

**For discussion on
22 May 2007**

**LEGISLATIVE COUNCIL
PANEL ON PLANNING, LANDS AND WORKS**

**Proposed Retention of Four Supernumerary Posts
in the Land Registry**

Purpose

The purposes of this paper are to :-

- (a) inform members of the progress with the follow-up work made since enactment of the Land Titles Ordinance (LTO) in 2004; and
- (b) seek members' support for the retention of four supernumerary posts for three years from 5 October 2007 to 4 October 2010 to continue with the preparatory work.

Background

2. Before the LTO was enacted in July 2004, during the committee stage discussion of the then Land Titles Bill, Members sought and the Administration gave the following undertakings :-

- (a) a review of the LTO would be conducted before commencement;
- (b) the Administration would:-
 - (i) work with the Law Society so as to address any subsisting points of concern and any issues that emerge on further consideration before implementation; and
 - (ii) not implement the LTO pending review of the Solicitors (Professional Indemnity) Rules and the Professional Indemnity Scheme by the Law Society;
- (c) follow-up actions set out in Appendix VI to the report of the Bills Committee to the House Committee would be taken (LC Paper No. CB(1) 2219/03-04);

- (d) regulations set out in Appendix V to the report would be put in place before commencement of the LTO; and
- (e) the Panel on Planning, Lands and Works would be consulted before the commencement notice for the LTO is published and that commencement notice would be subsidiary legislation subject to the vetting of the Legislative Council.

3. The Land Registrar at that time estimated that it would take at least two years to carry out the required review and preparatory work. When this estimate was given it was assumed that the main outstanding work was in relation to the subsidiary legislation, not the principal ordinance. The Establishment Sub-Committee and Finance Committee approved the creation of one permanent Deputy Principal Solicitor (DL2) (DPS) to head the Land Registry Legal Services Branch and four additional supernumerary directorate posts to assist the Land Registrar with the review of the LTO and preparation of the land title registration system with effect from 5 April 2005. The supernumerary posts were:-

- (a) one Senior Principal Executive Officer (SPEO) as Title Registration Development Manager (D2);
- (b) one Assistant Principal Solicitor (APS) (DL1);
- (c) one Chief Systems Manager (CSM) (D1); and
- (d) one Principal Land Registration Officer (PLRO) (D1).

These posts were approved for a period of 30 months, which will lapse on 5 October 2007.

4. From the legal review it has been concluded that an amendment bill needs to be enacted before the LTO can be brought into effect. Substantive amendments have to be made to the LTO before it can be commenced. Details are at paragraph 5 below. Preparation of the amendment bill is underway but it is a major exercise that requires more time both for drafting and consultation with the stakeholders. The IT development strategy to support title registration and the Land Registry's ongoing operations has had to be revised and extensive operational preparatory work is required, arising from the conversion mechanism approved in 2004¹ and the amendments proposed in the subsequent legal review. Such work requires continuing close directorate supervision. Paragraph 28 below sets out the expected timetable for the remaining work.

¹ The conversion mechanism is the statutory means whereby existing land is brought from the deeds registers onto the title register under the LTO.

The following sections and the annexes set out the extent of the follow-up work identified from the review and the present position on these matters.

The Review

5. The post enactment review of the LTO was not confined to issues raised in Appendix VI to the Bills Committee report. The wording and operation of every section of the LTO have been examined. To assist the Land Registry in carrying out this review, representatives of the Lands Department, the Department of Justice, the Housing Planning and Lands Bureau, the Bar Association and the Law Society were invited to join working committees to raise and deliberate on issues. Annex A sets out issues that were raised in Appendix VI to the Bills Committee Report and the positions that have been reached on these after review. We have either resolved or identified solutions for most of the issues. Annex B sets out further issues identified during the review and the position reached on these. There are significant matters where amendments to the enacted principal ordinance are essential before the legislation can be brought into operation. The individual matters where amendments are required are noted in Annexes A and B. In order to ensure a sound and robust system for legal practitioners and the public on the commencement of land title registration, we consider that these matters must be properly addressed before the commencement of the LTO.

6. The review of the LTO to ensure consistency internally and in its relationship with other ordinances requires substantial time and care. The close interrelationship between different provisions in the LTO means that the effects of the present wording have had to be analysed extensively, as do any proposed revisions. The large number of ordinances for which the LTO must provide support in succession to the Land Registration Ordinance (LRO) 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. Intensive effort is being given by the Land Registry to resolve all remaining matters, with close support from the Department of Justice, but we anticipate that at least another year is needed to complete the preparation of the amendment bill. The officers will have to follow through the whole legislative process including the bills committee discussions after the introduction of the bill into the Legislative Council.

Revision of Language and Organisation of the LTO

7. The Land Registrar has asked the Law Draftsman to take the opportunity of preparing the Land Titles (Amendment) Bill (LTAB) to address concerns about the complex language and organisation of the LTO. The

proposed revisions to the language and organisation of the ordinance are extensive. Almost all parts of the enacted LTO have been rewritten, reorganised or both. The overall response to these changes has been positive. There have been some requests for further improvements to the clarity of the legislation but generally the effect of the changes is seen as making the law more easily accessible and usable for practitioners and the public.

Ongoing Consultation with Stakeholders

8. Since enactment of the LTO in July 2004, the Land Registry has established a Steering Committee and a Review Committee to carry out the review of the LTO. Both of these committees have membership drawn from Government and from the Law Society, the Bar Association, the Hong Kong Association of Banks, the Hong Kong Mortgage Corporation Ltd, the Consumer Council and the Heung Yee Kuk. After completion of the review of the LTO, the Land Registry will be setting up an education task force, again drawing on expertise from these parties to help prepare the conveyancing and property profession to implement the new system and educate the public on the Land Title Registration System (LTRS).

9. The working draft of the LTAB prepared by the Law Draftsman was issued to the Law Society, the Bar Association, the Real Estate Developers Association, the Estate Agents Authority, the Heung Yee Kuk, the Consumer Council and other parties for consideration in mid-2006. The Land Registry has been receiving their comments since August 2006 and is reviewing if further changes are needed in light of their feedback. Further instructions for the Law Draftsman will be prepared leading to a further working draft for consultation.

10. In preparation for the next working draft of the LTAB, the Land Registry will continue to discuss issues with the major stakeholders, to seek views from interested parties and to provide briefings on request. These consultations with stakeholders are carried out at high level requiring the close involvement of Land Registry's directorate staff, including the SPEO, PLRO, CSM and APS. This will continue during the final stages of preparing the amendment bill as well as the examination by Bills Committee.

11. As agreed in 2004, we will continue to work closely with the Law Society, in particular its working party on title registration, to address any issues of concern. After completion of the proposals for amendment of the main ordinance, the main rules for operation of the new system will be adjusted to conform with the proposed amendments and discussed with the Law Society. We will also be seeking the Law Society's confirmation that it has carried out its own review of the Solicitors (Professional Indemnity) Rules and the Professional Indemnity Scheme.

Administrative Preparation

12. There are three main areas of administrative preparation that have significant impact on the LTAB or on the timetable for commencement of the LTRS.

Preparation for conversion

13. The first concerns the preparation of the existing 2.7 million deeds registers for conversion at the end of the 12th year after commencement. The “daylight” conversion mechanism adopted in 2004 puts great responsibility on the Land Registry to ensure that the title registers are properly created and easy to use. Extensive effort has been given to identify possible problems and solutions and to see whether the LTO has sufficient provisions to allow for the efficient management of the conversion.

14. The Land Registrar is required to convert registers opened under the LRO at the end of a period of 12 years from the commencement date of the LTO. The only exceptions will be :-

- (a) registers on which a caution against conversion have been registered;
- (b) registers for which instruments have been submitted for registration but registration has not been completed on the conversion date; and
- (c) registers which have been opened in respect of interests that are excluded from the application of the LTO.

15. Categories (a) and (b) above are straightforward. Category (c) has imposed a very large volume of work on the Land Registry. All registers opened under the LRO that do not qualify for conversion need to be identified so that they are excluded from the automatic conversion process. The casework does not have to be completed by the time the LTO commences but it has been essential to identify the scale of the work and the resources needed to deal with it now so that completion before the conversion date can be ensured. Extensive computer screening of the registers has been carried out to identify such cases. Pilot examination of individual cases to verify results is now underway. The Land Registry estimates that there are likely to be some 16000 cases that have to be looked at individually to ensure accuracy in the conversion process. The Land Registry’s intention is to complete the work well in advance of the end of the 12-year conversion period.

16. The investigation work already conducted has identified a category of registers that need to be withheld from conversion but which cannot be handled under any existing provisions of the LTO. This is where there are two or more registers that purport to relate to the same property or registers that purport to show two or more owners for the same property. In such cases, the Registrar cannot determine to whom title to the property should be given, nor can he register one title to two or more parties. To date, around 480 such multiple registers or multiple owner cases have been found. The existence of these cases has led to proposals for new provisions for exclusion from conversion, as set out in Annex B.

IT development strategy

17. The second issue is the development of IT support systems for land title registration. If development work does not start until the amendments and rules are enacted, there will be a substantial delay of at least two years before the legislation can be brought into operation while the IT system is made ready.

18. In 2005, the Land Registry launched a new computer system, the Integrated Registration Information System (IRIS), to support central registration of deeds under the existing deeds registration operation. At the time the IRIS contract was signed in 2002, it was envisaged that IT support for the implementation of title registration could be achieved through an upgrade of the IRIS system. This was on the assumption that the LTO would have been enacted in the form then envisaged. However, major changes were made to the legislative and operational framework during passage of the legislation through Legislative Council between 2002 and 2004. Further changes are now proposed arising from the review of the LTO. The changes have rendered simple upgrading of the IRIS system infeasible. It is necessary to develop a new, separate IT system to support land title registration.

19. To reduce the time required between enactment of the amendment bill and rules and the commencement of land title registration, the Land Registry is designing the new title registration information system such that development of those functions and infrastructure components with less dependence on the final form of the amendment bill and rules can proceed at an earlier stage. Upon enactment of the amendment bill and rules, the IT system will be further adjusted to cater for those legislative and operational requirements that are essential for the commencement of title registration. Requirements that are less essential will be dealt with as enhancements to the IT system after the system has been put into operation. Such an approach will help ensure the availability of the initial, essential IT support as soon as possible after enactment of the LTAB. Subsequent enhancements to the system will include workflow management and automation to increase productivity and keep pace with the growing volume of transactions under the title register in later years.

20. For external service to customers a comprehensive on-line search service through which the title registers can be accessed as easily as the deeds registers is essential. Since the main IT architecture for delivery of search services will be much less affected by changes to the LTO or rules during their consideration in the Legislative Council, it is feasible to start development of the required search system before the enactment of the legislation. Preparation work has started for this system. Direction of this work, together with the new title registration system, is the responsibility of the CSM, with contract negotiations supervised by the SPEO. Both are also involved in ongoing supervision of existing IT systems and contracts. The future title registration system and the existing IRIS system are major pieces of IT infrastructure. They do not simply support the internal operations of the Land Registry. They are vital to the smooth operation of important legal, financial and business services relating to property as well. Close high-level direction and management of the systems and their development is essential to ensure efficient service.

Operational preparation and training

21. The third issue is the preparation of rules, procedures, forms and guidelines for operation of the LTRS and for training staff and conveyancing practitioners in readiness for commencement of the LTO. As with the development of IT support, the Land Registry's objective is to reduce the gap between enactment of the LTAB and the time when land title registration can commence operation. These materials and activities are more dependent on the final form of the ordinance and the subsidiary legislation than the initial IT system. Time to complete these tasks has to be allowed after enactment of the law before title registration can commence.

22. There are three main areas of work involved :

- (a) preparation of the rules and guidelines for staff and practitioners;
- (b) staff training; and
- (c) training of private sector practitioners and public education.

Rules and guidelines

23. To support the implementation of LTRS, the Land Registry has prepared draft registration procedures and application forms for title registration. Consultation on these drafts with the stakeholders and other interested groups will be carried out prior to introduction of the LTAB. They will remain in draft form during deliberation on the LTAB since they may need

to be adjusted to take account of any amendments agreed in the bills committee. They will be finalised directly after enactment of the LTAB.

Internal training and preparation

24. Operational and legal staff needed to commence operation are already in place. They are now assisting with the preparatory work and will be trained to fully support the professional education programme needed before land title registration is launched.

External education and publicity

25. The main groups directly affected by the change from deeds to title registration will be the law firms, banks and estate agents who have daily dealings with the Land Registry. Education and training materials for these groups will be prepared in parallel with finalisation of the amendments and rules. Representatives from the Law Society, the Hong Kong Association of Banks and the Estate Agents Authority have been identified to form a task force on the professional education programme. The Task Force will begin preparatory work once drafting of the LTAB is complete, so as to gear up for launch of the professional education programme as soon as the LTAB is enacted.

26. After completion of the legislative consultation, a wide-ranging public education programme to prepare property owners for the intended introduction of the new system will commence and run right through to the eventual conversion of existing deeds registers at the end of the 12-year interim period. The Land Registry will work closely with its customer liaison groups and with other interested parties to ensure that information about the changes is presented in a timely and comprehensive manner and that any questions from the public are addressed effectively.

27. Co-ordination of all the above work is a responsibility for the SPEO. Under the SPEO's direction the APS contributes to the preparation of legal material and the PLRO is responsible for training and operational preparation.

Timetable for Commencement

28. After enactment of the LTAB about one year will be needed to complete the final preparations for commencement of the new registration system. If the LTAB is enacted by the beginning of 2010 then commencement can be anticipated at the end of that year. The 12-year interim period before

conversion of existing deeds registers would then begin to run, leading to the conversion taking place at the end of 2022.

Proposed Retention of the Supernumerary Directorate Posts

29. Having assessed the scale, complexity and volume of the work that are still required to be done before enactment of the LTAB and commencement of the LTRS, we consider it critical that operational continuity and supervision at directorate level be maintained. It is therefore proposed that the supernumerary posts mentioned in paragraph 3 be extended for three years, by which time, barring unforeseen circumstances, the LTAB should have been enacted. Given below is a detailed account of the work of these four posts and major tasks that they are required to undertake over the next three years:

(a) Supernumerary SPEO post (D2)

30. The SPEO is the overall coordinator of all preparatory work relating to the implementation of the new LTRS and assists the Land Registrar with handling of policy issues and preparation of policy papers. The SPEO also assists the Land Registrar in the necessary administrative, operational, public education and IT system preparation work. As head of the Title Registration Development Branch, the SPEO manages the PLRO and CSM. The extent of the issues raised by the review, as set out in Annexes A and B, has meant that the SPEO has been more heavily engaged in policy questions and their implications for departmental preparations than expected when the post was created. This will continue to be the case until the drafting of the LTAB is completed. However, the need for a senior officer, set apart from direct operational and legal issues but having oversight of the several strands of work so as to ensure efficient direction of effort remains. Without this post to support the Land Registrar, quality control and the efficient progress of business will be affected. Major tasks that the SPEO is required to handle over the next three years are:-

- (a) assessment of resource and operational implications of the pilot investigations on difficult cases related to the conversion of deeds registers (see paragraphs 13 to 16 above) and direction as to follow-up programmes by the Land Registry and other departments;
- (b) co-ordination and management of all additional departmental work required by further proposed amendments to the LTO, including measures required for implementation of exclusion provisions;

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

(b) Supernumerary PLRO post (D1)

31. 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 head of the Titles Registration Operation Division, the PLRO is responsible for provision of authoritative operational advice to guide legislative changes considered during the legal review and for planning and design of IT systems. On-going work to prepare the LTAB is generating a high volume of business for the PLRO which will continue through to the finalisation of the LTAB.

32. In parallel with work on the LTAB, the PLRO is giving direction to operational input to preparation of the subsidiary legislation in order to have these ready in draft for consideration alongside the LTAB. She will assist with consultation on this and will be responsible for operational input required to finalise the subsidiary legislation in line with the enacted form of the LTAB.

33. To the duties envisaged in 2005 has been added the task of assessing the operational implications of the new conversion mechanism noted in paragraphs 13 to 16 above and ensuring that the required work programmes are carried out efficiently. The volume and complexity of work required here is substantial. Categories of registers which may need to be excluded from conversion have been identified but each case has to be investigated. The PLRO gives direction to the investigation teams and will assess the results of

the pilot cases in order to make recommendations on planning for the further work required to ensure proper handling of the cases.

34. Given the volume of business arising from the review and the deferral of commencement due to the need to enact the LTAB, training and preparation of the team that will commence operation of title registration has not yet progressed far. The first overseas attachment course for title registration staff will be taking place shortly. The PLRO will evaluate the usefulness of the overseas course and give direction on the further development of training requirements for title registration staff.

35. There is also a continuing need for the post to oversee the operational input for development of the IT systems to support land title registration; for the preparation of the indemnity scheme; for the preparation of professional and public education programmes; and to ensure that all necessary forms, procedural guides and operational manuals are ready. Since revisions are still being made to the LTAB, the need for high level direction and supervision to ensure flexibility and consistency is essential. The PLRO also assists with the on-going consultation exercises.

36. The extent of the changes being considered to the LTO, the close inter-relationship between the legislation, the operational procedures and the IT systems and the range of substantial issues that have to be dealt with require directorate level supervision for the operational team. Owing to the operational background and overall view required to assess the wider implications of proposed changes and make appropriate decisions as well as the operational background required, there is a need to retain the PLRO post to handle the relevant work.

(c) **Supernumerary CSM post (D1)**

37. The CSM is the head of the Information Technology 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 land title registration and on-going deeds registration operations. These systems provide business critical services not just to the LR's internal registration work but also to all law firms engaging in conveyancing work; banks' mortgage lending services² estate agents; and a variety of government departments³.

² About \$1,000 billion is currently loaned by Hong Kong's financial institutions against the security provided by registered property.

³ Altogether law firms, banks, estate agents and government departments make about 430,000 searches of Land Registry records and lodge 50,000 documents for registration every month.

38. When created it was envisaged that the main task for the new post would be to plan the development of a phase II of the existing IRIS system to support title registration. As noted in paragraph 18 above, this has been found to be infeasible and a new strategy has been developed that will involve preparation of substantial new systems. Over the next three years the CSM will be required principally to:-

- (a) continue to review and whenever necessary, revise the IT strategy to align with progress of legislative and other preparatory work for land title registration⁴;
- (b) plan, coordinate and steer detailed implementation programmes in the execution of the IT strategy, in particular for ensuring that essential IT support becomes available as soon as after enactment of the LTAB so as to facilitate the early commencement of title registration;
- (c) direct the staff of ITMD in development and implementation of the new title registration information system and public search system;
- (d) oversee the contracts for operation of the existing IRIS system and any contract entered into for development or operation of the new systems; and
- (e) plan and oversee arrangements for the support and maintenance of IRIS on expiry of the current contract.

39. Items (a) to (c) above are directly related to preparation for the implementation of land title registration. The strategic input, planning and steering by the CSM are essential to ensure that the required IT support will be in place to facilitate the commencement of title registration soon after enactment of the LTAB. With regard to items (d) and (e), it is important to have the CSM oversee the continual operation of the existing IRIS while all the planning and preparatory work for new IT systems for land title registration are being taken forward in parallel. In view of the need for IRIS and the new IT systems to co-exist at least during the 12-year interim period after commencement of title registration, coordination and management by an officer at directorate level is required to direct the development of the new IT systems having proper regard to their interface requirements with IRIS.

⁴ The Land Registry's IT strategy has been regularly reviewed by the CSM, resulting in its revision in early 2006 and again in January 2007. Should substantial legislative or operational issues arise in the time before commencement of title registration, the CSM will manage any revision to the IT strategy needed to deal with these issues.

(d) Supernumerary APS post (DL1)

40. The APS post was created to assist the Deputy Principal Solicitor (DPS) (DL2) in the full range of duties in that post, given the large volume of work required for the review of the LTO and the preparation for launch of title registration. The APS 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. As outlined in paragraphs 5 and 6, the requirements of the review of the LTO have been found to be far more extensive than envisaged and have led to the preparation of a major amendment bill. Looking forward, over the next three years the APS will be required to:-

- (a) assist in completion of the legal work arising out of the review, in particular the preparation of final drafting instructions for the LTAB;
- (b) assist in preparation of drafting instructions for the subsidiary legislation to the LTO, in consultation with the PLRO and stakeholders and co-ordinate instructions on any amendments required during deliberation on the LTAB in the Legislative Council or consequential to the enacted bill;
- (c) assist in consultations with stakeholders and Government departments, particularly the Law Society, the Bar Association and the Department of Justice on key legal issues;
- (d) assist with presentation and processing of the LTAB in the Legislative Council;
- (e) give direction to legal staff engaged in research on matters arising from the LTO review;
- (f) assist with training and development of the legal team in preparation for the commencement of land title registration;
- (g) assist with the programme of professional training for external parties engaged in land title registration work; and
- (h) give direction to legal officers handling matters arising out of the case-by-case investigations required in preparation for conversion of the land registers.

41. Without the support of the APS, all direction of the Legal Services Branch and all supervision of solicitors working on preparations for the LTAB and handling of legal matters affecting existing operations will fall to the DPS.

The volume of work to prepare both the LTAB and the various pieces of subsidiary legislation is very substantial. Apart from giving advice and direction to the legal officers involved, it also requires extensive liaison and discussion with senior staff in the Department of Justice and senior members of the legal profession in the Law Society and the Bar Association or representing various other stakeholders such as REDA, the Heung Yee Kuk and the Consumer Council. During the consideration of the LTAB and subsidiary legislation in the Legislative Council the responsibility for this work will be particularly heavy.

42. On top of the aforementioned work, the DPS has to continue with her duties of advising the LR on legal matters arising from the day-to-day operations of the Land Registry. Unaided by the APS, the DPS could not reasonably be expected to undertake all this work within the required timescale and to the necessary quality. Thorough preparation of the legal framework and rapid, authoritative response to practitioners' questions is essential in order to secure and maintain confidence and trust in the title registration system.

Financial Implications

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

| | Notional annual salary cost at mid-point \$ | No. of posts |
|--|--|-------------------------|
| Supernumerary Posts | | |
| Senior Principal Executive Officer (D2) | 1,360,800 | 1 |
| Principal Land Registration Officer (D1) | 1,144,200 | 1 |
| Chief Systems Manager (D1) | 1,144,200 | 1 |
| Assistant Principal Solicitor (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 \$6,888,420. The Land Registry Trading Fund will continue to meet the full cost of the supernumerary posts, if approved by the Finance Committee.

Way Forward

44. A copy of the revised duty lists of the four posts for the extended period is at Annex C. An organisation chart of the Land Registry with the four

———— supernumerary posts proposed for extension is at Annex D. Subject to Members' advice, we intend to seek the support of the Establishment Subcommittee on 13 June 2007 and approval of the Finance Committee on 6 July 2007 for extension of the four supernumerary posts for a further period of 36 months from 5 October 2007 to 4 October 2010 to steer and oversee the preparatory work for the LTRS.

Housing, Planning and Lands Bureau
Land Registry
16 May 2007

**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 <i>original clause 4(a) (now s.13(a))</i> 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> | <p>The review has concluded that no specific regulation or rule is needed. There are two types of court order to consider:</p> <p>(a) those where there is no vesting of title, such as Building Orders or Closure Orders; and</p> <p>(b) those that support a transmission, such as vesting orders under section 45 of the Trustee Ordinance (Cap. 29).</p> <p>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.</p> |
| 2. | To check whether there are any existing laws of | No existing laws of court governing the exercise of power by the Land |

| Item No. | Follow-up action | Present Position |
|----------|--|---|
| | court that govern the exercise of power by the Land Registrar under the <i>new clause 6A (now s.9)</i> and consider the need to make regulations to 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>) | Registrar have been found. The Court Rules relating to the Land Titles Ordinance (whether as part of the Rules of the High Court or a set of stand-alone rules) will provide these. |
| 3. | To make recommendations for the Chief Justice to make rules for regulating applications made to the court under <i>clause 95 (now s.97)</i> . (<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 DoJ 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 <i>clause 77(5)(c) (now s.78(5)(c))</i> 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 LegCo Panel on Planning, Lands and Works in due course on the proposed commencement date of LTO before the commencement notice for the | An amendment bill is required. This will be put to the Legislative Council together with all necessary regulations or rules. The timing of commencement will be determined when the amendment bill is enacted. |

| Item No. | Follow-up action | Present Position |
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| | 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>) | |

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

| Item No. | Follow-up action | Present Position |
|----------|---|--|
| 6. | To prepare Land Registry Circular Memoranda and other advisory publications for solicitors, estate agents and other practitioners once the Bill is enacted. These documents will be drafted in consultation with the relevant professional bodies and issued before the Bill is brought into effect. (<i>Item 4 of LC Paper No. CB(1)1425/03-04(02).</i>) | The Land Registry 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, Estate Agents Authority, HK 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 title registration system. |

| Item No. | Follow-up action | Present Position |
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| 7. | <p>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> | <p>As with item 6, drafting will be carried out after the amendment bill has been finalized. 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 Registry's website as well as through other means. The Land Registry 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 title registration and update their knowledge thereafter.</p> <p>The Land Registry is sending staff for training in overseas jurisdictions that already operate title registration systems, 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 |
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| 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 Society and the Administration are in agreement that the Conveyancing and Property Ordinance and the Land Titles Ordinance 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 Land Titles Ordinance and section 4(1) of the Conveyancing and Property Ordinance. The Law Society is of the view that the amendment is not necessary. On review, the Administration accepts that the Land Titles Ordinance - 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 | 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 Land Titles Ordinance 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 |

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| | to cover all relevant cases. For example, supplemental deeds of mutual covenant may not fall under the definitions. The definitions may also fail to exclude the case where certain parts of the building are dedicated to public use and hence are not common parts. <i>(Item 9 of the list of follow-up actions to the 36th meeting of the Bills Committee on 15 June 2004.)</i> | housing estate who do not hold undivided shares in the whole lot. |
| 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 New Territories Ordinance (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 Land Titles Ordinance on registration of manager of clan, family or "T'ong". |
| 11. | To invite to the Law Society of Hong Kong (Law Soc) to deal with the consequential amendments to the Solicitors (General) Costs Rules (Cap. 159 sub. leg.) as part of the overall arrangement for the implementation of the LTRS. <i>(Page 35 of LC Paper No. CB(1)1544/03-04(01).)</i> | The Law Society has been invited to deal with this. |
| 12. | To carry out in the 2-year period between the enactment and commencement of the Bill a review of the references in Bill to the register | The references have been reviewed and it is proposed to add provisions in the Land Registration Ordinance (Cap. 128) to the effect that:- |

| Item No. | Follow-up action | Present Position |
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| | <p>kept under the existing deeds registration system (DRS), namely, “the land register kept in the Registry” or “the land register kept under the Land Registration Ordinance” and make any necessary simplification. <i>(Item 15 of the list of follow-up actions to the 36th meeting of the Bills Committee on 15 June 2004.)</i></p> | <p>(a) unless the context otherwise requires, any reference in any other enactment to “land register”, “Land Registry register”, “records of the Land Registry”, “Land Registry records”, “register kept in the Land Registry”, or similar expressions, shall be construed to mean the register or records kept under the Land Registration Ordinance or the Land Titles Ordinance, as the case may require; and</p> <p>(b) unless the context otherwise requires, any reference in any other enactment to “Land Registry register”, “land register”, “records of the Land Registry”, “Land Registry records”, “register kept in the Land Registry”, “register kept under the Land Registration Ordinance”, or 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 Land Titles Ordinance and the Conveyancing and Property Ordinance (Cap. 219) has been submitted to the Law Society for comment. The Administration and the Law Society agree that the Conveyancing and Property Ordinance and the Land Titles Ordinance 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> <p>(a) section 23A – whether to expressly provide that it does not apply to registered land;</p> <p>(b) section 53 – whether to make it clear the requirement for registration;</p> |

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| | | <p>(c) section 56(1) – whether to revise it to the effect that nothing therein provided shall affect the provisions of the Land Titles Ordinance, if section 90 of Schedule 3 to the Land Titles Ordinance is to be deleted.</p> <p>The Administration will further discuss with the Law Society 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 Legislative Council. <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 |
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| 15. | <p>To do some research during the 2-year period between the enactment and commencement of the Bill and, in consultation with Law Soc and other relevant parties, revisit the Assistant Legal Adviser (ALA)'s concern that by putting in <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 subclause (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 title registration system which aims at certainty of title.</p> <p>The Assistant Legal Adviser 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 Land Titles Ordinance 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 subclause</p> | <p>The Law Society has proposed to delete the words “under a provisional agreement for sale and purchase or an agreement for sale and purchase”</p> |

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| | 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 of the list of follow-up actions to the 39th meeting of the Bills Committee on 21.6.2004.)</i> | 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 intended that the Law Society’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 Land Titles Ordinance 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 Land Titles Ordinance referring only to section 44(2) of the Conveyancing and Property Ordinance is too limited. After discussion with the Law Society, 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 Land Titles Ordinance 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</i> | The Law Society 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 |

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| | <i>of follow-up actions to the 37th meeting of the Bills Committee on 17.6.2004.)</i> | operation of section 35 of the Conveyancing and Property Ordinance (Cap. 219) will be preserved and will not be disturbed by the Land Titles Ordinance. |
| 19. | To consider how to address ALA's concern that, because of the reference to "the entry in the Title Register" in <i>clause 81(4) (now s. 82(4))</i> , it is not clear whether a fraud or voidable transaction that would give rise to a claim for rectification in relation to land which was registered under the Land Registration Ordinance (LRO) (Cap. 128) can be rectified after the commencement of LTO. <i>(Item 8 of the list of follow-up actions to the 38th meeting of the Bills Committee on 18.6.2004.)</i> | 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 forward in the amendment bill. |

| Item No. | Follow-up action | Present Position |
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| 20. | To review the provisions in <i>clause 92 (now s. 94)</i> 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 Land Titles Ordinance or the Land Registration Ordinance (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 Land Registration Ordinance or the Land Titles Ordinance and the registration of the resultant land boundary plans contained in the Land Survey Ordinance. We would consider repealing section 94 of the Land Titles Ordinance 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 |
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| 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 applied to each value of property. (<i>Item 15 of LC Paper No. CB(1)1425/03-04(02).</i>) | This is being done. The Land Registry 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. |
| 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 Society for consideration in conjunction with the main rules. The Land Registry 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. |

| Item No. | Follow-up action | Present Position |
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| 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 Land Titles Ordinance and the Land Registration Ordinance (Cap. 128) by way of the LTAB.</p> <p>The original section 5 (applications registers) of the Land Titles Ordinance is to be deleted and in its place, the keeping of other registers, indexes and records will be added.</p> |
| 24. | To consult Law Soc on the applications register under the LTRS, so that legal practitioners would in future know how to deal with it. (Item 16 of the list of follow-up actions to the 36th meeting of the Bills Committee on 15 June 2004.) | The Land Registry has proposed and the Law Society has accepted that the Applications Register under the Land Titles Ordinance should be maintained in the same manner as the Memorial Day Book under the Land Registration Ordinance (Cap. 128). |

| Item No. | Follow-up action | Present Position |
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| 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 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 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 Land Registry 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 Land Titles Ordinance. |

| Item No. | Follow-up action | Present Position |
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| 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 Land Registry has invited the Heung Yee Kuk to nominate representatives to the Steering Committee. |

Land Registry

May 2007

Additional Major Issues Raised by the Review

A. Concept of registration of instruments

Under the original provisions of the 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 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 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 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 are 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 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 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”. Clarity is needed as to whether such reference, in the context of the LTO, means “instrument registered under the Land Titles Ordinance” 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 Land Registration Ordinance (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 Land Registry”. In the context of the Land Registration Ordinance (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) *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 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 Land Registry 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 Land Registration Ordinance (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 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 Land Registration Ordinance (Cap.128) to determine priorities as between competing unwritten equities whilst the Land Registration Ordinance 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 HKAB. 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 [Annex A](#)) the review has examined the entire operation of the indemnity provisions. The Land Registry has sought views from stakeholders on proposed revisions to clarify the operation of these provisions.

Q. Exclusion

26. Arising from the investigation of problematic land registers (paras. 13 to 16 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 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 Land Registry 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) *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) *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 Land Registry to alter the entry. This will cause practical difficulties. A resolution is under discussion with the Official Receiver.

(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.

Land Registry

May 2007

Revised Job Description
Senior Principal Executive Officer

Rank : Senior Principal Executive Officer (D2)

Responsible to : Land Registrar

Duties and Responsibilities –

1. 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. 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. Prepare all necessary documentation including Executive Council papers, Legislative Council briefs, panel papers and related documents, helping the Land Registrar to steer new policies, rules and legislative amendments through the government machinery and legislature.
4. Plan and develop education and publicity programmes for the benefits of customers, the general public and stakeholders, promoting public awareness and understanding of the LTRS.
5. 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. 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-ordinating government, departmental and stakeholder efforts.

7. Oversee the development of new IT systems, including the Title Registration Information System, to support 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 title registration in the 12-year interim period.

Revised Job Description
Principal Land Registration Officer

Rank : Principal Land Registration Officer (D1)

Responsible to : Senior Principal Executive Officer

Duties and Responsibilities –

1. 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. 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. 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. 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. Provide user requirements and operational input to the in-house 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 Information Technology Strategy Plan.

6. 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. Identify potential problematic land registers, establish clear guidelines to handle them where appropriate, resolve the problems where possible and devise a mechanism for preparing the land registers for the eventual conversion to title registration after the 12-year incubation period.
8. 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. As Head of the Information Technology Management Division, manage and supervise the work of all in-house IT staff, overseeing the provision of IT services to the department, advising on IT applications and ensuring the smooth running of all existing IT systems.
2. Formulate and review IT policies and strategies, in particular to align with progress of legislative and other preparatory work for title registration.
3. Plan, coordinate and steer detailed implementation programmes in the execution of the IT strategy, ensuring the successful implementation of the Title Registration Information System and the External Search Services in support of the operation of title registration, as well as effecting enhancements to the Integrated Registration Information System (IRIS) to meet the evolving business needs of the department.
4. Oversee and manage the delivery of services by contractors in accordance with the terms of the contracts.
5. Plan and oversee the taking over of the support and maintenance of the IRIS upon expiry of the IRIS contract.
6. Set standards in the use of computer facilities and recommend measures to safeguard system security, data integrity and the availability of essential IT systems.
7. Act as the department's e-Government Coordinator, plan, develop and implement G2G and G2E applications, promoting 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)

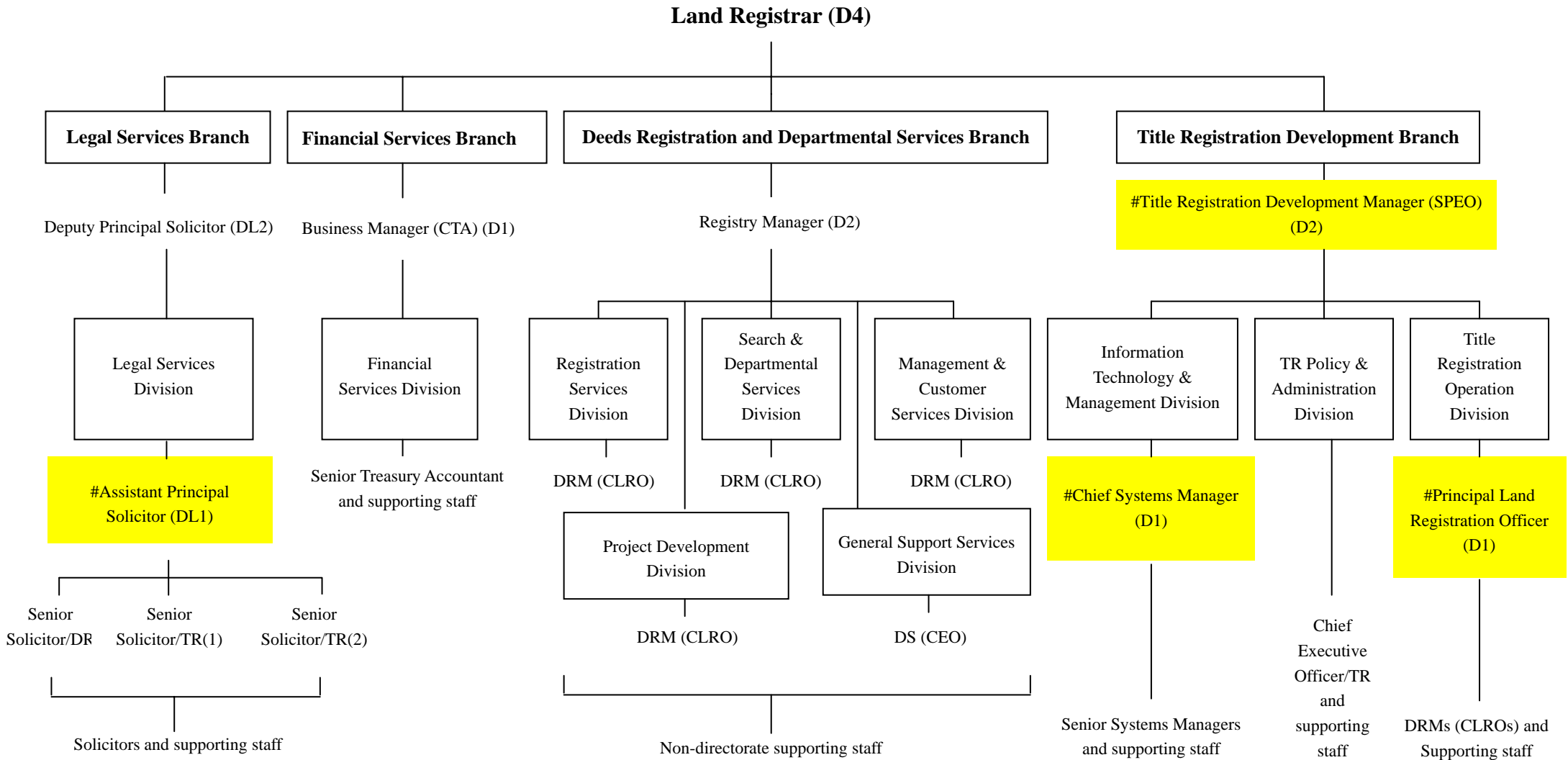
Responsible to : Deputy Principal Solicitor/Land Registry

Duties and Responsibilities –

1. Assist the Deputy Principal Solicitor in supervising three teams of non-directorate legal officers in the Legal Services Branch, providing day-to-day legal advisory services to the department, supervising legal research and other legal work.
2. 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. Develop and prepare comprehensive practice guides and explanatory notes for title registration and arrange professional training in preparation for implementation of title registration.
4. 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. Oversee and deal with any civil litigation action against the Land Registry or its staff.
6. 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.
7. Assist the Land Registrar to steer any amendment legislation, Regulations and Commencement Notice through the legislature.

Land Registry
May 2007

Existing and Proposed Organisation Chart of Land Registry



Legend: CEO: Chief Executive Officer
 DR: Deeds Registration
 CLRO: Chief Land Registration Officer
 DRM: Deputy Registry manager
 SPEO: Senior Principal Executive Officer
 CTA: Chief Treasury Accountant
 DS: Departmental Secretary
 TR: Title Registration

Proposed supernumerary directorate posts to be retained for 3 years from 5 October 2007