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Report of the Bills Committee on Land Titles Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Land Titles Bill.

Background

2. The present system of land registration in Hong Kong is a deeds registration system (DRS) governed by the Land Registration Ordinance (LRO) (Cap. 128). The system provides a record of the instruments affecting a particular property, but gives no guarantee of title. Even if a person is registered in the Land Registry as the owner of a property, he may not be the legal owner because there may be uncertainty or defects in his title to the property. The uncertainty of title puts purchasers at risk, causes confusion to the general public and reduces the commercial potential of properties in some cases. In order to establish title to property, it is necessary in every case to check the title documents relating to all the transactions affecting the property that extend to not less than 15 years before entering into a new transaction of that property.

3. In May 1988, a Working Party on Title Registration chaired by the then Registrar General and comprising practising solicitors from prominent conveyancing law firms and representatives of the Law Faculty of the University of Hong Kong was set up to consider the desirability of converting the DRS to a land title registration system (LTRS). The Working Party, having considered the major types of registration systems operating in other jurisdictions, concluded that conversion to a LTRS was desirable. The Law Society of Hong Kong (Law Society) was consulted on the proposal and supported it in principle. Subsequently, Professor Peter Willoughby was appointed as a consultant to examine the conversion process in detail. In his report produced in March 1991, Professor Willoughby made recommendations for the conversion. The Law Society, Hong Kong Bar Association (Bar Association) and a number of other interested bodies were consulted on the proposal.

4. In November 1994, the Administration introduced a Land Titles Bill into the Legislative Council (LegCo) with a view to converting the DRS to a LTRS. A Bills Committee was formed by LegCo to scrutinize that Bill, but the scrutiny work could not be completed before the end of the legislative term in July 1995. The House Committee decided that the Bills Committee should curtail its work.

5. After the lapse of the previous Land Titles Bill in July 1995, the Administration maintained dialogue with the Law Society and a number of amendments were subsequently made to the original Bill. In January 1999, the Administration consulted the LegCo Panel on Planning, Lands and Works (PLW Panel) on a draft Land Titles Bill and subsequently issued the draft Bill to the concerned parties for comments. In November 1999, the Administration briefed the PLW Panel on the outcome of the consultation exercise and its proposed amendments to the draft Bill. Following that, the Administration reviewed and revised various elements of the draft Bill, and consulted the interested parties on the revised draft Bill.

6. In July 2002, the Administration consulted the PLW Panel on the revised draft legislative proposals. In December 2002, the Administration introduced the current Land Titles Bill (the Bill) into LegCo.

The Bill

7. The object of the Bill is to replace DRS with a new system of registering the title to land and the interests in the land subject to which the title is held. The new system aims to provide certainty both as to the ownership of land and the interests in that land because, subject to certain exceptions in the Bill, no matter may affect land unless the matter is registered. Under the new system, the Title Register shall be conclusive evidence of the title to registered land and it will no longer be necessary to review the historical title deeds to establish title as at present. This will give greater security to property interests and simplify conveyancing.

The Bills Committee

8. The House Committee agreed at its meeting on 3 January 2003 to form a Bills Committee to study the Bill. The Bills Committee first met on 19 March 2003. Hon Margaret NG was elected Chairman and Hon Albert HO Chun-yan was elected Deputy Chairman. The membership list of the Bills Committee is in **Appendix I**.

9. The Bills Committee has held a total of 39 meetings. Given that the introduction of a statutory LTRS is a significant development of land law in Hong Kong and would have significant implications on members of the public and legal practitioners, the Bills Committee has invited the public and the concerned parties, including the Law Society and the Bar Association, to give views on the Bill. The Bills Committee has received written submissions from nine organizations and one individual, and met with representatives from six of the organizations. The list of the organizations/individual concerned is in **Appendix II**.

Deliberations of the Bills Committee

10. The Bills Committee notes that under the existing DRS, registration of deeds governs priority of the deeds but does not confer title. All deeds shall have priority one over the other according to the priority of their respective dates of registration. Under the new LTRS proposed in the Bill, however, registration as owner confers title to the land. The Title Register is conclusive evidence of title in law. Unregistered interests are unenforceable against subsequent purchasers who obtained the property for value. Given that the Bill seeks to replace the existing DRS by the new LTRS to provide greater security to title and simplify conveyancing, the Bills Committee has examined in detail the policy issues involved and the proposed provisions in the Bill, including the conversion mechanism and indemnity scheme. In the course of examination, the Bills Committee together with the Administration have considered and finally accepted the Law Society's proposal for adopting the daylight conversion mechanism instead of the gradual conversion mechanism originally proposed under the Bill. This significant change has necessitated substantial amendments to the Bill to give effect to the daylight conversion mechanism and to remove those parts which have become obsolete because of the change. The Bills Committee has examined in detail the substantial amendments which will be moved by the Administration during the Committee Stage.

11. The Bills Committee's deliberations on the following major issues are summarized in this report:

- (a) Conversion mechanism (paragraphs 12 to 23);
- (b) Security of title (Rectification of title by court or Land Registrar) (paragraphs 24 to 32);
- (c) Indemnity scheme (paragraphs 33 to 60);
- (d) Effect of registration (including overriding interests affecting registered land) (paragraphs 61 to 70);
- (e) Matters capable of being registered (paragraphs 71 to 75);
- (f) Dispositions and transmissions (paragraphs 76 to 94);
- (g) Protection of holders and claimants of interests in land (Consent cautions, non-consent cautions and priority of interests; inhibitions and restrictions) (paragraphs 95 to 107);
- (h) Application to court by Land Registrar or persons other than the Registrar (paragraphs 108 to 113); and
- (i) Land boundaries issues (paragraphs 114 to 119).

Conversion mechanism

Midnight conversion

12. The Bills Committee notes that the previous Land Titles Bill introduced in 1994 proposed an automatic conversion arrangement under which land registers held under DRS would be deemed to be land registers under LTRS on the day when the new system came into operation. This conversion arrangement, also known as "midnight conversion", had caused concern, as automatic conversion would extinguish certain rights enforceable, though not necessarily registered, under the present system at the cut-off time.

Gradual conversion

13. To address the concerns about automatic conversion, the Administration proposes under the Bill gradual conversion from the present system to the new system over an indefinite period of time. Clause 12 sets out two routes through which existing properties can be converted from the present system to the new system: mandatory application for conversion upon the first assignment of any property after commencement of the Land Titles Ordinance (LTO) (if enacted); or voluntary application for title registration at any time after commencement of LTO. Any applications through these two routes must be accompanied by a certificate of good title issued by a solicitor after examination of the owner's title to the property. As regards properties that have not been converted or are barred from conversion for any reason, LRO would continue to apply. The Administration's proposal is to revisit the idea of automatic conversion some time after title registration is introduced and when people have become accustomed to it.

14. The Bills Committee notes that the Law Society has raised a number of fundamental concerns about the proposed conversion mechanism. The Law Society is of the view that without a mechanism for review and adjudication by a reference body under the auspices of the Land Registrar in cases of doubt, certificates of good title would place an unacceptable burden on solicitors. However, the Administration does not consider it appropriate for the Land Registry to establish such a mechanism, as it will add to the cost and complexity of conveyancing and will be difficult to safeguard against abuse. The Bills Committee appreciates the Law Society's concerns about the issue of certificates of good title, in particular the extent of solicitors' liability in the issue of such a certificate under clause 96(1) and 96(2). Members therefore urge the Administration to further discuss with the Law Society on the arrangements to be made to address solicitors' concerns.

Daylight conversion

15. In December 2003, the Law Society informed the Bills Committee that it has come to the conclusion that the Bill, which requires a solicitor to guarantee title by the issue of a certificate of good title, is unworkable and cannot be supported in the absence of a mechanism by which doubtful cases can be referred to the Land Registrar for review. The Law Society considers midnight conversion the best and most practical way to implement LTRS, as the "at the stroke" conversion and removal of

title defects will achieve the dual purpose of simplicity and certainty of the system. However, if that is not acceptable, the Law Society would support a daylight conversion mechanism which is an adaptation of the system operating in some states of Australia and in effect is deferred midnight conversion. Under the daylight conversion mechanism, existing properties on DRS are brought onto the Title Register after the lapse of a period of time, such as 12 years.

16. As midnight conversion is not an option acceptable to all parties concerned, the Bills Committee invites the Administration to examine the daylight conversion mechanism. Following discussion with the Law Society, the Administration has worked out a detailed scheme for the operation of such a mechanism. The main features of the scheme are as follows:

New Land

- (a) From the commencement day of LTO, all "new land" will be registered under LTRS and the title will be vested in the grantee as registered owner. All other land will remain under LRO until the expiry of 12 years from the commencement day (12-year incubation period);
- (b) From the commencement day of LTO, any claim arising through an unwritten equity created in respect of new land can only affect a purchaser for value if notice of the claim is registered as a non-consent caution;

LRO Land

- (c) Upon the expiry of the 12-year incubation period, all unregistered land will be converted automatically to LTRS except where either a "caution against conversion" stands or where matters lodged for registration under LRO have not yet completed registration. The current owner on the register kept under the LRO register would become the first owner under the Title Register under LTO;
- (d) During the 12-year incubation period, all existing or newly created unwritten equities affecting unregistered land can be protected by registration of a warning notice known as "caveat" under LRO; and
- (e) Caveats and cautions against conversion are cumulative protections. They may be employed at the same time. However, registration of a caveat or caution against conversion without reasonable cause will attract liability for damages.

Under the scheme, after conversion to the Title Register at the expiry of the 12-year incubation period, all unwritten equities (other than overriding interests) existing at or prior to the conversion will be null and void as against a registered purchaser or chargee for value unless protected by a non-consent caution (caveats being deemed to be non-consent cautions upon conversion).

17. The Administration is of the view that the daylight conversion mechanism is a practicable and reasonable way forward. While the Bills Committee has no objection to the adoption of the daylight conversion mechanism, members consider the proposal a significant change and that it is prudent for the Administration to consult the concerned parties on the proposed change.

18. Since the concerned parties have not raised objections in principle to the daylight conversion mechanism during consultation, the Bills Committee supports the Administration's proposal that Committee Stage amendments (CSAs) be drafted to give effect to the change. In this connection, the Bills Committee suggests that for the purpose of clarity, the transitional arrangements for the 12-year incubation period be set out in a schedule to the Bill and the full implementation of LTRS in the main body of the Bill. The Administration accepts the suggestion and proposes CSAs to achieve this effect. The major proposed CSAs are set out as follows:

- (a) To add a new part 2B in the Bill to provide for the registration of new land after the commencement day of LTO;
- (b) To add a new Schedule 1A to provide for the conversion of LRO land and long term leases from the existing system to LTRS upon expiry of the 12-year incubation period;
- (c) To add a new Schedule 3 to provide for all the consequential amendments to LRO, including the amendments to provide for caveats and cautions against conversion; and
- (d) In connection with (c) above, to delete from Schedule 2 the amendments to LRO related to the original gradual conversion mechanism.

Cautions against conversion and caveats

19. The Bills Committee also suggests that detailed provisions be made on cautions against conversion and caveats, which are new instruments to be created under LRO. Members note that under the Administration's proposal, for unregistered land, cautions against conversion to the Title Register can be registered under LRO within 12 years from the commencement day of LTO. Such cautions may be registered only in respect of any claims of title to land or beneficial interest in the land. A cautioner may withdraw a caution against conversion at any time. The owner of the property may apply to the court at any time for an order to remove the caution. Any person presenting wrongful cautions without reasonable cause will be liable for any damages caused thereby to the owner or any other person who has an interest in the land.

20. The Bills Committee also notes that cautioners are required to take prompt action to bring a conclusion to the dispute on title or interest. Under the Administration's proposal, cautions against conversion will lapse after 12 months unless the cautioner has commenced court proceedings to establish his claim. The registration of these cautions can only be extended by the court at its discretion upon

application. Application for extension must be made by the end of the 12-month validity period. Members are concerned that in the absence of a limit on the extension period, registration of cautions against conversion may be extended endlessly and the court may be overloaded with such applications. They consider that there is a need to impose a limit on the extension period. The Administration accepts members' views and proposes that the extension of the validity of a caution against conversion shall not be more than 12 months. The Administration would incorporate this into the new provisions on "cautions against conversion".

21. As regards registration of caveats, the Bills Committee notes that the Administration's intention is to provide a means for anyone who has a claim to an interest that is unregistrable under LRO to protect that claim against the effect of a subsequent sale to a bona fide purchaser after the land has been brought under LTO. A caveat gives notice of a claim but does not affect the validity of the claim or prejudice the priority of the claim. The Bills Committee also notes that under the Administration's proposal, a caveat may be withdrawn or removed. This provision mirrors clause 72 dealing with the withdrawal or removal of consent cautions and non-consent cautions, and the provisions for withdrawal or removal of cautions against conversion. Moreover, a caveat that is registered or maintained without reasonable cause may be liable in a suit for damages. Again this provision mirrors clause 73 for consent cautions and non-consent cautions, and the proposed provisions for cautions against conversion. Any caveat that remains registered against the land when it becomes registered land will become a non-consent caution on the Title Register. Some members are however concerned whether it is appropriate to allow all caveats to become non-consent cautions under LTRS. The Administration considers the proposed arrangement appropriate, as any matter that can be the subject of a caveat (unregistrable interests or equities) can be the subject of a non-consent caution.

Review of LTRS during the incubation period

22. To ensure safe and smooth conversion at the end of the 12-year incubation period, members suggest that a legislative or administrative measure be put in place to effect a review mechanism for the implementation of LTRS during the 12-year incubation period, so that any problem that may arise in the interim can be tackled in a timely manner. Members also suggest that a provision be added in the Bill to empower the Administration to extend when necessary the 12-year incubation period. The Administration accepts the Bills Committee's suggestions and agrees that a mechanism to review the implementation of the new system is necessary. The Administration also proposes a CSA to clause 101 to empower the Secretary for Housing, Planning and Lands (SHPL) to vary the 12-year incubation period by gazetting an amendment to the new Schedule 1A. This power is subject to the positive vetting of LegCo.

Commencement date of LTO

23. As regards the commencement date of LTO, the Bills Committee has no objection to the Administration's proposal that the new Ordinance be commenced two years after its enactment so as to allow sufficient time for putting in place the relevant regulations and finalizing the guidance notes for legal practitioners and members of

the public. Members however urge the Administration to make full use of the two-year period to ensure the effective implementation of the new Ordinance.

Security of title

Rectification by Court of First Instance

24. One of the main features of LTRS is to provide security of title. The Bills Committee notes that under the previous Land Titles Bill introduced in 1994, the land register would not be rectified so as not to affect the indefeasible title of an innocent purchaser even in the event of a fraudulent transfer of property achieved through the fraud of a third party. The proposal caused considerable concern because under the new system, the former registered owner would have no way of getting back his title to the property in case of fraud, whereas under the present system, the former registered owner could apply to the court for a ruling. In response to calls for the dilution of the principle of indefeasibility to protect the innocent former registered owner, the Administration proposes under the current Bill that the Court of First Instance (CFI) should be allowed to order rectification of the Title Register on the ground that where the court is satisfied that an entry on ownership has been made by fraud and the former registered owner has no knowledge of or has not caused or substantially contributed to the fraud by his act, neglect or default, and that it would be unjust not to rectify the Title Register (clause 81(3)). The court may take into account two matters when considering whether to rectify the Title Register where a fraud has occurred: the acts of the parties and the hardship to the parties (clause 81(4)). While specifically mentioning these two matters for consideration, the Bill does not limit the factors that the court may consider in reaching its conclusions. In order to strike a fair balance between certainty of title and justice in the circumstances of each case, the Administration considers that the court should be given the discretion to consider any factors in the particular case before making its decision.

25. The Bills Committee notes the view of the Real Estate Developers Association of Hong Kong (REDA) that clause 81 should be amended to the effect that an innocent former registered owner would always be entitled to have the Title Register rectified and his name restored to it. The Law Society considers that the court should only be given the discretion to order rectification in specific limited circumstances. The Bar Association is of the view that certain provisions in clause 81 fail to achieve the right balance between the requirement of certainty of title and justice in a particular case. In particular, the Bar Association has grave doubts as to whether a “knowledge test” should be adopted as the statutory criterion in determining whether the Title Register is subject to the court’s power of rectification. Mere knowledge of, as opposed to contribution or participation, to a fraud, mistake, omission or voidability of the instrument should not have the effect of depriving a person’s registered title. This would put a registered person’s title at a greater risk than that under the existing law. The exclusion of the right of a former registered owner to apply for rectification merely because he might have knowledge of the fraud at some stage is unsatisfactory. The Bar Association considers that even if the knowledge test is the appropriate test, it is necessary to clarify at what time the former registered owner has knowledge of the fraud.

26. Whilst supporting the proposal of providing the court with the power of rectification, the Bills Committee requests the Administration to consider how the views of the concerned parties could be addressed. Upon review, the Administration proposes to recast clause 81 to achieve the following purposes:

- (a) To remove the wide discretion given to the court under the original subclauses (3) and (4);
- (b) To provide in the proposed new subclause (3) that subject to the new clause 81A, CFI shall order the rectification of the Title Register to restore the title of the former registered owner if it is satisfied that the entry in the Title Register by or as a result of which the applicant lost his title was procured by or as a result of a void instrument or a false entry in the Title Register; the applicant was not a party to the fraud; and the applicant did not, by his act or by lack of proper care, substantially contributed to the fraud; and
- (c) To set out clearly in the proposed new subclause (2) that unless the conditions in subclause (3) apply, CFI may not order the rectification of the Title Register so as to affect the title of a person who is the registered owner of registered land or the registered lessee of a registered long term lease, who is in possession of the land and has acquired the land or lease for valuable consideration unless the court is satisfied that the name of such person was entered in the Title Register as the owner or lessee by or directly as a result of the fraud, mistake or omission in question or the void or voidable instrument in question, as the case may be, and that the person:
 - (i) was a party to the fraud; caused the mistake or omission; caused the instrument to be void or voidable, as the case may be;
 - (ii) had knowledge of the fraud/the mistake or omission/that the instrument was void or voidable, as the case may be, at the time the person's name was so entered in the Title Register; or
 - (iii) had, by his act or by lack of proper care, substantially contributed to the fraud, mistake or omission, or making the instrument void or voidable, as the case may be.

27. Members express concern about how the proposed expressions “substantially contributed” and “lack of proper care” in the proposed new subclauses (2)(b) and (3)(c) would be interpreted by the court. Noting from the Administration that the Law Society is satisfied with the proposed expressions but REDA has expressed its concern, members request the Administration to reconsider whether it is appropriate to adopt the proposed expressions. The Administration advises that the proposed expressions are adopted from relevant provisions in UK and that there is relevant case law in UK on how the court interprets the expression “lack of proper care”. The Administration also advises that it has explained the situation to REDA.

28. On the Administration's proposal to impose a limitation period of 12 years for the rectification of Title Register by the court (new clause 81A), the Bills Committee is concerned whether extension of the period should be allowed under certain special circumstances to provide for a situation where an owner may be out of Hong Kong or is a minor during the 12-year limitation period. To address the Bills Committee's concern, the Administration proposes to add a provision in the new clause 81A to provide that the Limitation Ordinance (Cap. 347) shall apply, with necessary modifications, to an application for the rectification of the Title Register under clause 81.

29. The Bills Committee notes that under clause 81(5), in any rectification case not involving any mistake or omission on the part of any person referred to in clause 8(3), if the Land Registrar is joined as a party, the Registrar shall not pay costs incurred by the parties in the proceedings and damages suffered by any parties in the proceedings. Noting the Administration's advice that the claims for such costs and damages would have to be made by application for indemnity and that this policy intent would be set out in the relevant regulations, members are concerned that it is not clear from the relevant clauses (including clauses 83 and 84(2)(b)) that such costs could be recovered from the Indemnity Fund. To address members' concern, the Administration proposes a CSA to add the new subclause (8) to clause 81 to set out this policy intent.

Rectification by Land Registrar

30. Clause 80(1) provides that the Land Registrar may rectify any error in or omission from the Title Register under the following two circumstances:

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

31. Members suggest that the Administration should consider adding a new item to clause 80(1) to provide for other circumstances which may not be covered by item (a) or (b) above, for example, where there is a typographical error in relation to the name of the registered owner. The Administration appreciates members' views and considers it desirable to have a clerical error rectified in a simple and cost-effective way. In this connection, the Administration makes reference to Rule 13 of the UK Land Registration Rules 1925 which provides that the Registrar can correct any clerical error. The Administration therefore proposes a CSA to add a new subclause (aa) to clause 80(1) to provide that the Registrar may rectify an error in or omission from the Title Register on proof to his satisfaction of the error or omission being of a clerical nature only. Members stress that such power of rectification should rest with the Registrar personally and should not be delegable.

32. Members are also concerned that clause 80 does not provide the Land Registrar with the power to remove, when a minor who has been registered in the Title Register as the owner of registered land attains the age of majority, the annotation “a minor” added after the minor’s name in the Title Register. To address members’ concern, the Administration proposes CSAs to add the new subclauses (3) and (4) to clause 80 for the purpose.

Indemnity scheme

33. The Bills Committee notes that under LRO, the Land Registry is liable for any losses arising from negligence on the part of the Registry. However, LRO provides no assistance to innocent parties who lose ownership of their properties because of fraud or the operation of that Ordinance, and the innocent parties may only recover their loss from the fraudster. The Bill provides for an indemnity scheme under which indemnity may be claimed under the following two circumstances:

- (a) Loss caused by an entry in or omission from the Title Register as a result of mistakes or omissions on the part of the Land Registrar or public officers assisting the Registrar (clause 82(1)(b)); and
- (b) Loss of ownership caused by an entry in or omission from the Title Register as a result of fraud on the part of any person (clause 82(1)(a)).

34. On item (b) above, the Bills Committee notes that under the proposed provisions, the fraud may have been committed by any person (including a member of the Land Registry staff), but it must affect the ownership of registered land or the registration of a person as the lessee of a registered long term lease. Examples of fraud quoted by the Administration include forged transfer made by a fraudster forging the signature of the registered owner to assign the property to a purchaser, and transfer made by one joint tenant forging the signature of another joint tenant assigning the property to a purchaser. The Bills Committee also notes that in cases of fraud, an application for rectification of the relevant entry or omission must first have been made under clause 81 and adjudicated by CFI and a corresponding order has been made before the party suffering loss could claim the indemnity.

35. The Bills Committee notes that the Administration intends to set up an Indemnity Fund through which all indemnity payments will be made, whether arising from fraud or mistakes or omissions. However, the Land Registry Trading Fund (i.e. Government) will reimburse the Indemnity Fund for any payments attributable to mistakes or omissions by Land Registry staff. The Administration proposes to set this out clearly in the regulations governing the Indemnity Fund.

36. The Bills Committee has examined the proposed indemnity scheme in detail, particularly the amount of indemnity payable, the constitutionality of the proposed cap on indemnity in cases of fraud, operation and financing of the Indemnity Fund and the possible levy rates.

Amount of indemnity payable

37. Regarding loss caused by mistakes or omissions on the part of the Land Registrar or public officers assisting the Registrar, the Bills Committee notes that there will be no cap on the indemnity. This is the same as under the existing DRS. The amount of indemnity payable proposed under the Bill is the value of the interest in the land immediately before the discovery of the mistake or omission concerned or, if there is a court order for rectification, the date of the court order (clause 83(1)(b) and (2)). To address the Law Society's concern, the Administration proposes CSAs to clause 83(1)(b) to provide that the amount of indemnity payable is the value of the interest in the registered land "on the date on which the mistake or omission concerned was made", and to delete clause 83(2). Members support the proposed CSAs, as they provide a more reasonable basis for calculating the amount of indemnity.

38. Regarding cases of fraud, the Bills Committee notes that the Administration proposes a cap on the indemnity. The amount of indemnity payable is the value of the interest in the land before the date of the court order on rectification or the amount determined by the Financial Secretary (FS), whichever is the lesser (clause 83(1)(a) and (3)). The Administration's proposed upper limit for the amount determined by FS is HK\$30 million for each case.

Proposed cap on indemnity in cases of fraud

39. The Bills Committee notes that the proposed cap on indemnity in cases of fraud has been an issue of contention. The previous Land Titles Bill introduced in 1994 provided for a cap of HK\$20 million for each case. The proposal invited criticisms about the fairness of the indemnity scheme, as owners of properties valued at over HK\$20 million who lost their properties as a result of fraud on the part of a third party would not be fully compensated. In the Bill, the Administration maintains its proposal of imposing a cap on indemnity, but raises the upper limit to HK\$30 million for each case.

40. Noting that other jurisdictions such as England, New South Wales (Australia) and Ontario (Canada) do not impose a cap on indemnity, the Bills Committee requests the Administration to provide justifications for its proposal. The Administration considers that the indemnity scheme, which is a self-financing scheme, should be funded by the users of LTRS. As deliberate fraudulent acts are difficult to anticipate and prevent, there should be a suitable device to limit the potential liability that the scheme has to carry. Moreover, the interest of individuals being compensated should be balanced against the costs to property owners and purchasers at large. The proposed cap would provide protection for the great majority of property owners, as over 99% of property transactions involve sums less than HK\$30 million. While the Government would be the compensator of first resort, persons suffering loss in excess of the limit of compensation could still recover the shortfall through further legal proceedings.

41. The Bills Committee notes that the Law Society, Bar Association, REDA and Hong Kong Institute of Surveyors (HKIS) object to the proposed cap on indemnity in respect of fraud cases. Heung Yee Kuk (HYK) considers that it is inadvisable for the Government to bear the financial burden of providing indemnity to property owners in cases of fraud, but if the indemnity scheme is to be implemented, it should provide protection to all property owners. The cap on indemnity is unfair to the owners of properties valued at over HK\$30 million.

42. The Law Society considers that there should be no cap on the indemnity to ensure that any person suffering any loss under LTRS will be properly compensated. HKIS queries the reasons for the Administration to apply different treatment to properties of higher value. The Bar Association is of the view that the constitutionality of the cap on indemnity is highly doubtful under Articles 6 and 105 of the Basic Law (BL). REDA also considers that the proposed cap, insofar as it attempts to deprive an innocent owner of his property without full compensation, is contrary to BL 6 and 105.

43. The Bills Committee is much concerned about the constitutionality of the cap on indemnity. BL 6 provides that the Hong Kong Special Administrative Region (HKSAR) shall protect the right of private ownership of property in accordance with law. BL 105 provides that HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

44. The Bar Association points out that while imposing a general obligation on the government of HKSAR to protect private ownership under Article 6, BL goes on to provide, under Article 105, for the specific instances and species of property rights that the government has a duty to protect. Amongst the species of rights that are expressly specified under BL 105 is the “right to compensation” for lawful deprivation of property. BL 105 further expressly provides that such compensation shall correspond to the real value of the property concerned and shall be paid without undue delay. In the Bar Association's view, it is plain that the right of compensation for lawful deprivation of property is a guaranteed constitutional right. Equally the amount of compensation, which must correspond to the real value of the property, is guaranteed. Accordingly, once it is shown that there has been deprivation of property in accordance with any law, the Government has a constitutional duty to ensure that proper compensation is paid to the individual suffering from the deprivation. For this reason it is important to consider if the proposed legislation would have the effect of depriving private property rights or ownership. If it has that effect, any cap which seeks to reduce the amount of compensation to below the real value of the property deprived would, ipso facto, be a breach of BL.

45. The Bills Committee notes the following arguments put forward by the Administration to support its view that the Bill is consistent with BL 6 and 105:

(a) The theme of continuity provided in the Joint Declaration

It is established that the Joint Declaration may be used as a guide to the interpretation of BL. The part of the Joint Declaration corresponding to BL 6 and 105 is Section VI of Annex I. This provides that: "rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation shall continue to be protected by the law." It is clear from this that the right to compensation for lawful deprivation of property under BL 105 basically mirrors the right to compensation for lawful deprivation of property prior to the reunification. If certain interference with property rights did not give rise to any right to compensation before the reunification, it is unlikely that it would be within the scope of "deprivation" for which compensation is payable under BL 105.

(b) Pre-existing law

Under the present land registration system operating since 1844, interests in land can be rendered unenforceable in certain circumstances. No compensation would be paid by the Government for the loss of such interests due to the operation of this system.

(c) Comparative jurisprudence

The comparative jurisprudence of the Australian Courts and that under Article 1 of the First Protocol of the European Convention on Human Rights (ECHR) shows that the kind of deprivation envisaged is expropriation by the State, or authorized by the State for public purposes. Legislation of the kind as the Bill is legislation which merely adjusts competing rights, and is not legislation providing for State or State authorized expropriation of property. Accordingly there is no deprivation under BL 105.

46. Notwithstanding the above, the Administration admits that the Bill will interfere with or control ownership of property rights in land. This gives rise to a further question of whether such interference or control is consistent with BL 6 and 105. In this connection, the Administration points out that in the jurisprudence developed under ECHR, a fair balance needs to be struck between the general interests of society, which any interference with or control of property rights must aim to serve, and the protection of the individual's property rights. The Administration is of the view that the proposed indemnity scheme satisfies the fair balance test. Two major reasons are that the proposed cap of HK\$30 million available under the scheme will be sufficient to provide full coverage to well over 99% of transactions, and where the scheme is insufficient to meet the full extent of the loss it does not take away the right that individuals now have to seek personal remedy against the third party fraudster and, by giving assurance of recovery of up to the cap amount puts the party taking the action in a stronger position to pursue it.

47. The Bills Committee notes that both the Bar Association and REDA do not accept the arguments put forward by the Administration. On the argument on the Joint Declaration, the Bar Association considers that the argument is fallacious. While the Bar Association accepts that the Joint Declaration can be used as an aid to the interpretation of BL, it points out that it is BL itself, not the Joint Declaration, which is the constitution of HKSAR. The Bar Association further points out that property rights which existed before reunification are preserved by BL. One of those property rights is the fundamental principle of common law as expressed by the maxim *nemo dat qui non habet* (no one gives who possesses not), and an owner will not lose his ownership of property as a result of fraud by another person. This is because the fraudster acquires no title by his fraud, and cannot pass title which he himself does not have. It has been held in *HKSAR v. Ma Wai Kwan David* [1997] HKLRD 761 that on the interpretation of BL, the common law which existed before the resumption of sovereignty continues to apply to HKSAR after the reunification, and there is no need for a separate act of adoption by the National People's Congress for the common law to continue to apply. In the Bar Association's view, it follows that the *nemo dat* principle of the common law continues to apply to HKSAR after reunification. However, the *nemo dat* principle is altered by the Bill. Subject to the provisions of rectification, an owner will lose ownership of his property even though the registration of title by another person is the result of fraud. A fraudster would thus be able to pass title to another person at the expense of the former owner. It would seem clear that insofar as the proposed legislation seeks to remove the right of the owner to retain ownership of property from the effect of fraud, that is a deprivation of his property right – a right protected and guaranteed by BL.

48. Whilst accepting that there were already limitations to the operation of the *nemo dat* rule, the Bar Association considers that BL preserves the common law subject to those limitations which already existed prior to reunification. The mere existence of such pre-existing limitations does not give the Government the liberty to take away rights which are not otherwise limited by those pre-existing limitations. The right to restore ownership free from the effects of fraud is one such right. It is preserved and protected by BL. The fact that there are other pre-existing limitations cannot be a ground for taking away this protected right. If the argument of the Government were correct, the Government would be able to rely on the existence of such pre-reunification limitations to expropriate all private properties in HKSAR without compensation at all.

49. On the Administration's view that comparative jurisprudence in Australia and under ECHR shows that deprivation in this context is directed against State expropriation or State authorized expropriation for public purposes, the Bar Association doubts whether the comparison is appropriate.

50. On the Administration's view that the proposed indemnity scheme satisfies the fair balance test, the Bar Association points out that on the basis that deprivation of property is well justified, and otherwise lawful, BL requires that proper compensation be paid for such lawful deprivation. The proposed cap on indemnity, which arbitrarily limits the compensation to HK\$ 30 million, is not the compensation required by BL. In the context of BL, fair balance does not come into the equation at all once deprivation is shown. The BL leaves no room for argument that the amount of

compensation shall depend on the public interests involved, or that it shall be reduced if there is some general interests that should be considered other than the real value of the property deprived.

51. To facilitate the Bills Committee to examine this contentious issue, the Legal Service Division (LSD) of the LegCo Secretariat has been invited to give advice on the issue. LSD observes that nothing in the Bill directly expropriates any property. Hence, direct deprivation is out of the question. What remains to be ascertained is whether the title registration scheme affects the substance of a property to such an extent that there would be a de facto deprivation. The *Kowloon Poultry* case^{Note 1} appears to have accepted that BL 105 does cover a de facto deprivation. Under the Bill, it cannot be maintained that no compensation would be paid at all but only that the compensation would not correspond to the real value of the property when that real value exceeds the cap or the limitation. Consequently, the most that can be argued against the cap and the limitation is that they may result in a partial deprivation of an owner's property. It only does not guarantee full compensation. In LSD's view, the Bill is not a piece of legislation directed at partial deprivation of an owner's property. On the contrary, when comparing with the existing law, it would be a significant improvement as it would guarantee compensation to victims of fraud up to the cap without them needing to sue the fraudulent parties. The objective of the Bill is to establish a system of title registration for protection of property owners. Its provisions would affect and redefine rights of property owners. The cap and the limitation may result in an owner not being able to fully recover his losses. Applying the reasoning in *Kowloon Poultry* case, it is not unreasonable to conclude that the Bill is a piece of legislation of a general character affecting and redefining the rights of property owners. It follows that the cap and the limitation would not constitute a deprivation for the purposes of BL 105.

52. Moreover, LSD agrees with the Administration that the test of fair balance should be satisfied before rules interfering with property rights or legal relationship between individuals should be regarded as compatible with BL 6 and 105. The balance appears to be between the benefits to society having the title registration scheme and the protection of owners when not having the scheme and at the same time between the majority of owners who can enjoy having an indemnity scheme with reasonable levies and a minority being fully indemnified for their losses.

53. As regards the question of whether the proposed cap on indemnity contravenes BL 6, LSD advises that the fact that in some cases an owner may not be able to recover all his losses under the indemnity scheme or against the Government owing to any fraud, act or omission could not be taken to mean that the law does not protect ownership of property.

Note 1

In *Kowloon Poultry Laan Merchants Association v. Department of Justice [CACV 1521/2001]*, the Hong Kong Court of Appeal (CA) considered an appeal from CFI. The appellants were a poultry wholesalers' association. They complained that the Government's requirement of separating the locations for sale of chicken from those for sale of water birds had caused them to suffer severe financial losses, and the Government had refused to compensate them for such losses. They claimed that this was a deprivation of property within the meaning of BL 105. CA held that the requirement of separate location was a control of land use and not a deprivation.

54. Having considered the views of the Administration, concerned parties and LSD, members remain doubtful about the constitutionality of the proposed cap on indemnity in cases of fraud. Members are concerned whether the Bill would be struck off after enactment if subsequently found to be unconstitutional. Some members have quoted a scenario in which a person lost ownership of his land that was worth \$10 billion as a result of fraud by a third party. Being entitled to be indemnified by the Government up to HK\$30 million only, he challenged the cap on the indemnity in reliance on BL 6 and 105, and the cap was subsequently ruled by the court to be inconsistent with the above constitutional provisions. The Administration was asked if this scenario occurred, whether it would seek an interpretation of BL 6 and 105 from the Standing Committee of the National People's Congress (NPCSC). The Bills Committee is advised by the Administration that NPCSC is unlikely to exercise its power of interpretation of BL under BL 158(1) save in wholly exceptional circumstances. The Administration is fully committed to upholding the principles of "one country, two systems", a high degree of autonomy and judicial independence, and it would not seek an interpretation under BL 158(1) lightly. As the concerns over the issue of reference to NPCSC arise from doubts on the constitutionality of the cap, the Administration considers that its arguments demonstrating the strength of the Administration's case that the cap is fully constitutional would address these concerns. Members are assured by the Administration that the indemnity scheme and the level of the cap will be reviewed as experience is gained with the operation of LTRS in Hong Kong. As mentioned in paragraph 26(b) above, the Administration has proposed to amend clause 81 to introduce a new subclause (3) which aims to preserve the existing legal position of an owner when a void instrument has been used to try to dispose of their property.

Operation and financing of Indemnity Fund

55. The Bills Committee notes the Administration's proposal that the operation of the Indemnity Fund will be governed by regulations to be made under the Bill. Under clause 100(1), SHPL may make regulations to empower the Land Registrar to manage and invest the moneys of the Indemnity Fund, and to borrow for the purposes of the fund. Given that the Indemnity Fund and the power of the Registrar in respect of the fund are not mentioned in the main body of the Bill, members are concerned whether it is sufficient to provide such power in the regulations. They consider it more appropriate to provide in the main body of the Bill for the establishment of the Indemnity Fund and that the Registrar may manage and invest the moneys of the Indemnity Fund, and borrow for the purposes of the fund subject to the regulations to be made by SHPL under clause 100. The Administration accepts members' view and proposes a CSA to add the new clause 87A to provide for the establishment of the "Land Titles Indemnity Fund" and that the amount of indemnity awarded under clause 84(1) or (2)(b) shall be paid out of the Fund. The Administration also proposes a CSA to add the new subclause(1)(aa) to clause 6 (Functions and powers of Registrar) to provide that subject to the regulations, the Registrar shall be responsible for the general management and administration of the Fund.

56. On the financing of the Indemnity Fund, the Bills Committee is advised by the Administration that the Fund is a self-financing fund with the main sources of finance as follows:

- (a) Levy on registration;
- (b) Money recovered from wrongdoers who have contributed to losses by their fraud or negligence, and indemnity has been paid in respect of the losses;
- (c) Payments from the Land Registry Trading Fund in case of losses caused by mistakes or omissions by Land Registry staff; and
- (d) Interests from money in the Indemnity Fund.

57. Under the Administration's proposal, the reserve in the Indemnity Fund is proposed to be HK\$150 million to be accumulated in a ten-year period to meet unexpected claims. After the enactment of LTO, the Administration will seek the Finance Committee's approval to arrange a stand-by loan facility of HK\$150 million for the Indemnity Fund from the Government to meet claims before the reserve is built up.

Levy rates

58. The Bills Committee is concerned about the levy rates to be charged under LTRS. The Administration considers that the levy should not be a flat rate but should be graduated to reflect the value of the property involved. In this connection, the Administration has examined two possible approaches but not yet decided on the approach to take. The first is for a tiered structure, with a fixed levy for any property whose value falls within a specified range. The advantage of a tiered scheme is that the cost of the levy is clear and does not have to be calculated by the applicant and rechecked on payment. Its drawback is that, within each tier, purchasers of properties below the mid-point value pay slightly more in proportion to the value of the property than those buying at above the mid-point value. The second approach is to assess the levy as a percentage of the value of the property. While this approach is more equitable than a tiered scheme, its drawback is that each purchaser has to calculate the levy to be paid and the calculation needs to be checked on receipt. To raise the estimated level of funding of HK\$37.5 million^{Note 2} a year, the estimated levy rates under the two possible approaches provided by the Administration is set out in **Appendix III**.

Note 2

It is assumed that each year there may be between 5 and 10, say, 7.5, claims at an average of HK\$3 million a claim, and that every other year there may be one claim up to the cap of HK\$30 million. To meet this level of claims, the Indemnity Fund would require HK\$37.5 million a year.

Costs of indemnity claims

59. The Bills Committee notes that under clause 84(2)(b), a successful claimant may be awarded costs and expenses incurred in relation to the claim by the court. Members are advised by the Administration that if such costs are awarded, they will be paid out of the Indemnity Fund. If they have been incurred defending a claim for loss arising from error or omission on the part of the Land Registry, then the Land Registry Trading Fund will be liable to repay the Indemnity Fund.

Claims by professional indemnity insurers

60. The Bills Committee notes that express provision is made in clause 82(5) to bar professional indemnity insurers from subrogating to the rights of any person against the Indemnity Fund. The Administration's policy intent is that professional indemnity insurers, rather than the Indemnity Fund, will compensate persons who suffer loss caused by members of a profession. This gives rise to the Law Society's concern that the proposed provision would result in the Hong Kong Solicitors' Indemnity Fund Limited being the default insurer for conveyancing transactions in Hong Kong. The Administration clarifies that if a professional indemnity insurer has paid out for that part of a loss that was caused by the mistake or omission of Land Registry staff, the insurer would be entitled to recover that payment from the Land Registry. The Administration considers that the deletion of clause 82(5) is the simplest way to achieve this. Any claim by a solicitor (or by his insurer subrogating to his rights) would then be subject to exactly the same test laid down in clause 82(1) as a claim by any other person.

Effect of registration

61. The Bills Committee notes that the Bill applies to all land held under a Government lease (clause 3(1)). The Bill also sets out the effect of first registration of land on ownership (clause 14), the effect of registration of subsequent transfers or transmissions (clause 21), and the effect of registration of long term lease (clause 22). Given the adoption of the daylight conversion mechanism, members support the Administration's proposal that clause 14 be deleted and that a provision on the effect of first registration of new land be included in the new Part 2B and for LRO land in the new Schedule 1A.

62. On the effect of registration of transfers or transmissions, the Bills Committee notes that clause 21(1) provides that after a Title Register has been opened, when a subsequent transfer or transmission is registered, the property is vested in the person registered as the owner. To improve the clarity of the subclause, the Administration accepts members' suggestion that the subclause be amended to the effect that the registration of a person as the owner upon a transfer of land shall vest in the person who is registered as the owner of the land the legal estate or equitable interest and rights described in subclause (1A).

63. As regards the effect of registration of long term lease, the Bills Committee notes that clause 22(1) provides that immediately upon registration of a person as the lessee of a long term lease, he will be vested with:

- (a) the interest in the lease (that is, the right to use the property during the term of the lease); and
- (b) all rights attaching to the land which may be exercised by virtue of that interest.

The person holds this interest and can exercise these rights free from all other interests and claims.

64. However, a registered owner and a lessee of a long term lease will be subject to:

- (a) any terms and conditions in the Government lease;
- (b) any registered matter affecting the land; and
- (c) any overriding interest affecting the land specifically allowed under clause 24.

Overriding interests

65. The Bills Committee notes that the overriding interests set out in clause 24(1) will still affect registered land notwithstanding that the interests are not the subject of any entry in the Title Register. Members note the Administration's policy intent that by providing a clear limit on the overriding interests that will be accepted and removing the claim of any other unregistered interests, greater clarity and certainty will be provided. However, HYK is of the view that overriding interests should not be retained, and that if the Administration insists that overriding interests be retained, they should be entered in the Title Register. Members are advised by the Administration that overriding interests, which are allowed under the existing conveyancing system in Hong Kong and the title registration systems in England, Ontario and New South Wales, are important rights in the land that have to be protected even if they may not be registered. Many of such interests are impractical to register because of the onerous burden and cost that this would place on the public.

66. Whilst having no objection to the Administration's proposal of subjecting registered titles to some well-defined categories of overriding interests, members have examined the list of overriding interests set out in clause 24(1) in detail. Members note that certain easements are set out in clause 24(1) as overriding interests, including any rights of way (subclause (1)(c)(ii)), any rights of water (subclause (1)(c)(iii)), any easements provided for in any instrument within the meaning of the Land Registration Regulations and has been either registered or accepted for registration under LRO (subclause (1)(c)(i)), any implied easements that arise upon sale of part of land by an owner (subclause (1)(d)), and any easements of necessity (subclause (1)(e)).

67. On clause 24(1)(d), the Law Society is concerned that the proposed provisions do not cover all implied easements. Instead of seeking to define when an easement is implied under the Bill, the Law Society considers that it may be easier to simply limit the operation of subclause (1)(d) to any easements which are implied by law on the disposition or transmission of any land and which are not expressly granted or reserved in any instrument. The Bar Association has no objection to the Law Society's proposal but suggests that "or rights" be added after "any easements". The Administration accepts the proposed changes and will move a CSA to amend subclause (1)(d) accordingly.

68. The Bar Association also points out that a notable omission in the Bill is the absence of any provision to cater for the possibility that easements may be acquired by prescription. Members are advised by the Administration that under the English law it is possible to acquire an easement over freehold land by a long period of use over the land if such use has been exercised without force, without secrecy and without permission. The position in law may be stated in general terms that an easement under prescription may be acquired by uninterrupted use over servient land for more than 20 years unless the common law presumption of there being a grant is rebutted or the use was based on permission or licence. However, in view of the uncertain existence of an easement by prescription under Hong Kong land law^{Note 3}, the Administration does not intend to include an easement of prescription as an overriding interest which might be construed as a statutory recognition of the existence of such easement in Hong Kong. The exclusion means that any claimant for an easement by prescription may need to protect his claim either by a caveat under LRO or by a non-consent caution under LTO. A claimant might also commence an action and register a *lis pendens*. Before there is any court decision ruling out the possibility of an easement by prescription in Hong Kong, the Land Registrar will consider those claims as claims that may affect land for the purpose of registration.

69. As regards the Bar Association's view that the Administration should consider making specific provisions to address how the doctrine of prescription is to operate in relation to registered land, members are assured that this is a matter of legal policy to which the Administration will give further thought.

70. The Law Society further points out that if the aim of the Bill is to bring certainty of title, then the issue of adverse possession should be addressed in the Bill. Members are advised by the Administration that the issue of adverse possession stems from the operation of the Limitation Ordinance, but is not an issue of registration. The Administration also confirms that the Bill has never intended to change the law with respect of adverse possession. In the light of the comments of the Law Society, REDA and other parties on this issue, the Administration will be making recommendations for changes for consideration in subsequent legislation.

Note 3

In Hong Kong, Reyes J. in *Kong Sau Ching v Kong Pak Yan* [2004] 1 HKC 119 commented that the common law doctrine of prescription from time immemorial seemed to have little practical application to Hong Kong, whether or not it was part of the English common law actually received into Hong Kong in 1843. However, the judge concluded that, had he not found in the Plaintiffs' favour on other reasons, he would have been prepared to find for the particular Plaintiffs in respect of the acquisition of an easement by prescription over the disputed right of way. In other words the possibility of acquisition of easement by prescription in Hong Kong is still there.

Matters capable of being registered

71. The Bills Committee notes that under the existing DRS, instruments are registrable under section 2 of LRO if they affect any land in Hong Kong. These instruments include agreements for sale and purchase (ASP), assignments, mortgages, tenancy agreements, court orders and deeds of mutual covenants (DMC), etc. Members are concerned how these instruments would be dealt with under LTRS. To address members' concern, the Administration has provided a comparison of the instruments registrable under DRS and the matters registrable under LTRS, which is in **Appendix IV**.

72. Members are advised by the Administration that clause 4 provides for the four categories of matters that shall be capable of being registered under LTRS, as follows:

- (a) A matter expressly stated to be registrable under LTO or in any other Ordinance (clause 4(a));
- (b) A matter that is a dealing in a piece of registered land, a registered charge or a registered long term lease (clause 4(b));
- (c) An order affecting registered land, registered charge or a registered long term lease issued or made for the purpose of enforcing a judgment (clause 4(c)); and
- (d) In any other case, the matter affects registered land, a registered charge or a registered long term lease and the Land Registrar permits it to be registered (clause 4(d)).

73. Being concerned that clause 4(d) is too wide, members request the Administration to consider whether the subclause should be amended to confine the scope of the Land Registrar's power. Upon review, the Administration considers it appropriate to provide the Registrar with the power under clause 4(d) to register any matter that affects registered land, a registered charge or a registered long term lease but not covered by clause 4(a), (b) or (c).

74. The Bills Committee has no objection to the Administration's proposal of moving clause 4 from Part 1 (Preliminary) to the new Part 2A (Registration procedures and connected matters) of the Bill.

75. The Bills Committee notes that under LTRS, dispositions and transmissions are the main categories of matters that will be registered on the Title Register. They cover a wide variety of conveyancing instruments. The Bills Committee has examined the relevant provisions in detail (Part 5 and Part 7 of the Bill) and its deliberations on the major issues involved are summarized in the following paragraphs.

Dispositions

76. Dispositions are acts by the owner of registered land which affect his rights in the land. Examples of dispositions are transfers, charges, discharges, easements, charging orders, covenants and DMC. The Bills Committee is advised by the Administration that after the enactment of LTO, any disposition of registered land will only be effectual at law to pass the legal estate or legal interest when it is registered under the provisions of LTO, but nothing prevents any interest of a disposition taking effect in equity before registration.

Charging orders

77. The Bills Committee notes that clause 34(1) provides that subject to certain exceptions, where a charging order has been registered, the registration of the order shall cease to have effect upon the expiration of five years after the date of registration, but the order may be re-registered from time to time. To address members' concern that the priority of a charging order should be retained upon its re-registration, the Administration proposes that clause 34(1) be amended to the effect that if the re-registration of a charging order is made before the expiration of a current period of registration or re-registration of the order, then the order shall retain its original priority.

Implied covenants

78. Clause 43(a) provides that the provisions of the Bill shall not prejudice the operation of section 35 of the Conveyancing and Property Ordinance (CPO) (Cap. 219). Clause 43(b) puts it beyond doubt that implied covenants shall not be entered in the Title Register. Noting that section 35(2) of CPO states that the covenants implied under that section may be excluded, varied or extended in the assignment or legal charge, members are concerned how implied covenants which have been excluded, varied or extended will be dealt with under LTRS. Members are advised that the Administration's intention is that excluded, varied or extended covenants and any new covenants should be registered with the transfer or charge that gives rise to them. The fact that there are exclusions, variations or extensions of the implied covenants provided for by section 35(2) of CPO would be noted in the remarks column of the transfer or the legal charge in the Title Register. As there is no express provisions in the Bill for the above mechanism, the Administration will propose CSAs to clause 43 to provide explicitly for this mechanism and to link up section 35 of CPO with the provisions of the Bill.

79. Members also suggest that the Administration should consider issuing guidelines to solicitors on how implied covenants will be dealt with under LTRS. The Administration confirms that it would issue such guidelines in due course.

Covenants and DMCs

80. The Bills Committee notes that the registration of covenants and the registration of DMCs are provided in two separate clauses (clauses 50 and 51). It is expressly stipulated in clause 50(3) that in clause 50, "covenant" does not include a DMC within the meaning of clause 51. Members are advised by the Administration that clause 51 was introduced to address the Law Society's concern that there is a need to provide for the registration of DMCs in a single clause, having regard to the fact that DMC is a very common instrument affecting land in Hong Kong and the difficulties in separating and registering each of the rights, easements or covenants contained therein.

81. However, members note LSD's view that a separate clause is not required for registration of DMCs if clause 50(3) is removed. Given that LTRS is a system for registration of interests and not registration of instruments, it does not seem appropriate to provide for the registration of DMC, which is an instrument, in the Bill. Moreover, it is very difficult to define "DMC", and there is no comprehensive definition of this term in existing legislation. The Law Society's concern about the difficulties in registering each of the rights, easements or covenants contained in a DMC could be addressed by a CSA to the effect that one single registration of a covenant in the DMC against the relevant title would operate to effect the registration of all the easements, rights and covenants contained in the DMC which affect the registered land. Whilst maintaining its view that the registration of DMCs should be provided for in a separate clause, the Administration agrees that the proposed CSA mentioned above should be introduced.

82. Members note that the validity and enforceability of DMC covenants among the owners of a multi-storey building or an estate development are now governed by CPO. The combined effect of sections 39, 40 and 41 of CPO makes all DMC covenants, which benefit the land, enforceable against the occupiers of the building; the covenantor (i.e. the owner who first gave the covenant); his successors in title (e.g. a subsequent purchaser); and any person deriving title from them (e.g. a tenant). Section 41(9) of CPO expressly provides that the DMC, after being registered with the Land Registry under LRO shall bind the successors in title of the covenantor and the persons deriving title from them, whether or not they have actual notice of the DMC covenants. On the concern about whether clause 51 would change the existing law on the validity and enforceability of covenants which are contained in a DMC and which may create easement, right, etc. which may benefit and affect the land, members are assured by the Administration that clause 51 would not change the existing law, and that the validity and enforceability are still governed by the provisions of CPO mentioned above. As the drafting of clause 51 could not achieve this policy intent, the Administration proposes to amend the clause to put it beyond doubt that nothing in that clause shall prejudice the operation of sections 39, 40 and 41 of CPO except to the extent provided by LTO. The Administration also agrees to introduce a CSA to add a consequential amendment to section 41 of CPO to the effect that a covenant in the DMC registered in the Title Register under LTO against the land affected by the covenant shall bind the successors in title of the covenantor and the persons deriving title under or through him or them whether or not they had notice of the covenant (Section 94 of Schedule 2 to the Bill).

Disposition by minors

83. The Bills Committee notes that under the existing law, a minor has capacity to hold or own land but has no capacity to deal with the land during his minority. Under clause 61(1), a minor is not enabled to deal with registered land by virtue of being the owner of the land.

84. The Bills Committee also notes that under clause 61(2), where a disposition by a minor of registered land has been registered and the person to whom the disposition is made acted in good faith and for valuable consideration, and the minority of that minor was not disclosed to that person at any time before the registration of the disposition, that disposition will not be set aside only on the ground of that minority. Members note that the proposed provision is different from the existing practice. Under current case law, a minor can have any disposition set aside, even if it is to a bona fide purchaser for value who did not have notice of the minority of the owner. The Administration points out that this will undermine the security that it is intended to give a bona fide purchaser under the Bill. Nevertheless, clause 61(3) provides that the name of a minor may be registered in the Title Register as the owner of registered land but the words "a minor" will be added after the minor's name and thus the minority of the minor will be disclosed. In such case, as the minority of the minor is disclosed, clause 61(2) will not apply and the existing common law will apply instead.

85. In connection with clause 61(3), members consider that a mechanism should be put in place for the removal of the words "a minor" when the minor concerned attains the age of majority. The Administration accepts members' view and proposes CSAs to add the new subclauses (3) and (4) to clause 80 to provide that where, pursuant to clause 61(3), the name of a minor is entered in the Title Register as the owner of registered land, and the owner attains full age, then the owner may make an application to the Land Registrar to remove the words in the Title Register which describes him as a minor. On receipt of such an application, the Registrar shall, if he is satisfied that the owner concerned has attained full age, remove the words.

Transmissions

86. The Bills Committee notes that transmissions are the passing of title to registered land, a registered charge or a registered long term lease from one person to another person under a court order, under an ordinance or by operation of law. The Bill provides for registration of transmission on death of an owner, in bankruptcy cases, on liquidation and in other cases.

87. Under clause 62, where one or more joint tenants of registered land dies, the Land Registrar, on proof to his satisfaction of the death, shall remove the name of the deceased from the Title Register. Members suggest that the Administration should consider whether the name of the deceased should be removed from the Title Register or retained as a historical record. Members are advised by the Administration that upon proof of the death of a joint tenant, the Register will remove the name of the deceased joint tenant from the column "Name of Owner" in the Title Register. An appropriate note will be added in other columns to highlight the transmission of

ownership to the surviving joint tenant under clause 62. The historical record containing the name of the deceased owner immediately before the change will be kept as part of the permanent records of the Land Registry and made available for public search upon payment of a prescribed fee.

88. Clause 62(1) provides that where one of two or more joint tenants of registered land dies, the remaining joint tenant or tenants shall be subject to any interests subject to which the deceased joint tenant held the land, charge or lease immediately prior to his death; which are unregistered; and which are enforceable against the land or lease. Members request the Administration to clarify whether it is its policy intent that the remaining joint tenant or tenants shall be subject to the same rights and incumbrances as those before the death of a joint tenant, i.e. transmission on death of a joint tenant will not change the status quo apart from the change in ownership, and the remaining joint tenant would hold the land subject to exactly the same rights and incumbrances as before without any alternations. The Administration confirms that this is its policy intent, and agrees to improve the drafting of clause 62(1) to make clear this policy intent.

89. Clause 62(2) provides that the Land Registrar shall not remove the name of a deceased from the Title Register unless he is satisfied that:

- (a) estate duty is not payable under the Estate Duty Ordinance (EDO) (Cap.111) on the deceased's interest in registered land, the registered charge or the registered long term lease concerned (clause 62(a)); or
- (b) where such estate duty is payable on such interest, the estate duty has been paid or its payment postponed in accordance with the provisions of that Ordinance (clause 62(b)).

90. On clause 62(2)(a), the Administration agrees to members' observations that a registered charge is not chargeable to estate duty under section 18 of EDO and that the reference to a registered charge will be deleted from the subclause.

91. On clause 62(2)(b), members are concerned how the purchaser of a property could come to know that the payment of estate duty has been postponed in accordance with the provisions of EDO. Upon review, the Administration considers that even if a purchaser is aware of a mere postponement of payment, it does not remove the possible incumbrances on the property. The Administration therefore proposes to revise the condition precedent in clause 62(2)(b) to the effect that it is necessary to satisfy the Land Registrar either that the estate duty has been paid or its payment has been secured to the satisfaction of the Commissioner of Estate Duty. Members have no objection to this proposed amendment.

92. Clause 65 provides for the effect of transmission on death and dealing by personal representative. Members request the Administration to improve the drafting of the clause in the same way as clause 62(1) so as to clearly set out the policy intent that the transmission on death will not change the status quo apart from the change of ownership (i.e. that upon death of the owner of registered land, the personal representative to be registered as the owner would hold the land subject to exactly the

same rights and incumbrances as before). The Administration agrees to improve the drafting of clause 65 accordingly.

93. Noting that clause 67 provides for transmission on liquidation, members are concerned how receivership would be dealt with under LTRS. Members are advised by the Administration that under LTRS, both an appointment of a receiver by court or an appointment under a legal mortgage or equitable mortgage by deed may support an application for registration of a restriction under clause 77 if it is at the instance of a mortgagee or chargee of the property. If it is an appointment of receiver made by the court by way of equitable execution upon the application of a litigant in action who is not interested in the land, he should at the same time apply for an inhibition under clause 74 to restrain registration of any dealings inconsistent with the order of appointment of receiver.

94. Members note that clause 69(2) provides that the Land Registrar shall not enter particulars of the trust in the Title Register. Given the Administration's policy intent that clause 69(2) shall not affect the entry of cautions, inhibitions and restrictions which may contain particulars of the trust, members suggest that the Administration should introduce suitable amendments to make clear its policy intent. The Administration proposes a CSA to add the new subclause (2A) to clause 69 for the purpose.

Protection of holders or claimants of interests in land

95. The Bills Committee notes that the Bill gives the holders or claimants of interests in land various means to have their interests or claims protected on the Title Register. A holder or claimant of interests in land may:

- (a) apply for registration of a consent caution or a non-consent caution regarding dealings in land under clause 70;
- (b) apply to CFI for an inhibition under clause 74; and
- (c) apply to the Land Registrar to impose a restriction under clause 77.

The registration of a consent caution or a non-consent caution is recognized as giving notice of the interest under the Bill. An inhibition will prevent registration of any dealings in the land. A restriction will prohibit specified dealings.

Consent cautions, non-consent cautions and priority of interests

96. The Bills Committee notes that the Bill provides for the registration of two forms of cautions which may affect registered land, a registered charge or a registered long term lease. The distinction between the two forms is that one requires the consent referred to in clause 70(1) before it can be registered ("consent cautions") while the other ("non-consent cautions") does not. The purpose of a consent caution is to protect the interest of a person who in good faith and for valuable consideration intends to effect a dealing in, inter alia, registered land. The purpose of a non-consent caution is to serve a warning to persons proposing to deal with, inter alia, registered land that the

cautioner either claims an interest in the land or has presented a winding-up petition against the owner of the land. However, the registration of a non-consent caution shall not of itself affect the validity or otherwise of the interest which is the subject of the non-consent caution (clause 71(3)). A person who maintains or presents a caution wrongfully and without reasonable cause may be liable for damages (clause 73).

97. To facilitate the Bills Committee's consideration of the proposed provisions on consent cautions and non-consent cautions, LSD of the LegCo Secretariat has been invited to compare the provisions governing priorities under the existing DRS in LRO and the new LTRS in the Bill. LSD draws the Bills Committee's attention to the following issues on consent cautions:

- (a) A consent caution is only registrable with the consent of the owner if the land is not affected by any prior consent caution (clause 70(1)(a));
- (b) A consent caution is only registrable with the consent of the prior cautioner if a prior consent caution has been registered (clause 70(1)(b));
- (c) No subsequent interest can obtain priority without the cautioner's express consent (clause 70(1)(b)); and
- (d) Where a dealing, which is the subject of a consent caution, is registered, the priority of the dealing relates back to and takes effect from the priority of the first consent caution in respect of the same dealing (clause 33(7)(a)).

98. The Bills Committee is advised by LSD that paragraph 97(a) and (b) above are not provided for under the existing DRS in LRO. On paragraph 97(c) above, similar effect is provided under section 3(1) of LRO. As regards paragraph 97(d) above, no such effect is provided under LRO except as between a subsequent assignment and a registered ASP. However, this is effected by operation of law and not by any express statutory provision. In LSD's view, both paragraph 97(b) and (d) above are not absolutely necessary to preserve the priority of an interest registered by a consent caution as the doctrine of notice still applies.

99. Members note LSD's view that the requirement under paragraph 97(b) above would be a restriction on an owner's power of disposition of his own land. For example, where a consent caution has been registered by a mortgagee bank, a subsequent purchaser would need the bank's consent before he can register a caution of the sale and purchase agreement. By the same logic, a subsequent mortgagee would also require the consent of the cautioner before he can register a consent caution to preserve his priority. Members are concerned that as revealed from past experience, it may be difficult and would involve costs to seek such consent from the mortgagee bank. The Administration appreciates members' concern and proposes a CSA to recast clause 70(1).

100. As regards paragraph 97(d) above, LSD considers that determining priority according to the date of presentation of application would be sufficient. In fact, that would mean continuation of the present priority system. Relating back would change the law and could have unintended effects. Once a consent caution has been registered, any subsequent charging order would be ineffective. To that extent, the law would be changed. Under the present law, where an owner has entered into a sale and purchaser agreement and a charging order is registered prior to the execution of the assignment of the land, the charging order would attach to the proceeds of sale (*Ho King-yim v Lau King-mo* [1980] HKLR 42). Under the provisions of the Bill, the transfer will relate back to the date of the entry of the consent caution and the charging order will affect neither the land nor the proceeds of sale (Willoughby & Wilkinson, *Registration of Titles in Hong Kong*, 1995, 103). Hence, it would not be too difficult for a debtor to register a consent caution for a bogus sale and purchase agreement to defeat any attempt of his creditors to charge his property. LSD also points out that in certain circumstances, unintended consequences could result. If a sub-sale agreement is registered by consent caution before that of an equitable mortgage, the sub-purchaser could take free of the mortgage. The purchaser vendor could therefore skip redeeming the mortgage. Similarly, if an owner has agreed to sell his property with completion to take place a year later and seeks to refinance his mortgage, the new mortgagee would be postponed to the purchaser. Members are concerned that the proposed relating back provision would change the law and could have unintended consequences. Upon review, the Administration agrees to propose a CSA to delete clause 33(7)(a). The Administration also agrees to propose a CSA to delete a similar relating back provision in clause 33(7)(c) in respect of non-consent cautions.

101. The Bills Committee notes that under the Bill, a *lis pendens* may be registered as a non-consent caution. While clause 73 provides that a wrongful registration of consent cautions or non-consent cautions without reasonable cause will attract liability for damages, LRO only provides power to the court to order vacation of *lis pendens*, but is silent on the point whether the court may award damages against a person for his wrongful registration of a *lis pendens*. The Bills Committee therefore requests the Administration to examine how clause 73 compares with the common law position on claims for damages in tort.

102. Having researched the case law, the Administration's conclusion is that the case law authorities do tend to show that a claim for damages for a "wrongful and injurious" registration of instrument resulting in loss may be actionable. However, "injurious" in this sense means without reasonable and probable cause, and with malice. Thus a claimant who makes a common law claim in tort for wrongful registration will probably be required to prove an element of "malice". Under clause 73, however, "malice" does not have to be proved. The reasoning behind this is that proof of "malice" requires a proof of the intention of the wrongdoer, which is difficult to obtain. Requiring such proof is likely to undermine the intention of providing a sufficient deterrent to wrongful registration lest cautions be abused. The Administration believes that the "without a reasonable cause" test adopted in clause 73 should provide a more effective deterrent effect while still safeguarding the cautioner's interest by availing him of a fairly straightforward defence against a charge that he has acted "wrongfully". Given the need to deter wrongful registrations and provide a clear statutory basis for a claim for damages arising out of such a registration, the

Administration considers that the slight departure from the common law position in clause 73 is justified.

103. Members consider that claims for wrongful registrations under DRS and LTRS should be in line with each other. The Administration accepts members' view and proposes consequential amendments to LRO accordingly.

Inhibitions and restrictions

104. The Bills Committee notes that the Bill provides for two new forms of restraints on disposition. The first is "inhibitions", being orders of CFI inhibiting the registration of dealings in registered land (clause 74). The second form is "restrictions", being orders made by the Land Registrar, upon application by a person, prohibiting dealings in registered land, if the Registrar is satisfied that the powers of the owner concerned to deal with the land should be restricted (clause 77). Both an inhibition order or a restriction may be for a specific period of time; until the occurrence of an event, e.g. a minor attaining full age, consent given by a particular person, etc.; or generally until a further order by CFI or the Land Registrar as appropriate.

105. Noting that an injunction is the only avenue available under the existing system to restrain dealings, members request the Administration to clarify the differences between injunctions and inhibitions/restrictions. Members are advised that an inhibition is a specific order granted by the court under clause 74 that stops the Land Registrar from registering dealings of the land. A person who has obtained an inhibition shall present an application to the Land Registrar for an entry to be made on the Title Register. The application must be accompanied by a sealed copy of the court order. The Registrar is obliged to give effect to the order and shall register the inhibition accordingly (clause 74(2)). While an inhibition is in force, no dealing which is inconsistent with it shall be registered (clause 75). On the other hand, an injunction is granted by the court in exercise of its wider jurisdiction under section 21L of the High Court Ordinance (Cap. 4) and stops the party concerned from exercising his powers of disposition.

106. As regards the differences between inhibitions and restrictions, members are advised by the Administration that an application for a restriction may only be made by a person interested in the land (clause 77(1)(a)) while an application for an inhibition may be made by any person. Members are however concerned that clause 74(1) has not specified the circumstances under which CFI may make an order inhibiting the registration of any dealing in registered land, and that the scope of the power of the Land Registrar in making a restriction under clause 77(1) is not clear.

107. Upon review, the Administration proposes to amend clause 74(1) by adopting the criteria laid down in section 46(1) of the United Kingdom (UK) Land Registration Act 2002 to allow the court to act if it appears to the court that "it is necessary or desirable to do so for the purpose of protecting a right or claim in relation to a registered estate or charge". The Administration also proposes to amend clause 77(1) by adopting the criteria laid down in section 42 of the UK Land Registration Act 2002 with suitable modification to provide that the Land Registrar may only enter a

restriction after being satisfied that the powers of the owner of the registered land or the registered charge, or of the lessee of the registered long term lease, to deal in the land, charge or lease should be restricted to prevent invalidity or unlawfulness in relation to dealing in the land, charge or lease; or protect an interest or claim in relation to the land, charge or lease. The Administration further proposes to adopt the UK approach to define the person entitled to make an application for restriction. The new subclause (5) is proposed to be added to clause 77 for the purpose to provide for a definition of "interested person". To allow time for the Administration to consider carefully the scope of the definition of "interested person", members accept that the term means, inter alia, a person who falls within a class of persons prescribed by the relevant regulations. In this connection, members request the Administration to put in place the relevant regulations before the commencement of LTO. The Administration agrees to do so. The Administration also indicates that it would make reference to the relevant provisions in the UK Land Registration Rules in drafting the relevant regulations.

Application to court by Land Registrar and persons other than the Registrar

Application to CFI by Land Registrar for directions

108. The Bills Committee notes that clause 88 provides that in any case of doubt or difficulty or in any matter not provided for under the Bill, the Land Registrar may apply to CFI for directions on principles of law. Members request the Administration to provide the justifications for clause 88; to define the scope of powers of the Registrar under the clause; and to explain why the clause is included in Part 10 (Appeals) of the Bill.

109. Members are advised by the Administration that many jurisdictions operating title registration systems have provided the registration authority with mechanisms to state a case to the court for the court's opinion. For example, under the UK Land Registration Act 1925, the registrar was given certain power to refer a case to the court for opinion. The New South Wales Real Property Act 1900 also allows the Land Registrar to apply to the court for opinion. The Administration considers that a similar provision in the Bill is likely to prove useful, especially in the early years of operating LTRS. Such a mechanism will allow directions to be sought on important questions of law, in turn facilitating dealings in land with certainty and in a timely manner. The Administration's intention is that the Registrar should resort to this provision only when faced with issues of law that are of general importance to the performance of his duties, the exercise of his powers and the discharge of his responsibilities under the Bill. The Administration does not anticipate that the power would be used frequently. The Registrar would have to justify fully to the court why he is seeking direction and not relying on his own legal advisors; otherwise the court might decline to give directions on his application. The Administration agrees that clause 88 should be amended to clearly reflect this policy intent. The Administration also confirms that clause 88 is intended to be of general application and that it should not be placed in Part 10 of the Bill.

110. In connection with the above, members support the Administration's proposal of moving clause 88 to Part 2 (Organization and administration) of the Bill as the new clause 6A. Members note that under the new clause, the Land Registrar may apply to CFI for direction if any question of law arises in respect of the performance or exercise of any functions or powers imposed or conferred on the Registrar by or under LTO. Some members remain concerned about the need for the provision having regard that the Land Registrar may seek legal advice from the Department of Justice, and may seek judicial review where there is a dispute between an applicant and the Registrar. On members' question of whether any other Government officials in a similar position have powers comparable to those of the Land Registrar under the original clause 88, the Administration points out that in Hong Kong law, similar provisions may be found in insolvency cases. For example, section 82(3) of the Bankruptcy Ordinance (Cap. 6) provides that the trustee may apply to the court for directions in relation to any particular matter arising under the bankruptcy. Similarly, under section 200(3) of the Companies Ordinance (Cap. 32), a liquidator may apply to the court for directions in relation to any particular matter arising under the winding up. The right of referral to the court for directions has been sparingly exercised by the Official Receiver & Trustee. It has proved useful, however, when he has been faced with a complex issue of law which has a general importance to his performance of public duties.

111. While the scope of the new clause 6A is narrower than that of the original clause 88, some members are concerned whether regulations would be made to govern the exercise of power by the Land Registrar under the new clause 6A and to provide for the procedures for implementation. The Administration agrees to consider the need to make regulations. The Administration also agrees to take into account some members' views that if the application may involve any inter-party hearings, there is a need to ensure that the other party would know what steps he should take and his rights in the circumstances, especially if the provision may have implications on any appeals against decisions made by the Registrar under clause 89.

Application to CFI by persons other than Land Registrar

112. Clause 95 provides that a person interested in registered land, a registered charge or a registered long term lease may apply to CFI by petition or originating summons in respect of any question relating to the title or an interest in the land, charge or lease. Noting that the scope of this clause is wider than that of section 12 of CPO which provides the application by a vendor or purchaser of land, members request the Administration to provide the justifications for the expanded scope of clause 95. Members are advised by the Administration that given that the Bill covers a great variety of interests and matters, it is appropriate to provide a procedure to resolve questions on law relating to the title or an interest in land, charge or lease raised by a purchaser, a person claiming overriding interests, a cautioner, a chargee, a lessee or any other person interested in the land, charge or lease.

113. To address members' concern that the reference to "petition" in clause 95 does not fit present day circumstances, as people rarely apply to CFI in respect of questions of title by petition, the Administration agrees that the reference to petition be deleted from the clause. As regards members' concern about the rules on the procedures under clause 95, the Administration points out that under clause 91, the Chief Justice may make rules for regulating applications under the Bill to CFI.

Land boundaries

114. The Bills Committee notes that under DRS, land boundaries are not guaranteed. In the previous Land Titles Bill introduced in 1994, the Administration has not proposed to provide any form of guarantee for land boundaries under LTRS. While some interested parties have expressed their view that guarantee of land boundaries should be part of LTRS, the Administration considers that this would present great complications given the past history of land boundary survey in Hong Kong. As only boundaries surveyed since the establishment of the Geodetic Datum in 1980 (which represents only about 7% of existing properties) could be assured immediately, the Administration maintains its previous proposal and does not provide any form of guarantee for land boundaries under the Bill. The Administration however proposes that an avenue be provided under clause 92(1) for owners of registered land to apply to the Director of Lands for a determination of their lot boundaries.

115. The Bills Committee notes that HYK supports the Administration's proposal to allow the owner of registered land to make an application to the Director of Lands for a determination of lot boundaries. However, HYK considers that when an owner of registered land makes such an application, if the Director considers that the existing land boundary plan is acceptable for the purpose, he should verify the plan together with the relevant District Survey Office before causing the plan to be registered under clause 92(3)(c). The Bills Committee also notes that HKIS considers it most important that LTRS should provide reliable and adequate records about the particulars of the landed interest including plan showing the size, boundary and layout of the interests. Whilst appreciating that the Administration is not ready to provide any form of guarantee for land boundaries under the Bill, HKIS considers that the Administration should address the boundary problems of the Demarcation District lots in the New Territories by bringing these old land survey records up to the standard. In this connection, HKIS is concerned that under clause 92(2)(b), the Director of Lands shall not make a determination of lot boundaries in respect of a lot held under a block Government lease, i.e. a Government lease of old schedule lots.

116. The Bills Committee appreciates the concerns of HYK and HKIS, and requests the Administration to consider their views. On HYK's views on clause 92(3)(c), the Administration confirms that it will set out the criteria for deciding whether a land boundary plan, including the existing plan prepared by the Survey and Mapping Office of the Lands Department, is acceptable for determination of the boundaries of a lot and registration in the Land Registry. As regards the concern of HKIS about clause 92(2)(b), the Administration agrees to delete the subclause to address the concern.

117. Given that the determination of lot boundaries by the Director of Lands should be beneficial to members of the public, members consider that clause 92 should come into operation upon commencement of LTO, not upon the expiry of the 12-year incubation period. In the light of members' views, the Administration confirms that clause 92 will come into operation upon commencement of LTO, but it will only apply to land that is registered under the Ordinance. The Administration intends to introduce a similar provision under a suitable ordinance that will apply to land not yet registered under LTO.

118. The Bills Committee also requests the Administration to provide information on the procedures for and the time required to process an application for determination of lot boundaries under clause 92(1), and the fees involved. The Bills Committee is advised by the Administration that the Director of Lands will process such an application according to the procedures set out in clause 92(3). For cases where an existing plan is available and is acceptable to the Director of Lands, the processing time should not take more than two weeks and the fee (exclusive of the fee for registration at the Land Registry) will be charged on a cost recovery basis and the Administration's current estimate is about \$1,100. For cases where the land owner is required to appoint an authorized land surveyor to conduct a land boundary survey, the Director of Lands will need about four weeks to complete the plan checking process, and the fee (exclusive of registration fee) will also be charged on a cost recovery basis. The Administration's current estimate is about \$6,500.

119. As regards some members' concern about the re-alignment of lot boundaries, the Administration confirms that the Bill does not contain any provision to address the issue of re-alignment of boundaries for lots in the urban area or in the New Territories. To re-align boundaries affecting private lots without seeking the agreement from the lot owners concerned may affect private property rights and may have human rights implications. Members are advised that the Director of Lands is now actively discussing with HYK on possible measures to address the issue.

Follow-up actions to be taken by the Administration

120. As mentioned in paragraph 23 above, the Bills Committee has no objection to the Administration's proposal that LTO be commenced two years after its enactment so as to allow sufficient time for putting in place the relevant regulations and finalizing the guidance notes for legal practitioners and members of the public. At the request of members, the Administration has undertaken that:

- (a) the list of regulations set out in **Appendix V** will be put in place before the commencement of LTO;
- (b) a review of LTO will be conducted during the two-year period between its enactment and commencement; and
- (c) the LegCo Panel on Planning, Lands and Works will be consulted in due course on the proposed commencement date of LTO before the commencement notice for the Ordinance is published in the Gazette.

The Administration also agrees that the commencement notice should be subsidiary legislation subject to the vetting of LegCo.

121. At the request of the Law Society, the Administration has been asked to undertake:

- (a) to work with the Law Society so as to address any subsisting points of concern and any issues that emerge on further consideration of the drafting of LTO before its implementation; and
- (b) not to implement LTO pending the review of the Solicitors (Professional Indemnity) Rules and the Professional Indemnity Scheme by the Law Society on the issue of double payment from the Solicitors Indemnity Fund in respect of any claim arising from LTO and to effect any consequential amendments in this regard.

122. The Administration has also undertaken to take the follow-up actions set out in **Appendix VI**.

Committee Stage amendments

123. A full set of the draft CSAs to be moved by SHPL is in **Appendix VII**. The Bills Committee supports the draft CSAs.

124. At the conclusion of the last Bills Committee meeting on 21 June 2004, no members indicated that they would move any CSAs to the Bill.

Recommendation

125. Subject to the undertakings mentioned in paragraphs 120 and 121 being given by the Administration, the Bills Committee supports the Administration's proposal that the Second Reading debate on the Bill be resumed on 7 July 2004.

Advice sought

126. Members are invited to support the recommendation of the Bills Committee in paragraph 125 above.

《土地業權條例草案》委員會
Bills Committee on Land Titles Bill

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法律顧問 Legal Adviser	顧建華先生	Mr KAU Kin-wah
日期 Date	2003年3月19日 19 March 2003	

Appendix II

Bills Committee on Land Titles Bill

List of organizations/individual submitted views on the Bill

- * 1. The Real Estate Developers Association of Hong Kong
- * 2. Consumer Council
- * 3. The Law Society of Hong Kong
- * 4. The Hong Kong Institute of Surveyors
- * 5. Hong Kong Bar Association
- * 6. Heung Yee Kuk New Territories
- 7. Director, Hong Kong Institute of Asia-Pacific Studies,
The Chinese University of Hong Kong
- 8. Hong Kong Society of Accountants
- 9. The Hong Kong Association of Banks
- 10. First American Title Insurance Company

Remark:

“*” denotes those organizations the representatives of which have attended a Bills Committee meeting(s).

Land Title Registration System

Estimated levy rates under two possible schemes

The figures are calculated on the basis of obtaining \$37.5 million in funding from the actual number and value of assignments registered for 2002/03, and are for illustrative purposes only.

<i>Fixed \$ rate 5 value bands</i>	<i>Fixed % scheme 0.017%</i>
<i><\$750,000</i> \$90	\$42.50 for a \$0.25 million property \$128 for a \$0.75 million property
<i>\$750,000 to \$3 million</i> \$340	\$170 for a \$1 million property \$425 for a \$2.5 million property
<i>\$3 million to \$10 million</i> \$900	\$595 for a \$3.5 million property \$1,275 for a \$7.5 million property
<i>\$10 million to \$20 million</i> \$2,200	\$1,700 for a \$10 million property \$3,400 for a \$20 million property
<i>\$20 million to \$30 million</i> \$4,000	\$5,100 for a \$30 million property
<i>Over \$30 million</i> \$4,000	\$5,100 for a property over \$30 million
<i>Explanatory Note:</i> The same levy is charged on every property within each band.	<i>Explanatory Note:</i> The same % rate is levied on every property. The amount received varies with the value of each property.

(Source: Annex A to the paper provided by the Administration on "Indemnity Scheme — Levy Rates and Miscellaneous Matters" (LC Paper No. CB(1)2207/02-03(06))

**Comparison of registrable matters
under the existing deeds registration system and
the proposed land title registration system**

Instruments registrable under deeds registration system	How the matter will be dealt with under the Land Titles Bill (The number and letter indicate the subclause of clause 4 that provides the necessary authority)
1. Provisional Agreement for Sale and Purchase	1. Consent Caution – 4(a)
2. Agreement for Sale and Purchase	2. Consent Caution – 4(a)
3. Agreement for Sub-Sale and Purchase	3. Consent Caution – 4(a)
4. Supplemental Agreement for Sale and Purchase	4. Consent Caution – 4(a)
5. Assignment	5. Transfer – 4(a)
6. Vesting Assignment	6. Transfer – 4(a)
7. Building Mortgage	7. Charge – 4(a)
8. Mortgage	8. Charge – 4(a)
9. Legal Charge	9. Charge – 4(a)
10. Debenture	10. Charge – 4(a)
11. Second Mortgage	11. Second Charge – 4(a)
12. Transfer of Mortgage	12. Transfer – 4(a)
13. Sub-mortgage	13. Charge on registered charge – 4(a)
14. Consolidation of Mortgage	14. Non-consent caution – 4(a)

Instruments registrable under deeds registration system	Matters registrable under the land title registration system
15. Equitable Mortgage of uncompleted building units	15. Consent Caution – 4(a)
16. Agreement for Mortgage	16. Consent Caution – 4(a)
17. Deed of variation of mortgage	17. Charge – 4(a)
18. Assignment of Mortgage Loan with negative pledge clause	18. Non-consent caution – 4(a)
19. Supplemental Mortgage	19. Charge – 4(a)
20. Collateral Mortgage	20. Charge – 4(a)
21. Further Charge	21. Subsequent Charge – 4(a)
22. Receipt on Discharge of a charge	22. Discharge of registered charge – 4(a)
23. Release	23. Discharge of registered charge – 4(a)
24. Discharge	24. Discharge of registered charge – 4(a)
25. Reassignment	25. Discharge of registered charge – 4(a)
26. Assignment of Rental Proceeds with negative pledge clause	26. Non-consent caution – 4(a)
27. Assignment of Sale Proceeds with negative pledge clause	27. Non-consent caution – 4(a)
28. Partial Release	28. Partial discharge of registered charge – 4(a)
29. Partial Reassignment	29. Partial discharge of registered charge – 4(a)

Instruments registrable under deeds registration system	Matters registrable under the Land title registration system
30. Partial Discharge	30. Partial discharge of registered charge – 4(a)
31. Partial Receipt	31. Partial Discharge of registered charge – 4(a)
32. Partial Satisfaction	32. Partial Discharge of registered charge – 4(a)
33. Lease	33. Lease – 4(a)
34. Tenancy Agreement	34. Lease – 4(a)
35. Assignment of lease	35. Lease – 4(a)
36. Agreement for lease	36. Consent Caution – 4(a)
37. Sub-lease	37. Lease – 4(a)
38. Under-lease	38. Lease – 4(a)
39. Licence	39. Dealing – 4(b)
40. Declaration of Trust	40. Transfer – 4(a)
41. Probate	41. Transmission – 4(a)
42. Letters of Administration	42. Transmission – 4(b)
43. Deed of Family Arrangement	43. Dealing – 4(b)
44. Deed of Gift	44. Transfer – 4(a)
45. Assent	45. Transfer – 4(a)
46. Deed of Surrender to the Government	46. Transfer – 4(a)
47. Notice of Resumption	47. Overriding interests – 4(a)

Instruments registrable under deeds registration system	Matters registrable under the land title registration system
48. Vesting Notice	48. Overriding interests – 4(a)
49. Deed of Mutual Covenant	49. Deeds of mutual covenant – 4(a)
50. Sub-deed of mutual covenant	50. Deeds of mutual covenant – 4(a)
51. Memorandum of Re-allocation of shares	51. Dealing – 4(b)
52. Power of Attorney	52. Dealing – 4(b)
53. Deed of Exchange	53. Transfer – 4(c)
54. Deed of Partition	54. Dealing – 4(b)
55. Appointment of Trustee – S.18 (New Territories Ordinance)	55. Matter registrable under other enactment – 4(a)
56. Succession	56. Matter registrable under other enactment – 4(a)
57. Memorandum of Charge of outstanding management fee	57. Charge – 4(a)
58. Death Certificate	58. Transmission – 4(a)
59. Deed Poll – division of land	59. Division – 4(a)
60. Deed Poll – Change of name	60. Change of Name – 4(a)
61. Deed of Rectification	61. Dealing – 4(b)
62. Deed of Confirmation	62. Dealing – 4(b)
63. Confirmatory Release	63. Discharge of registered charge – 4(a)
64. Confirmatory Legal Charge	64. Legal Charge – 4(a)
65. Confirmatory Agreement for Sale and Purchase	65. Consent Caution – 4(a)

Instruments registrable under deeds registration system	Matters registrable under the land title registration system
66. Confirmatory Assignment	66. Transfer – 4(a)
67. Memorandum of Change of building name	67. Matter affecting registered land – 4(d)
68. Cancellation Agreement	68. Withdrawal of consent caution – 4(a)
69. Letter of Rescission	69. Withdrawal of consent caution – 4(a)
70. Certification of Incorporation on change of name	70. Change of Name – 4(a)
71. Occupation Permit	71. Matter affecting registered land – 4(d)
72. Deed of Severance	72. Dealing – 4(b)
73. Charging Order Nisi	73. Charging Order – 4(c)
74. Charging Order Absolute	74. Charging Order – 4(c)
75. Writ of Summons	75. Non-consent caution – 4(a)
76. Court order for enforcement	76. Order for enforcement of judgment – 4(c)
77. Court order for vesting property in a person	77. Transmission – 4(a)
78. Bankruptcy order	78. Transmission – 4(a)
79. Notice of discontinuance	79. Withdrawal of non-consent caution – 4(a)
80. Exclusion Order	80. Matter registrable under other enactment – 4(a)
81. Order under S.33(1) of the Buildings Ordinance	81. Matter registrable under other enactment – 4(a)

Instruments registrable under deeds registration system	Matters registrable under the land title registration system
82. Order under s.24(1) of the Building Ordinance	82. Overriding interest – 4(a)
83. Order under s.26 of the Buildings Ordinance	83. Overriding interests – 4(a)
84. Order under s.27A of the Buildings Ordinance	84. Overriding interests – 4(a)
85. Notice of unauthorized development under S.23(4A) of Town Planning Ordinance (Cap.131)	85. Matter registrable under other enactment – 4(a)
86. Closure Order under s.153B of Crimes Ordinance	86. Overriding interests – 4(a)
87. Certificate of charge on property under s.18A(1) of Legal Aid Ordinance	87. Matter registrable under other enactment – 4(a)
88. Consent Letter	88. Overriding interests – 4(a)
89. Letter of removal of alienation restriction	89. Overriding interests – 4(a)
90. Modification Letter	90. Overriding interests – 4(a)
91. Waiver Letter	91. Overriding interests – 4(a)
92. No-objection Letter	92. Overriding interests – 4(a)
93. Letter of compliance	93. Matter registrable under other enactment – 4(a)
94. Nomination	94. Matter affecting registered land – 4(d)

Instruments registrable under deeds registration system	Matters registrable under the land title registration system
95. Redevelopment order under s.4 of Demolished Buildings (Re-development of Sites) Ordinance	95. Matter registrable under other enactment – 4(a)
96. Memorandum of deposit of title deeds	96. Charge – 4(a)

(Source: Annex to the paper provided by the Administration on "Comparison of Registrable Matters" (LC Paper No. CB(1)2207/02-03(04))

**List of Regulations to be enacted
before commencement of the Land Titles Ordinance**

1. Land Titles Regulations

These will cover most of the specific provisions for regulations set out in Clause 100(1) or referred to in other clauses of the Bill, the exceptions being those dealt with under the other sets of regulations listed below.

2. Land Titles Indemnity Fund Regulations

These will provide for the detailed operation of the Indemnity Fund established under Clause 87A of the Bill. They will cover the matters as set out in Clause 100(1) subsections (zh) to (zm) .

3. Land Titles (Fees and Levies) Regulations

These will be made under Clause 98 to provide for the fees to be paid to the Registrar for matters set out in sub-clause (1) and the levy to be paid for the purposes of the indemnity fund under sub-clause (2A).

4. Land Titles Transitional Regulations

These will be made under Clause 100(1)(zp) and will provide for matters required to support Clauses 8 and 9 of Schedule 1A and any other purely transitional matters.

5. Court Rules

These may be made by the Chief Justice under Clause 91 to provide any necessary rules for regulating appeals and other applications.

All the regulations (items 1 to 4) are needed to ensure the smooth implementation of the new system and will be enacted before commencement of the Ordinance.

Rules under item 5 are at the discretion of the Chief Justice. The Administration will refer matters to him for consideration after enactment and will request that the necessary rules be made before commencement of the Legislation.

Bills Committee on Land Titles Bill

**List of follow-up actions to be taken by the Administration
after enactment of the Land Titles Bill**

Part A: Making of rules and regulations

Apart from preparing the regulations highlighted in clause 100 of the Bill, the Administration has also agreed to take the following actions where regulations are concerned -

1. To specify in the regulations relating to the **original clause 4(a)** the means by which notices and orders relating to premises under other Ordinances, such as section 153M of the Crimes Ordinance (Cap. 200) can be registered under the original clause 4(a) as matters expressly provided for in other enactments (*item 26 of the list of follow-up actions to the thirty-fifth meeting of the Bills Committee on 11 June 2004*);
2. To check whether there are any existing laws of court that govern the exercise of power by the Land Registrar under the **new clause 6A** and consider the need to make regulations to provide for the relevant implementation procedures (*item 6 of the list of follow-up actions to the thirty-third meeting of the Bills Committee on 1 June 2004*);
3. To make recommendations for the Chief Justice to make rules for regulating applications made to the court under **clause 95** (*page 29 of LC Paper No. CB(1)1544/03-04(01)*);
4. To put in place the regulations prescribing the class of persons referred to in **clause 77(5)(c)** on the definition of "interested person" before the commencement of the Land Titles Ordinance (LTO) (*item 4 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004*); and
5. In connection with item 4 above, to put in place all the relevant regulations before the commencement of LTO and consult the LegCo Panel on Planning, Lands and Works in due course on the proposed commencement date of LTO before the commencement notice for the Ordinance is published in the Gazette (*item 5 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004*).

Part B: Preparation of guidelines, guidance notes and the like

The Land Registry has agreed to prepare the following to facilitate implementation of the new land title registration system (LTRS) -

6. To prepare Land Registry Circular Memoranda and other advisory publications for solicitors, estate agents and other practitioners once the Bill is enacted. These documents will be drafted in consultation with the relevant professional bodies and issued before the Bill is brought into effect (*item 4 of LC Paper No. CB(1)1425/03-04(02)*); and
7. To prepare practice guides and explanatory notes on the use of cautions, restrictions and inhibitions, similar to those issued by the Land Registrar in England, for reference by the public and practitioners. The Administration would also ensure that the above and all practice guides and explanatory notes on the registration of matters under the Bill would be ready before the implementation of LTRS, and that they will be regularly updated and made available to the legal practitioners and the public on the Internet (*item 40 of LC Paper No. CB(1)1425/03-04(02) and item 4(d) of the list of follow-up actions to the twenty-eighth meeting of the Bills Committee on 13 April 2004*).

Part C: Further consequential amendments to be introduced after enactment of the Bill

The Administration has agreed to consider further consequential amendments arising from the Bill, as follows -

8. To make any other consequential amendments to the relevant legislation in recognition that the current practice of disposal of land by deeds would discontinue after the implementation of LTRS, so that such legislation would not apply to land registered under LTRS (*item 11 of the list of follow-up actions to the thirty-first meeting of the Bills Committee on 11 May 2004*);
9. To relay to the Secretary for Home Affairs for his consideration of introducing amendment to the definition of “common parts” in section 2 of the Building Management Ordinance (Cap. 344) the following comments, namely, that the original and proposed revised definitions of “common parts” are not comprehensive enough to cover all relevant cases. For example, supplemental deeds of mutual covenant may not fall under the definitions. The definitions may also fail to exclude the case where certain parts of the building are dedicated to public use and hence are not common parts (*item 9 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004*);

10. To consider outside the context of the Bill how registration as owners in cases relating to t'so should be dealt with, so as to address the Bills Committee's concern that section 15 of the New Territories Ordinance (NTO) (Cap. 97) only governs cases relating to clan, family or t'ong (*item 14 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004*);
11. To invite the Law Society of Hong Kong (Law Soc) to deal with the consequential amendments to the Solicitors (General) Costs Rules (Cap. 159 sub. leg.) as part of the overall arrangement for the implementation of the LTRS (*page 35 of LC Paper No. CB(1)1544/03-04(01)*);
12. To carry out in the 2-year period between the enactment and commencement of the Bill a review of the references in the Bill to the register kept under the existing deeds registration system (DRS), namely, "the land register kept in the Registry" or "the land register kept under the Land Registration Ordinance" and make any necessary simplification (*item 15 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004*);
13. To ensure that any provision incompatible with the Conveyancing and Property Ordinance (Cap. 219) would be rectified during the 2-year period between the enactment and commencement of the Bill (*item 28 of the list of follow-up actions to the thirty-fifth meeting of the Bills Committee on 11 June 2004*); and
14. To introduce any other additional consequential amendments that may become necessary during the period between the passage of the Bill and the implementation of LTRS in the form of subsidiary legislation that require positive vetting of the Legislative Council (*item 33 of LC Paper No. CB(1)1425/03-04(02)*).

Part D: Clauses to be reviewed after enactment of the Bill

The Administration has agreed to review the following clauses of the Bill after its enactment -

15. To do some research during the 2-year period between the enactment and commencement of the Bill and, in consultation with Law Soc and other relevant parties, revisit the Assistant Legal Adviser (ALA)'s concern that by putting in **clause 29(1)** a universal prohibition on the creation, extinguishment, transfer, variation or affection of land by means other than by registration under the Bill, and qualifying such with subclause (2), the power of an owner to dispose of his property would be significantly affected (*item 2 of the list of follow-up actions to the thirty-ninth meeting of the Bills Committee on 21 June 2004*);

16. To revisit **clause 33(8)** and address Law Soc's concern about the subclause as a result of the retention of the words "under a provisional agreement for sale and purchase or an agreement for sale and purchase" therein (*item 3 of the list of follow-up actions to the thirty-ninth meeting of the Bills Committee on 21 June 2004*);
17. To revisit **clause 35(3)** to address Law Soc's concern that the protection given to a registered charge under the Bill may be too limited (*item 5 of the list of follow-up actions to the thirty-ninth meeting of the Bills Committee on 21 June 2004*);
18. To review **clause 43** in consideration of ALA's view that implied covenants should take effect upon registration and not when the relevant transfer is signed (*item 14 of the list of follow-up actions to the thirty-seventh meeting of the Bills Committee on 17 June 2004*);
19. To consider how to address ALA's concern that, because of the reference to "the entry in the Title Register" in **clause 81(4)**, it is not clear whether a fraud or voidable transaction that would give rise to a claim for rectification in relation to land which was registered under the Land Registration Ordinance (LRO) (Cap.128) can be rectified after the commencement of LTO (*item 8 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004*); and
20. To review the provisions in **clause 92** after introducing a similar provision in a suitable ordinance that will apply to land not yet registered under LTO (*item 13 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004*).

Part E: Other issues

The Administration has also undertaken to take the following actions after enactment of the Bill -

21. To carry out fresh calculations closer to the time of implementation of the LTRS the estimated levy rates for the properties valued over \$30 million set out in Annex A to the paper on "Indemnity Scheme: Levy Rates and Miscellaneous Matters" (*LC Paper No. CB(1)2207/02-03(06)*). Consideration will then be given to the rate to be applied to each value of property (*item 15 of LC Paper No. CB(1)1425/03-04(02)*);
22. To discuss with the relevant parties on the relevant procedures, forms and documents once the terms of the Bill are settled. The exercise will be undertaken in parallel with the preparation of regulations under the Bill and a presentation may be made to members before the regulations are submitted for approval (*item 18 of LC Paper No. CB(1)1425/03-04(02)*);

23. To consider how the public, or a solicitor acting on behalf of a member of the public, may search properties by owners' names provided that they comply with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486) (*item 20 of LC Paper No. CB(1)1425/03-04(02)*);
24. To consult Law Soc on the applications register under the LTRS, so that legal practitioners would in future know how to deal with it (*item 16 of the list of follow-up actions to the thirty-sixth meeting of the Bills Committee on 15 June 2004*);
25. To resolve before commencement of the Bill certain issues, such as the documents to be kept under the LTRS under clause 44(1), which the Administration has agreed to resolve with Law Soc after enactment of the Bill (*item 23 of the list of follow-up actions to the thirty-seventh meeting of the Bills Committee on 17 June 2004*);
26. To provide in due course the relevant case law in the UK on how the court interprets the expression "lack of proper care" in **clause 81** (*item 7(b) of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004*); and
27. To reply to Heung Yee Kuk shortly regarding its comments on the paper on "Report on Consultation on Revisions to Conversion Mechanism and Rectification Provisions" (*LC Paper No. CB(1)1230/03-04(04)*), and provide the Bills Committee with a copy of the reply (*item 25 of the list of follow-up actions to the thirty-eighth meeting of the Bills Committee on 18 June 2004*).

LAND TITLES BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Housing, Planning and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1) -</p> <p>(i) by deleting the definition of "appeal";</p> <p>(ii) by deleting the definition of "applications record" and substituting -</p> <p>"applications register"</p> <p>(申請註冊紀錄) means the applications register kept under section 5A;"</p> <p>(iii) by deleting the definition of "block Government lease";</p> <p>(iv) by deleting the definition of "caution";</p> <p>(v) by deleting the definition of</p>

"charge" and substituting -

"charge" (押記) means -

(a) a legal charge
within the meaning
of section 2 of the
Conveyancing and
Property Ordinance
(Cap. 219); or

(b) a mortgage of an
equitable interest
over land but
excluding any
mortgage of an
interest which is
only capable of
being protected by a
consent caution or
non-consent
caution;" ;

(vi) in the definition of "charging
order", by deleting "a court" and
substituting "any court of
competent jurisdiction";

- (vii) by deleting the definition of
"commencement day";
- (viii) in the definition of "company", in
paragraph (c), by deleting "Hong
Kong;" and substituting -
 - "Hong Kong,
and includes an unregistered
company within the meaning of
Part X of the Companies
Ordinance (Cap. 32);";
- (ix) by deleting the definition of "date
of first registration" and
substituting -
 - "date of first registration"
(首次註冊日期) means -
 - (a) in relation to
registered land, the
date determined in
accordance with
section 20C of this
Ordinance or section
3 of Schedule 1A,
whichever is

applicable; and

(b) in relation to a registered long term lease, the date determined in accordance with section 47(5) of this Ordinance or section 6 of Schedule 1A, whichever is applicable;" ;

(x) by deleting the definition of "dealing" and substituting -
"dealing" (交易) means a

disposition or transmission;" ;

(xi) in the definition of "entry", by deleting "Register, and" and substituting "Register; and" ;

(xii) by deleting the definition of "first registration" ;

- (xiii) in the definition of "image" or "image record", by deleting "image" (影像) or";
- (xiv) by deleting the definition of "instrument" and substituting -
"instrument" (文書) includes -
 - (a) a deed, conveyance, judgment, decree, order or other document which is -
 - (i) required to support, or is capable of supporting, an application for registration;
or
 - (ii) specified in any other enactment as a document which shall or may support an

application for
registration
under this
Ordinance (or
words to the
like effect);
and

(b) a memorial which
supports a current
entry in the Title
Register,

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

(xv) by deleting the definition of
"land" and substituting -
"land" (土地) includes -

(a) land covered by
water; and

(b) a thing attached to
land or permanently
fastened to a thing

attached to land,
but does not include an
interest in or over land other
than -

(c) an undivided share
in land; and

(d) such an interest
vested in a person
by virtue of the
operation of section
20D, 21(1) or 22(1)
of this Ordinance or
section 4 or 7 of
Schedule 1A;"

(xvi) by deleting the definition of "land
title record";

(xvii) in the definition of "lease", by
adding "and a tenancy" after "a
lease";

(xviii) by deleting the definition of
"lessee" and substituting -
"lessee" (承租人) means -

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

(b) in relation to any other lease, the lessee of the lease;" ;

(xix) in the definition of "lis pendens", by deleting paragraph (a) and substituting -

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

(xx) in the definition of "long term lease" -

(A) by deleting "bona fide";

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

"(a) granted by -
(i) subject to
subparagraph
(ii), the owner
of registered
land;
(ii) if the lease
was granted
before the land
became
registered land
under this
Ordinance, the
owner of the
land at the
time of the
grant,
of the right to
exclusive possession
of the land for a
term of not less
than 21 years;"

(xxi) by deleting the definition of "long
term lease register";

- (xxii) in the definition of "non-consent caution", by deleting "(4),";
- (xxiii) by deleting the definition of "old schedule lot";
- (xxiv) by deleting the definition of "owner" and substituting -
"owner" (擁有人) means -
 - (a) in relation to registered land, the person (including, in respect of registered land to which Part II of the New Territories Ordinance (Cap. 97) applies, any clan, family or t'ong) named in the Title Register as -
 - (i) the owner, lessee or holder (or words to the

like effect) of
a Government
lease of the
land; or

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

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

(xxv) by deleting the definition of
"ownership register";

(xxvi) by deleting the definition of
"professional indemnity insurer";

(xxvii) by deleting the definition of
"register" and substituting -

"register" (註冊), when used as a verb, means to make, remove, alter or add to an entry in the Title Register, but does not include to make, remove, alter or add to an entry in the Title Register to the extent that the entry denotes, in the case of the presentation of an application for the registration of a matter, that registration is pending or withheld in respect of the matter; and "registered" (註冊), "unregistered" (沒有註冊) and "registration" (註冊) shall be construed accordingly;"

(xxviii) in the definition of "registered charge", by adding "under section 35" after "lease";

(xxix) by deleting the definition of
"registered land" and
substituting -

"registered land" (註冊土地) means -

(a) land -

(i) held under a
Government
lease; and

(ii) the title to
which is
registered
under section
20B; and

(b) land deemed to be
registered land
under section 2 of
Schedule 1A;"

(xxx) by deleting the definition of
"registered long term lease" and
substituting -

"registered long term lease"

(註冊長期租契) means -

- (a) a long term lease registered under section 47; and
 - (b) a lease deemed to be a registered long term lease under section 5 of Schedule 1A;";
- (xxxi) in the definition of "remove", by adding "to" before "delete";
- (xxxii) by deleting the definition of "title number";
- (xxxiii) by deleting the definition of "Title Register" and substituting -
"Title Register" (業權註冊紀錄) means the Title Register kept under section 5;";
- (xxxiv) by deleting the definition of "transmission" and substituting -
"transmission" (傳轉) means the passing of the title to registered land, a registered charge or a registered long

term lease from one person to another person under an order of a court of competent jurisdiction, under an enactment or by operation of law;" ;

(xxxv) in the definition of "valuable consideration", by deleting the semicolon and substituting a full stop;

(xxxvi) by deleting the definition of "working day" ;

(xxxvii) by adding -

"appointed day" (指定日期) means the day appointed under section 1(2) for the commencement of section 20B;

"Court" (法庭) means the Court of First Instance;

"Land Registry" (土地註冊處) means the Land Registry of the Government of the Hong Kong Special Administrative Region

which is administered by the Registrar;

"Land Titles Indemnity Fund"

(土地業權彌償基金) means the indemnity fund established pursuant to section 87A;

"mortgage" (按揭) means a security over land for securing money or money's worth;

"regulations" (《規例》) means regulations made under this Ordinance;

"unregistrable interest"

(不可註冊權益) has the meaning assigned to it by section 1A(1) of the Land Registration Ordinance (Cap. 128);".

(b) By deleting subclause (2)(a), (b), (c), (d) and (e) and substituting -

"(a) the title to land becomes registered under this Ordinance by virtue of an entry being made in the Title Register specifying a

person as being the owner of that land, and references in this Ordinance to registered land shall be construed accordingly; and

- (b) any reference in any other enactment to "register in the Land Registry" or "registered in the Land Registry", or words to the like effect, shall be construed to mean register or registered under the Land Registration Ordinance (Cap. 128) or this Ordinance, as the case may require."

- 3 (a) By deleting subclause (1) and substituting -
- "(1) Subject to Part 2B and Schedule 1A, this Ordinance applies to land held under a Government lease."
- (b) In subclause (2), by deleting "another" and substituting "any other".
- (c) By deleting subclause (3) and substituting -
- "(3) Where an instrument supporting an application for registration of a transfer under this Ordinance is void

under the provisions of any other enactment governing the validity of a transfer, then the provisions of that enactment shall, in relation to the land to which the transfer relates, prevail over the provisions of this Ordinance."

(d) In subclause (4)(a), by deleting "定權益或衡平法" and substituting "律上或衡平法上的".

4 By deleting the clause.

5 By deleting the clause and substituting -

"5. The Title Register

(1) The Registrar shall keep in the Land Registry a register to be known as the Title Register.

(2) There shall be entered in the Title Register such matters as are or may be required to be entered therein under this Ordinance or any other enactment including, but not limited to -

(a) particulars of the land the title to which is registered under this Ordinance, including -

- (i) its title number (which may include letters or alphanumeric symbols or characters);
 - (ii) the lot number of the land;
 - (iii) the undivided shares, if any, in the land;
 - (iv) the location or address, if any, of the land;
 - (v) the date of commencement of the term of the relevant Government lease and its expiry date;
 - (vi) the name of the owner or owners of the land; and
 - (vii) the capacity in which the owner or owners hold the land, whether as sole owner, tenants in common, joint tenants, trustee or otherwise;
- (b) particulars of each long term lease registered under this Ordinance, including -
- (i) its title number (which may include letters or alphanumeric symbols or characters);

- (ii) the lot number of the land;
 - (iii) the undivided shares, if any,
in the land;
 - (iv) the location or address, if
any, of the land;
 - (v) the term of the lease;
 - (vi) the name of the lessee or
lessees of the lease; and
 - (vii) the capacity in which the
lessee or lessees hold the
lease, whether as sole lessee,
tenants in common, joint
tenants, trustee or otherwise;
- (c) particulars of each charge registered
under this Ordinance, including -
- (i) its application number (which
may include letters or
alphanumeric symbols or
characters); and
 - (ii) the name of the chargor;
- (d) particulars of all instruments which
support a current entry in the Title
Register;

- (e) the date of registration of each of the instruments referred to in paragraph (d);
- (f) particulars of any pending application for the registration of any matter under this Ordinance; and
- (g) such other matters as the Registrar is of the opinion should be contained in the Title Register.

5A. Applications register

(1) The Registrar shall keep in the Land Registry a register to be known as the applications register, which shall contain a record of all pending applications for the registration of any matter under this Ordinance.

(2) The applications register shall contain such particulars as are required by the regulations to be contained therein.

5B. Supporting documents

(1) The Registrar shall keep in the Land Registry, or make and keep in the Land Registry a microfilm, image record or other record (including

an image record of a microfilm) of, the following documents -

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

(2) Where a microfilm, image record or other record of a document is made under subsection (1), the Registrar may -

- (a) destroy or otherwise dispose of the document from which the record was made; or

(b) return that document to the person by whom, or on whose behalf, it was delivered to the Land Registry.

(3) Where a microfilm, image record or other record is made of a document under subsection (1), the microfilm, image record or other record, as the case may be, shall be treated for all purposes as the original document.

5C. Form of registers

The Title Register and the applications register may be kept in such form as the Registrar considers appropriate, including in a form other than a documentary form."

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(a) In subclause (1) -

(i) in paragraph (a), by deleting "the Land Registry in accordance with the provisions of";

(ii) by adding -

"(aa) subject to the regulations, be responsible for the

general management and
administration of the
Land Titles Indemnity
Fund;" ;

(iii) in the Chinese text, by deleting
paragraph (b) and substituting -

"(b) 對遵守本條例條文作出監管；
及" ;

(iv) in paragraph (c), by deleting "as
are imposed" and substituting "and
exercise such other powers as are
imposed or conferred".

(b) In subclause (2) -

(i) by adding "and exercise of his
powers," before "and in
particular" ;

(ii) in paragraph (c), by deleting
everything after "程序" and
substituting "、法律程序文件、資料或解
釋，並可爲此目的而爲該人監誓或監理該聲
明;" ;

(iii) in paragraph (d) -

- (A) by deleting "any registration" and substituting "the registration of a matter";
 - (B) in subparagraph (iv), by deleting "a matter" and substituting "the matter";
 - (iv) in paragraph (e), by deleting "and";
 - (v) in paragraph (f), by deleting "; and" and substituting a full stop;
 - (vi) by deleting paragraph (g).
- (c) In subclause (3), by deleting "in accordance with section 94".

New

By adding -

"6A. Registrar may apply to Court for directions

If any question of law arises in respect of the performance or exercise of any functions or powers imposed or conferred on the Registrar by or under this Ordinance, the Registrar may apply to the Court for directions."

7 In the heading, by adding "**functions and**" before
"powers".

8 (a) In subclause (2), by deleting "9" and
substituting "9A".

(b) In subclause (3) -

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

"(a) the Registrar (including
a delegate of the
Registrar under section
7); and";

(ii) in paragraph (b), by adding "(or
any such delegate)" after
"Registrar".

10 By deleting the clause.

11 By deleting the clause.

12 By deleting the clause.

13 By deleting the clause.

New By adding immediately before clause 14 -

"PART 2A

REGISTRATION PROCEDURES AND CONNECTED MATTERS".

14 By deleting the clause and substituting -

**"14. Matters capable of
being registered**

No matter shall be capable of being
registered in the Title Register unless -

- (a) the registration of the matter
is expressly provided for in
this Ordinance or any other
enactment (by whatever words
used);
- (b) where paragraph (a) is not
applicable, the matter is a
dealing in registered land, a
registered charge or a
registered long term lease;
- (c) where neither paragraph (a)
nor (b) is applicable, the
matter is an order of any
court or tribunal -

- (i) affecting registered land, a registered charge or a registered long term lease; and
 - (ii) issued or made for the purpose of enforcing a judgment; and
- (d) in any other case, the matter affects registered land, a registered charge or a registered long term lease and the Registrar permits it to be registered."

15

By deleting the clause and substituting -

"15. Applications for registration

(1) Except as otherwise expressly provided in this Ordinance, no matter shall be registered in the Title Register unless the matter is the subject of an application presented to the Registrar for the registration of that matter, and this

requirement applies -

- (a) whether or not any express reference is made in this Ordinance to that matter; or
- (b) if an express reference is made in this Ordinance to the registration of that matter, whether or not that reference is accompanied by an express reference to such an application.

(2) Each application for the registration of any matter shall be verified in such manner as is required by the regulations."

16

By deleting the clause and substituting -

"16. Manner of registration

(1) Except as otherwise expressly provided in this Ordinance, the registration of any matter in the Title Register shall be effected by the Registrar in the following manner -

- (a) by making, or adding to, an entry in the Title Register;
- (b) by removing or altering an entry in the Title Register; or
- (c) by any combination of the acts mentioned in paragraphs (a) and (b).

(2) The registration of a matter in the Title Register is effected when that matter is registered by virtue of the making, the addition to, or the removal or alteration of, an entry in the Title Register which refers to that matter, the application for registration of that matter or any document accompanying that application, or any combination thereof, and references in this Ordinance to the registration of any matter (howsoever expressed) shall be construed accordingly."

New

By adding -

**"16A. Entry in Title Register
constitutes notice to
all persons**

All persons are deemed to have notice of every entry in the Title Register."

17 (a) By deleting "an entry" and substituting "any entry".

(b) By deleting "in his opinion".

18 By deleting the clause.

19 (a) In subclause (1), by deleting "(and notwithstanding that it is a land title record)" and substituting "referred to in the Title Register, or a plan or microfilm, image record or other record of a plan kept in the Land Registry under section 5B,".

(b) By deleting subclause (2) and substituting -

"(2) For the avoidance of doubt, it is hereby declared that the fact that a plan is referred to in the Title Register, or the fact that a plan or microfilm, image record or other record of a plan is kept in the Land Registry under section 5B, shall not constitute a warranty, or a guarantee, as to the accuracy of the plan.".

20

- (a) In subclause (1), by deleting everything after "may" and substituting "effect the combination by making the appropriate entries in the Title Register to create a single title for the combined parcels of registered land."
- (b) In subclause (2), by adding ", in the circumstances prescribed by the regulations," after "Registrar shall".
- (c) In subclause (3), by deleting everything after "by" and substituting "making the appropriate entries in the Title Register to create a single title for each parcel of land into which the registered land is to be divided."
- (d) In subclause (4), by deleting everything after "that application" and substituting ", by making the appropriate entries in the Title Register to create a single title for each parcel of land into which the registered land is to be divided."
- (e) By deleting subclause (5).
- (f) By deleting subclause (6)(a), (b), (c) and (d) and substituting -

- "(a) an occupation permit may be issued under section 21 of the Buildings Ordinance (Cap. 123) on or after the appointed day;
- (b) a temporary occupation permit may be issued under section 21 of the Buildings Ordinance (Cap. 123) on or after the appointed day in respect of the whole or any part of the building;
- (c) a certificate of exemption has been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) before the appointed day but the building has not been completed before that day; or
- (d) a certificate of exemption under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) may be issued on or after the appointed day."

New

By adding

"PART 2B

REGISTRATION OF TITLE TO LAND
AND CONNECTED MATTERS

20A. Interpretation

In this Part -

"LRO land" (《土註條例》土地) has the meaning assigned to it by section 1 of Schedule 1A;

"new land" (新土地) means land granted under a Government lease or an agreement for a Government lease on or after the appointed day but does not include -

- (a) land granted under a short term tenancy; or
- (b) land which was the subject of a Government lease or agreement for a Government lease in effect immediately before the appointed day and which is the subject of an instrument executed on or after the appointed day

whereby -

- (i) the term of the Government lease or agreement for a Government lease has been extended;
- (ii) the area of the land has been extended; or
- (iii) the provisions of the Government lease or agreement for a Government lease have otherwise been varied;

"short term tenancy" (短期租約) means a lease expressed to be granted for a term of not more than 7 years; and in calculating that period for the purpose of this definition there shall be excluded any extension or renewal of the lease that has occurred, or may

occur, by virtue of the exercise of any right.

20B. Registration of title to new land

On the presentation of an application by the Director of Lands, the Registrar shall register the title to new land by -

- (a) making an entry in the Title Register to the effect that the Government lessee is the owner of the land; and
- (b) entering such other particulars in the Title Register relating to the land as the Registrar considers appropriate.

20C. Date of first registration of new land

The date of first registration of new land to which the title is registered under section 20B shall be the day on which the Registrar makes the entries in the Title Register referred to in that section.

**20D. Effect of first registration
of new land**

On the date of first registration of new land, the registration of any person as the owner of the land shall vest in that person the same legal estate or equitable interest and rights as would be vested in that person if the land were transferred to him and he was registered as the owner of land under section 21.

20E. Registration of LRO land

LRO land shall become registered land as provided in Schedule 1A."

Part 3 In the heading, by deleting ", ETC." and substituting "AND CONNECTED MATTERS".

21 (a) In the heading, by adding "**of transfer of land**" after "**registration**".

(b) By deleting subclause (1) and substituting -

"(1) Subject to sections 23 and 81, the registration of a person as the owner upon a transfer of land shall vest

in the person who is registered as the owner of the land the legal estate or equitable interest and rights described in subsection (1A), free from all other interests and claims except as specified in subsection (2).

(1A) (a) Where paragraph (a)(i) of the definition of "owner" in section 2(1) is applicable and the land is held under a Government lease or an agreement for a Government lease in respect of which a Government lease is deemed to have been issued under section 14 of the Conveyancing and Property Ordinance (Cap. 219), there shall vest in the person who is registered as the owner -

- (i) the legal estate in the land held under the Government lease or the agreement for the Government lease (but excluding any case where the person does not hold the full unexpired term of the lease of the land); and
 - (ii) all rights attaching to the land which may be exercised by virtue of that legal estate.
- (b) Where paragraph (a)(i) of the definition of "owner" in section 2(1) is applicable and the land is held under an agreement for a Government lease in respect of which any

condition precedent has not been complied with or has not been deemed to have been complied with under section 14 of the Conveyancing and Property Ordinance (Cap. 219), there shall vest in the person who is registered as the owner -

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

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

equitable interest.

- (c) Where paragraph (a)(ii) of the definition of "owner" in section 2(1) is applicable and the land is held under a Government lease or an agreement for a Government lease in respect of which a Government lease is deemed to have been issued under section 14 of the Conveyancing and Property Ordinance (Cap. 219), there shall vest in the person who is registered as the owner -
- (i) the legal estate of the undivided share in the land (but excluding any case where the person does not hold the

full unexpired term
of the lease of the
land); and

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

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

person who is registered
as the owner -

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

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

(c) In subclause (2), by deleting "operation of
subsection (1) in respect of land shall not
affect" and substituting "person who is
registered as the owner shall hold his legal
estate or equitable interest and rights
subject to".

(d) In subclause (3), by adding "registered" before "land".

22

(a) By deleting subclauses (1) and (2) and substituting -

"(1) Subject to subsections (2) and (4) and sections 23 and 81, immediately upon registration of a person as the lessee of a registered long term lease, there shall vest in the person, free from all other interests and claims -

(a) the interest in the lease; and

(b) all rights attaching to the land which may be exercised by virtue of that interest.

(2) The person who is registered as the lessee shall hold his interest and rights subject to -

(a) any covenants, exceptions, reservations, stipulations, provisos or declarations contained in

the Government lease of
the land or the long term
lease;

- (b) any registered matter
affecting the land; and
- (c) any overriding interest
affecting the land."

(b) By deleting subclause (3).

(c) In subclause (4), by adding "registered"
before "long".

23

(a) In subclause (2)(d), by deleting "14(2)(d) or
22(2)(d)" and substituting "4(2) or 7(2) of
Schedule 1A".

(b) By adding -

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

24

(a) In subclause (1) -

- (i) by deleting "Registered" and
substituting "All registered";
- (ii) by deleting paragraph (d) and

substituting -

"(d) any easements or rights
(whether existing before,
on or after the appointed
day) which are implied by
law on the disposition or
transmission of the land
and which are not
expressly granted or
reserved in any
instrument;"

(iii) in paragraph (e), by deleting
"commencement of this section" and
substituting "appointed day";

(iv) by deleting paragraph (f) and
substituting -

"(f) any rights (whether of
the Government or any
other person) under the
Government lease under
which the land is held;

(fa) any rights, under an
enactment, -

- (i) of resumption,
closure, entry,
search, inspection,
investigation, user,
repair, alteration,
removal, demolition,
marking, naming or
planning of
buildings or
development,
redevelopment or
reinstatement of
land;
- (ii) to extinguish
rights or to create
easements or other
rights;
- (iii) relating to costs,
standards or
specifications of
any building, street
or engineering
works; or

(iv) affecting land or
any interest in
land,
and any notices, orders
and certificates
relating to any such
rights;" ;

(v) by deleting paragraph (g) and
substituting -

"(g) any first charge under
section 18(1) of the
Estate Duty Ordinance
(Cap. 111), but only if -
(i) the instrument which
gave rise to the
charge was
registered under the
Land Registration
Ordinance (Cap. 128)
before the date of
first registration
of the land;
(ii) not more than 3
years have elapsed

since the date of
that instrument; and

(iii) the charge has not
been registered
under section 18(2)
of the Estate Duty
Ordinance (Cap.
111);

(ga) any first charge under
section 67 of the Stamp
Duty Ordinance (Cap.
117);".

(b) In subclause (3), by deleting "(1)(f)(ii)"
and substituting "(1)(fa)".

(c) By deleting subclause (4) and substituting -

"(4) The Court may order -

(a) the registration of an
overriding interest in
such manner as it thinks
fit and specified in the
order; or

(b) the removal or alteration
of an entry in the Title
Register referring to an

overriding interest."

(d) By deleting subclause (5) and substituting -

"(5) The Registrar shall give effect to an order made under subsection (4) in accordance with the provisions of the order."

25 By deleting the clause.

Part 4 In the heading, by deleting "AND SEARCHES" and substituting ", SEARCHES AND EVIDENCE".

26 (a) In subclause (2), by adding "which is" after "lease".

(b) In subclause (5), by deleting "If" and substituting "Except in the circumstances permitted under the regulations, if".

(c) In subclause (6)(b), by adding "subject to subsection (7)," before "shall".

(d) By deleting subclause (7) and substituting -

"(7) A new title certificate may be issued, in accordance with the regulations, in place of a title certificate which has been lost or

destroyed or which for any other reason
needs to be replaced."

(e) In subclause (8), by adding "registered long
term" before "lease".

27

(a) In subclause (1) -

(i) in paragraph (b), by deleting
"regulations made under section
100" and substituting "the
regulations";

(ii) by deleting "5(2)" and substituting
"5, 5A or 5B".

(b) In subclause (2) -

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

"(a) have made available any
thing referred to in
section 5, 5A or 5B in a
manner not expressly
permitted under the
regulations (or, where
more than one manner is
so permitted, in any one
such manner as the

Registrar decides);";

- (ii) in paragraph (b), by deleting
"referred to in that subsection".

28

(a) In subclause (1)(a) -

- (i) by deleting subparagraphs (ii) and
(iii) and substituting -

- "(ii) the applications register
(including any part
thereof);

- (iii) any document, or any
microfilm, image record
or other record of a
document, kept in the
Land Registry under
section 5B (including any
part thereof);";

- (ii) in subparagraph (iv), by deleting
"prescribed" and substituting
"specified";

- (iii) by deleting subparagraphs (v) and
(vi) and substituting -

- "(v) any other document
(including any part

thereof) -

(A) which is filed or deposited in the Land Registry under the provisions of this Ordinance or any other enactment;

or

(B) which otherwise belongs to the Land Registry; or

(vi) any endorsement on the Title Register, the applications register or any document, record or form referred to in subparagraph (iii), (iv) or (v); and".

(b) In subclause (3), by deleting "paragraph (a)(i), (ii), (iii), (iv), (v) or (vi) of subsection (1)" and substituting "subsection (1)(a)".

Part 5 In the heading, by adding "AND CONNECTED MATTERS"
after "DISPOSITIONS".

29 (a) By deleting the heading and substituting
 "**Dispositions and instruments**".

(b) In subclause (1) -

(i) by deleting "No" and substituting
 "Subject to subsection (2), no";

(ii) by deleting "in or over land" and
 substituting "in or over registered
 land";

(iii) by adding "under this Ordinance"
 after "is registered".

(c) By deleting subclause (2) and substituting -

(2) Nothing in this section shall
be construed as preventing an interest
in or over registered land or a
registered long term lease which is not
registered under this Ordinance from
taking effect in equity if the interest
is -

(a) capable of registration
 under this Ordinance; or

(b) protected by an entry in
the Title Register."

30 By deleting the clause.

31 (a) In subclause (1), by deleting "matter" and
substituting "dealing".

(b) In subclause (2), by deleting "matter"
wherever it appears and substituting
"dealing".

32 (a) In subclause (1) -

(i) by deleting "through that person's
wilful default" and substituting
"without reasonable excuse";

(ii) by deleting "matter" and
substituting "dealing".

(b) In subclause (2), by deleting "the subject of
a notice" and substituting "in relation to
which a notice has been issued".

33 (a) In subclause (1), by deleting "(3), (4), (5)
and (6) and sections 24(6) and 71(1)(b)" and
substituting "(3), (7), (8) and (9) and

section 9 of Schedule 1A".

(b) By deleting subclauses (4), (5) and (6).

(c) By deleting subclause (7) and substituting -

"(7) It is hereby declared that

where -

(a) a consent caution ("first consent caution")

referred to in section

70(2) has been registered

in respect of a dealing;

(b) the provisional agreement

for sale and purchase or

agreement for sale and

purchase to which the

first consent caution

relates is stamped or

endorsed under the Stamp

Duty Ordinance (Cap.

117); and

(c) another consent caution

("second consent

caution"), accompanied by

that stamped or endorsed

provisional agreement for

sale and purchase or
agreement for sale and
purchase, as the case may
be, is registered in
respect of that dealing
not later than 30 days
after the registration of
the first consent
caution,

then the second consent caution shall
enjoy the same priority as the first
consent caution, as if it had been
registered on the same date as the first
consent caution.

(8) If a consent caution is
registered in relation to an interest
under a provisional agreement for sale
and purchase or an agreement for sale
and purchase, then, upon the
registration of the dealing to which the
consent caution relates, the priority of
all matters registered after that
consent caution is registered shall be
postponed as against that dealing.

(9) A charging order or non-consent caution which is duly registered shall have priority from the commencement of the day following the date of its registration."

34

(a) In the heading, by adding "**, etc.**" after "**pendens**".

(b) By deleting subclause (1) and substituting -

"(1) Subject to subsections (2), (3) and (4) -

(a) the registration of a charging order shall cease to have effect immediately upon the expiration of 5 years from the date of registration of the order but the order may be re-registered from time to time and, if so re-registered, the re-registration of the order shall have effect for

another 5 years from the date of re-registration; and

- (b) if the re-registration of a charging order is made before the expiration of a current period of registration or re-registration of the order, then the order shall retain its original priority.".
- (c) In subclause (3), by adding "of competent jurisdiction" after "court".
- (d) In subclause (4), by adding "of competent jurisdiction" after "court".
- (e) By deleting subclause (5) and (6) and substituting -

"(5) Without prejudice to the generality of any other provisions of this Ordinance under which the registration of a judgment, order or lis pendens may be removed or withdrawn, subsections (1) and (2) shall, with all

necessary modifications, apply to a judgment, order or lis pendens as they apply to a charging order.

(6) A charging order, judgment or order shall be registered in the manner prescribed by the regulations."

35

By deleting subclause (3) and substituting -

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

- (a) a registered charge shall not operate as a transfer of the registered land or the registered long term lease which is subject to the charge but shall have effect as a security only; and
- (b) where the registered charge is a mortgage effected by a legal charge within the meaning of section 2 of the Conveyancing and Property Ordinance (Cap. 219), the registration of the charge under this Ordinance

shall not affect the operation
of section 44(2) of that
Ordinance."

36 By deleting "land or the lessee of a registered
long term lease" and substituting "land, or the
lessee of a registered long term lease, which is".

38 (a) In paragraph (a), by adding "在" after
"除".

(b) By deleting paragraph (b) and substituting -
"(b) in the case of a partial discharge, the
alteration of the entry in the Title
Register referring to the charge or its
removal or substitution by a new entry,
as the case may require."

39 (a) By deleting "Notwithstanding section 38, on"
and substituting "On".

(b) In paragraph (c), by deleting "(partial
payment)".

(c) In paragraph (d), by deleting "(partial
fulfilment)".

(d) By deleting paragraphs (e) and (f) and substituting -

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

(f) in the case of paragraph (c) or (d), alter the entry in the Title Register referring to the charge or remove the entry or substitute a new entry, as the case may require.".

41(1)(b) By deleting "chargee" and substituting "owner".

42 By deleting the heading and substituting "**Division of land, etc.**".

43 (a) In the heading, by deleting "**Covenants**" and substituting "**Implied covenants**".

(b) By renumbering the clause as clause 43(1).

(c) By adding -

"(2) Where a covenant implied under section 35 of the Conveyancing and Property Ordinance (Cap. 219) is to be

excluded, varied or extended in a transfer of registered land or a registered charge, express reference shall be made to the covenant so excluded, varied or extended in the instrument supporting the transfer or registered charge.

(3) Where a transfer or charge is supported by an instrument mentioned in subsection (2), then the registration of the transfer or charge shall of itself effect the registration of the covenant implied under section 35 of the Conveyancing and Property Ordinance (Cap. 219) as varied or extended by the transfer or charge."

44

- (a) In subclause (1) -
 - (i) by deleting ", other than a lessee or chargee";
 - (ii) in paragraph (a), by deleting everything after subparagraph (i) and substituting -

"(ii) a copy of any instrument referred to in any such entry;

(iii) a copy of any plan referred to in any such entry or instrument; and

(iv) such other documents as may be prescribed by the regulations,

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

(iii) in paragraph (b), by deleting "of" after "knowledge".

(b) In subclause (2) -

(i) by deleting "assignment effecting a first registration of land under section 12(1)(a) on or after the commencement day" and substituting "transfer on or after the date of

first registration of land";

- (ii) in paragraph (b), by deleting
"first registration of the land"
and substituting "registration of
the transfer".

- (c) By deleting subclause (3) and substituting -

"(3) Notwithstanding any
stipulation to the contrary, on a sale
of registered land or a registered long
term lease, a purchaser shall only be
entitled to require from the vendor the
matters required to be provided by the
vendor to the purchaser under this
section.".

45 By adding "transferor or" before "transferee.".

- 46 (a) In the heading, by adding "**other than long
term leases**" after "**Leases**".

- (b) By deleting subclause (2) and substituting -

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

- (a) a lease which is an overriding interest;
- (b) a lease of any land which is not registered land;
or
- (c) a long term lease."

47

- (a) In subclause (1) -
 - (i) by deleting "in the specified form";
 - (ii) by deleting "尋" and substituting "要".
- (b) By deleting subclause (3) and substituting -
 - "(3) The Registrar may register a long term lease which is the subject of an application under subsection (1) if the Registrar is satisfied that the application complies with the provisions of this Ordinance applicable to it.
 - (4) The Registrar shall register a long term lease which is the subject of an application under subsection (1) by -

- (a) making an entry in the Title Register specifying that the applicant is the lessee of the long term lease; and
- (b) entering such other particulars in the Title Register relating to the lease as the Registrar considers appropriate.

(5) The date of first registration of a long term lease registered under this section shall be the date on which the application for registration of the lease was delivered to the Land Registry."

48

By deleting the clause and substituting -

"48. Termination of leases

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

to the Registrar therefor together with -

(a) the instrument, if any,
providing for the termination;

or

(b) such other evidence as
satisfies the Registrar that
the lease has been
terminated."

49 (a) In subclause (1)(c), by deleting "benefitted"
and substituting "benefited".

(b) In subclause (2), by deleting "benefitted"
and substituting "benefited".

50(1) By deleting everything after "burdened" and
substituting "and the registered land or the
registered long term lease benefited by the
covenant".

51 (a) By deleting subclause (1)(b) and
substituting -

"(b) entering particulars of the deed in
the Title Register."

(b) By adding -

"(1A) The registration of any alteration or addition to a registered deed of mutual covenant shall be effected by -

(a) adding to or altering the entry in the Title Register referring to the deed; or

(b) removing that entry and substituting a new entry in relation to the deed."

(c) In subclause (2) -

(i) by adding ", including any registered alterations or additions," after "covenant";

(ii) by deleting "from the Title Register the entry" and substituting "the entry in the Title Register".

(d) By adding -

"(2A) The registration of a deed of mutual covenant under this section shall also effect the registration of any

easement, right or covenant provided for in the deed which affects the registered land or registered long term lease concerned."

- (e) In subclause (3), by deleting the definitions of "deed of mutual covenant" and "registered deed of mutual covenant" and substituting -

"deed of mutual covenant" (公契)

includes a document which defines the rights, interests and obligations of owners among themselves;

"owner" (擁有人) has the meaning assigned to it by section 2 of the Building Management Ordinance (Cap. 344)."

- (f) In subclause (4), by deleting everything after "declared that" and substituting ", except to the extent provided by this Ordinance, nothing in this section shall prejudice the operation of sections 39, 40 and 41 of the Conveyancing and Property Ordinance (Cap. 219)."

52 By deleting the clause.

53(2) (a) In paragraph (b) -

(i) in subparagraph (i), by deleting ";
or" and substituting a semicolon;

(ii) in subparagraph (ii), by deleting
the comma and substituting "; or";

(iii) by adding -

"(iii) the easement or covenant
has otherwise ceased to
have effect,".

(b) By deleting "除業" and substituting "除在業".

54(b) By deleting "benefitted" and substituting
"benefited".

57 (a) In the heading, by adding ", **etc.**" after
"**succession**".

(b) In paragraph (b), by deleting "or".

(c) In paragraph (c), by deleting the full stop
and substituting "; or".

(d) By adding -

"(d) the operation of section 15 or 18

of the New Territories Ordinance
(Cap. 97).".

58(1) By deleting ", or the date of registration of the long term lease under 47 or 48," and substituting "of the land or lease".

59 By deleting the clause and substituting -

"59. Stamping

(1) Without prejudice to the operation of section 15(3) of the Stamp Duty Ordinance (Cap. 117), no instrument required by law to be stamped shall be accepted for registration of any matter unless the instrument is stamped in accordance with the requirements of that Ordinance.

(2) Subject to section 70(2) and without prejudice to the operation of section 15(3) of the Stamp Duty Ordinance (Cap. 117), where an application for the registration of a consent caution, a non-consent caution, an inhibition or a restriction for the purpose of protecting an interest in registered land, a registered charge or a registered long term

lease is supported by an instrument required by law to be stamped, the registration shall not be proceeded with unless the instrument is stamped in accordance with the requirements of the Stamp Duty Ordinance (Cap. 117).".

60 By deleting the clause.

61 By deleting the clause and substituting -

"61. Minors

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

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

(a) the person to whom the disposition is made acted in good faith and for valuable

consideration; and

- (b) the fact that the minor was a minor was not disclosed to that person at any time before the registration of the disposition,

that disposition shall not be set aside only on the ground that the disposition was made by a minor.

(3) For the avoidance of doubt, it is hereby declared that where the owner of registered land or a registered charge, or the lessee of a registered long term lease, is a minor and that fact is disclosed to the Registrar in any application for registration made by him, then the name of that minor shall be entered in the Title Register with the addition after the minor's English name of the words "a minor" and with the addition after his Chinese name of the words "未成年人".

New

By adding immediately before clause 62 -

"61A. Transmission

(1) Without prejudice to the operation of sections 62, 63, 64, 65, 66 and 67, where a person has become entitled to registered land, a registered charge or a registered long term lease under an order of a court, under an enactment or by operation of law (including so entitled in the capacity of trustee), the Registrar shall, on the presentation to him by the person of such evidence as the Registrar requires, register the person so entitled -

(a) as the owner, or as the owner in the capacity of trustee, of the land or charge; or

(b) as the lessee, or as the lessee in the capacity of trustee, of the lease,

as the case may require.

(2) The registration of a person under subsection (1) as the owner, or as the owner in the capacity of trustee, of registered land shall be treated as only confirming that

the person has the same legal estate or equitable interest and rights as would have been vested in that person if the land had been transferred to him and he had been registered as the owner of the land under section 21.

(3) The registration of a person under subsection (1) as the lessee, or as the lessee in the capacity of trustee, of a registered long term lease shall be treated as only confirming that the person has the same interest and rights as would have been vested in that person if he had been registered as the lessee of the lease under section 22."

62

(a) In subclause (1), by deleting everything after "Title Register" and substituting a full stop.

(b) By deleting subclause (2) and substituting -

"(2) The Registrar shall not remove the name of a deceased from the Title Register under subsection (1) until he is satisfied that -

(a) estate duty is not payable under the Estate Duty Ordinance (Cap. 111) on the deceased's interest in registered land or the registered long term lease concerned; or

(b) where such estate duty is payable on such interest -

(i) the estate duty has been paid in accordance with the provisions of that Ordinance; or

(ii) the payment of the estate duty has been secured to the satisfaction of the Commissioner under section 15 of the Estate Duty Ordinance (Cap.

111).".

63

(a) In subclause (1) -

(i) by deleting "a lessee of lessees holding as tenants in common" and substituting "one of 2 or more lessees holding as tenants in common of";

(ii) by deleting "by transmission".

(b) In subclause (2) -

(i) by deleting "a lessee of lessees holding as tenants in common" and substituting "one of 2 or more lessees holding as tenants in common of";

(ii) by deleting "by transmission".

(c) In subclause (3), by deleting "by transmission".

64

By deleting "by transmission".

65

(a) In the heading, by adding "**and dealing by personal representative**" after "**death**".

(b) In subclause (1) -

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

"(a) be subject to any interests to which the land, charge or lease is subject at the time of registration of the personal representative as the owner or lessee, as the case may be; and";

(ii) in paragraph (b), by deleting "be deemed to have been registered as the owner of the land or charge, or as the lessee of the lease, with" and substituting "have".

(c) By deleting subclause (2).

66

(a) In subclause (1) -

(i) by deleting "of First Instance";

(ii) by deleting "by transmission".

(b) In subclause (2) -

(i) in paragraph (a)(ii), by deleting everything after "interests" and substituting "subject to which the

bankrupt or deceased owner of the land or charge or lessee of the lease held the land, charge or lease immediately prior to his bankruptcy or death;

- (ii) in paragraph (b), by deleting "他擁" and substituting "他須擁".

67(4)(b) By deleting everything after "interests" and substituting "subject to which the company held the land, charge or lease immediately prior to the order made under section 198 of the Companies Ordinance (Cap. 32) by virtue of which the land, charge or lease was vested in the liquidator.".

68 By deleting the clause.

69 (a) By deleting the heading and substituting "**Trusts**".

(b) By deleting subclause (1) and substituting -
"(1) A person who, in the capacity of trustee (other than as a personal representative or trustee in

bankruptcy) -

- (a) acquires registered land,
a registered charge or a
registered long term
lease;
- (b) holds a registered
charge;
- (c) holds a long term lease;
or
- (d) becomes the lessee of a
Government lease issued
on or after the appointed
day,

may be described by that capacity in the relevant instrument, and, if so described, shall be registered with the addition of the words "as trustee" and "作為受託人", but the Registrar shall not enter particulars of the trust concerned in the Title Register."

(c) By adding -

"(2A) For the avoidance of doubt,
it is hereby declared that subsections

(1) and (2) shall not prevent the making of an entry of a consent caution, non-consent caution, inhibition or restriction in the Title Register by reason only of the fact that the entry contains particulars of a trust."

(d) By deleting subclause (3) and substituting -

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

(a) shall be subject to any interests to which the land, charge or lease is subject at the time of registration of the person as the owner or lessee, as the case may be; and

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

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

New

By adding in Part 7 -

"69A. Protection of person dealing with trustees

Where a person, in the capacity of trustee, is registered as the owner of registered land or a registered charge, or as the lessee of a registered long term lease, he shall, in dealing with the land, charge or lease, be deemed to be the owner of that land or charge or lessee of that lease, and no disposition that amounts to a breach of trust by the trustee to a bona fide purchaser for

valuable consideration shall be defeasible by reason only of the fact of that breach."

70

(a) By deleting subclause (1) and substituting -

"(1) A person who intends to effect a dealing in registered land, a registered charge or a registered long term lease may present to the Registrar an application for the registration of a consent caution in respect of the dealing if he has obtained the consent of the relevant person specified in subsection (1A).

(1A) For the purposes of subsection (1), the relevant person is -

(a) the owner of the registered land or registered charge, or the lessee of the registered long term lease, as the case may be; or

(b) the cautioner under a registered consent caution with whom any

person intends to enter into a dealing in respect of an interest that the cautioner claims under that registered consent caution."

(b) By deleting subclauses (2) and (3) and substituting -

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

(3) A person who -

(a) claims any interest,
whether contractual or
otherwise, in registered
land or a registered
charge, or a registered
long term lease; or

(b) has presented a winding-
up petition against the
owner of registered land
or a registered charge,
or the lessee of a
registered long term
lease,

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

(c) In subclause (4)(b), by deleting "made where"
and substituting "made and".

(d) In subclause (5) -

- (i) by deleting "in registered land or a registered long term lease which is not for valuable consideration" and substituting "by a natural person of registered land or a registered long term lease by way of gift inter vivos";
 - (ii) by deleting "該宗" and substituting "該項".
- (e) By deleting subclause (6) and substituting -
- "(6) Notwithstanding subsection (3), for the purposes of subsection (5), an application for the registration of a transfer referred to in subsection (5) shall be accompanied by an application for the registration of a non-consent caution referred to in subsection (5) made by the same person who makes the application for registration of the transfer."
- (f) In the Chinese text, by deleting subclause (7) and substituting -

"(7) 就已註冊的第(6)款提述的非同意警告書而言，在業權註冊紀錄上須記入《遺產稅條例》(第111章)所指的署長為提出該警告書的人，而本條例的其他條文(包括第72條)須據此解釋。".

- (g) In subclause (8), by adding "consent caution or non-consent" before "caution".
- (h) In subclause (9), by adding "consent caution or non-consent" before "caution".
- (i) By deleting subclause (10) and substituting -
"(10) The Registrar may refuse to register a consent caution or non-consent caution the purpose of which he considers can be effected by an entry in the Title Register other than an entry referring to the caution.".
- (j) In subclause (11), by adding "consent caution or non-consent" before "caution".
- (k) By deleting subclause (13).
- (a) By deleting subclause (1) and substituting -
"(1) Where a consent caution has been registered in respect of registered land, a registered charge or a

registered long term lease, the consent caution shall not of itself prohibit the registration of matters in the Title Register affecting the land, charge or lease.".

(b) By adding -

"(2A) For the avoidance of doubt, it is hereby declared that the registration of a consent caution shall not -

(a) of itself affect the validity or otherwise of the interest which is the subject of the consent caution; and

(b) without prejudice to the generality of paragraph (a), constitute a warranty, or a guarantee, as to the validity of the interest which is the subject of the consent caution.".

(c) In subclause (3) -

(i) in paragraph (a), by deleting

"interest or winding-up petition"
and substituting "winding-up
petition or claim which is";

- (ii) in paragraph (b), by deleting
everything after "validity of the"
and substituting "winding-up
petition or claim."

72

- (a) By deleting subclause (1) and substituting -

"(1) A consent caution or non-
consent caution may be withdrawn on the
presentation to the Registrar by the
cautioner of an application for the
withdrawal of the caution.

(1A) A consent caution or non-
consent caution may be removed on the
presentation to the Registrar of an
application for its removal -

- (a) in any case, by a person
who has obtained an order
of the Court for its
removal;
- (b) in the case of a consent
caution, by the owner of

the registered land or
the registered charge, or
the lessee of the
registered long term
lease, affected by the
caution, but only if the
Registrar is satisfied
that the cautioner has
agreed to its removal; or

(c) in the case of a non-
consent caution, by the
owner of the registered
land or the registered
charge, or the lessee of
the registered long term
lease, affected by the
caution, but only if the
Registrar -

(i) is satisfied that
the owner or lessee
has provided a copy
of the application
to the cautioner not
less than 14 days

before the
presentation of the
application to the
Registrar; and

(ii) is satisfied -

(A) that the
caution was
wrongfully
registered;

(B) that the ground
on which the
caution was
registered no
longer exists;
or

(C) that the
cautioner
consents to the
removal of the
caution.".

(b) In subclause (2), by deleting
"(1)(b)(iii)(B)" and substituting
"(1A)(c)(ii)".

(c) In subclause (3), by deleting "caution under subsection (1)(b)(ii) or (iii)" and substituting "consent caution or non-consent caution under subsection (1A)(b) or (c)".

(d) By deleting subclauses (4) and (5) and substituting -

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

(e) In subclause (6), by adding "consent caution or non-consent" before "caution -".

(f) By deleting subclause (7) and substituting -

"(7) The Registrar shall give effect to an order made under subsection (1A)(a) or (4) in accordance with the provisions of the order."

73

By deleting the clause and substituting -

"73. Wrongful cautions

(1) A person who applies to register a consent caution or non-consent caution without reasonable cause shall be liable, in an action for damages at the suit of -

(a) the owner of the registered land or registered charge concerned;

(b) the lessee of the registered long term lease concerned; or

(c) any other person who has an interest in the land, charge or lease,

to pay compensation to the owner, lessee or other person for any damage sustained thereby, in such amount as to the Court appears just.

(2) A cautioner under a registered consent caution or non-consent caution who fails, without reasonable excuse, to apply to the Registrar for the withdrawal of the caution within a reasonable period of time after the ground on which it was registered

ceases to exist, shall be liable, in an action for damages at the suit of a person referred to in subsection (1)(a), (b) or (c), to pay compensation to that person for any damage sustained thereby, in such amount as to the Court appears just."

74

(a) In the heading, by deleting "**of First Instance**".

(b) In subclause (1), by deleting everything before paragraph (a) and substituting -

"(1) The Court may, if it appears to the Court that it is necessary or desirable to do so for the purpose of protecting an interest or claim in relation to registered land, a registered charge or a registered long term lease, make an order inhibiting the registration of any dealing in the land, charge or lease, on such terms and conditions as it thinks fit -".

(c) In subclause (2), by deleting "of First Instance".

charge, or of the lessee of the registered long term lease, to deal in the land, charge or lease should be restricted to -

(i) prevent invalidity or unlawfulness in relation to dealing in the land, charge or lease; or

(ii) protect an interest or claim in relation to the land, charge or lease,".

(b) By adding -

"(5) In this section, "interested person" (利害關係人), in relation to registered land, a registered charge or a registered long term lease, means a person -

(a) who is the owner of the land or charge or the lessee of the lease;

(b) who is entitled to be registered as the owner of the land or charge or

the lessee of the lease;

or

- (c) who falls within a class of persons prescribed by the regulations for the purposes of this section."

78

By deleting subclause (2) and substituting -

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

- (a) with the consent of the Registrar; or

- (b) by order of the Court."

79

(a) In subclause (1) -

- (i) in paragraph (b), by deleting "in accordance with section 94";

- (ii) by deleting "vary" and substituting "alter".

- (b) In subclause (2) -
 - (i) by deleting "of First Instance" where it twice appears;
 - (ii) by deleting "other order" and substituting "other orders".
- (c) By deleting subclause (3) and substituting -
 - "(3) The Registrar shall give effect to an order made under subsection (2) in accordance with the provisions of the order."

Part 9

In the heading, by deleting "AND INDEMNITY".

80

- (a) In subclause (1) -
 - (i) by deleting "in or omission from" and substituting "or omission in";
 - (ii) by deleting paragraph (a) and substituting -
 - "(a) on his own volition, if the rectification will not materially affect the interest of the owner of registered land or a registered charge, or the

lessee of a registered
long term lease;

(aa) on application presented
to him by any person, if
the applicant proves to
the satisfaction of the
Registrar that the error
or omission is of a
clerical nature only and
that the rectification
will not materially
affect the interest of
the owner of the
registered land or a
registered charge, or the
lessee of a registered
long term lease; or";

(iii) in paragraph (b), by adding a comma
after "case".

(b) By adding -

"(3) Where -

(a) pursuant to section
61(3), the name of a
minor is entered in the

Title Register as the
owner of registered land
or a registered charge,
or as the lessee of a
registered long term
lease; and

- (b) the owner or lessee, as
the case may be, attains
full age,

then the owner or lessee, as the case
may be, may make an application to the
Registrar to remove the words in the
Title Register which describe him as a
minor.

(4) On receipt of an application
under subsection (3), the Registrar
shall, if he is satisfied that the owner
or lessee concerned has attained full
age, remove the words in the Title
Register which describe him as a
minor."

(1) Subject to subsections (2) and (3) and section 81A, the Court may, on application by any person, order the rectification of the Title Register by directing that an entry therein relating to registered land or a registered long term lease be removed or altered, or that an entry relating to registered land or a registered long term lease which has been omitted from the Title Register be entered therein, if the Court is satisfied that the entry was obtained, made or omitted, as the case may be, by or as a result of -

(a) the fraud, mistake or omission of any person; or

(b) a void or voidable instrument.

(2) No order may be made under subsection (1) so as to affect the title of a person who is the registered owner of registered land or the registered lessee of a registered long term lease, and who is in possession of the land and has acquired the land or lease for valuable consideration, unless the Court is satisfied -

(a) that the name of such person was entered in the Title Register as the owner or lessee, as the case may be, by or directly as a result of the fraud, mistake or omission in question or the void or voidable instrument in question, as the case may be; and

(b) that -

(i) in the case of fraud, the person -

(A) was a party to the fraud;

(B) had knowledge of the fraud at the time his name was so entered in the Title Register; or

(C) had, by his act or by lack of proper care, substantially contributed to the

fraud;

(ii) in the case of a mistake
or omission, the person -

(A) caused the mistake
or omission;

(B) had knowledge of the
mistake or omission
at the time his name
was so entered in
the Title Register;

or

(C) had, by his act or
by lack of proper
care, substantially
contributed to the
mistake or omission;

or

(iii) in the case of a void or
voidable instrument, the
person -

(A) caused the
instrument to be
void or voidable, as
the case may be;

(B) had knowledge that the instrument was void or voidable, as the case may be, at the time his name was so entered in the Title Register; or

(C) had, by his act or by lack of proper care, substantially contributed to making the instrument void or voidable, as the case may be.

(3) Subject to section 81A, on an application made under subsection (1) by a former registered owner of registered land or a former registered lessee of a registered long term lease to restore his title to the land or lease on the ground that he lost his title by or as a result of fraud, the Court shall order the rectification of the Title

Register to so restore the title of the applicant (and irrespective of whoever is currently the registered owner or registered lessee of the land or lease concerned), if the Court is satisfied that -

- (a) the entry in the Title Register by or as result of which the applicant lost his title was procured, whether in whole or in part, by or as a result of -
 - (i) a void instrument; or
 - (ii) a false entry in the Title Register;
- (b) the applicant was not a party to the fraud; and
- (c) the applicant did not, by his act or by lack of proper care, substantially contribute to the fraud.

(4) An order may be made under subsection (1) or (3) whether or not the entry in the Title Register in question was obtained, made or omitted, as the case may

be, before, on or after the date of first registration of the registered land or registered long term lease concerned.

(5) The Registrar shall give effect to an order made under subsection (1) or (3) in accordance with the provisions of the order.

(6) This section is without prejudice to the operation of section 3(4)(c).

(7) The Court may make such order as to the costs of proceedings under this section as to the Court appears just.

(8) Any costs of proceedings awarded against the Registrar in any proceedings under this section shall be paid out of the Land Titles Indemnity Fund.

(9) For the purpose of subsection (2), a person who is in receipt of rents or profits, or who has the right to receive rents or profits, in respect of the registered land or registered long term lease concerned shall be treated as being in possession of the land.".

**"81A. Time for bringing proceedings
under section 81**

(1) Subject to subsection (2), no application for the rectification of the Title Register may be made under section 81 after the end of the period of 12 years from the date on which the entry in the Title Register in question was obtained, made or omitted, as the case may be.

(2) The Limitation Ordinance (Cap. 347) shall apply, with necessary modifications, to an application for the rectification of the Title Register under section 81 of this Ordinance."

New By adding immediately before clause 82 -

"PART 9A
INDEMNITY"

82 (a) In subclause (1) -

(i) by deleting "(2), (4)(b) and (c)
and (5)" and substituting "(2) and
(4)(b) and (c)";

(ii) by deleting "or omission from" and

substituting ", or an entry omitted from,".

(b) In subclause (4) -

(i) in paragraph (a), by deleting "in respect of the registered land" and substituting "of the registered land or registered long term lease";

(ii) in paragraph (b) -

(A) in subparagraph (i), by deleting "in respect" where it first appears;

(B) in subparagraph (ii), by deleting "registration of the lease as a long term lease in respect" and substituting "first registration";

(iii) by deleting paragraph (c) and substituting -

"(c) no indemnity shall be payable under subsection (1) in respect of any fraud, mistake or omission -

- (i) subject to
subparagraph (ii)
which occurred
before the date of
first registration
of the registered
land concerned and
is discovered
(whether in
proceedings before
any court or
otherwise) on or
after that date; or
- (ii) which occurred
before the date of
first registration
of the registered
long term lease
concerned and is
discovered (whether
in proceedings
before any court or
otherwise) on or
after that date;

(d) no indemnity shall be payable under subsection (1) in respect of any fraud, mistake or omission in relation to land which is not registered land (including any lease to which the land is subject), and whether or not the fraud, mistake or omission occurred before, on or after the appointed day."

(c) By deleting subclause (5).

(d) In subclause (6), by deleting "(2), (4)(b) and (c) and (5)" and substituting "(2) and (4)(b) and (c)".

83

(a) By deleting subclause (1)(a) and (b) and substituting -

"(a) in the case of any such entry obtained, made or omitted by or as the result of fraud on the part of

any person -

(i) the value of the interest in the registered land or registered long term lease concerned on the date on which such entry was obtained, made or omitted; or

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

whichever is the lesser;

(b) in any other case, the value of the interest in the registered land or registered long term lease concerned on the date on which the mistake or omission concerned was made."

(b) By deleting subclause (2) and substituting -

"(2) Where 2 or more persons have ceased to be the owners of registered land or the lessees of a registered long term lease in consequence of -

(a) an order being made under section 81(1) or (3) for the rectification of the Title Register on the ground of fraud; or

(b) a fraud referred to in section 82(1),

and, in consequence of that cesser, those persons are entitled to be paid an indemnity under section 82(1), then the total of the indemnity shall not exceed the amount referred to in subsection (1)(a).".

84

(a) In subclause (2), by deleting "of First Instance" where it twice appears.

(b) In subclause (3), by deleting "of First Instance".

(c) In subclause (4), by deleting "of First Instance under" and substituting "under Part

9 or".

86

By deleting the clause and substituting -

"86. Recovery of indemnity paid

(1) Where an indemnity is paid for a loss, the Government shall be entitled to recover the amount paid from any persons who have caused or substantially contributed to the loss by their fraud, in proportion to their respective contributions to the loss.

(2) The Government shall be entitled to enforce any express or implied covenant or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which indemnity has been paid.

(3) For the avoidance of doubt, it is hereby declared that subsections (1) and (2) shall not operate to prevent a person to whom an indemnity has been paid from taking any legal proceedings or enforcing any right to recover any amount of damages that, by virtue of the operation of section 83(1)(a), he has not been able to recover from the Land Titles

Indemnity fund."

87

(a) By deleting paragraph (a)(ii) and substituting -

"(ii) shown in the Title Register, on any Government lease or on any plan, or on any microfilm, image record or other record of any plan, kept in the Land Registry under section 5B;"

(b) By deleting paragraph (b)(ii) and substituting -

"(ii) shown in the Title Register, on any Government lease or on any plan, or on any microfilm, image record or other record of any plan, kept in the Land Registry under section 5B; and"

New

By adding in Part 9A -

"87A. Land Titles Indemnity Fund

(1) An indemnity fund, to be known as the Land Titles Indemnity Fund, shall be

established for the purposes of this Part in accordance with the regulations.

(2) The amount of any indemnity awarded under section 84(1) or (2)(b) shall be paid out of the Land Titles Indemnity Fund."

Part 10 In the heading, by adding "AND RULES" after "APPEALS".

88 By deleting the clause.

89 (a) In subclause (1), by deleting "of First Instance" where it twice appears.

(b) In subclause (2)(a), by deleting "of First Instance".

(c) In subclause (3) -

(i) in paragraph (c), by deleting "of First Instance";

(ii) by deleting "發言" where it twice appears and substituting "陳詞".

(d) In subclause (4), by deleting "of First Instance".

(e) By deleting subclause (5) and substituting -

"(5) The Registrar shall give effect to an order made under subsection (4), in so far as it relates to him, in accordance with the provisions of the order."

90 By adding "under section 89" after "An appeal".

91 By deleting the clause and substituting -

"91. Appeal rules, etc.

The Chief Justice may make rules for regulating appeals under section 89, and applications made under this Ordinance to the Court, and for the fees to be paid in respect of such appeals and applications."

92 (a) In subclause (1)(b), by deleting "尋" and substituting "要".

(b) In subclause (2) -

(i) in paragraph (a), by adding "or" after the semicolon;

(ii) by deleting paragraph (b);

(iii) in paragraph (c), by adding "a

case" before "where".

(c) In subclause (3) -

- (i) by adding "which is" after "a lot";
- (ii) by deleting "by" after "subsection (1)";
- (iii) in paragraph (a), by adding "by" before "causing";
- (iv) by deleting paragraph (d) and substituting -

"(d) if there is no existing plan or the existing plan is not acceptable -

- (i) by advising the owner of the lot to appoint an authorized land surveyor to conduct a land boundary survey of the lot in accordance with the code of practice approved under the Land Survey Ordinance (Cap. 473)

and to deliver the
resultant land
boundary plan ("new
plan") certified by
the authorized land
surveyor and
accompanied by the
relevant fee to the
Director of Lands;
or

- (ii) if the Director of
Lands decides to do
so and with the
consent of the owner
of the lot and upon
payment of the
relevant fee, by
conducting a land
boundary survey of
the lot and
preparing the
resultant land
boundary plan ("new
plan");

- (v) in paragraph (e), by adding "by" before "deciding";
- (vi) in paragraph (f) -
 - (A) by deleting ", then," and substituting "and";
 - (B) by adding "by" before "causing".
- (d) By deleting subclause (4) and substituting -
 - "(4) The Director of Lands shall not make a determination of the boundaries of a lot under this section if the existing plan or new plan changes the boundaries or area or measurement of that lot as shown -
 - (a) on a land boundary plan, or a microfilm, image record or other record of a land boundary plan, kept in the Land Registry under section 5B; or
 - (b) on any Government lease."

93(a) By deleting "尋" and substituting "要".

94

By adding -

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

95

(a) In the heading, by deleting "**of First Instance**".

(b) In subclause (1) -

(i) by deleting "petition or" where it twice appears;

(ii) by deleting "of First Instance" wherever it appears;

(iii) by deleting "覺得是" and substituting "覺得屬".

(c) By adding -

"(1A) No proceedings may be commenced under this section in respect of any matter for which proceedings may be commenced under section 81.".

(d) By deleting subclause (2) and substituting -

"(2) The Registrar shall give effect to an order made under subsection (1) in accordance with the provisions of the order."

96

(a) In subclause (1) -

- (i) in paragraphs (a), (b) and (c), by deleting "尋" and substituting "要";
- (ii) in paragraph (d), by deleting "2(2)(c)" and substituting "15(2)";
- (iii) in paragraph (e), by adding "record" after "image";
- (iv) by deleting paragraph (g);
- (v) by deleting paragraph (h)(ii), (iii), (iv) and (v) and substituting -
 - "(ii) the applications register;
 - (iii) any document, or any microfilm, image record or other record of a

document, kept in the
Land Registry under
section 5B;

- (iv) any endorsement on any
thing referred to in
subparagraph (i), (ii) or
(iii); or
- (v) any copy, print or
extract of or from any
thing referred to in
subparagraph (i), (ii) or
(iii) or of or from any
endorsement on any such
thing; or";
- (vi) by deleting paragraph (i)(ii) and
(iii) and substituting -
 - "(ii) any endorsement on any
such thing;
 - (iii) any copy, print or
extract of or from any
such thing or of or from
any endorsement on any
such thing."

- (b) In subclause (2), by deleting "(g),".
- (c) In subclause (4), by deleting "\$1,000" and substituting "\$500".
- (d) In subclause (6), by deleting "\$1,000" and substituting "\$500".
- (e) In subclause (7) -
 - (i) in the definition of "daily penalty", by deleting "after conviction therefor";
 - (ii) in the definition of "尋求將任何事項註冊的申請", by deleting "尋" and substituting "要".

- 97(5)(d)
- (a) By deleting "registered long term lease" and substituting "a registered long term lease is".
 - (b) By adding "and" before "is also".
 - (c) By deleting "尋" and substituting "要".

- 98
- (a) In the heading, by deleting "**levy**" and substituting "**levies**".
 - (b) In subclause (1) -
 - (i) by deleting "fees and levy" and

substituting "the fees";

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

- "(a) any application for the registration of any matter (whether made pursuant to this Ordinance or any other enactment);";

- (iii) in paragraph (b), by deleting "2(2)(c)" and substituting "15(2)";

- (iv) by deleting paragraph (d) and substituting -

- "(d) the registration of any matter (whether pursuant to this Ordinance or any other enactment);";

- (v) in paragraph (g), by deleting "尋" and substituting "要".

- (vi) by deleting paragraph (h) and substituting -

- "(h) the provision (including inspection) of any thing

(including any information) required to be or which may be kept in the Land Registry (whether under section 5, 5A or 5B or otherwise), or of a copy, print or extract of or from any such thing or of or from a microfilm, image record or other record of any such thing;"

(vi) by deleting paragraph (k).

(c) In subclause (2) -

(i) by deleting "or levy" where it twice appears;

(ii) by deleting "or levies".

(d) By adding -

"(2A) The Financial Secretary may by regulation prescribe the levies to be paid to the Registrar in respect of the registration of any matter (whether pursuant to this Ordinance or any other enactment)."

(e) In subclause (3) -

(i) by deleting "(2)" and substituting
"(2A)";

(ii) by deleting "subsection (1)" and
substituting "that subsection".

99(1) By deleting "unpaid fee or levy or part of a fee
or levy" and substituting "fact that the fee or
levy or part of the fee or levy has not been
paid".

100(1) (a) By deleting paragraphs (b), (c), (d), (e),
(f), (g) and (h) and substituting -

"(b) the manner of verification of an
application for the registration of
any matter;

(c) the size, form and colouring of
plans attached to or endorsed on an
instrument accompanying an
application for registration of any
matter;

(d) the size and form of, and the
particulars to be contained in,
instruments accompanying

applications for registration of
any matter;

- (e) the manner in which an application
for the registration of any matter
is made and the procedures to be
followed for the presentation of
the application;
- (f) the numbering of applications for
the registration of any matter;
- (g) the particulars to be entered in the
Title Register and the applications
register;
- (h) without prejudice to the generality
of paragraph (g), the manner in
which the names of persons are to
be entered in the Title Register
and the applications register;".

(b) By deleting paragraph (i).

(c) By deleting paragraphs (j) and (k) and
substituting -

"(j) the circumstances and the
procedures for rectification of the
Title Register;

(k) the scrutiny of applications for

the registration of any matter;".

(d) By deleting paragraph (n) and substituting -

"(n) the circumstances in which an application for the registration of any matter, which is accompanied by an instrument which is stamped under section 13(2) of the Stamp Duty Ordinance (Cap. 117), shall be required to be accompanied by an application for the registration of a charge in respect of any stamp duty payable or to be payable on the instrument (including any stamp duty and penalty payable under section 13(7)(b), or additional stamp duty payable under section 13(10), of that Ordinance on that instrument);".

(e) In paragraph (o), by deleting "尋" and substituting "要".

(f) By adding -

"(oa) without prejudice to the generality of the grounds mentioned in

paragraph (o), the circumstances in which the Registrar shall under section 20(2) refuse to proceed with the registration of any matter relating to an undivided share with an exclusive right to use and occupy a part of a building;

(ob) the documents to be provided by a vendor under section 44(1)(a)(iv);

(oc) the documents relating to title to be retained by the Land Registry where there is a dealing in registered land or a registered long term lease, and the period for which they are to be retained;

(od) the classes of person who fall within paragraph (c) of the definition of "interested person" in section 77(5);".

(g) By deleting paragraph (p) and substituting -

"(p) the date on which the first registration of any matter, which is not expressly provided for in this Ordinance, shall take

effect;".

- (h) In paragraph (q), by deleting "尋" and substituting "要".
- (i) By deleting paragraph (u) and substituting -
 - "(u) the manner of registration, withdrawal or removal of a consent caution or non-consent caution and the form of consent under a consent caution;
 - (ua) the manner of registration or removal of a charging order, judgment or order;".
- (j) In paragraph (v), by deleting "and" and substituting "or".
- (k) in paragraph (w), by adding "making an application for an order under section 77(1) and for the" before "registration";
- (l) By deleting paragraph (x) and substituting -
 - "(x) the manner of making an application for a title certificate, for the cancellation of a title certificate and for the replacement of a title certificate;

- (xa) the circumstances in which a title certificate need not be returned for cancellation under section 26(5);".
- (m) In paragraph (y), by deleting "存檔的程序及" and substituting "提交和存檔的程序及提交".
- (n) In paragraph (za), by deleting "5(2)" and substituting "5, 5A or 5B".
- (o) In paragraph (zb), by deleting "5(2)" and substituting "5, 5A or 5B".
- (p) In paragraph (zc), by deleting "and maintained".
- (q) By deleting paragraphs (zh) and (zi) and substituting -
 - "(zh) the funding, management, investment, and the keeping of accounts of, and the processing of claims in respect of, the Land Titles Indemnity Fund;
 - (zi) the power of the Registrar -
 - (i) to borrow moneys for the purposes of the Land Titles Indemnity Funds;

and

(ii) to manage and invest the moneys of the Land Titles Indemnity Fund;".

(r) By deleting paragraph (zj).

(s) By deleting paragraph (zk) and substituting -
"(zk) payments into and out of the Land Titles Indemnity Fund;".

101 By deleting the clause and substituting -

**"101. Amendment of Schedules
1A and 1**

(1) The Secretary may, with the approval of the Legislative Council, by notice published in the Gazette, amend Schedule 1A.

(2) The Secretary may, by notice published in the Gazette, amend Schedule 1."

102 (a) By adding -

"(1A) The Land Registration Ordinance (Cap. 128) is amended as set out in Schedule 3."

(b) By deleting subclause (2) and substituting -

"(2) The Secretary may, with the approval of the Legislative Council, by notice published in the Gazette, amend Schedule 2 or 3."

New By adding -

"SCHEDULE 1A [ss. 2, 3, 20A,
20E, 23, 33
& 101]

PROVISIONS FOR CONVERSION OF LRO LAND
AND LONG TERM LEASES FROM LAND
REGISTRATION SYSTEM TO
LAND TITLE SYSTEM

PART 1

PRELIMINARY

1. **Interpretation**

In this Schedule -

"caution against conversion" (抗轉換警告書) has the meaning assigned to it by section 1A(1) of the Land Registration Ordinance (Cap. 128);

"caveat" (知會備忘) has the meaning assigned to it by section 1A(1) of the Land Registration Ordinance (Cap. 128);

"long term lease" (長期租契) has the same meaning as in section 2(1) of this Ordinance except that it does not include a lease of both registered land and LRO land;

"LRO land" (《土註條例》土地) means land -

- (a) which is the subject of a Government lease for which a register has been kept under the Land Registration Ordinance (Cap. 128); and
- (b) which is not registered land within the meaning of section 2(1) of this Ordinance.

PART 2

CONVERSION OF LRO LAND

6. When LRO land becomes registered land

(1) Subject to the provisions of this section, on the commencement of the 12th anniversary of the appointed day, all LRO land shall be deemed to be registered land, and all the provisions of this Ordinance shall apply to the

land accordingly.

(2) Subject to subsection (3), subsection (1) shall not apply to any LRO land -

(a) in respect of which an instrument has been delivered for registration under the Land Registration Ordinance (Cap. 128) but has not been registered under that Ordinance before the commencement of the 12th anniversary of the appointed day; or

(b) which is subject to a registered caution against conversion which is registered under the Land Registration Ordinance (Cap. 128).

(3) LRO land referred to in subsection (1) shall be deemed to be registered land on -

(a) the date on which the instrument referred in subsection (2)(a) is registered under the Land Registration Ordinance (Cap. 128); or

(b) the date on which the land ceases to be subject to a caution against

conversion which is registered under
the Land Registration Ordinance
(Cap. 128),

whichever is the later, and all the provisions of
this Ordinance shall apply to the land accordingly.

3. Date of first registration

The date of first registration of LRO land
shall be -

- (a) in the case of land which falls
within section 2(1), the 12th
anniversary of the appointed day;
and
- (b) in the case of land which falls
within section 2(2), the date
determined under section 2(3).

4. Effect of deeming

(1) On the date of first registration of
LRO land, there shall vest in the owner of the
land the same legal estate or equitable interest
and rights as would have been vested in him if
the land had been transferred to him and he had
been registered as the owner of land under

section 21 of this Ordinance.

(2) Subject to subsection (3), the deeming of LRO land to be registered land under section 2 shall not affect the validity or enforceability of any interest -

- (a) existing immediately before the date of first registration of the LRO land;
- (b) affecting the LRO land;
- (c) which was not registered under the Land Registration Ordinance (Cap. 128) (and whether or not it was capable of registration under that Ordinance); and
- (d) which was, immediately before the date of first registration, enforceable against the LRO land.

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

PART 3

CONVERSION OF LONG TERM LEASES

5. **When long term lease becomes registered long term lease, etc.**

Where, on the date of first registration of any LRO land, the land is subject to a long term lease registered under the Land Registration Ordinance (Cap. 128), then on that date the long term lease shall be deemed to be a registered long term lease, and all the provisions of this Ordinance shall apply to the lease accordingly.

6. **Date of first registration**

The date of first registration of a long term lease is the date on which the lease was deemed to be a registered long term lease under section 5.

7. **Effect of deeming**

(1) On the date of first registration of a long term lease, there shall vest in the lessee of the lease the same interest and rights as would have been vested in him if he had been registered as the lessee of the lease under section 22 of

this Ordinance.

(2) Subject to subsection (3), the deeming of a long term lease to be a registered long term lease under section 5 shall not affect the validity or enforceability of any interest -

- (a) existing immediately before the date of first registration of the long term lease under this Ordinance;
- (b) affecting the land;
- (c) which was not registered under the Land Registration Ordinance (Cap. 128) (and whether or not it was capable of registration under that Ordinance); and
- (d) which was, immediately before the date of first registration of the long term lease under this Ordinance, enforceable against the land.

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

date of first registration of the long term lease under this Ordinance.

PART 4

MISCELLANEOUS

8. Registers kept under Land Registration Ordinance

On the date of first registration of LRO land for which a register has been kept under the Land Registration Ordinance (Cap. 128), the register shall, subject to the regulations, be deemed to form part of the Title Register, and all the provisions of this Ordinance shall apply to the register accordingly.

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

Subject to the regulations, where a register has been kept under the Land Registration Ordinance (Cap. 128) in relation to LRO land, then, on and after the date of first registration of the land under section 3, the priority of all interests in the Title Register -

(a) existing immediately before the date

of first registration; and

(b) in respect of which a memorial of an instrument within the meaning of the Land Registration Regulations (Cap. 128 sub. leg. A) has been registered under the Land Registration Ordinance (Cap. 128), shall be determined in accordance with the provisions of the Land Registration Ordinance (Cap. 128), and the provisions of this Ordinance shall be construed accordingly.

10. Transitional provision in respect of registered caveat

Where immediately before the date of first registration of LRO land under this Ordinance there was a caveat registered against the land under the Land Registration Ordinance (Cap. 128), then, commencing on the date of first registration of the land under this Ordinance -

- (a) the caveat shall be deemed to be a non-consent caution;
- (b) notwithstanding section 33(1) of this Ordinance, the priority of the

interest claimed in the deemed non-consent caution shall be determined in accordance with the law in force immediately before the date of first registration of the land concerned and applicable to the priority among such interests; and

- (c) all the provisions of this Ordinance (including sections 72 and 73) shall apply to the deemed non-consent caution accordingly."

- Schedule 1 (a) By adding "6A," after "6(1)(a),".
- (b) By deleting ", 88".

New By adding -

"SCHEDULE 3 [s. 102]

CONSEQUENTIAL AMENDMENTS TO
LAND REGISTRATION ORDINANCE

1. **Interpretation**

Section 1A of the Land Registration Ordinance (Cap. 128) is amended -

- (a) by renumbering it as section 1A(1);
- (b) in subsection (1) -

(i) in the definition of "register card", by repealing the full stop and substituting a semicolon;

(ii) by adding -

"caution against conversion"

(抗轉換警告書) means a document

in the specified form -

(a) giving notice of a claim to title to land or a beneficial interest in the land; and

(b) specifying that title or interest and that land;

"caveat" (知會備忘) means a document

in the specified form -

(a) giving notice of a claim to an unregistrable interest in land; and

(b) specifying that

interest and that
land;

"registered caution against
conversion" (註冊抗轉換警告書)
means a caution against
conversion registered under
this Ordinance;

"registered caveat" (註冊知會備忘)
means a caveat registered
under this Ordinance;

"specified" (指明), in relation to
a form, means specified under
section 27A;

"unregistrable interest" (不可註冊權
益) means any interest or
equity in or affecting land
which -

(a) has been created by
operation of law;

and

(b) but for the
enactment of section
21A, would not be

registrable under
this Ordinance.";

(c) by adding -

"(2) Unless the context otherwise requires, any reference in any other enactment to a thing being noted in or shown in a register kept under this Ordinance, or to the register of a lot or section kept under this Ordinance, shall be construed as a reference to the relevant records of the Land Registry kept under this Ordinance, by whatever name called."

2. Section added

The following is added immediately after section 1A -

"1B. Application

This Ordinance does not apply to new land or registered land within the meaning of the Land Titles Ordinance (of 2004)."

3. **Establishment of Land Registry
for registration of instruments
affecting land**

Section 2 is amended by adding -

"(1A) A caveat and a caution against conversion shall be regarded as an instrument in writing capable of registration under this Ordinance."

4. **Section substituted**

Section 17 is repealed and the following substituted -

**"17. Registration and re-registration of
judgment, order or lis pendens**

(1) Subject to subsection (2) -

(a) the registration of a relevant order shall cease to have effect immediately upon the expiration of 5 years from the date of registration of the order but the order may be re-registered from time to time and, if so re-registered, the re-registration of the order shall have effect for another

5 years from the date of re-registration; and

- (b) if the re-registration of a relevant order is made before the expiration of a current period of registration or re-registration of the order, then the order shall retain its original priority.

(2) For the avoidance of doubt, it is hereby declared that the operation of this section shall not prejudice the generality of any other provisions of this Ordinance under which the registration of a relevant order may be removed or withdrawn.

(3) In this section, "relevant order" (有關命令) means a judgment, order or *lis pendens*."

5. **Sections added**

The following are added immediately after section 21 -

"CAVEATS

**21A. Registration of caveat to
protect unregistrable
interest**

A person who claims an unregistrable interest in land may make an application in the specified form to the Land Registrar to register a caveat against the land.

21B. Effect of registration of caveat

(1) The registration of a caveat against land shall constitute notice of the claim which is the subject of the caveat to all persons.

(2) For the avoidance of doubt, it is hereby declared that the registration of a caveat shall not -

(a) of itself affect the validity or otherwise of the claim which is the subject of the caveat;

(b) of itself create or validate any rights or interests, or adversely affect any rights or

interests, of the caveator; or

- (c) without prejudice to the generality of paragraph (a), constitute a warranty, or a guarantee, as to the validity of the claim.

(3) The registration of a caveat does not confer any priority on the claim which is the subject of the caveat.

21C. Relationship between caveat and registered instrument

The question of whether a registered instrument is subject to an unregistrable interest claimed under a caveat shall be determined in accordance with the law in force at the time when the transaction which is the subject of the registered instrument was effected.

21D. Priority among unregistrable interests relating to the same land

The priority of all unregistrable interests relating to the same land, and

whether or not any such interest is the subject of a registered caveat, shall be determined in accordance with the law applicable to the priority among such interests.

21E. Withdrawal and removal of caveats

(1) A caveat may be withdrawn on the presentation to the Land Registrar by the caveator of an application in the specified form for the withdrawal of the caveat.

(2) A caveat may be removed on the presentation to the Land Registrar of an application in the specified form for the removal of the caveat -

(a) in any case, by a person who has obtained an order of the Court of First Instance for its removal;

(b) by the owner of the land affected by the caveat but only if the Land Registrar -

(i) is satisfied that the owner has provided a copy

of the application to the caveator not less than 14 days before the presentation of the application to the Land Registrar; and

(ii) is satisfied -

(A) that the caveat was wrongfully registered;

(B) that the ground on which the caveat was registered no longer exists; or

(C) that the caveator consents to the removal of the caveat.

(3) The Land Registrar may require the owner of land presenting an application for the removal of a caveat under subsection (2)(b) to support the application by such evidence as the Land Registrar requires.

(4) A person with an interest in land affected by the caveat may apply by originating summons to the Court of First Instance for the removal of the caveat and the Court of First Instance may make such order on the originating summons and as to costs as to the Court of First Instance appears just.

(5) On the withdrawal or removal of a caveat -

- (a) the Land Registrar shall cause an entry to be made in the register kept under this Ordinance in respect of the land against which the caveat was registered, giving notice of the withdrawal or removal of the caveat; and
- (b) any liability of the caveator previously incurred under section 21F shall not be affected by the entry made under paragraph (a).

21F. Wrongful caveats

(1) A person who applies to the Land Registrar to register a caveat without reasonable cause shall be liable, in an action for damages at the suit of -

(a) the owner of land concerned;

or

(b) any other person who has an interest in the land,

to pay compensation to the owner or other person for any damage sustained thereby, in such amount as to the Court of First Instance appears just.

(2) A caveator under a registered caveat who fails, without reasonable excuse, to apply to the Land Registrar for the withdrawal of the caveat within a reasonable period of time after the ground on which it was registered ceases to exist, shall be liable, in an action for damages at the suit of a person referred to in subsection (1)(a) or (b), to pay compensation to that person for any damage sustained thereby, in such amount as to the Court of First Instance

appears just.

CAUTIONS AGAINST CONVERSION

21G. Registration of caution against conversion

(1) Subject to subsection (2), a person who claims to have any title to land, or a beneficial interest in any land, may make an application in the specified form to the Land Registrar to register a caution against conversion against the land.

(2) No application may be made under subsection (1) on or after the 12th anniversary of the appointed day as defined by section 2(1) of the Land Titles Ordinance (of 2004).

21H. Effect of registration of caution against conversion

(1) Land against which a registered caution against conversion subsists shall not become registered land under the Land Titles Ordinance (of 2004).

(2) The registration of a caution against conversion against land shall constitute notice of the claim which is the subject of the caution against conversion to all persons.

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

(a) of itself affect the validity or otherwise of the claim which is the subject of the caution against conversion;

(b) of itself create or validate any rights or interests, or adversely affect any rights or interests, of the cautioner; or

(c) without prejudice to the generality of paragraph (a), constitute a warranty, or a guarantee, as to the validity of the claim.

(4) The registration of a caution against conversion does not prejudice the

priority of the claim which is the subject of the caution against conversion.

21I. Relationship between caution against conversion and registered instrument

The question of whether a registered instrument is subject to an interest claimed under a caution against conversion shall be determined in accordance with the law in force at the time when the transaction which is the subject of the registered instrument was effected.

21J. Validity of registration of caution against conversion

(1) Subject to subsections (2), (3), (4), (5) and (6) and section 21K, the registration of a caution against conversion shall expire immediately upon the commencement of the 1st anniversary of its date of registration.

(2) Subject to subsection (3), the cautioner under a registered caution against conversion may from time to time apply by

originating summons to the Court of First Instance for the extension of the validity of registration of the caution against conversion and the Court of First Instance may make such order on the originating summons and as to costs as to the Court of First Instance appears just.

(3) An application for time extension under subsection (2) must be made -

(a) before the expiration of the validity of registration of a registered caution against conversion; or

(b) if the application is made within an extension granted under that subsection, before the expiration of such extension.

(4) Subject to subsection (5), the Court of First Instance shall not grant any extension of time under subsection (2) which would extend the validity of the registration of a caution against conversion beyond the date of the 2nd anniversary of the caution

against conversion's first date of registration.

(5) The Court of First Instance may, if it is satisfied that exceptional circumstances exist, grant an extension of time under subsection (2) notwithstanding that the applicant has not complied with subsection (3) or that the extension would extend the validity of registration of the caution against conversion beyond the date referred to in subsection (4).

(6) Where before the expiration of the validity of the registration of a caution against conversion under this section, a lis pendens relating to the claim which is the subject of the caution against conversion has been registered by the cautioner against land against which the caution against conversion is registered, then, subject to section 21K, the validity of the registration of the caution against conversion shall not expire under this section until the registration of the lis pendens has been vacated or discharged.

- (7) The Land Registrar shall not -
- (a) register more than one caution against conversion in respect of the same claim made by the same person; or
 - (b) again register a caution against conversion the registration of which -
 - (i) has previously expired; or
 - (ii) has been withdrawn or removed under section 21K.

21K. Withdrawal and removal of caution against conversion

(1) A caution against conversion may be withdrawn on the presentation to the Land Registrar by the cautioner of an application in the specified form for the withdrawal of the caution.

(2) A caution against conversion may be removed on the presentation to the Land Registrar of an application in the specified

form for the removal of the caution -

(a) in any case, by a person who has obtained an order of the Court of First Instance for its removal;

(b) by the owner of the land affected by the caution but only if the Land Registrar -

(i) is satisfied that the owner has provided a copy of the application to the cautioner not less than 14 days before the presentation of the application to the Land Registrar; and

(ii) is satisfied -

(A) that the caution was wrongfully registered;

(B) that the ground on which the caution was registered no longer exists; or

(C) that the cautioner
consents to the
removal of the
caution.

(3) The Land Registrar may require the owner of land presenting an application for the removal of a caution against conversion under subsection (2)(b) to support the application by such evidence as the Land Registrar requires.

(4) A person with an interest in land affected by the caution against conversion may apply by originating summons to the Court of First Instance for the removal of the caution against conversion and the Court of First Instance may make such order on the originating summons and as to costs as to the Court of First Instance appears just.

(5) On the withdrawal or removal of a caution against conversion -

(a) the Land Registrar shall cause an entry to be made in the register kept under this Ordinance in respect of the

land against which the caution against conversion was registered, giving notice of the withdrawal or removal of the caution against conversion; and

- (b) any liability of the cautioner previously incurred under section 21L shall not be affected by the entry made under paragraph (a).

21L. Wrongful caution against conversion

(1) A person who applies to the Land Registrar to register a caution against conversion without reasonable cause shall be liable, in an action for damages at the suit of -

- (a) the owner of land concerned;
or

- (b) any other person who has an interest in the land,

to pay compensation to the owner or other

person for any damage sustained thereby, in such amount as to the Court of First Instance appears just.

(2) A cautioner under a registered caution against conversion who fails, without reasonable excuse, to apply to the Land Registrar for the withdrawal of the caution against conversion within a reasonable period of time after the ground on which it was registered ceases to exist, shall be liable, in an action for damages at the suit of a person referred to in subsection (1)(a) or (b), to pay compensation to that person for any damage sustained thereby, in such amount as to the Court of First Instance appears just."

6. Section added

The following is added -

"27A. Power of Land Registrar to specify forms

(1) Subject to subsection (2), the Land Registrar may specify the form of any document required under this Ordinance to be

in the specified form.

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

- (a) completed in accordance with such directions and instructions as are specified in the form;
- (b) accompanied by such documents (including instruments, certificates, duplicates of the form and statutory declarations) as are specified in the form; and
- (c) if the completed form is required to be provided to the Land Registrar or any other person, so provided in the manner, if any, specified in the form.

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

(a) include in the specified form of any document referred to in that subsection a statutory declaration -

(i) to be made by the person completing the form; and

(ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;

(b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Land Registrar thinks fit."."

LAND TITLES BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Housing, Planning and Lands

Clause

Amendment Proposed

Schedule 2,
section 2

By deleting paragraph (b) and substituting -

"(b) by adding -

"(6) In the case of a charging order registered under the Land Titles Ordinance (of 2004), if an order under subsection (4) discharging the charging order is made, the Land Registrar shall, on the presentation to him of an application for the purpose accompanied by an office copy of the order, remove from the Title Register kept under that Ordinance the entry referring to the order."."

Schedule 2,
section 3

By deleting the section and substituting -

**"3. Special rules as to the sale of
immovable property**

Order 47, rule 7(4)(b) of the Rules of
the High Court (Cap. 4 sub. leg. A) is
repealed and the following substituted -

"(b) In the case of immovable property
which is registered under the Land
Titles Ordinance (of 2004), such
certificate shall be liable to the
same stamp duty as an assignment of
the same property and, when duly
stamped, may support an application
for registration under that
Ordinance of the purchaser as the
owner of the property.

(c) In the case of any other immovable
property, such certificate shall
be liable to the same stamp duty
as an assignment of the same
property and, when duly stamped,
shall be taken and deemed to be a
valid transfer of such right,
title and interest and may be
registered under the Land

Registration Ordinance (Cap.
128).".".

Schedule 2,
section 4

By deleting the section and substituting -

"4. Discharge, etc., of charging order

Order 50, rule 7(2) is amended by
repealing "the lot number of the land and
the memorial number of any relevant charge
registered against the land." and
substituting -

" -

- (a) the lot number of the
land; and
- (b) the memorial number of
any relevant charge
registered against the
land under the Land
Registration Ordinance
(Cap. 128) or the
application number of
any relevant charge
registered against the
land under the Land
Titles Ordinance (of

2004), as the case may
be."."

Schedule 2,
section 5

By deleting the section and substituting -

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

Rule 53 of the Bankruptcy Rules (Cap. 6
sub. leg. A) is amended by repealing "a
memorial of the petition in the Land Registry
against any property registered therein" and
substituting "the petition under the Land
Registration Ordinance (Cap. 128), or
register a non-consent caution under the Land
Titles Ordinance (of 2004) relating to
the petition, against any property which is
registered under that Ordinance"."

Schedule 2,
section 6

By deleting the section and substituting -

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

Rule 54 is amended by repealing "in
either of the cases mentioned in rule 133 or
135 register a memorial of the petition in
the Land Registry against any property

registered" and substituting ", in either of the cases mentioned in rule 133 or 135, register the petition under the Land Registration Ordinance (Cap. 128), or register a non-consent caution under the Land Titles Ordinance (of 2004) relating to the petition, against any property which is registered under that Ordinance".".

Schedule 2,
section 7

By deleting the section and substituting -

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

Rule 73 is amended by repealing "a memorial of such bankruptcy order in the Land Registry against any property registered therein" and substituting "the order under the Land Registration Ordinance (Cap. 128), or register a non-consent caution under the Land Titles Ordinance (of 2004) relating to the order, against any property which is registered under that Ordinance".".

Schedule 2,
section 8

By deleting the section and substituting -

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

Rule 74 is amended by repealing "a memorial thereof in the Land Registry against any property registered" and substituting "the order under the Land Registration Ordinance (Cap. 128), or register a non-consent caution under the Land Titles Ordinance (of 2004) relating to the order, against any property which is registered under that Ordinance".".

Schedule 2,
section 10

By deleting the section and substituting -

"10. Forms

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

- (a) in Form 67, by repealing "vacated upon the application of the debtor under the Land Registration Ordinance (*Chapter 128*)" and substituting "vacated or removed upon the application

of the debtor under the Land
Registration Ordinance
(*Chapter 128*) or the Land
Titles Ordinance (*of*
2004), as the case may
require";

- (b) in Forms 128 and 129, by
repealing "in the Land
Registry" and substituting
"under the Land Registration
Ordinance (*Chapter 128*) or the
Land Titles Ordinance (*of*
2004)".

Schedule 2,
section 15

In paragraph (b), by adding a comma after
"(*of 2002*)".

Schedule 2,
section 17

By deleting the section and substituting -

"17. Interpretation

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

or which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance, ".".

Schedule 2,
section 19

By deleting the section and substituting -

"19. New Government rent to be noted or entered in register

Section 10 is amended -

(a) by repealing subsection (1)(b) and substituting -

"(b) the Land Registrar shall cause the amount of the new Government rent payable in respect of the lot or section -

(i) to be noted in the register of such lot or section kept under the Land Registration Ordinance (Cap. 128); or

(ii) if the lot or section is registered under the Land Titles Ordinance (of 2004), to be entered in the Title Register kept under that Ordinance.";

(b) by repealing subsection (2)(b) and substituting -

"(b) the Land Registrar shall cause -

(i) the amount of the new Government rent noted in the register of such lot or section kept under the Land

Registration
Ordinance (Cap.
128), or
entered in the
Title Register
kept under the
Land Titles
Ordinance
(of 2004),
to be deleted;
and

(ii) the increased
new Government
rent to be
noted or
entered
therein."."

Schedule 2,
section 20

By deleting the section and substituting -

**"20. Correction of clerical or
arithmetical errors**

Section 11(2) is amended by repealing
"in the Land Registry" and substituting
"under the Land Registration Ordinance (Cap.
128) or entered in the Title Register kept

under the Land Titles Ordinance (of
2004), as the case may require".".

Schedule 2,
section 21

By deleting the section and substituting -

"21. Section substituted

Section 12 is repealed and the
following substituted -

"12. Evidence of renewal

The amount of the new Government
rent payable in respect of a lot or
section for the time being shown in the
register kept under the Land
Registration Ordinance (Cap. 128), or
entered in the Title Register kept under
the Land Titles Ordinance (of 2004),
as the case may be, shall be conclusive
evidence of the grant of the new
Government lease of the lot or section
and of the new Government rent
thereof.". ".

Schedule 2,
section 23

By deleting paragraph (b) and substituting -

"(b) by adding -

"(aa) any charge registered under the Land Titles Ordinance (of 2004);

(ab) any equitable mortgage which is the subject of a consent caution or non-consent caution registered under the Land Titles Ordinance (of 2004);".

Schedule 2,
section 24

By deleting the section and substituting -

"24. Section substituted

Section 16 is repealed and the following substituted -

"16. Government lease plan

(1) If a plan of a lot held under a renewable Government lease -

(a) is not annexed to the counterpart of the Government lease kept under the Land Registration Ordinance (Cap. 128), or if the plan annexed thereto is,

in the opinion of the Director, inaccurate or inadequate to establish the location, position, or dimensions of the lot; or

- (b) if the lot is registered under the Land Titles Ordinance (of 2004), is not referred to in the Title Register kept under that Ordinance, or if the plan is referred to in the Title Register, is, in the opinion of the Director, inaccurate or inadequate to establish the location, position, or dimensions of the lot,

the Director may cause the lot to be surveyed and a plan thereof prepared.

(2) If a plan of a section of a lot held under a renewable Government lease -

- (a) is not registered under the Land Registration Ordinance (Cap. 128), or if the plan is so registered is, in the opinion of the Director, inaccurate or inadequate to establish the location, position, or dimensions of the section; or
- (b) if the lot is registered under the Land Titles Ordinance (of 2004), is not referred to in the Title Register kept under that Ordinance, or if the plan is referred to in the Title Register, is, in the opinion of the Director, inaccurate or inadequate to establish the location, position, or dimensions of the

section,
the Director may cause the section to be
surveyed and a plan thereof
prepared."."

Schedule 2,
section 25

By deleting the section and substituting -

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

Section 22(a) and (b) is repealed and
the following substituted -

"(a) in the case of a lot -

(i) cause the plan to be
annexed to the
counterpart of the
renewable Government
lease of the lot kept
under the Land
Registration Ordinance
(Cap. 128) and cause the
previous plan, if any,
to be cancelled; or

(ii) if the lot is registered
under the Land Titles
Ordinance (of 2004),
cause the plan to be

entered in the Title Register kept under that Ordinance and cause any entry relating to the previous plan, if any, to be removed from the Title Register;

(b) in the case of a section of a lot -

- (i) cause the plan to be registered under the Land Registration Ordinance (Cap. 128) in respect of the section of the lot to which the renewable Government lease relates, and cause the previous plan, if any, to be cancelled; or
- (ii) if the lot is registered under the Land Titles Ordinance (of 2004), cause the plan to be entered in the Title

Register kept under that Ordinance and cause any entry relating to the previous plan, if any, to be removed from the Title Register."."

Schedule 2,
section 31

By deleting the section and substituting -

**"31. Registration of manager
of "t'ong", etc.**

Section 15 of the New Territories Ordinance (Cap. 97) is amended by repealing the last sentence and substituting "Such re-entry, in the case of any such lease, shall be effected by the registration under the Land Registration Ordinance (Cap. 128), of an instrument of re-entry presented to the Land Registrar by the Secretary for Home Affairs or, if the lease is registered under the Land Titles Ordinance (of 2004), by the making of an entry relating to such an instrument in the Title Register kept under that Ordinance."."

Schedule 2,
section 37

By deleting the section and substituting -

"37. Attachment

Section 6(7) of the Tramway Ordinance (Cap. 107) is repealed and the following substituted -

"(7) For the purpose of this section, "owner" (擁有人) means the person who is registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2004) as the owner or holder of the land on which the house or building in question is built and any -

(a) mortgagee thereof who is registered as such under the Land Registration Ordinance (Cap. 128); or

(b) chargee thereof who is registered as such under the Land Titles Ordinance (of 2004).".".

Schedule 2,
section 38

By deleting the section and substituting -

"38. Charge of estate duty on property

Section 18 of the Estate Duty Ordinance

(Cap. 111) is amended -

- (a) by repealing subsection (2) and
substituting -

"(2) Notice of any charge on any
leasehold property constituted by
subsection (1) which is to be registered
under the Land Registration Ordinance
(Cap. 128) may be given by the
Commissioner registering a memorial
under that Ordinance against the
property affected thereby, which
memorial -

- (a) shall be signed by the
Commissioner; and

- (b) shall specify -

- (i) the subsection under
which the charge is
constituted;

- (ii) the name,
description, and
date of death of the

deceased in respect
of whose estate the
claim to estate duty
arises; and

(iii) particulars of the
property charged.";

(b) by adding -

"(2A) Notice of any charge on any
leasehold property constituted by
subsection (1) which is to be registered
under the Land Titles Ordinance (of
2004) may be given by the Commissioner
registering a non-consent caution under
that Ordinance against the property
affected thereby, which non-consent
caution -

(a) shall state that the
property is subject to a
first charge under that
subsection; and

(b) shall be supported by an
application signed by the
Commissioner specifying -

(i) the subsection under which the charge is constituted;

(ii) the name, description and date of death of the deceased in respect of whose estate the claim to estate duty arises; and

(iii) particulars of the property charged.";

(c) by repealing subsection (3) and substituting -

"(3) A notice in writing of any charge under subsection (1) or (2) may be registered under the Land Registration Ordinance (Cap. 128) as an instrument affecting land.".

Schedule 2,
section 39

By deleting the section and substituting -

"39. Joint owners and co-owners

Section 56A(1) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing

everything after "appearing from" and substituting -

" -

- (a) any deed, conveyance, judgment or other instrument in writing registered under the Land Registration Ordinance (Cap. 128); or
- (b) the Title Register kept under the Land Titles Ordinance (of 2004),

to be such an owner shall be answerable for doing all such acts, matters and things as would be required to be done under the provisions of this Ordinance by a sole owner."."

Schedule 2,
section 41

By deleting the section and substituting -

"41. Non-admissibility etc. of instruments not duly stamped

Section 15(3) is amended -

- (a) in paragraph (a), by repealing "or" at the end;

(b) by adding -

"(aa) a matter under the
Land Titles
Ordinance (of
2004) if the
instrument
supporting the
registration of the
matter is -

(i) stamped under
section 5(1)
or 13(2); or

(ii) an agreement
for sale that
either
contains a
statement to
the effect
that it
relates to
non-
residential
property
within the

meaning of
section 29A(1)
or is endorsed
under section
29C(13) (a);
or".".

Schedule 2,
section 42

By deleting the proposed section 67(3) and
substituting -

"(3) The charge under subsection (2) in
respect of registered land shall expire on -

- (a) the 1st anniversary of the
date of first registration of
the land;
- (b) the date on which the
instrument is stamped under
section 13 with a stamp
denoting that it is not
chargeable with stamp duty; or
- (c) the date on which the
instrument is stamped with a
stamp denoting that it is duly
stamped,

whichever is the earlier."

Schedule 2,
section 49

(a) By deleting paragraph (a)(iii) and
substituting -

"(iii) in paragraph (a), by repealing
"such Land Registry register" and
substituting "the Land Registry
register kept under the Land
Registration Ordinance (Cap. 128)
or the Title Register kept under
the Land Titles Ordinance (of
2004)";".

(b) By deleting paragraph (c) and substituting -

"(c) by adding -

"(11) Where the
certificate is registered
under the Land Titles
Ordinance (of 2004), upon
the recovery of any sum under
this section, the Building
Authority shall cause the
appropriate entries to be
made in the Title Register
kept under that Ordinance to
effect a discharge or partial

discharge of the charge
mentioned in subsection (9),
as the case may require."."

Schedule 2,
section 51

By deleting the section and substituting -

"51. Section substituted

Section 4A is repealed and the
following substituted -

"4A. Purchase by agreement

(1) Where an order has been made
for the resumption of any land under
section 3, the Authority may, before
the land reverts to the Government
under section 5 -

(a) agree with the owner on
the purchase of the
land; and

(b) agree with any person -

(i) having an
estate or
interest in
such land
under an
instrument

registered
under the Land
Registration
Ordinance
(Cap. 128); or

(ii) having an
estate or
interest in
such land
which is
registered
under the Land
Titles
Ordinance
(of 2004),

on the purchase of any
such estate or interest
therein.

(2) Any such agreement relating to
land in respect of which an order under
section 3 is made on or after the
commencement of the Crown Lands
Resumption (Amendment) Ordinance 1984 (5
of 1984) may provide for the payment by

the Authority to the owner or such person of any costs or remuneration reasonably incurred or paid by him in employing persons to act in a professional capacity in connection with the purchase."."

Schedule 2,
section 52

By deleting the section and substituting -

"52. Compensation

Section 6(1)(a) is repealed and the following substituted -

"(a) make an offer of compensation in respect of the resumption of the land in writing to -

- (i) the former owner; and
- (ii) any person having, immediately before reversion -

- (A) an estate or interest in such land under an instrument registered under the Land

Registration
Ordinance (Cap.
128); or

- (B) an estate or
interest in such
land which is
registered under
the Land Titles
Ordinance (of
2004); or".".

Schedule 2,
section 53

By deleting the section and substituting -

"53. Interpretation

Section 2 of the Government Rent and
Premium (Apportionment) Ordinance (Cap. 125)
is amended -

- (a) in the definition of
"existing building", by
repealing paragraph (c) and
substituting -

"(c) in respect of
which -

- (i) in the case of
a lot or

section which
is registered
under the Land
Titles
Ordinance
(of 2004),
the Title
Register kept
under that
Ordinance
contains no
current entry
providing for
a basis of
apportionment
of the
principal
Government
rent reserved
under the new
Government
lease or of
the annual
instalment of

premium
payable in
respect of
that relevant
interest; or
(ii) in the case of
any other lot
or section, no
instrument
containing a
basis of
apportionment
of the
principal
Government
rent reserved
under the new
Government
lease or of
the annual
instalment of
premium
payable in
respect of

that relevant
interest has
been
registered
under the Land
Registration
Ordinance
(Cap. 128);";

(b) in the definition of "owner",
by repealing paragraphs (a)
and (b) and substituting -

"(a) the person whose
name is registered
under the Land
Registration
Ordinance (Cap.
128) or the Land
Titles Ordinance
(of 2004) as
that of the owner
or one of the
owners of the
section or relevant
interest, as the

case may be; and

(b) a mortgagee under a mortgage which is registered under the Land Registration Ordinance (Cap. 128) or a chargee of a charge which is registered under the Land Titles Ordinance (of 2004);";

(c) in the definition of "relevant interest", by repealing "under the terms of an instrument registered in the Land Registry to exclusive possession of premises in that building;" and substituting -
"to exclusive possession of premises in that building under the terms of an instrument -

(a) which is
registered
under the Land
Registration
Ordinance (Cap.
128); or

(b) which is
registered
under the Land
Titles
Ordinance
(of 2004) or
which supports
a current entry
in the Title
Register kept
under that
Ordinance;"

(d) by repealing the definition
of "section" and
substituting -

"section" (分段) means any
portion or division of a
lot which has been

assigned, alienated or retained for the whole of the term or interest created by the Government lease of the lot by or under an instrument -

(a) which is registered under the Land Registration Ordinance (Cap. 128); or

(b) which is registered under the Land Titles Ordinance (of 2004)

or which supports a current entry in the Title Register kept

under that
Ordinance."."

Schedule 2,
section 54

By deleting the section and substituting -

"54. Apportionment of Government rent

Section 6(1)(b) is amended by repealing
"which is registered in the Land Registry;
or" and substituting -

" -

- (i) which is registered under the
Land Registration Ordinance
(Cap. 128); or
- (ii) which is registered under the
Land Titles Ordinance (of
2004) or which supports a
current entry in the Title
Register kept under that
Ordinance; or"."

Schedule 2,
section 55

By deleting the section and substituting -

"55. Apportionment of premium on section

Section 7(1)(a) is amended by repealing
"which is registered in the Land Registry;
or" and substituting -

" -

- (i) which is registered under the Land Registration Ordinance (Cap. 128); or
- (ii) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance; or".

Schedule 2,
section 56

By deleting the section and substituting -

"56. Area of lot or section

Section 10(1) is amended by repealing everything after "contained in" and substituting -

" -

- (a) a Government lease or other instrument -
 - (i) which is registered under the Land Registration Ordinance (Cap.

128); or

(ii) which is
registered
under the Land
Titles
Ordinance
(of 2004)
or which
supports a
current entry
in the Title
Register kept
under that
Ordinance; or

(b) any plan annexed to or
endorsed on any such
Government lease or
instrument."."

Schedule 2,
section 57

By deleting the section and substituting -

**"57. Cases in which Government rent
or premium to be treated as
apportioned in registered
instrument**

Section 11(a) and (b) is amended by
repealing "in the Land Registry" and

substituting "under the Land Registration Ordinance (Cap. 128), or which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance, ".".

Schedule 2,
section 58

By deleting the section and substituting -

"58. Apportionment of Government rent on relevant interest

Section 13(1) (a) is amended by repealing "which is registered in the Land Registry; or" and substituting -

" -

- (i) which is registered under the Land Registration Ordinance (Cap. 128); or
- (ii) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance; or".

Schedule 2,
section 59

By deleting the section and substituting -

"59. Apportionment of premium on relevant interest

Section 14(1)(a) is amended by repealing "which is registered in the Land Registry; or" and substituting -

"-

(i) which is registered under the Land Registration Ordinance (Cap. 128); or

(ii) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance; or".

Schedule 2,
section 61

By deleting the section and substituting -

"61. Covenants between owners not to be affected

Section 25 is amended by repealing "which is registered in the Land Registry, but" and substituting -

"-

- (a) which is registered under the Land Registration Ordinance (Cap. 128); or
- (b) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance,

but".".

Schedule 2,
section 62

By deleting the section and substituting -

"62. Interpretation

Section 2 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) is amended -

- (a) in the definition of "former owner", by repealing everything after "immediately before" and substituting -
"-

- (a) in the case of
a lot or
relevant
interest which
is registered
under the Land
Titles
Ordinance
(of 2004),
the time of
registration
under that
Ordinance of an
application
supported by an
instrument of
re-entry or a
vesting notice,
as the case may
be;
- (b) in the case of
any other lot
or relevant
interest, the

time of
registration
under the Land
Registration
Ordinance (Cap.
128) of an
instrument of
re-entry or a
vesting notice,
as the case may
be;" ;

(b) in the definition of "owner" -

(i) in paragraph (a), by
repealing "in the
Land Registry" and
substituting "under
the Land
Registration
Ordinance (Cap. 128)
or the Land Titles
Ordinance (of
2004)";

(ii) in paragraph (b), by
repealing "in the

Land Registry" and
substituting "under
the Land
Registration
Ordinance (Cap. 128)
or a chargee of a
charge which is
registered under the
Land Titles
Ordinance (of
2004)";

- (c) in the definition of "relevant
interest", by repealing
everything after "entitled"
and substituting -

"to exclusive possession
of premises in that
building under the terms
of an instrument -

- (a) which is
registered
under the Land
Registration
Ordinance (Cap.

128); or

(b) which is
registered
under the Land
Titles
Ordinance
(of 2004) or
which supports
a current entry
in the Title
Register kept
under that
Ordinance;"

(d) in the definition of "vesting
notice", by repealing
"registered in the Land
Registry under section 7."
and substituting -

"issued under section 7 -

(a) which is
registered
under the Land
Registration
Ordinance

(Cap.128); or
(b) which supports
an application
for
registration
relating to
the vesting
notice under
the Land
Titles
Ordinance
(of
2004)."."

Schedule 2,
section 63

By deleting the section and substituting -

"63. Instrument of re-entry

Section 4 is amended -

(a) in subsection (1) -

(i) by repealing "a memorial of an
instrument of re-entry" and
substituting "an instrument of re-
entry may be issued";

(ii) by repealing "may be registered in
the Land Registry." and

substituting -

"and -

(a) if such an instrument relates to lands or tenements registered under the Land Titles Ordinance (of 2004), it may be made the subject of an application for registration under that Ordinance; and

(b) if such an instrument relates to other lands or tenements, it may be registered under the Land Registration Ordinance (Cap. 128).";

(b) in subsection (2), by repealing "on the registration of such a memorial" and

substituting "upon the making of an entry relating to such an instrument in the Title Register kept under the Land Titles Ordinance (of 2004), or the registration of such an instrument under the Land Registration Ordinance (Cap. 128)".

Schedule 2,
section 64

By deleting the section and substituting -

"64. Section substituted

Section 5 is repealed and the following substituted -

**"5. Notice of registration
of instrument of
re-entry**

Notice of the making of an entry in the Title Register kept under the Land Titles Ordinance (of 2004) relating to, or the registration under the Land Registration Ordinance (Cap. 128) of, an instrument of re-entry by the Government shall be published in the Gazette."

Schedule 2,
section 65

By deleting the section and substituting -

**"65. Power to vest relevant interest
in The Financial Secretary
Incorporated**

Section 7 is amended -

(a) in subsection (1), by repealing
everything after paragraph (b) and
substituting -

"a vesting notice may be issued,
under the hand of any public
officer authorized by the Chief
Executive to sign such
instruments, and -

(c) if the relevant
interest is
registered under
the Land Titles
Ordinance (of
2004), such vesting
notice may be made
the subject of an
application for
registration under
that Ordinance; and

(d) if the relevant interest is not registered under the Land Titles Ordinance (of 2004), such vesting notice may be registered under the Land Registration Ordinance (Cap. 128).";

(b) in subsection (1A), by repealing everything after "Government Leases Ordinance (Cap. 40)" and substituting -
"a vesting notice may be issued, under the hand of any public officer authorized by the Chief Executive to sign such instruments, and -

(a) if the relevant interest of which the tenement to which the demand

relates forms a part is registered under the Land Titles Ordinance (of 2004), such vesting notice may be made the subject of an application for registration under that Ordinance; and

- (b) if the relevant interest of which the tenement to which the demand relates forms a part is not registered under the Land Titles Ordinance (of 2004), such vesting notice may be registered under the Land

Registration
Ordinance (Cap.
128).";

(c) in subsection (2) -

(i) by repealing everything before
paragraph (a) and substituting -

"(2) Immediately upon the
making of an entry relating
to a vesting notice in the
Title Register kept under the
Land Titles Ordinance (of
2004), or the registration of
a vesting notice under the
Land Registration Ordinance
(Cap. 128) -";

(ii) in paragraph (b), by repealing
"registered in the Land Registry"
and substituting "supporting a
current entry in the Title
Register kept under the Land
Titles Ordinance (of 2004), or
registered under the Land
Registration Ordinance (Cap.
128),";

- (iii) in paragraph (i), by repealing "in the Land Registry" and substituting "under the Land Titles Ordinance (of 2004) or the Land Registration Ordinance (Cap. 128)";
- (iv) in paragraph (iv), by repealing "registered in the Land Registry" and substituting "supporting a current entry in the Title Register kept under the Land Titles Ordinance (of 2004), or not registered under the Land Registration Ordinance (Cap. 128)";
- (d) in subsection (3), by repealing "registered in the Land Registry under subsection (1) or (1A)" and substituting "which, under subsection (1) or (1A), is made the subject of an application for registration under the Land Titles Ordinance (of 2004), or is registered under the Land Registration Ordinance (Cap. 128)".

Schedule 2,
section 66

By deleting the section and substituting -

**"66. Right to apply for relief against
re-entry or vesting**

Section 8 is amended -

- (a) in subsection (1), by
repealing "where a memorial of
re-entry has been registered
under section 4 in the Land
Registry" and substituting
"where, under section 4, an
entry relating to an
instrument of re-entry has
been made in the Title
Register kept under the Land
Titles Ordinance (of 2004),
or an instrument of re-entry
has been registered under the
Land Registration Ordinance
(Cap. 128)";
- (b) in subsection (2), by
repealing "where a vesting
notice has been registered
under section 7 in the Land
Registry" and substituting

"where, under section 7, an entry relating to a vesting notice has been made in the Title Register kept under the Land Titles Ordinance (of 2004), or a vesting notice has been registered under the Land Registration Ordinance (Cap. 128)";

- (c) in subsection (3), by repealing "from the registration of the memorial of re-entry or vesting notice" and substituting "from the date of the making of the entry in the Title Register kept under the Land Titles Ordinance (of 2004) relating to the instrument of re-entry or vesting notice, or the date of registration of the instrument of re-entry or vesting notice under the Land Registration Ordinance (Cap.

128)".".

Schedule 2,
section 69

By deleting paragraph (b) (ii) and substituting -

"(ii) by repealing "it had never been registered" and substituting "no entry had been made in respect of it in the Title Register kept under the Land Titles Ordinance (of 2004), or as if it had never been registered under the Land Registration Ordinance (Cap. 128), as the case may be";".

Schedule 2,
section 70

By deleting paragraph (b) and substituting -

"(b) in subsection (2) -

(i) by repealing "the same had never been made or registered" and substituting "no entry had been made in respect of it in the Title Register kept under the Land Titles Ordinance (of 2004), or as if it had never been registered under the Land Registration Ordinance (Cap. 128), as the

case may be,";

- (ii) by repealing "no vesting notice had been registered at the Land Registry" and substituting "no entry had been so made or no vesting notice had been so registered, as the case may be".

Schedule 2 By deleting the subheading "**Land Registration Ordinance**" before section 71.

Schedule 2 By deleting section 71.

Schedule 2 By deleting section 72.

Schedule 2 By deleting section 73.

Schedule 2 By deleting section 74.

Schedule 2,
section 76 (a) In paragraph (a)(iii), by deleting "land register" and substituting "register".

(b) By deleting paragraph (b) and substituting -

"(b) in subsection (10), by repealing everything after "this section" and substituting -

"in respect of which a certificate has been issued under the provisions of subsection (1), the public officer concerned shall -

(a) if the certificate has been registered under the Land Registration Ordinance (Cap. 128), register under that Ordinance an appropriate instrument of satisfaction against the certificate;
or

(b) if the
certificate
has been
registered
under the Land
Titles
Ordinance
(of
2004), cause
the
appropriate
entries to be
made in the
Title Register
kept under
that Ordinance
to effect a
discharge or
partial
discharge of
the charge
mentioned in
subsection
(9), as the

case may
require."."

Schedule 2,
section 77

By deleting the section and substituting -

"77. Interpretation

Section 3 of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK) is amended, in the definition of "common parts", by repealing "in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner or occupier;" and substituting -

"as being for the exclusive use,
occupation or enjoyment of an owner or occupier in an instrument -

- (a) which is registered under the Land Registration Ordinance (Cap. 128); or
- (b) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that

Ordinance;".".

Schedule 2,
section 78

In paragraph (a), in the proposed definition of "Land Registry register", by deleting "land register" and substituting "register".

Schedule 2,
section 79

By deleting the section and substituting -

"79. Burdens and covenants

Section 7 is amended -

(a) in subsection (1), by repealing "registered in the Land Registry" and substituting "referred to in subsection (4)";

(b) by adding -

"(4) For the purpose of subsection (1), the instrument referred to in that subsection is an instrument -

(a) which is registered under the Land Registration Ordinance

(Cap. 128); or
(b) which is
registered
under the Land
Titles
Ordinance
(of 2004)
or which
supports a
current entry
in the Title
Register kept
under that
Ordinance."."

Schedule 2,
section 80

By deleting the section and substituting -

"80. Interpretation

Section 2 of the New Territories
(Renewable Government Leases) Ordinance
(Cap. 152) is amended, in the definition of
"section", by repealing "in the Land
Registry and also means" and substituting
"under the Land Registration Ordinance (Cap.
128), or which is registered under the Land

Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance, and".".

Schedule 2,
section 81

By deleting the section and substituting -

"81. New Government leases deemed to be granted on 1st July 1973

Section 4(4) is amended -

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

(b) by adding -

"(aa) any charge
registered under the
Land Titles
Ordinance (of
2004);

(ab) any equitable
mortgage which is
the subject of a
consent caution or
non-consent caution

registered under the
Land Titles
Ordinance (of
2004);".".

Schedule 2 By deleting the subheading "**Solicitors (General)
Costs Rules**" before section 83.

Schedule 2 By deleting section 83.

Schedule 2 By deleting section 87.

Schedule 2, By adding "of the Conveyancing and Property
section 88 Ordinance (Cap. 219)" after "13".

Schedule 2, By deleting the section and substituting -
section 89

**"89. Conversion of equitable interest
to legal estate where right
to Government lease**

Section 14(3) is amended -

(a) in paragraphs (a) and (b), by
repealing "in the Land

Registry";

(b) by repealing paragraph (c) and
substituting -

"(c) upon the entry made
by the Land
Registrar in the
register kept under
the Land
Registration
Ordinance (Cap.
128), or in the
Title Register kept
under the Land
Titles Ordinance
(of 2004), of a
note to the effect
that those
conditions have been
complied with."."

Schedule 2,
section 91

By deleting the section and substituting -

**"91. What an assignment is deemed
to include**

Section 16 is amended by adding -

"(3) This section shall not
apply to land which is registered
land within the meaning of the Land
Titles Ordinance (of 2004)."."

Schedule 2,
section 92

By deleting the section and substituting -

"92. **Assignment passes whole estate**

Section 17 is amended -

(a) by renumbering it as section 17(1);

(b) by adding -

"(2) This section shall not apply to land which is registered land within the meaning of the Land Titles Ordinance (of 2004).".

Schedule 2,
section 93

By deleting the section and substituting -

"93. **Standard forms**

Section 37 is amended -

(a) by renumbering it as section 37(1);

(b) by adding -

"(2) This section shall not apply to land which is registered land within the meaning of the Land Titles Ordinance (of 2004).".

Schedule 2,
section 94

By deleting the section and substituting -

"94. Enforcement of covenants

Section 41 is amended -

- (a) in subsection (3), by adding
"and the Land Titles Ordinance
(of 2004)" after
"subsection (5)";
- (b) by adding -

"(9A) A covenant
registered or deemed to
be registered in the
Title Register kept under
the Land Titles Ordinance
(of 2004) against the
land affected by the
covenant shall bind the
successors in title of
the covenantor and the
persons deriving title
under or through him or
them whether or not they
had notice of the
covenant."."

Schedule 2,
section 95

In paragraph (a)(ii), by deleting "land register" and substituting "register".

Schedule 2,
section 98

By deleting the section and substituting -

**"98. Covenants and Conditions which
may be incorporated
by reference**

The Second Schedule is amended, in Part A, in clause 10, by repealing "in the Land Registry, to register at the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128), to register under that Ordinance".

Schedule 2,
section 99

By deleting "or under the Land Titles Ordinance (of 2002) by Application No."

Schedule 2,
section 100

In the proposed definition of "Land Registry registers", by deleting "land register" and substituting "register".

Schedule 2,
section 103

By deleting "land register" and substituting "register".

Schedule 2,
section 104

By deleting "land register" and substituting
"register".

Schedule 2,
section 105

By deleting paragraph (a) and substituting -

"(a) in the definition of "common parts", by
repealing "in an instrument registered
in the Land Registry as being for the
exclusive use, occupation or enjoyment
of an owner;" and substituting -

"as being for the exclusive use,
occupation or enjoyment of an owner
in an instrument -

(a) which is registered under
the Land Registration
Ordinance (Cap. 128); or

(b) which is registered under
the Land Titles Ordinance
(of 2004) or which
supports a current entry
in the Title Register
kept under that
Ordinance;"

Schedule 2,
section 106

By deleting the section and substituting -

**"106. Orders by Chief Executive
in Council relating to
heights of buildings**

Section 3(3) of the Hong Kong Airport
(Control of Obstructions) Ordinance (Cap.
301) is repealed and the following
substituted -

"(3) An order under subsection
(1)(c) shall be served upon the owner
of the premises affected, and -

- (a) if the land affected is
registered under the
Land Registration
Ordinance (Cap. 128),
the order may be
registered under that
Ordinance against the
land affected by
delivering to the Land
Registrar a memorial
thereof signed by the
Clerk to the Executive
Council and containing
the full terms of the

order; or

- (b) if the land affected is registered under the Land Titles Ordinance (of 2004), the order may be registered under that Ordinance against the land affected by delivering a copy thereof to the Land Registrar containing a declaration signed by the Clerk to the Executive Council to the effect that it is a true and correct copy of the order,

and upon receipt of such memorial or copy, the Land Registrar shall register it in the register kept under the Land Registration Ordinance (Cap. 128) or in the Title Register kept under the Land Titles Ordinance (of 2004), as the case may require."."

Schedule 2,
section 108

By deleting "land register" and substituting
"register".

Schedule 2,
section 110

By deleting paragraph (b) and substituting -

"(b) by adding -

"(6) If an order under
subsection (4) discharging a
charging order registered under
the Land Titles Ordinance
(of 2004) is made, the
Land Registrar shall, on the
presentation to him of an
application for the purpose
accompanied by an office copy of
the order, remove from the Title
Register kept under that Ordinance
the entry referring to the
order."."

Schedule 2,
section 111

By deleting the section and substituting -

**"111. Special rules as to the sale of
immovable property**

Order 47, rule 7(4) (b) of the Rules of
the District Court (Cap. 336 sub. leg. H) is

repealed and the following substituted -

"(b) In the case of immovable property which is registered under the Land Titles Ordinance (of 2004), such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped, may support an application for registration under that Ordinance of the purchaser as the owner of the property.

(c) In the case of any other immovable property, such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped, shall be taken and deemed to be a valid transfer of such right, title and interest and may be registered under the Land Registration Ordinance (Cap. 128).".".

Schedule 2,
section 112

By deleting the section and substituting -

**"112. Discharge, etc., of
charging order**

Order 50, rule 7(2) is amended by
repealing "the lot number of the land and
the memorial number of any relevant charge
registered against the land." and
substituting -

"-

- (a) the lot number of the
land; and
- (b) the memorial number of
any relevant charge
registered against the
land under the Land
Registration Ordinance
(Cap. 128) or the
application number of
any relevant charge
registered against the
land under the Land
Titles Ordinance (of
2004), as the case may
be."."

Schedule 2,
section 114

By deleting "land register" and substituting
"register".

Schedule 2,
section 115

By deleting "land register" and substituting
"register".

Schedule 2,
section 116

By deleting "land register" and substituting
"register".

Schedule 2,
section 119

(a) By deleting paragraph (a) and substituting -

"(a) in the definition of "common
parts", in paragraph (a), by
repealing "in an instrument
registered in the Land Registry as
being for the exclusive use,
occupation or enjoyment of an
owner; and" and substituting -

"as being for the exclusive
use, occupation or enjoyment
of an owner in an
instrument -

(i) which is registered
under the Land
Registration

Ordinance (Cap.
128); or

- (ii) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance; and";".

- (b) In paragraph (d), by deleting "land register" and substituting "register".

Schedule 2,
section 120

- (a) By deleting "land register" and substituting "register".
- (b) By deleting "may require" and substituting "may be".

Schedule 2,
section 123

By deleting the section and substituting -
**"123. Jurisdiction of tribunal
in relation to building
management**

Section 45 is amended -

(a) in subsection (3), by repealing
"which is registered in the Land
Registry including a deed of
mutual covenant (if any)." and
substituting -

", including a deed of mutual
covenant (if any) -

(a) which is
registered
under the Land
Registration
Ordinance
(Cap. 128); or

(b) which is
registered
under the Land
Titles
Ordinance
(of 2004)
or which
supports a
current entry
in the Title
Register kept

under that
Ordinance.";

(b) in subsection (4)(j), by repealing
"which is registered in the Land
Registry including a deed of
mutual covenant (if any)." and
substituting -

", including a deed of mutual
covenant (if any) -

(i) which is registered
under the Land
Registration
Ordinance (Cap.
128); or

(ii) which is registered
under the Land
Titles Ordinance
(of 2004) or
which supports a
current entry in
the Title Register
kept under that
Ordinance."."

Schedule 2,
section 124

By deleting the section and substituting -

**"124. Meetings and procedure
of corporation**

The Third Schedule is amended -

(a) in paragraph 3(5)(a), by
repealing "the provisions of
any instrument registered in
the Land Registry and subject
to sub-paragraph (6)" and
substituting "sub-paragraph
(6) and subject to the
provisions of any instrument
referred to in sub-paragraph
(9)";

(b) by adding -

"(9) For the purpose of
sub-paragraph (5)(a), the
instrument referred to in
that sub-paragraph is an
instrument -

(a) which is
registered
under the Land
Registration
Ordinance

(Cap. 128); or

(b) which is
registered
under the Land
Titles
Ordinance
(of 2004)
or which
supports a
current entry
in the Title
Register kept
under that
Ordinance."."

Schedule 2,
section 125

- (a) By deleting "land register" and substituting "register".
- (b) By deleting "may require" and substituting "may be".

Schedule 2,
section 126

By deleting the section and substituting -

"126. Interpretation

Section 2 of the Electricity Networks
(Statutory Easements) Ordinance (Cap. 357)

is amended, in the definition of "owner" -

(a) in paragraph (a), by repealing "in the Land Registry" and substituting "under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance (of 2004)";

(b) in paragraph (b), by repealing "registered in the Land Registry;" and substituting -

"-

(i) which is registered under the Land Registration Ordinance (Cap. 128); or

(ii) which is registered under the Land Titles Ordinance (of 2004) or which

supports a
current entry
in the Title
Register kept
under that
Ordinance;".".

Schedule 2,
section 131

By deleting the section and substituting -

"131. Recovery of costs

Section 40B of the Water Pollution
Control Ordinance (Cap. 358) is amended -

- (a) in subsection (9), by adding
"or the Land Titles Ordinance
(of 2004)" after "Land
Registration Ordinance (Cap.
128)";
- (b) in subsection (10), by
repealing everything after
"shall" and substituting -

"-

- (a) if a copy of
the
certificate
has been

registered
under the Land
Registration
Ordinance
(Cap. 128)
against land
or premises
pursuant to
subsection
(9), register
under that
Ordinance a
certificate of
satisfaction
against the
land or
premises; or
(b) if a copy of
the
certificate
has been
registered
under the Land
Titles

Ordinance
(of 2004)
against land
or premises
pursuant to
subsection
(9), cause the
appropriate
entries to be
made in the
Title Register
kept under
that Ordinance
to effect a
discharge of
the legal
charge
mentioned in
that
subsection."

Schedule 2,
section 134

By deleting "land register" and substituting
"register".

Schedule 2,
section 135

By deleting "land register" and substituting
"register".

Schedule 2,
section 136

By deleting "land register" and substituting
"register".

Schedule 2,
section 140

By deleting the section and substituting -

"140. Publication of plans

Section 4 is amended -

(a) in subsection (2)(d), by
repealing "registered in the
Land Registry" and
substituting "referred to in
subsection (3)";

(b) by adding -

"(3) For the purpose of
subsection (2)(d), the
instrument referred to in
that subsection is an
instrument -

(a) which is
registered
under the Land

Registration
Ordinance
(Cap. 128); or
(b) which is
registered
under the Land
Titles
Ordinance
(of 2004)
or which
supports a
current entry
in the Title
Register kept
under that
Ordinance."."

Schedule 2,
section 141

By deleting the section and substituting -

"141. Objections

Section 5 is amended -

- (a) in subsection (1), by
repealing "registered in the
Land Registry" and
substituting "referred to in

subsection (5)";

(b) by adding -

"(5) For the purpose of subsection (1), the instrument referred to that subsection is an instrument -

(a) which is registered under the Land Registration Ordinance (Cap. 128); or

(b) which is registered under the Land Titles Ordinance (of 2004)

or which supports a current entry in the Title Register kept under that

Ordinance.". ".

Schedule 2,
section 145 By deleting "land register" and substituting
"register".

Schedule 2,
section 146 By deleting "land register" and substituting
"register".

Schedule 2,
section 147 By deleting paragraphs (a) and (b) and
substituting -

- "(a) in subsection (2), by repealing "in the
Land Registry" and substituting "under
the Land Registration Ordinance (Cap.
128) or the Land Titles Ordinance
(of 2004), as the case may
require,";
- (b) in subsection (8), by repealing "in the
Land Registry" and substituting "under
the Land Registration Ordinance (Cap.
128) or the Land Titles Ordinance
(of 2004), as the case may
require,";
- (c) in subsection (9), by repealing "登記"
and substituting "註冊";

(d) in subsection (10), by repealing
everything after "shall" and
substituting -

" -

- (a) if the certificate
has been registered
under the Land
Registration
Ordinance (Cap.
128), register
under that
Ordinance an
appropriate
memorial of
satisfaction
against the charge
mentioned in
subsection (8); or
- (b) if the certificate
has been registered
under the Land
Titles Ordinance
(of 2004),

cause the
appropriate entries
to be made in the
Title Register kept
under that
Ordinance to effect
a discharge of the
charge mentioned in
subsection (8).".".

Schedule 2,
section 151

By deleting the section and substituting -

**"151. Land boundary plans
for subdivisions**

Section 30 is amended by adding -

"(11) This section shall not apply
to land which is registered land within
the meaning of the Land Titles
Ordinance (of 2004).".".

Schedule 2,
section 152

By deleting the proposed section 30A(12) and
substituting -

"(12) This section shall apply to land
which is registered land within the meaning
of the Land Titles Ordinance (of
2004).".

Schedule 2,
section 154

By deleting paragraph (b) and substituting -

"(b) in subsection (10), by repealing
everything after "shall" and
substituting -

"-

- (a) if a copy of the
certificate has
been registered
under the Land
Registration
Ordinance (Cap.
128) against land
or premises
pursuant to
subsection (9),
register under that
Ordinance a
certificate of
satisfaction
against the land or
premises; or
- (b) if a copy of the
certificate has

been registered
under the Land
Titles Ordinance
(of 2004)
against land or
premises pursuant
to subsection (9),
cause the
appropriate entries
to be made in the
Title Register kept
under that
Ordinance to effect
a discharge of the
legal charge
mentioned in that
subsection."."

New

By adding after the subheading "**Government Rent
(Assessment and Collection) Ordinance**" -

"154A. Interpretation

Section 2 of the Government Rent
(Assessment and Collection) Ordinance (Cap.
515) is amended, in the definition of

"section", by repealing "registered in the Land Registry;" and substituting -

"-

- (a) which is registered under the Land Registration Ordinance (Cap. 128); or
- (b) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance;".".

Schedule 2,
section 155

By deleting the section and substituting -

"155. Exemption from liability to pay Government rent

Section 4(13)(a) is amended by repealing everything after "entitled" and substituting -

"to the exclusive possession of any part of any building erected on the lot or of any part of the lot under the terms of an instrument -

- (i) which is registered under the Land Registration Ordinance

(Cap. 128); or

- (ii) which is registered under the Land Titles Ordinance (of 2004) or which supports a current entry in the Title Register kept under that Ordinance."."

Schedule 2,
section 156

By deleting the section and substituting -

"156. Deed of mutual covenant overridden

Section 38(4) is amended -

- (a) in the definition of "common parts", by repealing "in an instrument registered in the Land registry as being for the exclusive use, occupation or enjoyment of an owner;" and substituting -

"as being for the exclusive use, occupation or enjoyment of an owner in an instrument -

- (a) which is registered under the Land

Registration
Ordinance (Cap.
128); or

(b) which is registered
under the Land
Titles Ordinance
(of 2004) or
which supports a
current entry in
the Title Register
kept under that
Ordinance;"

(b) in the definition of "deed of
mutual covenant", in
paragraph (b), by repealing
"in the Land Registry" and
substituting "under the Land
Registration Ordinance (Cap.
128) or the Land Titles
Ordinance (of 2004)".

Schedule 2,
section 158

By deleting "land register" and substituting
"register".

Schedule 2,
section 159

By deleting "land register" and substituting
"register".

Schedule 2,
section 160

By deleting "land register" and substituting
"register".

Schedule 2,
section 167

By deleting paragraph (b) and substituting -

"(b) by repealing "land register" and
substituting "register kept under the
Land Registration Ordinance (Cap. 128)
or the Title Register kept under the
Land Titles Ordinance (of 2004),
as the case may require, ".".