ordered the registration of the stopped deed. It is only on occurrence of all of the above events that the provisions of either proposed Regulation 15A(5) or 15A(8) are invoked. Under the proposed mechanism for removal of stopped deeds, the parties to the stopped deed have ample opportunities to protect their interests. They are given notice 3 times, once when the Registrar proposes to exercise his power – proposed Regulation 15(7)(a); the second time after the Registrar has made a decision – proposed Regulation 15(10)(b); the third time after the Registrar has exercised his power to remove the particulars after the expiry of 60 days – proposed Regulation 15(6)(b).
- With all the safeguards of the parties' interests that are provided and as there are only exceptional cases when proposed Regulation 15A(5) and 15A(8) might be invoked, we consider that the simple and certain way of providing for the dividing line by reference to the date of registration is the better proposal.

Proposed Regulations 15A(5) and 15A(8) (para.17)

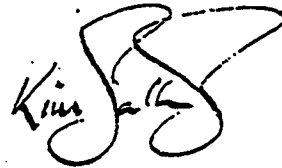
We have considered the proposal of giving protection only to the bona fide purchaser or mortgagee for valuable consideration. However, we agree with the view that the guiding principle for invoking the mechanism in proposed Regulation 15A(5) and 15A(8) should be that a person should take subject to what is on the land register and free from what is not on the land register at the material time the particular transaction is registered. The uncertainty that would be created if we do not follow this principle will be significant.

Loss of Priority (paras.18 and 19)

We agree with your view that there should be compensation for persons who suffer loss as a result of the application of the new power if it is approved. We are of the view that there are already provisions for compensation. The Land Registrar is liable to pay damages for failure to register under section 23A of the Land Registration Ordinance. Such liability would extend to a case where he removes the particulars of the stopped deed wrongfully.

Once again, may I thank you for the interest that the Bar Association has taken in this issue and the range of matters covered in your submission. Please be assured that while we may not have found ourselves in agreement on all points I have found your paper most helpful in consideration of this issue.

Yours sincerely

A handwritten signature in black ink, appearing to read "Kim Salkeld". The signature is stylized with large, sweeping loops.

(Kim Salkeld)
Land Registrar

c.c. SHPL (Attn: Miss Cheung Siu-hing, DS(PL)2)

Fax: 2899 2916

Annex 6



土地註冊處處長
香港金鐘道 66 號
金鐘道政府合署 28 樓
電話：(852) 2867 8001
圖文傳真：(852) 2596 0281

LAND REGISTRAR
QUEENSWAY GOVERNMENT OFFICES
28TH FLOOR
66 QUEENSWAY
HONG KONG
TEL.: (852) 2867 8001
FAX: (852) 2596 0281

Our ref: LR/HQ/101/20 Pt. 25

URGENT BY FAX & BY MAIL

Your ref. PPTY

(Fax : 2845 0387)

Ms. Christine Chu
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road, Central
Hong Kong

12 August 2002

Dear Ms Chu,

Re: Removal of Stopped Deeds

Further to my letter of 9th July I am writing to advise you of the Administration's position on the route for handling this legislation and of further reflections we have had on the Bar Association's suggestion for an automatic removal mechanism.

There are two possible routes for introducing the power to remove stopped deeds. A bill to amend the Land Registration Ordinance can be introduced or regulations can be made under section 28(1)(a) of that Ordinance. The Bar Association submission argues in favour of the former.

I have now had the benefit of extensive advice that our proposals should properly effected through amendments to the subsidiary legislation. The advice is unambiguous. Section 28(1)(a) of the Land Registration Ordinance confers the power on the Land Registrar to make regulations for *the manner* in which the entry and registration of memorials (etc.) is to be effected. The stopping and the removal of stopped deeds are part of the manner in which entry and registration is effected. Furthermore, it is *intra vires* to make regulations that provide for a difference in order priority to that set out in S.3(1). S.3(1) is explicitly made "Subject to this Ordinance" which implies that it must be read in the context of other relevant provisions of the Ordinance (which, as defined in the Interpretation and General Clauses Ordinance, includes subsidiary legislation).

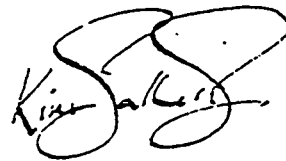
In light of this advice I have no basis on which to argue that the power to remove stopped deeds must be introduced by way of primary legislation. We intend to proceed by way of regulations.

I share the Bar Association's concern that the mechanism we propose is rather cumbersome (see paras 20-21 of the Bar Association's position paper sent to you with my letter of 19th June). However, having examined the effect of various arrangements for automatic removal we cannot see any that would be simpler than the arrangements now proposed. Notice provisions are essential in the case of existing stopped deeds and strongly supported on human rights grounds for stopped deeds that arise after the removal power is brought into effect. An appeal process is also important to give protection against wrong decisions by the Land Registrar.

Subject to any further consideration your members may have on this question of automatic removal, I intend to stay with the existing mechanism we have developed together.

I look forward to your comments on the other points in the Bar Association's submission as set out in my letter of 9th July, so that we can take forward the scheme for removal of stopped deeds.

Yours sincerely



(Kim Salkeld)
Land Registrar



THE

LAW SOCIETY

OF HONG KONG

香港律師會

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG · DX-009100 Central
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話): (852) 2846 0500
FACSIMILE (傳真): (852) 2845 0387
E-MAIL (電子郵件): sg@hklawson.org.hk
HOME PAGE (網頁): <http://www.hklawson.org.hk>

Our Ref
Your Ref
Direct Line

PPTY
LR/EQ/101/20/Pt.25

20 August 2002

BY FAX (25960281) AND BY POST

Mr. Kim Salkeld
The Land Registrar
Queensway Government Offices
28/F., 66 Queensway,
Hong Kong.

Dear Mr. Salkeld,

Land Registration (Amendment) Bill – Stopped Deeds Provisions

I refer to a letter dated 19 June 2002 from your Ms. May Lee enclosing, inter alia, the Bar Association's comments on the proposed legislation on the above and your 2 letters dated 9 July and 12 August 2002 providing the Administration's views on the Bar's various proposals.

As you know, the Property Committee has considered the issues raised by the Bar at its recent meeting. Basically, the Committee continues to support the proposed Regulations 15 and 15A as originally agreed between the Land Registry and the Committee save that reference to Section 3 of the Land Registration Ordinance in Regulation 15A(8)(d) should also include Section 5.

The Committee does not agree to the Bar's proposal for an automatic removal mechanism to be set up regarding stopped deeds that have been withheld for a certain period of time. There could be various reasons why instruments are withheld from registration. To provide arbitrarily that all instruments so withheld after a certain period of time would only result in judicial reviews being brought against the Land Registry's decision to withhold in the first place. There could also be further complications as an instrument may be withheld from registration just because registration of an earlier instrument has been stopped. Automatic removal of an earlier stopped instrument in this regard will create problems for these subsequent instruments.

I hope that the Committee has made its stance clear and trust that you will take such steps as are necessary to ensure a smooth passage of the relevant legislation/subsidiary legislation.

Yours sincerely,

Christine W. S. Chu
Christine W. S. Chu
Assistant Director of Practitioners Affairs

Encl.

c.c.: Ms. Wendy Chow -- Chairman of the Property Committee

P.53



President
Ip Shing Ming

Vice-Presidents
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Paul C.Y. Tan
No 50279

Council Members
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Cecilia K.W. Wong

Secretary General
Patrick B. Moss

土地註冊處
香港金鐘道六十六號
金鐘道政府合署二十八樓
圖文傳真：2596 0281

Annex 8
THE LAND REGISTRY
QUEENSWAY GOVERNMENT OFFICES,
28TH FLOOR, 66 QUEENSWAY,
HONG KONG.
FAX: 2596 0281

覆函請註明本處檔號

In reply please quote this Ref.:

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來函檔號 Your Ref.:

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2867 8003

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21 August 2002

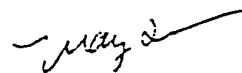
Miss Christine Chu
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road
Central
Hong Kong

Dear Miss Chu,

Re: Removal of Stopped Deeds

Thank you for your letter of 20 August 2002 and the support for the proposals from the Law Society. We will propose amendment to Reg.15A(8)(d)(i) and (ii) and Reg.15A(8)(f) to add "Sections 5 or 5A" to the reference to Section 3 in these Regulations as Sections 3, 5 and 5A of the Land Registration Ordinance all deal with the priority of documents.

Yours sincerely,



(Ms. May LEE)
Deputy Principal Solicitor
for Land Registrar