

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

Head 46 – GENERAL EXPENSES OF THE CIVIL SERVICE Subhead 009 Recoverable salaries and allowances (Land Registry Trading Fund)

Members are invited to recommend to Finance Committee the retention of the following four supernumerary posts in the Land Registry with effect from 5 October 2007 for a period of three years up to 4 October 2010 –

1 Senior Principal Executive Officer
(D2) (\$110,000 - \$116,800)

1 Principal Land Registration Officer
(D1) (\$92,650 - \$98,300)

1 Chief Systems Manager
(D1) (\$92,650 - \$98,300)

1 Assistant Principal Solicitor
(DL1) (\$92,650 - \$98,300)

PROBLEM

The following four supernumerary directorate posts in the Land Registry (LR) will lapse on 5 October 2007 –

/Title

Title Registration Development Branch

- (a) one Senior Principal Executive Officer (SPEO) (D2);
- (b) one Principal Land Registration Officer (PLRO) (D1);
- (c) one Chief Systems Manager (CSM) (D1); and

Legal Services Branch

- (d) one Assistant Principal Solicitor (APS) (DL1).

The Land Registrar needs the continued support of the above directorate posts for another three years to prepare for the commencement of the Land Titles Ordinance (LTO) and the implementation of the new land title registration system (LTRS).

PROPOSAL

2. We propose to retain the four supernumerary posts of one SPEO (D2), one PLRO (D1), one CSM (D1) and one APS (DL1) with effect from 5 October 2007 for a period of three years up to 4 October 2010.

JUSTIFICATION**Post-enactment Review of the LTO**

3. The LTO was enacted in July 2004 with the objective of introducing a new LTRS to replace the present deeds registration system. Since a number of fundamental changes were made to the Bill within a short period of time during the Bills Committee discussions, the LTO was enacted subject to the condition that the Administration should conduct a review before commencement. When passing the Ordinance, the Legislative Council (LegCo) took note of the extensive preparatory work involved and a variety of issues that required further examination before the LTO could commence operation. It was then estimated that the preparatory work would likely require at least two years, on the assumption that the main outstanding work was in relation to the subsidiary legislation only, not the principal ordinance. On 25 February 2005, the Finance Committee (FC) approved vide EC(2004-05)15 the creation of the four supernumerary posts listed in paragraph 1 above in the LR with effect from 5 April 2005 for a period of 30 months to prepare for the implementation of the LTO and the new LTRS. The original job descriptions of the posts are at Enclosures 1 to 4.

Encls. 1 - 4

4. Following the enactment of the LTO, the LR has, in consultation with the key stakeholders, conducted the review and concluded that –
- (a) a number of matters included in the Bills Committee Report in 2004 for further review have to be dealt with by way of amendments to the LTO before commencement of the Ordinance;
 - (b) there are a substantial number of other issues that require amendments to the LTO or other related ordinances before commencement of the LTO;
 - (c) conversion of the existing 2.7 million deeds registers to the LTRS under the “daylight” conversion mechanism¹ requires detailed assessment to map out the necessary follow-up actions and identify the legal and resource requirements; and
 - (d) the LR’s information technology (IT) strategy requires major changes to accommodate the revised conversion mechanism and other changes pursuant to the LTO enacted in July 2004 and the subsequent review.

Follow-up Actions Arising from the Review

Follow-up actions requested by the Bills Committee

5. Matters requested by the LegCo for further review as contained in the Bills Committee Report on the LTO cover a variety of issues involving substantial follow-up work. Such matters include considering and resolving a number of legal issues; preparing regulations in support of the LTO; as well as preparing guidelines, operations manuals, explanatory notes, practice manuals and various conveyancing and application forms to prepare for the implementation of the LTRS. Many of them involve complex legal and technical issues which not only require time and effort to tackle, but also careful planning to ensure successful implementation of the future registration system. Many of the issues also require consultation and co-ordination with other government departments and relevant stakeholders. We have either resolved or identified solutions for most of the issues, and some of them would require amendments to the LTO and consequential amendments to other ordinances. The Land Titles (Amendment) Bill (LTAB) is under drafting. As for the guidelines, manuals and forms, preparation is also underway. A detailed progress report on the follow-up actions required as included in the Bills Committee Report on the LTO is in Enclosure 5.

Encl. 5

/Other

¹ Under the “daylight” conversion mechanism to be adopted under the LTO, all deeds registers are treated in the same way and, subject to certain exceptions, will be converted to the land title registers at the same time at the end of a 12-year incubation period. Different from the “gradual” conversion mechanism originally proposed by the LR, the conversion will be automatic rather than upon transactions only.

Other follow-up actions relating to the LTO

6. Apart from the matters contained in the Bills Committee Report, a substantial number of additional issues have been identified during the review of the LTO. They involve important legal as well as policy and operational issues that need to be properly dealt with so as to ensure a sound and robust LTRS for legal practitioners and the public. Many of the issues need to be addressed by way of amendments to the LTO. A summary of the major issues identified and the progress of the follow-up actions taken is at Enclosure 6.

7. In addition, the LTO, as well as the amendments to be made under the LTAB, need to be reviewed thoroughly to ensure consistency within the Ordinance and in its relationship with other ordinances. This requires substantial time and effort. The close inter-relationship between different provisions in the LTO means that the effects of the present wordings have had to be analysed extensively. The large number of ordinances for which the LTO must provide support in succession to the Land Registration Ordinance means that the task of ensuring effective, unambiguous integration between the existing legislation and the new LTO also requires substantial time, effort and consultation. Much has been completed but a significant number of matters are still being worked through. In addition, the LR has also taken the opportunity to carry out a comprehensive revision of the language and organisation of the LTO through the LTAB, which it had not been possible to deal with during the discussion on the individual amendments to the original bill before the LTO was enacted.

Preparation for conversion of the existing deeds registers

8. The LR has to prepare the existing 2.7 million deeds registers for conversion. The “daylight” conversion mechanism to be adopted under the LTO puts a great responsibility on the LR to ensure that the land title registers are properly created and easy to use. In the past two years, the LR made extensive effort to conduct a detailed assessment on the work required for the conversion including potential problems and difficulties, and possible solutions. The LR has identified that –

- (a) about 16 000 cases will require individual scrutiny before conversion;
- (b) there is a need to include exclusion provisions in the LTO to allow the Land Registrar to withhold certain deeds registers from conversion. This is necessary since some cases of apparent multiple owners of single properties have been found. It may not be possible for the Land Registrar to determine who has the title to the property; and

/(c)

- (c) the LR needs to co-ordinate with other government departments extensively to ensure that the necessary preparatory measures are in place to dovetail with the conversion of the deeds registers to the land title registers.

9. The LR is carrying out pilot studies on the 16 000 difficult cases mentioned in paragraph 8(a) above to assess the resources required for completing the full investigation in good time before conversion. The LR has begun investigation of cases that may be affected by these arrangements so that parties affected could be given ample notice before the conversion date. It has also commenced the necessary co-ordination work with other government departments concerned.

Development of IT support systems

10. The IT systems are an essential component of the LTRS to ensure secure recording, effective processing and efficient searching of land title registers. If development work does not start before the LTAB and the related subsidiary legislation are enacted, there will be a substantial delay of at least two years for the implementation of the LTRS. The LR has reviewed its IT strategy for this purpose. Due to the adoption of the “daylight” conversion mechanism and other major changes made by the committee stage amendments to the LTO and amendments proposed by the subsequent post-enactment review, the LR finds that it is no longer feasible to adapt the LR’s existing Integrated Registration Information System (IRIS) for deeds registration to handle land title registration as originally planned. The LR has decided to –

- (a) develop a separate IT system to support land title registration, i.e. Title Registration Information System (TRIS);
- (b) develop a common search system independent of IRIS and TRIS through which the public, estate agents, law firms, banks and other interested parties can obtain registry information seamlessly, irrespective of whether it is kept on IRIS or TRIS; and
- (c) continue to maintain and enhance the IRIS system for deeds registration services to the public, which will co-exist with the TRIS system at least for the 12-year incubation period before conversion of the deeds registers to land title registers.

System designs for the TRIS and the common search system are now underway. Work on maintaining and enhancing the existing IRIS system is substantial and on-going as the LR has to respond to clients’ changing requests and needs.

/Other

Other Preparatory Work

Consultation with stakeholders

11. Since enactment of the LTO in 2004, the LR has established a Steering Committee and a Review Committee comprising, among others, members from the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Association of Banks, the Consumer Council, and the Heung Yee Kuk etc., to conduct the review of the Ordinance. The LR has also been consulting the stakeholders and relevant government departments during the drafting of the LTAB. In view of the significance and complexity of the issues involved, substantial consultation work is required.

Operational preparation and training

12. To ensure successful implementation of the new LTRS, we need to prepare related rules, procedures, forms and guidelines for the operation of the LTRS and for training staff and conveyancing practitioners in readiness for the commencement of the LTO. We also need to implement a wide range of public education programmes to prepare property owners for the implementation of the LTRS. These are not easy tasks as much co-ordination work is required. The LR's objective is to complete such preparatory work in a timely manner so that the LTRS can be implemented as soon as possible after the enactment of the LTAB.

Timetable for Commencement of the LTO

13. Although the LR, with the support of the four supernumerary directorate posts in question, has been making substantial progress to resolve the outstanding issues in consultation with the Department of Justice and the key stakeholders, it is anticipated that at least another year is required to complete the preparation of the LTAB. Having considered the nature and volume of the work involved, we plan to introduce the LTAB into the LegCo in early 2009. Assuming that it would take about one year for the scrutiny of the Bill, we expect that enactment may take place in early 2010. We will need about another year to complete the final preparatory work, which includes the enactment of rules under the LTO, finalisation of forms and procedures as well as public education and publicity, for launching the new LTRS. Therefore, we expect that the earliest possible commencement date of the new LTRS would be by the end of 2010.

/Proposed

Proposed Retention of the Supernumerary Directorate Posts

14. We consider it critical to maintain operational continuity and supervision at the directorate level by retaining the four supernumerary posts in question, given the scale, complexity and volume of work still required to introduce the LTAB into the LegCo and to prepare for implementation of the LTRS as detailed in paragraphs 5 to 12 above. The change from deeds registration to land title registration is a matter of significance to every property owner in Hong Kong. It needs to be prepared thoroughly and managed with care to ensure certainty for owners, banks and any party with interests in property. Effective management and development of the LR's IT systems is also essential as they provide key services to banks, law firms and estate agents and to the public. Taking into account the estimated timetable mentioned in paragraph 13 above, we propose to retain the four supernumerary directorate posts with effect from 5 October 2007 for a period of three years up to 4 October 2010. The existing organisation chart with the proposed supernumerary directorate posts is at Enclosure 7. The need for the continual service of the four supernumerary directorate posts for another three years is elaborated in the ensuing paragraphs.

Supernumerary SPEO post (D2)

15. The SPEO is the overall co-ordinator of all preparatory work relating to the implementation of the new LTRS and assists the Land Registrar in handling the related policy issues. The SPEO also assists the Land Registrar in the necessary administrative, operational, as well as public education and IT system-related preparatory work. As reflected in the extent of the issues identified in the post-enactment review of the LTO detailed above, the SPEO has been more heavily engaged in policy issues and their implications on the preparatory work required than expected when the post was created. As the head of the Title Registration Development Branch, the SPEO supervises the PLRO and the CSM, the other two supernumerary posts. The post is required to provide appropriate supervision at directorate level to ensure efficient implementation of the LTRS. Without this post to support the Land Registrar, quality control and the efficient progress of business will be adversely affected. If approved, the SPEO will be responsible for the following major tasks over the next three years –

- (a) assessing the resource and operational implications of the pilot investigations on the difficult cases related to the conversion of deeds registers, and formulating follow-up programmes to be conducted by the LR and other government departments;
- (b) co-ordinating and managing all additional departmental work arising from the proposed amendments to the LTO, including measures required for the implementation of the exclusion provisions for the conversion of deeds registers;

/(c)

- (c) assisting the Land Registrar in the preparation and conduct of consultation exercises on the revised drafts of the LTAB, formulation of the implementation framework and co-ordination of follow-up work;
- (d) assisting the Land Registrar in the preparation of policy submissions, reports and papers required for finalising the LTAB and implementation of the LTRS;
- (e) preparing for the establishment of the indemnity scheme² in accordance with the arrangements set out in the LTAB and assessing the operational requirements;
- (f) drawing up public education programmes to support the introduction of the LTRS; and
- (g) co-ordinating IT development and professional training to ensure that the LTRS can commence operation as promptly as possible after the enactment of the LTAB and the subsidiary legislation.

Encl. 8 16. A revised job description of the SPEO is at Enclosure 8.

Supernumerary PLRO post (D1)

17. The PLRO assists the SPEO in defining the operational requirements under the LTO, reviewing operational practices, and developing new registration processes and work procedures that can effectively support the LTRS. As the head of the Title Registration Operation Division, the PLRO is responsible for provision of operational advice on legislative amendments arising from the review and for planning and design of the required IT systems. These duties cannot be handled effectively by the SPEO alone without the professional support of the PLRO on operational front. If approved, the PLRO will be responsible for the following major tasks over the next three years –

- (a) providing operational input for the preparation and finalisation of the subsidiary legislation in the light of the LTAB, and assisting with the associated consultation work;

/(b)

² The LTO provides for an indemnity scheme under which indemnity may be claimed under certain circumstances, such as, 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, or 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. An Indemnity Fund will be set up under the LTO through which all indemnity payments will be made. The Land Registry Trading Fund will reimburse the Indemnity Fund for any payments attributable to mistakes or omissions caused by the Land Registrar or public officers assisting the Registrar.

- (b) assessing the operational implications of the conversion mechanism to be adopted under the LTO, giving direction to the investigation teams and assessing the results of the pilot investigations on difficult cases for making recommendations on the planning of further work required to ensure proper handling of the cases;
- (c) evaluating the usefulness of overseas attachment courses and giving direction on the further development of training requirements for land title registration staff;
- (d) overseeing the operational input for the development of the IT systems to support land title registration, as well as for the preparation of the indemnity scheme and professional and public education programmes; and
- (e) giving high-level direction and supervision to the preparation of all necessary forms, procedural guides and operational manuals and assisting with the on-going consultation exercises.

Encl. 9 18. A revised job description of the PLRO is at Enclosure 9.

Supernumerary CSM post (D1)

19. The CSM is the head of the IT Management Division (ITMD). He manages and supervises the work of all in-house IT staff, oversees the provision of IT services, advises on IT applications and ensures the smooth running of all existing IT systems. He is responsible for advising on the strategy for IT development and for management of the ITMD to deliver effective, secure systems to support the new land title registration and the on-going deeds registration. These systems provide business critical services not only to the LR for the registration work but also to all law firms engaging in conveyancing work, banks providing mortgage lending services, estate agents, and various government departments.

20. When the post was created in 2005, it was envisaged that its main task would be to plan the development of the phase II of the existing IRIS system to support the new land title registration. As explained in paragraph 10 above, in the light of the latest development, a new IT strategy has to be developed which involves preparation of substantial new systems. The strategic input, planning and steering by a professional staff at directorate level are therefore essential to ensure that effective IT support will be in place in time to facilitate the commencement of the new LTRS as soon as possible after the enactment of the LTAB. If approved, the CSM will be responsible for the following major tasks over the next three years –

/(a)

- (a) reviewing and revising, where necessary, the IT strategy to align with the progress of legislative and other preparatory work for the implementation of the LTRS;
- (b) planning, co-ordinating and steering detailed implementation programmes in the execution of the IT strategy, in particular for ensuring that essential IT support will be available as soon as possible after the enactment of the LTAB so as to facilitate the early commencement of the LTRS;
- (c) overseeing the development and implementation of the new TRIS and public search system; and
- (d) overseeing the contracts for the continual operation of the existing IRIS and any contract entered into for development or operation of the new systems to ensure efficient parallel operation of the dual systems.

Encl. 10 21. A revised job description of the CSM is at Enclosure 10.

Supernumerary APS post (DL1)

22. The APS post was created to assist the Deputy Principal Solicitor (DPS) (DL2) in the LR, given the large volume of work involved for the review of the LTO and the preparation for launching the LTRS. As the head of the Legal Services Division, the APS also assists the DPS in supervising other legal officers in the LR providing day-to-day legal advisory services, supervising legal research and other legal work. The requirements of the review of the LTO have been found to be far more extensive than originally envisaged and have led to the preparation of a major amendment bill. If approved, the APS is required to handle the following major tasks over the next three years –

- (a) assisting in the completion of the legal work arising from the LTO review, in particular the finalisation of the drafting instructions for the LTAB;
- (b) assisting in the preparation of drafting instructions for the subsidiary legislation to the LTO, in consultation with the stakeholders, and co-ordinating instructions on any amendments required during deliberation on the LTAB in the LegCo or consequential to the enacted bill;
- (c) assisting in consultation with senior legal professionals among stakeholders and government departments on key legal issues;

/(d)

- (d) assisting with presentation and processing of the LTAB in the LegCo;
- (e) giving direction to legal staff engaged in research on matters arising from the LTO review and in handling matters arising from the case-by-case investigations required in preparation for conversion of the deeds registers; and
- (f) assisting with the training and development of the internal legal team in preparation for the commencement of land title registration and the programme of professional training for external parties engaged in land title registration work.

Encl. 11 23. A revised job description of the APS is at Enclosure 11.

24. The responsibilities and tasks mentioned in paragraphs 15 to 23 above are varied and demanding. They require the attention of appropriate officers at directorate level with strong capabilities and extensive experience in management, administrative and operational work, as well as IT and legal expertise. We consider that the continual support of the four supernumerary directorate posts are essential to ensure that the preparation work for the LTAB and the LTRS could be completed on time and that sufficient support is available to assist the LegCo with examination of the LTAB and the subsequent implementation of the LTRS.

ALTERNATIVES CONSIDERED

25. At present, there are only three directorate officers working under the Land Registrar (D4), namely the Registry Manager (RM) (D2), the DPS (DL2) and the Business Manager (BM) (D1). We have explored whether these directorate staff can take up the duties relating to the preparatory work for the LTAB and the implementation of the new LTRS, and considered that this option is not feasible based on the following grounds –

- (a) the DPS, being the head of the Legal Services Branch, has been heavily engaged in providing legal support to the Land Registrar for day-to-day operations of the LR and various new initiatives that are being introduced. In addition to her daily duties, she has to oversee all review and legislative work to be undertaken before the commencement of the LTO as well as to prepare professional guidance notes and training to the legal profession and property practitioners;

/(b)

- (b) the RM, being the head of the Deeds Registration and Departmental Services Branch, has been fully engaged in managing the day-to-day operations of the LR and taking forward various quality management initiatives to improve service delivery to meet customer needs; and
- (c) the BM, pitched at the Chief Treasury Accountant (D1) level, is responsible for the financial and accounting management of the LR, and assists the Land Registrar in managing the Land Registry Trading Fund. She is currently involved in the formulation of Fees Regulations and the operation of the Indemnity Fund under the LTO, and will be required to manage the Indemnity Fund after the implementation of the LTRS.

26. We have also explored the possibility of allowing the lapse of the four supernumerary posts in question. However, having regard to the range, significance and volume of the preparatory work required, we consider that the retention of the supernumerary posts is essential to ensure a smooth implementation of the new LTRS in a timely and effective manner.

FINANCIAL IMPLICATIONS

27. The proposed retention of four supernumerary posts will bring about an additional notional annual salary cost at mid-point of \$4,793,400 as follows –

	Notional annual salary cost at mid-point \$	No. of posts
Supernumerary posts		
SPEO (D2)	1,360,800	1
PLRO (D1)	1,144,200	1
CSM (D1)	1,144,200	1
APS (DL1)	1,144,200	1
Total	4,793,400	4

The additional full annual average staff cost of the proposal, including salaries and on-costs, is \$6,888,000. We have sufficient provision under the Land Registry Trading Fund to meet the full cost of the proposal. In ECI(2006-07)8 on “Update on Overall Directorate Establishment Position”, we originally proposed to retain the supernumerary SPEO and PLRO posts and make permanent the supernumerary CSM and APS posts. However, after careful deliberation, we consider that the directorate establishment of the LR should be reviewed after enactment of the LTAB and thus propose to retain all the four supernumerary posts.

CONSULTATION WITH LEGISLATIVE COUNCIL PANEL

28. We consulted the LegCo Panel on Planning, Lands and Works on this proposal on 22 May 2007. Members urged the Administration to expedite the preparation work for the commencement of the LTO and the LTRS. They were generally supportive of the proposal to extend the four supernumerary directorate posts to allow the work to be completed efficiently.

BACKGROUND

29. The Land Registrar is the General Manager of the Land Registry Trading Fund established under the Trading Funds Ordinance to operate on a self-financing basis. He is responsible to the Secretary for Housing, Planning and Lands for the performance of the Land Registry Trading Fund and for advising on policies and legislative issues concerning land registration and the registration of title to land.

30. On 5 October 2004, five supernumerary directorate posts, viz one DPS (DL2), one SPEO (D2), one PLRO (D1), one CSM (D1) and one APS (DL1), were created under delegated authority in the LR to prepare for the implementation of the LTRS. On 25 February 2005, FC approved vide EC(2004-05)15 the creation of one permanent post of DPS (DL2) and the remaining four directorate posts on a supernumerary basis with effect from 5 April 2005 for a period of 30 months to prepare for the implementation of LTO and the LTRS in Hong Kong and to deal with all legal and legislative work arising from the implementation after the commencement of the LTO. The four supernumerary directorate posts in question will lapse on 5 October 2007.

ESTABLISHMENT CHANGES

31. The establishment changes in the LR for the last two years are as follows –

Establishment (Note)	Number of posts		
	Existing (as at 1 April 2007)	As at 1 April 2006	As at 1 April 2005
A	4 + (4) #	4 + (4)	3 + (5)
B	35	24	22
C	435	438	449
Total	474 + (4)	466 + (4)	474 + (5)

/Note

Note :

- A - ranks in the directorate pay scale or equivalent
- B - non-directorate ranks the maximum pay point of which is above MPS Point 33 or equivalent
- C - non-directorate ranks the maximum pay point of which is at or below MPS Point 33 or equivalent
- () - number of supernumerary directorate posts
- # - As at 1 April 2007, there was no unfilled directorate post in the LR

CIVIL SERVICE BUREAU COMMENTS

32. The Civil Service Bureau supports the proposed retention of the four supernumerary posts for a period of three years to sustain the directorate support required in preparation for the commencement of the LTO and the implementation of the LTRS. The grading and ranking of the proposed posts are appropriate having regard to the level and scope of the responsibilities and the professional input required.

ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

33. As the posts are proposed on a supernumerary basis, their retention, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

Housing, Planning and Lands Bureau
June 2007

**Job Description
Senior Principal Executive Officer**

Rank : Senior Principal Executive Officer (D2)

Responsible to : Land Registrar

Duties and Responsibilities –

1. to act as Head of the Title Registration Development Branch, provide administrative and policy support to the Land Registrar, assist him to develop strategies and plans for the smooth and timely commencement of the Land Titles Ordinance and successful implementation of the land title registration system (LTRS);
2. to review the existing administrative and operational systems, facilities and services, devise new mechanisms and introduce necessary changes to enable effective parallel operation of two land registration systems (Deeds Registration System (DRS) and LTRS) during the 12-year incubation period;
3. to prepare all necessary documentation including Executive Council papers, Legislative Council briefs, panel papers and related documents, help the Land Registrar to steer new policies, rules and legislative amendments through the government machinery and legislature;
4. to plan and develop education and publicity programmes for the benefits of customers, the general public and stakeholders, promote public awareness and understanding of the LTRS;
5. to devise a mechanism for the operation of the Indemnity Scheme, draw up administrative guidelines for indemnity claims and indemnity payments, and for the protection of government interest against any loss attributable to the mistakes or omissions of Land Registry staff;
6. to chair the Title Registration Implementation Committee and serve under the Title Registration Steering Committee and the Title Registration Education Committee both chaired by the Land Registrar, co-ordinate government, departmental and stakeholder efforts; and
7. to oversee enhancement of Phase I of the Integrated Registration Information System (IRIS) to support central registration under DRS, and supervise the development and timely delivery of Phase II of IRIS to support the new LTRS.

Job Description
Principal Land Registration Officer

Rank : Principal Land Registration Officer (D1)

Responsible to : Senior Principal Executive Officer

Duties and Responsibilities –

1. to define the operational requirements under the Land Titles Ordinance (LTO), review the existing operational practices, develop new registration processes and work procedures that can effectively support the new land title registration system (LTRS); prepare relevant operation manuals and reference materials for staff;
2. to review existing facilities for public search and other departmental services, recommend changes to ensure that these facilities and services can effectively cater for the parallel operation of both registration systems (Deeds Registration System (DRS) and LTRS) during the 12-year incubation period;
3. to conduct publicity and training programmes for customers and staff, develop suitable computer-aided and classroom training and information materials, prepare customers and staff for the new mode of operation under the revised DRS and new LTRS following commencement of the LTO;
4. to provide operational input to the in-house information technology team in making improvements to the Integrated Registration Information System (IRIS) that supports centralised services under the DRS, and in the development of Phase II of IRIS to support the new LTRS having regard to the recommendations in the department's Information System Strategic Plan (ISSP);
5. to provide operational input to the in-house legal team in making regulations and consequential legislative amendments, in designing statutory forms and procedures, and assist in their study into any outstanding issues that relate to operational practices; and
6. to serve as member of the Title Registration Education Action Taskforce and any other relevant committees/taskforces set up for the LTRS implementation.

Job Description
Chief Systems Manager

Rank : Chief Systems Manager (D1)

Responsible to : Senior Principal Executive Officer

Duties and Responsibilities –

1. to act as Head of the Information Technology Management Division, manage and supervise the work of all in-house information technology (IT) staff, oversee the provision of IT services to the department, advise on IT application and ensure the smooth running of all existing IT systems;
2. to plan, develop and implement IT infrastructure projects, including the Information Registration Integrated System (IRIS), manage the contractors and user interface, ensure successful enhancement of IRIS Phase I and development of IRIS Phase II that can effectively support Deeds Registration System and land title registration system, and ensure timely delivery of the project within the target timeframe;
3. to formulate and implement IT policies and strategy, set standards in the use of computer facilities and recommend measures to ensure system security and data integrity;
4. to oversee the operation of the Local Area Network and Wide Area Network, their interface with IRIS and other government e-applications;
5. to advise on the adequacy of IT resources and equipment in support of departmental operations, recommend IT solutions to meet business and development needs; and
6. to act as the department's e-Government co-ordinator, plan, develop and implement G2G and G2E applications, promote e-Government and the use of e-services among customers and staff.

Job Description
Assistant Principal Solicitor/Land Registry

Rank : Assistant Principal Solicitor (DL1)

Responsible to : Deputy Principal Solicitor/Land Registry

Duties and Responsibilities –

1. to assist the Deputy Principal Solicitor in supervising three teams of non-directorate legal officers in the Legal Services Branch, provide day-to-day legal advisory services to the department, supervise legal research and other legal work;
2. to assist in the Land Titles Ordinance (LTO) enactment review and the drafting of all necessary legislation including Amendment Bills, Land Titles Regulations, Indemnity Fund Regulation, Fees and Levies Regulations and Transitional Regulations, and arrange for the making of Court Rules;
3. to develop and prepare comprehensive practice guides and explanatory notes for land title registration, arrange professional training for solicitors, estate agents and banks, assist in the training of Land Registry staff;
4. to chair the Regulations Preparatory Committee, serve and co-ordinate the work of the LTO Review Committee, attend other related committees and taskforces as member to provide legal input;
5. to oversee and deal with any civil litigation action against the Land Registry or its staff;
6. to liaise and consult with the stakeholders and other government departments/agencies on all legal matters relating to the LTO and land title registration system implementation; and
7. to assist the Land Registrar to steer any amendment legislation, Regulations and Commencement Notice through the legislature.

**Follow-up actions on matters to be taken by the Administration
after enactment of the Land Titles Ordinance**

Note: The Item Numbers used in this Annex correspond with the item numbers used in Appendix VI of the Bills Committee Report on the Land Titles Bill.

Part A: Making of rules and regulations

Item No.	Follow-up action	Present Position
1.	To specify in the regulations relating to the original clause 4(a) (now s.13(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 clause 4(a) (now s.13(a)) as matters expressly provided for in other enactments. <i>(Item 26 of the list of follow-up actions to the 35th meeting of the Bills Committee on 11 June 2004.)</i>	The review has concluded that no specific regulation or rule is needed. There are two types of court order to consider: (a) those where there is no vesting of title, such as Building Orders or Closure Orders; and (b) those that support a transmission, such as vesting orders under section 45 of the Trustee Ordinance (Cap. 29). In case (a), the order itself will be registered as an instrument. In case (b), the procedure for registration of a transmission will be followed. Special regulations or rules for registration of a court order are therefore unnecessary. The same applies to notices in respect of which no special regulations or rules for registration are necessary.
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 (now s.9) and consider the need to make regulations to	No existing laws of court governing the exercise of power by the Land Registrar have been found. The Court Rules relating to the Land Titles Ordinance (LTO) (whether as part of the Rules of the High Court or a set of stand-alone rules) will provide these.

Item No.	Follow-up action	Present Position
	provide for the relevant implementation procedures. (<i>Item 6 of the list of follow-up actions to the 33rd meeting of the Bills Committee on 1 June 2004.</i>)	
3.	To make recommendations for the Chief Justice to make rules for regulating applications made to the court under clause 95 (now s.97) . (<i>Page 29 of LC Paper No. CB(1)1544/03-04(01).</i>)	Draft Drafting Instructions for the Court Rules have been sent to Department of Justice for comment and preparation of the draft rules. The working draft of the rules will be reviewed and further instructions given to revise the working draft. The working draft will then be prepared for submission to the Chief Justice for consideration by the Rules Committee of the High Court.
4.	To put in place the regulations prescribing the class of persons referred to in clause 77(5)(c) (now s.78(5)(c)) on the definition of "interested person" before the commencement of the LTO. (<i>Item 4 of the list of follow-up actions to the 38th meeting of the Bills Committee on 18 June 2004.</i>)	The review has concluded that provisions for the Land Registrar to make, vary and remove restriction orders be deleted. There is fundamentally no difference between an inhibition order made by the Court and a restriction order made by the Land Registrar. The duplication of power is not necessary. Further, the making of an inhibition order is final whereas a restriction order made by the Land Registrar is still subject to the scrutiny of the Court.
5.	In connection with item 4 above, to put in place all the relevant regulations before the commencement of LTO and consult the Legislative Council (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. (<i>Item 5 of the list of follow-up actions to the 38th meeting of the Bills Committee on 18 June 2004.</i>)	An amendment bill is required. This will be put to the LegCo together with all necessary regulations or rules. The timing of commencement will be determined when the amendment bill is enacted.

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

Item No.	Follow-up action	Present Position
6.	To prepare Land Registry (LR) 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. <i>(Item 4 of LC Paper No. CB(1)1425/03-04(02).)</i>	The LR has reviewed similar guides prepared in other jurisdictions and has determined the nature and scope of documents that need to be prepared. Drafting will begin once the consultation on the amendment bill is completed. Representatives from the Law Society of Hong Kong (Law Soc), the Estate Agents Authority, the Hong Kong Association of Banks and other interested parties will be consulted on the drafts while the amendment bill and rules are being considered by the legislature. Subject to any final amendments required when the remaining legislation is enacted, the material will then be published for use during the final preparation for implementation of the land title registration system (LTRS).
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. <i>(Item 40 of LC Paper No. CB(1)1425/03-04(02).)</i>	<p>As with item 6, drafting will be carried out after the amendment bill has been finalised. These guides will be part of the larger set of publications prepared under item 6.</p> <p>All guides will be made available through the LR's website as well as through other means. The LR has already produced an interactive guide for preparation of memorials under the deeds registration system and will make use of similar tools to assist practitioners prepare for land title registration and update their knowledge thereafter.</p> <p>The LR is sending staff for training in overseas jurisdictions that already operate LTRSs, to ensure that they are prepared for the practical issues and questions that users of the new system may have and are able to give prompt and helpful support to all customers.</p>

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

Item No.	Follow-up action	Present Position
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. <i>(Item 11 of the list of follow-up actions to the 31st meeting of the Bills Committee on 11 May 2004.)</i>	Section 4(1) of the Conveyancing and Property Ordinance (Cap. 219) provides for the disposal of a legal estate by deed. The Law Soc and the Administration are in agreement that the Conveyancing and Property Ordinance and the LTO should operate independently. To remove any doubt whether a legal estate in land may be created, extinguished or disposed of on the execution of a deed under section 4(1) of the Conveyancing and Property Ordinance, the Administration proposed to amend section 4(1) to make it clear that in respect of registered land, the creation, extinguishment or disposal of a legal estate shall comply with both section 32(1) of the LTO and section 4(1) of the Conveyancing and Property Ordinance. The Law Soc is of the view that the amendment is not necessary. On review, the Administration accepts that the LTO - which deals with registered land - sets requirements that are additional to those under the Conveyancing and Property Ordinance - which deals with land in general. It is not recommended to amend section 4(1) of the Conveyancing and Property Ordinance.
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	The Assistant Legal Advisor has clarified that his main concern is that the definition of “deed of mutual covenant” in section 53(5) of the LTO does not cover all types of deeds of mutual covenants under the present conveyancing system. The Administration has asked the Law Draftsman to amend the definition of “deed of mutual covenant” to include sub-deeds of mutual covenant. The Law Draftsman has also been instructed to revise the definition of “owner” to include owners of the same housing estate who do not hold undivided shares in the whole lot.

Item No.	Follow-up action	Present Position
	not common parts. <i>(Item 9 of the list of follow-up actions to the 36th meeting of the Bills Committee on 15 June 2004.)</i>	
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. <i>(Item 14 of the list of follow-up actions to the 36th meeting of the Bills Committee on 15 June 2004.)</i>	The review has concluded that a 'T'so' is similar to a clan, family or 'T'ong' under section 15 of the NTO (Cap. 97). 'T'so' may therefore be registered as an owner, as with a 'T'ong', together with the name of the manager if any has been appointed. Provisions will be added to the LTO on registration of manager of clan, family or "T'ong".
11.	To invite to the 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. <i>(Page 35 of LC Paper No. CB(1)1544/03-04(01).)</i>	The Law Soc has been invited to deal with this.
12.	To carry out in the two-year period between the enactment and commencement of the Bill a review of the references in 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 (LRO)" and make any necessary simplification. <i>(Item 15 of the list of follow-up actions to the 36th meeting of the Bills Committee on 15 June 2004.)</i>	The references have been reviewed and it is proposed to add provisions in the LRO (Cap. 128) to the effect that:- (a) unless the context otherwise requires, any reference in any other enactment to "land register", "LR register", "records of the LR", "LR records", "register kept in the LR", or similar expressions, shall be construed to mean the register or records kept under the LRO or the LTO, as the case may require; and (b) unless the context otherwise requires, any reference in any other enactment to "LR register", "land register", "records of the LR", "LR records", "register kept in the LR", "register kept under the LRO", or

Item No.	Follow-up action	Present Position
		<p>similar expressions, shall be construed to refer to the records kept by the Land Registrar in the register card and the register computer defined in Regulation 2 of the Land Registration Regulations (Cap. 128A).</p>
13.	<p>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. <i>(Item 28 of the list of follow-up actions to the 35th meeting of the Bills Committee on 11 June 2004.)</i></p>	<p>A discussion paper comparing the LTO and the Conveyancing and Property Ordinance (Cap. 219) has been submitted to the Law Soc for comment. The Administration and the Law Soc agree that the Conveyancing and Property Ordinance and the LTO should operate independently. Both agree to amend section 12A of the Conveyancing and Property Ordinance but have not come to agreement on the following provisions of the Conveyancing and Property Ordinance:-</p> <ul style="list-style-type: none"> (a) section 23A – whether to expressly provide that it does not apply to registered land; (b) section 53 – whether to make it clear the requirement for registration; (c) section 56(1) – whether to revise it to the effect that nothing therein provided shall affect the provisions of the LTO, if section 90 of Schedule 3 to the LTO is to be deleted. <p>The Administration will further discuss with the Law Soc with a view to reaching an agreement.</p>
14.	<p>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 LegCo. <i>(Item 33 of LC Paper No. CB(1)1425/03-04(02).)</i></p>	<p>Agreed. All additional consequential amendments will be considered together with the amendment bill and enacted together with it after due process in the legislature.</p>

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

Item No.	Follow-up action	Present Position
15.	<p>To do some research during the two-year period between the enactment and commencement of the Bill and, in consultation with the Law Soc and other relevant parties, revisit the Assistant Legal Adviser (ALA)'s concern that by putting in <i>clause 29(1) (now s.32(1))</i> 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 sub-clause (2), the power of an owner to dispose of his property would be significantly affected. <i>(Item 2 of the list of follow-up actions to the 39th meeting of the Bills Committee on 21.6.2004.)</i></p>	<p>The Review Committee has examined sections 32(1) and 32(2) and has decided that registration of dispositions is required. The decision is in line with the spirit of the LTRS which aims at certainty of title.</p> <p>The Assistant Legal Advisor has commented on the decision to retain sections 32(1) and 32(2) and has raised further questions on the surrender of leases and the creation of easements by prescription. With respect to surrender or termination of leases, it is proposed that:-</p> <ul style="list-style-type: none"> (a) if termination of a lease that is registered is provided in an instrument of termination, the instrument must be registered; or (b) if a lease that is registered is terminated in any other manner, an application for removal of the relevant entry is needed. <p>With respect to easements by prescription, a non-consent caution may be registered.</p> <p>On advice by the Law Draftsman, it is proposed to state expressly that no instrument shall be effectual to create, extinguish, transfer, vary or otherwise affect registered land or a registered long term lease or any interest in or over the land or lease unless and until the instrument is registered. Transmissions and overriding interests are the exceptions. Provisions will be added to the LTO to provide for the exceptions.</p>
16.	<p>To revisit <i>clause 33(8) (now s.35(5))</i> and address Law Soc's concern about the sub-clause 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. <i>(Item 3</i></p>	<p>The Law Soc has proposed to delete the words “under a provisional agreement for sale and purchase or an agreement for sale and purchase” from section 35(5), so that section 35(5) will apply not only to consent cautions in relation to an interest under a provisional agreement for sale and purchase or an agreement for sale and purchase but also to other consent cautions. It is</p>

Item No.	Follow-up action	Present Position
	<i>of the list of follow-up actions to the 39th meeting of the Bills Committee on 21.6.2004.)</i>	intended that the Law Soc's suggestion be accepted.
17.	To revisit clause 35(3) (now s.37(3)(b)) to address Law Soc's concern that the protection given to a registered charge under the Bill may be too limited. <i>(Item 5 of the list of follow-up actions to the 39th meeting of the Bills Committee on 21.6.2004.)</i>	Section 37(3)(b) of the LTO is a provision clarifying that registration of a charge under the Ordinance will not affect the operation of section 44(2) of the Conveyancing and Property Ordinance (Cap. 219). Section 44(2) of the Conveyancing and Property Ordinance preserves the protection, powers and remedies that the mortgagor and the mortgagee under a mortgage effected by a legal charge would enjoy as if the mortgage had been effected by way of an assignment. There are other sections of the Conveyancing and Property Ordinance which provide for the powers or remedies available to a mortgagor and mortgagee, for example, sections 49, 50 and 51. The Administration agrees therefore that section 37(3)(b) of the LTO referring only to section 44(2) of the Conveyancing and Property Ordinance is too limited. After discussion with the Law Soc, the Administration also agrees that the protection currently given under the Conveyancing and Property Ordinance should be preserved. It is proposed that section 37(3)(b) will be deleted and a new provision will be added to the LTO to achieve this.
18.	To review clause 43 (now s.45) in consideration of ALA's view that implied covenants should take effect upon registration and not when the relevant transfer is signed. <i>(Item 14 of the list of follow-up actions to the 37th meeting of the Bills Committee on 17.6.2004.)</i>	The Law Soc has taken the view that implied covenants should take effect on the date of the instrument. It is proposed that implied covenants and the exclusion, variation and extension thereof shall take effect on the date of execution of the instrument. Moreover, it is intended that the operation of section 35 of the Conveyancing and Property Ordinance (Cap. 219) will be preserved and will not be disturbed by the LTO.
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) (now s. 82(4)) , it is not	No indemnity will be payable if the fraud occurred before the date of first registration. The Law Draftsman has been instructed to consider whether amendment is needed to make this clear. If in the affirmative, this will be put

Item No.	Follow-up action	Present Position
	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 LRO (Cap. 128) can be rectified after the commencement of LTO. <i>(Item 8 of the list of follow-up actions to the 38th meeting of the Bills Committee on 18.6.2004.)</i>	forward in the amendment bill.
20.	To review the provisions in clause 92 (now s. 94) after introducing a similar provision in a suitable ordinance that will apply to land not yet registered under LTO. <i>(Item 13 of the list of follow-up actions to the 38th meeting of the Bills Committee on 18.6.2004.)</i>	The Administration has decided that rather than having separate provisions dealing with similar matters in the LTO or the LRO (Cap. 128) and the Land Survey Ordinance (Cap. 473), we would consider having a single set of provisions covering the determination of the boundaries of land registered under the LRO or the LTO and the registration of the resultant land boundary plans contained in the Land Survey Ordinance. We would consider repealing section 94 of the LTO and replacing it with new provisions in the Land Survey Ordinance. We would consider consequential amendments to amend the Land Survey Ordinance in the Land Titles (Amendment) Bill.

Part E: Other issues

Item No.	Follow-up action	Present Position
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” <i>(LC Paper No. CB(1)2207/02-03(06))</i> . Consideration will then be given to the rate to be	This is being done. The LR has engaged actuaries to review the planning assumptions and calculations for operation of the indemnity fund. Given the changes to the conversion mechanism made in the enacted LTO, the levy scheme will need to be adjusted. The proposed levy will be set out within the Land Titles (Fees and Levies) Rules which are being prepared.

Item No.	Follow-up action	Present Position
	applied to each value of property. <i>(Item 15 of LC Paper No. CB(1)1425/03-04(02).)</i>	
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. <i>(Item 18 of LC Paper No. CB(1)1425/03-04(02).)</i>	Draft procedures and forms have been prepared but will require review on completion of consultation on the amendment bill. They will then be put to the Law Soc for consideration in conjunction with the main rules. The LR will provide a briefing on the intended procedures and forms as part of the introduction to the rules when they are laid before members for consideration.
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). <i>(Item 20 of the LC Paper No. CB(1)1425/03-04(02).)</i>	<p>In order to allow for members of the public who have grounds that satisfy the exemptions allowed under the Personal Data (Privacy) Ordinance (Cap. 486) for searching the Title Register by the name of an owner, the Administration intends to put forward provisions for persons who have obtained unsatisfied judgement and court order to make application for a search by an owner's name. Detailed provisions are being developed for discussion with the Office of the Privacy Commissioner for Personal Data and Department of Justice and will be added to both the LTO and the LRO (Cap. 128) by way of the Land Titles (Amendment) Bill.</p> <p>The original section 5 (applications registers) of the LTO is to be deleted and in its place, the keeping of other registers, indexes and records will be added.</p>

Item No.	Follow-up action	Present Position
24.	To consult the Law Soc on the applications register under the LTRS, so that legal practitioners would in future know how to deal with it. <i>(Item 16 of the list of follow-up actions to the 36th meeting of the Bills Committee on 15 June 2004.)</i>	The LR has proposed and the Law Soc has accepted that the Applications Register under the LTO should be maintained in the same manner as the Memorial Day Book under the LRO (Cap. 128).
25.	To resolve before commencement of the Bill certain issues, such as the documents to be kept under the LTRS under clause 44(1) (now s.46(1)), which the Administration has agreed to resolve with the Law Soc after enactment of the Bill. <i>(Item 23 of the list of follow-up actions to the 37th meeting of the Bills Committee on 17 June 2004.)</i>	An owner would only be required to produce instruments which support a current entry. The principle of land title registration is that it would not be necessary to look behind the transaction so that historic instruments are not required to prove title. Even under the existing deeds registration system, certified copies of title deeds as opposed to original deeds, are acceptable so to require production of original instruments would even be more onerous than under the existing system. For proving forgery, secondary evidence can also be relied upon.
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 (now s.82) . <i>(Item 7(b) of the list of follow-up actions to the 38th meeting of the Bills Committee on 18 June 2004.)</i>	The LR has obtained an opinion from a UK QC as well as relevant case law. In light of the advice, amendment will be proposed to section 82 of the LTO.

Item No.	Follow-up action	Present Position
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" (<i>LC Paper No. CB(1)1230/03-04(04)</i>), and provide the Bills Committee with a copy of the reply (<i>Item 25 of the list of follow-up actions to the 38th meeting of the Bills Committee on 18 June 2004</i>).	The LR has invited the Heung Yee Kuk to nominate representatives to the Steering Committee.

Additional Major Issues Raised by the Review

A. Concept of registration of instruments

Under the original provisions of the Land Titles Ordinance (LTO), a disposition (the act as opposed to the instrument) is required to be registered. The instrument providing for the disposition supports the application for registration of the disposition. The instrument itself is not registered.

2. Registration of instruments is a more simple and straight-forward approach. When a transaction is to be effected by an instrument, the transaction is not effectual until the instrument is registered. Upon registration of the instrument, the interest in the registered land to which the transaction relates is registered. For a transfer, when the instrument of transfer is registered, title to the property is vested in the transferee. Redrafting has been proposed in the working draft of the Land Titles (Amendment) Bill (LTAB) and accepted by all parties.

B. Instruments not effectual until registered

3. Section 32(1) of the LTO provides that no disposition shall be effectual unless and until the disposition is registered. Redrafting of section 32 has been proposed to stipulate that, with the exception of transmission and overriding interest, no instrument shall be effectual to affect a registered property or registered charge unless and until the instrument is registered. However, there are certificates, orders, notices and other documents under other enactments that at present are effective without being registered. The treatment of each of these documents under the land title registration system is being reviewed.

C. Date of registration

4. Under the LTO, the Title Register is conclusive of all matters registered. No disposition will be effectual unless and until the disposition has been registered. That being the case, the date of registration is important and needs to be certain.

5. Section 35 of the LTO stipulates the priority of registered matters. The order of presentation of the applications to the Land Registrar is important in according priority irrespective of the dates of the instruments. That means the date of presentation determines the priority whereas the date of registration (whatever that means) confers title to the land.

6. Unless there is to be instantaneous registration, there will be a turnaround time between the date of presentation and the date of physical registration. Given the turnaround time, if the date of registration were the date of physical entry in the Title Register, that would mean an ownership vacuum during that period. There would be no certainty of title until completion of registration. Consequently we intend to propose in the LTAB that the date of registration is to be the date of presentation. There would then be certainty as to the date on which a person became a registered owner. The date will be determined directly by the interested person (through his solicitors) as it is the same date that he chooses to present his application for registration.

D. Overriding interests

7. The LTO provides that all registered property shall be subject to overriding interests referred to in section 28 of the LTO. This is irrespective of whether the interests are entered in the Title Register. Included in the list are rights under enactments relating to resumption, extinguishment of rights or creation of easements, and costs for works, and any notices, orders or certificates relating to these rights. The provisions in other enactments in relation to these rights have been examined, and conflicts have been found between them and the LTO. Examples are –

(a) *Necessity of registration*

Some ordinances mandate registration but under the LTO overriding interests need not be registered.

(b) *Registration of statutory charge*

It is not clear how certain statutory charges are to be treated.

(c) *Discharge of statutory charge*

In some ordinances it is clear that a charge must be registered but it is not clear how the discharge of this charge is to be effected.

(d) *Re-entry or vesting*

The Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap.126), makes clear provision for registration of a memorial of re-entry. But, re-entry or vesting may be cancelled and there is no clear provision to deal with this.

8. Revisions to address these conflicts are being examined.

/Prescriptive

Prescriptive rights

9. Having regard to the case of Kong Sau Ching v Kong Pak Yan [2004]1 HKC 119, there has been a call to expand the list of overriding interests to specifically include rights acquired by prescription. It has been decided that it is unnecessary to expand the list of overriding interests at this stage. If such a claim arises, the claimant may register a non-consent caution against the property. If a prescription right is established through court proceedings, then the court order may be registered against the property.

Adverse possession

10. The Law Reform Committee has set up a sub-committee to study the law on adverse possession. A right acquired or to be acquired under the Limitation Ordinance (Cap.347) is preserved as an overriding interest under section 28(k) of the LTO. The Land Registry (LR) will keep in close contact with the Sub-committee and consideration will be given in due course to any recommendations that may be made requiring additions to the LTO.

E. Severance of joint tenancy

11. Under section 8(1) of the Conveyancing and Property Ordinance (Cap.219), joint tenancy may be severed at law by notice served by a joint tenant on the other or an instrument. It is proposed to include provisions in the LTO to deal in a general way with severance of joint tenancy. However, the registration requirements under the LTO raise question as to when severance takes effect, whether upon the execution of the instrument of severance or its registration, or upon the service of notice or the alteration of the entry referring to the joint tenancy. Amendments to clarify the position will be made in the LTAB.

F. Consequential amendments in other legislation

12. Schedule 3 of the LTO provides for amendments to other legislation consequential upon the enactment of the LTO. During review, a number of issues have been identified where further amendments to clarify the position is needed. These include –

(a) *Interfacing with other ordinances*

Some provisions in the LTO state that the LTO would not affect or prejudice the operations of other ordinances. Whether this is appropriate in each case requires review. Other examples of interfaces that require review are where the registration of an instrument referred to in another ordinance is mandatory but it may

/be

be an overriding interest in the LTO, which is not required to be registered; or how the effect of registration provided for in another ordinance is to be reflected in the LTO register; and, how charges arising under other ordinances are to be registered and discharged under the LTO. Any conflict or inconsistency should be removed.

(b) *Reference in other enactments to registered instruments*

It is common that other enactments refer to rights under an “instrument registered under the Land Registration Ordinance (LRO)”. Clarity is needed as to whether such reference, in the context of the LTO, means “instrument registered under the LTO” or “instrument supporting an entry in the Title Register” or both.

(c) *Creation of charges*

Different enactments adopt different approaches for creation of a charge. While some ordinances provide that a charge is created when certain events happen or upon the registration of certain instruments, there are ordinances, such as the Water Pollution Control Ordinance (Cap.358), which provides that a registered copy of a certificate itself constitutes a legal charge as defined in the Conveyancing and Property Ordinance (Cap.219). This inconsistency with the LTO should be removed.

(d) *Definitions of “Owner”*

Some ordinances contain a definition of the expression “owner”. In the context of the LRO (Cap.128), an owner is still an owner even if he is not registered under that ordinance. In the context of the LTO, an owner is not an owner unless he is registered. The meaning of “owner” under each ordinance needs to be clarified.

(e) *Use of the term “registrable”*

Some ordinances refer to an instrument as being “registrable in the LR”. In the context of the LRO (Cap.128), the expression can mean either an instrument that has been registered or an instrument that has not been registered but could be submitted for registration. In the context of the LTO an instrument not registered is ineffectual. Each ordinance needs to be checked to ensure that the LTO does not have unintended consequences.

/(f)

(f) *Special provisions on Priority*

There are enactments which provide for their own priority rule. For example, the Bedspace Apartments Ordinance (Cap.447) provides that a charge under that ordinance shall have priority from the commencement of the day following the date of its registration. That is not the case under the LTO. It is uncertain whether in the context of the LTO a special priority rule should apply to such charge and if so, how the special priority rule is to be dealt with as against priority under the LTO.

G. Court orders

13. To protect the integrity of the Title Register and ensure that interested parties are not caught by hidden matters, a court order should be registered before it is effectual. Revision may be needed to clarify this. Before pronouncement and registration of the court order, the claim under it can be protected by registration of a non-consent caution.

H. Transmission

14. Under the LTO, transmission does not have to be registered to be effectual. Registration only confirms the vesting of rights that are vested by court order, enactment or operation of law. However, one of the purposes of the LTO is to provide certainty of title to property, and to provide certainty as to which party a purchaser of property should deal with. If transmission takes effect without registration, there is a risk that the registered owner with whom the purchaser is dealing no longer holds the title to the property as a result of transmission. If transmission is required to be registered before it is effectual, then the position under the common law and other enactments would be disturbed. A balance has to be struck. We intend to amend the LTO to provide that, save and except for transmission by court order, registration of transmission will only confirm the vesting. For transmission by court order, the order has to be registered before transmission is effectual.

I. Cautions

15. The LTO provides that upon the registration of the instrument providing for the disposition to which a registered consent caution relates, the priority of all instruments or matters registered after the consent caution will be postponed as against the disposition. The postponement will only take effect when

/the

the disposition is registered. During the time between the registration of the consent caution and the registration of the disposition, other instruments, such as a court order, can be registered. These instruments may affect the registrability of the disposition to which the consent caution relates. After review of provisions for the protection of dispositions in other jurisdictions, the LR has concluded that no additional mechanisms are needed under Hong Kong's circumstances.

J. Caveats

16. At present, unwritten equities are not registrable. If a purchaser for value of a legal estate has made reasonable enquiries and has no notice of the unwritten interest, then he and his successors in title would not take subject to it.

17. Under Schedule 4 to the LTO, provisions for registration of caveats have been added to the LRO (Cap.128) to allow an alleged interest holder to give notice of his unwritten equity. The provisions are not intended to substitute or to disturb the present law on unwritten equities so that an interest holder does not lose his interest by non-registration. A purchaser has still to make the necessary enquiries.

18. Upon conversion to land title registration, the registered caveat will be deemed a non-consent caution under the LTO and all matters registered after the conversion would take subject to that interest. If no caveat was registered before conversion, then that interest would be defeated by a purchaser for value after conversion.

19. Provisions have been made in the LRO (Cap.128) to determine priorities as between competing unwritten equities whilst the LRO applies to the LRO land to which the unwritten equities relate. However, when the LRO land is deemed registered land on conversion, the priority as between competing unwritten equities, the caveated unwritten equities, the newly registered non-consent caution and the deemed non-consent caution remain problematic. Proposals for addressing this have been prepared but require further consideration.

K. Definitions in the LTO

20. The definitions in the LTO have been given careful scrutiny to ensure that they can be applied as intended to a particular section of the LTO.

L. Liability of Government

21. Section 11 of the LTO restricts Government's liability to those under the indemnity provisions. This may have the effect of excluding Government from other tortious claims. This is not intended and amendment may be needed to remove this limitation.

M. Filing of standard terms documents

22. Many terms of an instrument are standard such as a charge to a particular bank. A proposal has been made for banks to file a set of standard terms of frequently used documents and has been agreed by the Hong Kong Association of Banks. Provisions have been set out in the working draft of the LTAB. Practical arrangements and possible provisions under the LRO are now being considered.

N. Restriction order

23. The LTO provides for the Land Registrar to have the power to prohibit dealings. Having concluded that such a power is not that different to that of the court if it were to make an inhibition order, it has been decided that the power of the Land Registrar to make restriction orders can be deleted. The court's decision is final whereas the decision of imposing a restriction order by the Land Registrar is not. To review the Land Registrar's exercise of the power in an application for a restriction order will add to costs unnecessarily.

O. Rectification by the Land Registrar

24. Section 81 of the LTO provides for the Land Registrar to rectify errors or omissions in the Title Register only in limited circumstances, such as where the error or omission is of a clerical nature or the error or omission would not materially affect the interest of the owner. In all other cases the interested parties would have to resolve the error or omission by court proceedings. It was recognised that there are certain errors or omissions which fall outside these two categories which justify being rectified without resorting to court proceedings. For example, when the Land Registrar is of the view that it would otherwise be unjust not to rectify. Amendments to deal with this will be put forward in the LTAB.

P. Indemnity provisions

25. Apart from addressing the issue raised in the Bills Committee report (item 19 of Enclosure 5) the review has examined the entire operation of the indemnity provisions. The LR has sought views from stakeholders on proposed revisions to clarify the operation of these provisions.

/Q.

Q. Exclusion

26. Arising from the investigation of problematic land registers (paragraphs 8 to 9 of covering paper) it is clear that the LTO as it stands does not have provisions to enable the Registrar to handle certain cases where he cannot determine before the statutory conversion date who is the owner to be entered in the land title register. These cases are where there is more than one register in respect of a single property, or more than one owner found on a single register. As well as undertaking detailed scrutiny of potential cases, the LR is preparing new provisions to be added to the LTO to set out how any unresolved cases are to be handled at the time of conversion. The intention is to give the Registrar power to issue a notice that a particular register will not be converted on the statutory conversion date. The circumstances in which such a notice may be issued will be specified and the Registrar will be required to give sufficient notice for affected parties to act before the conversion date should they wish to do so. Affected parties will be able to make representations to the Registrar or to go to Court [for a declaration].

R. Practical implications

27. Practical implications of the operation of the LTO have been considered to identify whether any further amendments are needed and what needs to be covered in guidelines. Issues that have been addressed include:

(a) *Commencement date and expiry date of Government lease term*

Section 4(2) of the LTO needs to be amended to make more provisions for all past arrangements as well as arrangements for new land.

(b) *Historical records*

The arrangements for maintenance and access to historical records need to be set out.

(c) *Unposted applications list*

In cases where a relevant register has not yet been created or cannot be found or exists, pending applications cannot be entered in the Title Register. It has been decided that an unposted applications list should be maintained so that such pending applications can be recorded for reference.

(d)

(d) *Power to reject/withhold applications*

The criteria and the procedures for withholding or rejecting an application are being drawn up.

(e) *Registrable instruments or matters*

The registrability of each instrument in current use is being considered so as to provide clear guidance.

(f) *Separate registration*

An easement or covenant may be created in an instrument of transfer. It may not be desirable to treat these interests as registered when the instrument of transfer is registered. The interests themselves are not referred to in the application for registration of transfer. They should be separately registered. Procedures, forms and fees for dealing with this are being drawn up.

(g) *First registration of new land*

Part 4 of the LTO deals with registration of title to new land. Applications for registration of title to new land will be presented by the Director of Lands. The procedures and timetable for doing this are being tested.

Extension areas may be granted by the Government as extension to new land. Consideration is being given to how to register extension areas and whether there are any practical difficulties to apply the provisions for registration of title to new land to extension areas.

(h) *First registration of long term lease*

Provisions need to be added to allow presentation of an application for registration of a long term lease by a person other than the first lessee.

(i) *Title certificate*

Section 29(1) provides for the issue of title certificates. Some revisions to allow applications only on or after the first transfer after conversion are being considered. Procedures for issue, cancellation and management of the certificates are being drawn up.

(j)

(j) *Satisfaction of registered charge*

Under section 41 of the LTO, if the Land Registrar is satisfied that the charge money has been paid in full or partly paid or the conditions of the charge has been completely or partly fulfilled, he shall remove or alter the entry in the Title Register referring to the charge. In cases where mortgages are noted in the Block Government Leases and the amount of the mortgage money or the conditions of the mortgage are not available, the Land Registrar will have difficulty in the exercise of the power. Investigation as to whether the mortgage money has been paid or the conditions of the mortgage have been fulfilled is beyond the Land Registrar's administrative role. It was decided to delete section 41 and to expand section 12A of the Conveyancing and Property Ordinance (Cap.219) to the effect that in the case of registered land, the court shall have the power to declare the land to be free from a registered charge and make an order for discharge if the court is satisfied with fulfillment of part or all of the conditions to which the charge relates.

(k) *Stamping and Stamp duty charges*

Section 60(1) of the LTO provides that no instrument required by law to be stamped shall be accepted for registration unless the instrument is stamped. Consultation with the Collector of Stamp Revenue is ongoing to ensure compliance with the provision as well as to ensure that registration is not delayed by the stamping process. Consultation is also ongoing regarding the operation of Section 102(1)(m).

(l) *Unrestricted power of sale by personal representative*

Under section 66 of the LTO, a personal representative who in that capacity is registered as the owner has the unrestricted power of sale. The Secretary for Home Affairs has advised that the power of sale should be restricted, subject to the Probate and Administration Ordinance (Cap.10). Whether amendment is needed is under examination.

(m) *Transmission on bankruptcy*

Section 67(1) of the LTO provides that a trustee in bankruptcy shall be entitled to be registered as the owner with the addition after his name of the words "as trustee of the property of a bankrupt". The entry of the name of the trustee in the Title Register means that on each change of appointment of trustee, an application needs to be presented to the LR to alter the entry. This will cause practical difficulties. A resolution is under discussion with the Official Receiver.

(n)

(n) *Address for service*

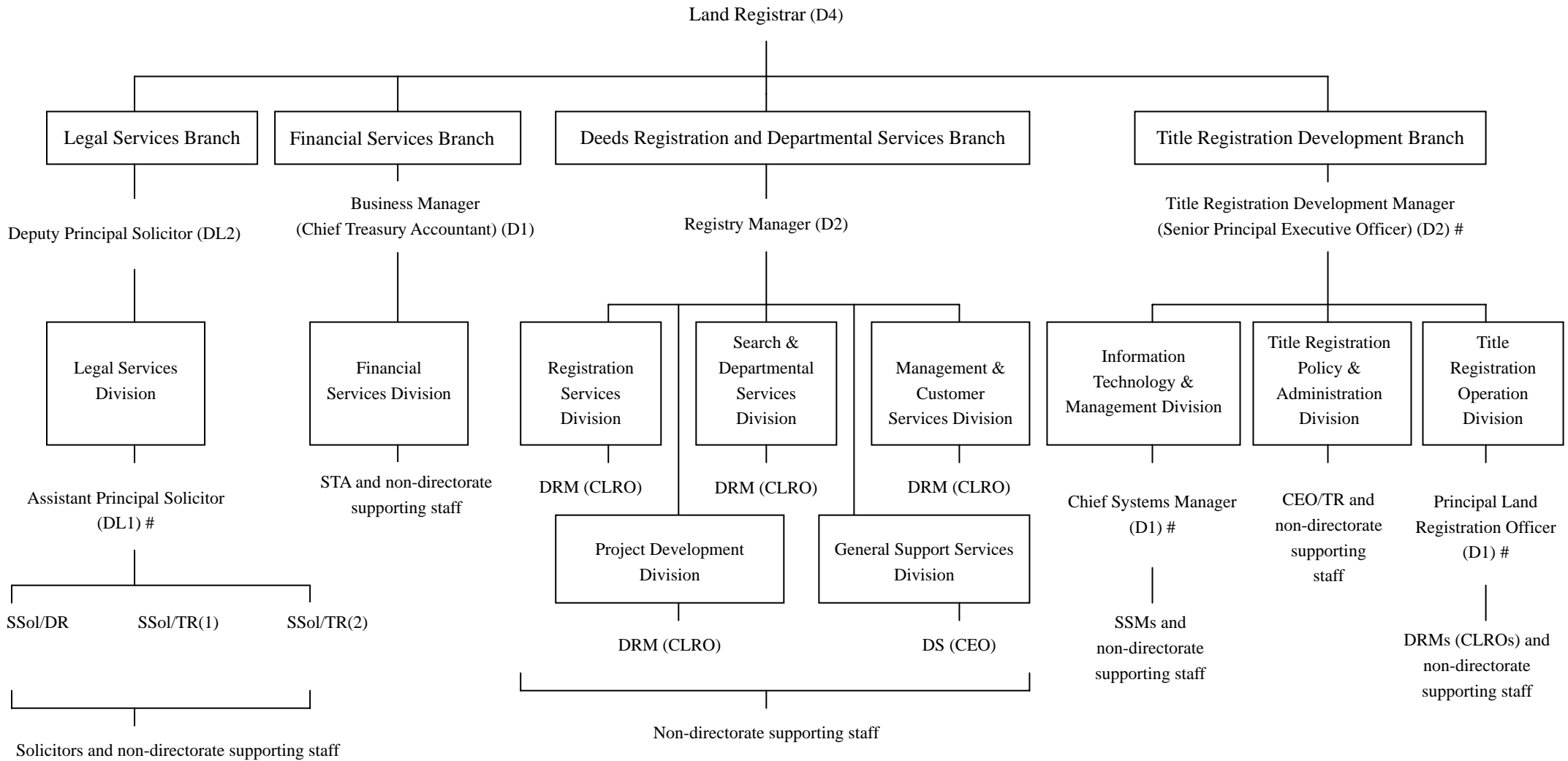
The practicality of Section 95 of the LTO, which empowers the Land Registrar to issue notice to a person as described therein to provide the Registrar with his address for service is doubtful since the Land Registrar may not have that person's address in the first instance for issue of the notice. Also, there is no certain mechanism for keeping addresses up to date.

(o) *Conveyancing practice*

It is necessary to match the provisions of the LTO with the conveyancing practice. Mock conveyancing transactions with the assistance of solicitors' firms in key areas such as combination and division of land, new development of land, sale and purchase and charge, are being planned. Conveyancing forms and application forms for registration are being drawn up.

Existing Organisation Chart of the Land Registry

Enclosure 7 to EC(2007-08)6



Legend: SSol: Senior Solicitor (MPS Pt 45-49) STA : Senior Treasury Accountant (MPS Pt 45-49) CLRO: Chief Land Registration Officer (MPS Pt 45-49)
 CEO: Chief Executive Officer (MPS Pt 45-49) SSM: Senior Systems Manager (MPS Pt 45-49) DRM: Deputy Registry Manager
 DS: Departmental Secretary DR: Deeds Registration TR: Title Registration

Proposed supernumerary directorate posts to be retained with effect from 5 October 2007 for a period of three years to 4 October 2010.

**Revised Job Description
Senior Principal Executive Officer**

Rank : Senior Principal Executive Officer (D2)

Responsible to : Land Registrar

Duties and Responsibilities –

1. to act as Head of the Title Registration Development Branch, provide administrative and policy support to the Land Registrar, assist him to develop strategies and plans for the smooth and timely commencement of the Land Titles Ordinance and successful implementation of the land title registration system (LTRS);
2. to review the existing administrative and operational systems, facilities and services, devise new mechanisms and introduce necessary changes to enable effective parallel operation of two land registration systems (Deeds Registration System and the LTRS) during the 12-year incubation period;
3. to prepare all necessary documentation including Executive Council papers, Legislative Council briefs, panel papers and related documents, help the Land Registrar to steer new policies, rules and legislative amendments through the government machinery and legislature;
4. to plan and develop education and publicity programmes for the benefits of customers, the general public and stakeholders, promote public awareness and understanding of the LTRS;
5. to devise a mechanism for the operation of the Indemnity Scheme, draw up administrative guidelines for indemnity claims and indemnity payments, and for the protection of government interest against any loss attributable to the mistakes or omissions of Land Registry staff;
6. to chair the Title Registration Implementation Committee and serve under the Title Registration Steering Committee and the Title Registration Education Committee both chaired by the Land Registrar, co-ordinate government, departmental and stakeholder efforts; and
7. to oversee the development of new information technology (IT) systems, including the Title Registration Information System, support land title registration, and also the continual enhancement of the Integrated Registration Information System to ensure there is adequate IT support for the parallel operation of both deeds registration and land title registration in the 12-year incubation period.

**Revised Job Description
Principal Land Registration Officer**

Rank : Principal Land Registration Officer (D1)

Responsible to : Senior Principal Executive Officer

Duties and Responsibilities –

1. to act as Head of the Title Registration Operation Division, manage and supervise the work of all staff of the Division to ensure that the necessary operational and administrative arrangements are in place to support the implementation of the new land title registration system (LTRS);
2. to define the operational requirements under the Land Titles Ordinance (LTO), review the existing operational practices, develop new registration processes and work procedures that can effectively support the LTRS; prepare relevant registration manuals and operational procedures for staff; design specified application forms under the LTO and prepare guidance notes for customers;
3. to review existing facilities for public search and other departmental services, recommend and implement changes to ensure that these facilities and services can effectively cater for the parallel operation of both registration systems (Deeds Registration System (DRS) and the LTRS) during the 12-year incubation period;
4. to conduct publicity and training programmes for customers and staff, develop suitable computer-aided and classroom training and information materials, prepare customers and staff for the new mode of operation under the revised DRS and new LTRS following commencement of the LTO;
5. to provide user requirements and operational input to the in-house information technology (IT) team in making enhancements to the Integrated Registration Information System that supports the revised DRS, and in the development of the Title Registration Information System and the External Search Services to support the new LTRS having regard to the department's revised IT Strategy Plan;
6. to provide operational input to the in-house legal team in the post-enactment review of the LTO, the drafting of the Amendment Bill and consequential legislative amendments and the making of the rules and regulations, and assist in their study into any outstanding issues that relate to operational practices;

7. to identify potential problematic deeds registers, establish clear guidelines to handle them where appropriate, resolve the problems where possible and devise a mechanism for preparing the deeds registers for the eventual conversion to land title registration after the 12-year incubation period; and
8. to serve as member of the Title Registration Education Committee and any other relevant committees/sub-committees set up for the LTRS implementation.

**Revised Job Description
Chief Systems Manager**

Rank : Chief Systems Manager (D1)

Responsible to : Senior Principal Executive Officer

Duties and Responsibilities –

1. to act as Head of the Information Technology Management Division, manage and supervise the work of all in-house information technology (IT) staff, oversee the provision of IT services to the department, advise on IT applications and ensure the smooth running of all existing IT systems;
 2. to formulate and review IT policies and strategies, in particular to align with progress of legislative and other preparatory work for land title registration;
 3. to plan, co-ordinate and steer detailed implementation programmes in the execution of the IT strategy, ensure the successful implementation of the Title Registration Information System and the External Search Services in support of the operation of land title registration, as well as effect enhancements to the Integrated Registration Information System (IRIS) to meet the evolving business needs of the department;
 4. to oversee and manage the delivery of services by contractors in accordance with the terms of the contracts;
 5. to plan and oversee the taking over of the support and maintenance of the IRIS upon expiry of the IRIS contract;
 6. to set standards in the use of computer facilities and recommend measures to safeguard system security, data integrity and the availability of essential IT systems; and
 7. to act as the department's e-Government Co-ordinator, plan, develop and implement G2G and G2E applications, promote e-Government and the use of e-services among customers and staff.
-

**Revised Job Description
Assistant Principal Solicitor/Land Registry**

Rank : Assistant Principal Solicitor (DL1)

Responsible to : Deputy Principal Solicitor/Land Registry

Duties and Responsibilities –

1. to assist the Deputy Principal Solicitor in supervising three teams of non-directorate legal officers in the Legal Services Branch, provide day-to-day legal advisory services to the department, supervise legal research and other legal work;
2. to assist in the Land Titles Ordinance (LTO) enactment review and the drafting of all necessary legislation including Amendment Bills, Land Titles Regulations, Indemnity Fund Regulation, Fees and Levies Regulations and Transitional Regulations, and arrange for the making of Court Rules;
3. to develop and prepare comprehensive practice guides and explanatory notes for land title registration and arrange professional training in preparation for implementation of land title registration;
4. to chair the Regulations Preparatory Committee, serve and co-ordinate the work of the LTO Review Committee, attend other related committees and taskforces as member to provide legal input;
5. to oversee and deal with any civil litigation action against the Land Registry or its staff;
6. to liaise and consult with the stakeholders and other government departments/agencies on all legal matters relating to the implementation of the LTO and the land title registration system implementation; and
7. to assist the Land Registrar to steer any amendment legislation, Regulations and Commencement Notice through the legislature.
