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20 May 2025

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BY EMAIL AND BY POST

URGENT

The Hon Lau Kwok-fan, MH, JP,
Chairman of the Bills Committee,
Legislative Council,
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong.

Dear Mr. Lau,

Registration of Titles and Land (Miscellaneous Amendments) Bill 2025

We are pleased to attach the Law Society's submissions on the Registration of Titles and Land (Miscellaneous Amendments) Bill 2025 for consideration by the Bills Committee.

Yours faithfully,

Eileen Tam
Assistant Director of Practitioners Affairs

Encl.

c.c. The Land Registrar
The Hon Ambrose Lam, JP

Registration of Titles and Land (Miscellaneous Amendments) Bill 2025

The Law Society's Submission

1. The Registration of Titles and Land (Miscellaneous Amendments) Bill 2025 (the “**Amendment Bill**”) was gazetted on 28 February 2025. The Amendment Bill seeks to amend the Land Titles Ordinance (Cap. 585 of the Laws of Hong Kong) (the “**LTO**”), the Land Registration Ordinance (Cap. 128 of the Laws of Hong Kong) (the “**LRO**”) and the resolution passed under the Trading Funds Ordinance establishing Land Registry Trading Fund (Cap. 430A of the Laws of Hong Kong), and implement the title registration system on newly granted land first.

2. The Law Society supports the policy objectives of the Amendment Bill and has considered the changes the Amendment Bill proposes to make, focusing on the changes to be introduced to the LTO.

Specific comments on the Amendment Bill

3. Our specific comments on the changes that the Amendment Bill proposes to make to the LTO are set out as follows:

4. Clause 3(15)

4.1 The following new definition of “*long term lease*” is introduced to section 2(1) of the LTO:

“***long term lease*** (長期租約) –

- (a) *means a lease of the following descriptions-*
 - (i) *a lease of registered land as a whole (other than any undivided share in the land) granted by the owner of the land;*
 - (ii) *under which the lessee is granted the right to exclusive possession of the land for a term of not less than 21 years; and*
 - (iii) *for which a premium is paid or a valuable consideration (other than those payable on a periodic basis) is given; but*
- (b) *does not include a lease the unexpired term of which is less than 21 years at the time when the application for the registration of the lease*

is lodged;”

4.2 The new definition suggests that a long term lease must be a lease in respect of the whole of a registered land but not any undivided share in the land.

4.3 On the other hand, under Clause 24, a new section 26 is introduced to the LTO.

“26. Effect of registration of long term lease

...

- (2) *Subject to sections 27, 81 and 82, on the registration of a long term lease, the following interest and rights, free from all interests and claims (other than those specified in subsection (3)), are vested in the person whose name is entered in the Title Register as the owner or holder (or words to the like effect) of an undivided share in the land held under the lease –*
 - (a) *the interest in the undivided share; and*
 - (b) *all rights attaching to the land which may be exercised because of that interest.*
- (3) *The interests and claims specified for the purposes of subsection (1) and (2) are –*
 - (a) *covenants, exceptions, reservations, stipulations, provisos or declarations contained in the Government lease of the land or the long term lease;*
 - (b) *registered matters affecting the land; and*
 - (c) *overriding interests affecting the land.”* (emphasis added)

4.4 The new section 26(2) of the LTO clearly anticipates that a long term lease may be a lease involving an undivided share in registered land, which contradicts with the new definition of “long term lease”.

4.5 The new definition also requires a long term lease to provide for payment of a premium or giving of a valuable consideration which is not payable periodically. We believe the intention is to include long leases in respect of which a premium is payable, and to exclude long leases in respect of which only periodic rental payments are made. However, the new definition may also exclude long leases that provide for payment of a premium in instalments instead of in a lump sum upfront upon signing of the lease. We are uncertain whether this aligns with the legislative intention.

5. Clause 3(30)

5.1 A definition of “new land” is introduced into section 2(1) of the LTO.

“new land (新土地) –

- (a) *means land held under a Government lease granted on or after the commencement date for a term commencing on or after that date; but*
- (b) *does not include –*
 - (i) *land held under a short term tenancy;*

... ”

5.2 Paragraph (b)(i) of the definition of “*new land*” states that new land does not include land held under a short term tenancy. A new definition for “*short term tenancy (短期租約)*” has also been introduced into section 2(1) of the LTO by Clause 3(30) of the Amendment Bill. The new definition simply defines a “short term tenancy” as “*a lease granted for a term of not more than 7 years (exclusive of any extension or renewal of the lease)*”.

5.3 It is not clear whether the intention is to exclude from “new land” all lands held under a tenancy for a term of not more than 7 years, regardless of whether the tenancy is granted by the Government, or only lands held under a tenancy for a term of not more than 7 years from the Government. We believe the latter is the intention, otherwise, the lessee of land held under a Government lease granted on or after the commencement date of the amendments cannot register his lease under the LTO if the term granted to him under the lease is not more than 7 years, even though his landlord’s interests in the land, which qualifies as new land, are registered on a Title Register under the LTO.

5.4 If our belief is correct, the definition of “*short term tenancy*” should be amended to clearly refer to a lease granted for a term of not more than 7 years by the Government (exclusive of any extension or renewal of the lease).

6. Clause 5(20)

6.1 In Clause 5 of the Amendment Bill, sections 4(3) and 4(4) are added to the LTO as follows:

“4. Title Register

(3) To avoid doubt, a reference to the following in the Title Register is for information only and does not form part of the Title Register –

- (a) a pending application for the registration of a matter;*
- (b) the documents, information, evidence or explanation accompanying the application;*
- (c) other particulars of the application.*

(4) Despite what is shown on a title certificate, the Title Register is, subject to other provisions of this Ordinance, conclusive evidence of –

- (a) the title to a registered interest, and*
- (b) any other matters shown in the Title Register.”*

6.2 Section 4(4) above provides that the Title Register is the conclusive evidence of the title to a registered interest. Section 4(3) above provides that a pending application for registration does not form part of the Title Register.

6.3 Upon application for registration of a transfer, will the name of the transferee under the transfer be shown immediately as the owner under the Title Register? If not, will the transfer be shown as an entry of pending application for registration and the name of the owner in the Title Register will still be the transferor? The latter case may cause confusion to the public (including people who need to verify the title of the transferee before the transfer to the transferee has been registered on the Title Register) and in law, because the owner will still be the transferor even though the transfer has been duly completed pending registration.

7. Clause 6

7.1 In Clause 6 of the Amendment Bill, section 5 of the LTO is to be substituted by the following: -

“5. Applications register

- (1) The Registrar is to, for the purposes of this Ordinance, keep a register to be known as the applications register.*
- (2) The applications register is to—*
 - (a) record all applications for registration ever lodged under this Ordinance; and*
 - (b) contain other particulars or information that the Registrar considers appropriate to be entered in the applications register.”*

7.2 The Law Society notes that according to the new section 5(2)(a), the applications register is to record **all** applications for registration ever lodged under the LTO.

7.3 The Law Society wishes to seek clarifications on the purpose of the applications register. According to the Law Society’s understanding, the subject matter of a successful application will result in an entry in the Title Register. Is the purpose of the applications register for facilitating the checking of pending applications in relation to a registered interest/charge or for determining the priority of matters lodged with the Land Registry on the same day but at different times? Please clarify the purpose of the applications register, and how it is relevant for the use of the public. Please also confirm whether applications which have been processed and registered or which have been pending for a long time will be removed from the applications register.

8. Clause 16

8.1 A new section 15A is added to the LTO.

“15A. Registration

Subject to other provisions of this Ordinance, a registered matter is regarded to have been registered on the day on which the application leading to the registration of the matter is lodged (or is regarded to have

been lodged under section 41A), which is to be determined in accordance with the provisions of this Ordinance."

8.2 Please clarify which date will be considered as the date of registration in a case where the application for registration of a matter has been returned for amendment and is re-lodged after the amendment, and the re-lodged application for registration eventually leads to the registration of the matter. Will the date of registration be the date on which the application was first lodged, or the date on which the application was re-lodged?

9. Clause 22

9.1 A new section 22 is proposed to substitute the original section 22 of the LTO.

"22. Date of first registration of new land

For any new land the title to which is registered under section 21, the date of its first registration is the day on which the application leading to the title being so registered for the first time is lodged under that section."

9.2 The effect of this new section is similar to the proposed new section 15A, although it will deal with the date of first registration of new land on an application lodged by the Director of Lands. The question in relation to the new section 22 is the same as the one raised in paragraph 8.2 in relation to the new section 15A of the LTO.

10. Clause 30

10.1 In Clause 30 of the Amendment Bill, section 30 of the LTO is to be substituted by the following: -

"30. Public inspection of registers and documents etc.

- (1) Subject to other provisions of this section and this Ordinance, the Registrar is to make available the registers, documents, lists and applications specified in subsection (2) (**specified materials**) for search and inspection, in the form and manner that the Registrar considers appropriate.*
- (2) The registers, documents, lists and applications specified for the purposes of subsection (1) are—*
 - (a) individual title registers (including the historical editions of individual title registers);*
 - (b) applications register;*
 - (c) lodged documents (or a record of such documents) kept under section 6(1)(a) and (b);*
 - (d) a list of all applications that support the entries (whether current or historical) in an individual title register;*

- (e) *standard terms documents filed under section 61B;*
- (f) *lodged applications for the registration of matters that have been removed from the Title Register after their registration and the documents accompanying those applications (or a record of such documents) (**historical records**); and*
- (g) *lodged applications for which the Registrar refuses to process further under section 8(2)(d) and the documents accompanying those applications (or a record of such documents).*
- (3) *A person who intends to make a search or inspection of the specified materials must—*
 - (a) *lodge an application in accordance with the regulations; and*
 - (b) *accompany the application with the fee prescribed in respect of the search or inspection.*
- (4) *Without limiting subsection (3), an application for a search or inspection of any specified materials that are historical records—*
 - (a) *is to be lodged by a person specified in the regulations for the purposes of the application; and*
 - (b) *is to contain the particulars or information, and be accompanied by the documents, confirmation, declaration or acknowledgement, specified in the regulations for the purposes of the application.*
- (5) *For an application lodged by a person under this section, without limiting section 8, the Registrar may require the person to provide any information, document, confirmation, declaration or acknowledgement (including proof of the capacity in which the person acts when lodging the application) that the Registrar considers necessary.*
- (6) *On approving an application under this section, the Registrar may specify—*
 - (a) *the extent to which the specified materials are to be made available to the person for search or inspection; and*
 - (b) *the manner in which the specified materials are to be made available to the person.*
- (7) *An application for a search or inspection of the specified materials mentioned in subsection (2)(a), (c), (d), (f) or (g) is to be refused unless the search or inspection is for any one or more of the purposes specified in the regulations for the purposes of the application.”.*

10.2 It appears that more stringent rules will be imposed on searches. Please clarify who will be the person(s) entitled to lodge an application for search? What information and documents must the applicant provide? For what purposes will searches be restricted to use? What information will not be made available for search? Restrictions on searches or the purposes they may be used should be imposed only if they are necessary because transparency and free flow of information is vital to attracting investments in Hong Kong.

11. Clause 36

11.1 In Clause 36 of the Amendment Bill, section 35(1) and section 35(5) of the LTO are to be substituted by the following: -

“35. Priority of Registered Matters

(1) Registered matters have priority according to the order in which the applications leading to their registration were lodged.

(1A) If a consent caution is registered against a registered interest or a registered charge in relation to an agreement for a disposition –

(a) the priority of all matters that are registered against that interest or charge after the registration of the consent caution is, on the registration of the disposition, postponed in relation to that disposition; and

(b) the interest and right arising from the agreement are, for the purposes of subsection (1), regarded to be registered matters on the registration of the consent caution and to have priority as determined in accordance with that subsection. ”

...

(5) A charging order is to have priority from the commencement of the day following the date of its registration.

11.2 We have already raised our question relating to the date of registration if an application is returned for amendment and is re-lodged which eventually leads to the registration of the matter concerned. Please refer to Paragraph 8.2 of this Submission.

11.3 We set out the following scenario:

Date	Instrument
1 May 2025	Agreement for Sale and Purchase (“SPA”) signed
2 May 2025	Charging Order Nisi obtained against the Property
3 May 2025	Consent caution (“CC”) of the SPA registered
4 May 2025	Charging Order Nisi Registered
30 June 2025	Transfer of the Property pursuant to the SPA registered

11.4 According to the new section 35(5) of the LTO proposed by the Amendment Bill, the Charging Order is to have priority from the commencement of the day following the date of its registration (i.e. 5 May 2025). According to section 35(1A) of the LTO, as a CC of the SPA has been registered against the Property, the priority of all matters that are registered against the Property after the CC, is on the registration of transfer of the Property pursuant to the CC, postponed in relation to the transfer. Therefore, the Charging Order (if valid) will be postponed after the transfer made on 30 June 2025.

Please confirm:

- (a) Whether the Registry will allow registration of the Charging Order Nisi against the Property if a CC of the SPA has already been registered, for by

virtue of the SPA, the substantial beneficial interest in the property has already passed to the purchaser.

- (b) If the scenario set out in Paragraph 11.3 is changed so that the Charging Order is registered before the CC but the SPA has already been signed between the vendor and the purchaser when the Charging Order is granted by Court, it would seem that the Charging Order should have priority over the SPA according to the provisions of the LTO. However, on the date of the Charging Order, the vendor has disposed of substantial beneficial interest in the property to the purchaser already and there will be little interest which the Charging Order could attach to. In a case like this, please advise whether the Charging Order would nonetheless be an effective charge against the property and have priority over the SPA. To this end, it is noted that section 32(2) of the LTO provides that Part 7 does not prevent an interest in or over a registered interest that is not registered from taking effect in equity.
- (c) In the scenario set out above, does the purchaser need to pay off the charge created by the Charging Order from the balance of the purchase price although his interest in land will rank prior to the charge and the charging order absolute is not yet registered?
- (d) Would the answer to Paragraph 11.4(c) above be different when a charging order absolute has been granted by court and registered?

11.5 Also, where a purchaser lodges the assignment for registration several days after the date of the assignment, the purchaser will on completion of the registration legally become the owner of the property only on the date of application for registration, not on the date of the assignment although the purchaser is already in possession of the property since the date of the assignment. If any liability arises e.g. an accident happens in the relevant property or in the building during the period after the date of the assignment but before the date of application for registration, an aggrieved party will likely bring a claim against the vendor as the vendor will still be shown as the registered owner of the property at the material time even though the vendor is no longer in possession or control of the property, and also bring an action against the purchaser as the person in control of the property.

11.6 The vendor remains a member of the Incorporated Owners during such period, the rights and liability of an owner as member of the Incorporated Owners and under the Deeds of Mutual Covenant will not pass to the purchaser on the date of the assignment.

11.7 It is not satisfactory that the vendor can only claim against the purchaser should the vendor suffer any loss during such period when he has already ceased to be the real "owner".

12.1 In Clause 43 of the Bill, section 41A was added to the LTO as follows: -

“41A. Statutory charge: charge arising under section 13A of Cap. 117

- (1) *If an application lodged for the registration of a matter against a registered interest (**subject application**) is supported by an instrument (**supporting instrument**)—*
 - (a) *that has been presented for, and is pending, adjudication by the Collector of Stamp Revenue under section 13 of Cap. 117; and*
 - (b) *in respect of which a charge has arisen under section 13A of Cap. 117 against the registered interest,*

then, an application for the registration of that charge against the interest is to be regarded as having been lodged for the purposes of section 41 under this section, and is to be regarded as having been so lodged immediately before the lodging of the subject application.
- (2) *Subject to subsection (3), if an application lodged for the registration of a matter against a registered interest (**target application**) is supported by a conveyance on sale—*
 - (a) *that is executed in conformity with, or in pursuance of, an instrument (**relevant instrument**) that has been presented for, and is pending, adjudication by the Collector of Stamp Revenue under section 13 of Cap. 117;*
 - (b) *that has been stamped in accordance with section 29D(2) of Cap. 117; and*
 - (c) *in respect of which no charge under section 13A of Cap. 117 has been registered against the registered interest,*

then, an application for the registration of that charge against the interest is to be regarded as having been lodged for the purposes of section 41 under this section, and is to be regarded as having been so lodged immediately before the lodging of the target application.
- (3) *Subsection (2) does not apply if the target application is accompanied by proof to the Registrar’s satisfaction that the charge on the relevant instrument constituted under section 13A of Cap. 117 has expired by the operation of section 13A(4) of Cap. 117.*
- (4) *The applicant in a subject application or target application must state in the application that the supporting instrument (in the case of subject application) or the relevant instrument (in the case of target application) has been presented for, and is pending, adjudication by the Collector of Stamp Revenue under section 13 of Cap. 117, failing which the Registrar may refuse to process further, or refuse the application.”.*

12.2 For section 41A(2)(c), please clarify whether the word “which” refers to the “relevant instrument” mentioned in section 41A(2)(a) or conveyance on sale. Section 41A(2) should only apply when the “relevant instrument” pending adjudication has not

been lodged for registration prior to the lodgement of the application for registration supported by the conveyance on sale. Please confirm the legislative intent which is not quite discernible.

12.3 Please confirm the manner in which the Registrar will register the charge that has arisen under section 13A of Cap. 117 and in respect of which an application is deemed to have been made by section 41A(1) or (2). Would the Registrar effect the registration of the charge in accordance with section 15 of the LTO so that there will be an entry in the relevant Title Register in respect of the charge?

13 Clause 46

13.1 In Clause 46 of the Amendment Bill, section 45 of the LTO is to be substituted by the following: -

“45. Implied covenants for title

(1) To avoid doubt –

(a) the provisions of this Ordinance do not affect the operation of section 35 of Cap. 219; and

(b) no reference to a covenant implied under section 35 of Cap. 219, or to the exclusion, variation or extension of such a covenant by any instrument under section 35(2) of Cap. 219, may be entered in the Title Register.

(2) The covenants implied under section 35 of Cap. 219 in an instrument, or the exclusion, variation or extension of such covenants by the instrument under section 35(2) of Cap. 219, take effect on the date of the instrument, except as otherwise provided in the instrument.”

13.2 Section 45(1)(a) stipulates that the provisions of LTO do not affect the operation of section 35 of Cap.219. However, under section 45(1)(b), no reference, inter alia, to the exclusion, variation or extension of a covenant implied under section 35 of Cap.219, may be entered in the Title Register. If the covenants under section 35(2) of Cap.219 are to be excluded, varied and/or extended as contemplated under section 45(2), for instance, the vendor assigns the registered interest free from encumbrances save as specified in the instrument (see covenant 3 in Part II of the First Schedule to Cap.219), please advise: -

(a) whether such exclusion, variation and/or extension are to be set out in the specified Transfer Form or otherwise; and

(b) if there is subsequent disposition of the registered interest and the registration of the relevant Transfer Form or instrument has been removed from the Title Register, how a third party may note that any covenant previously given in

respect of the registered interest is affected by such exclusion, variation and/or extension?

13.3. In Clause 46 of the Amendment Bill, section 46 of the LTO is to be substituted by the following: -

“46. Provisions as between vendor and purchaser

- (1) *Subject to any agreement between the vendor and purchaser of a sale of a registered interest to the contrary, the vendor must, at the vendor's expense—*
 - (a) *provide the purchaser with the documents that are prescribed by the regulations; and*
 - (b) *subject to subsection (2), provide the purchaser with the full particulars of the overriding interests affecting the registered interest of which the vendor has, or ought reasonably to have, knowledge.*
- (2) *If, on the first transfer of a registered interest by sale on or after the date of first registration of the new land to which the interest relates or the date of first registration of the long term lease to which the interest relates (as the case may be), the vendor has, or ought reasonably to have, knowledge of any overriding interest that affects the interest, then, even if there is an agreement between the vendor and purchaser of the sale to the contrary—*
 - (a) *the vendor must, at the vendor's expense, provide the purchaser with the full particulars of the overriding interest; and*
 - (b) *the purchaser must include such particulars in the application lodged for the registration of the first transfer.*
- (3) *Subject to any agreement between the vendor and purchaser of a sale of a registered interest to the contrary, the purchaser is entitled to require from the vendor only the documents, instruments and particulars required to be provided by the vendor to the purchaser under this section.*
- (4) *To avoid doubt, this Ordinance does not prevent a purchaser of a registered interest from raising requisitions on, or making objections to, the title to the interest in respect of any overriding interest affecting the interest.”.*

13.4 The Law Society notes that on the first transfer of a registered interest by sale after first registration, the vendor must provide the purchaser with the full particulars of the overriding interests and set them out in the application for registration of the first transfer. To what extent should the details of such overriding interests be disclosed? For example, covenants which run with the registered land and rights under the Government lease are overriding interests. These may have been set out in the relevant Deed of Mutual Covenants and Government leases already lodged in the Land Registry and are available for public search. In such cases, can the vendor discharge his duty under s.46(2) of the LTO by referring to “covenants which run with the land as contained in the Deed

of Mutual Covenant XX” and “rights under Government lease YY” instead of having to set out each and every one of the numerous overriding interests?

13.5 According to the current draft of section 46, the default position is that a vendor will be required to provide the purchaser with the full particulars of the overriding interests affecting the registered interest of which the vendor has, or ought reasonably to have, knowledge, unless such requirement is contracted out in the relevant agreement for sale and purchase. It would, however, not be possible to contract out such requirement in case the relevant transaction is the first transfer of the relevant property (i.e. a sale by the original Government grantee). Based on the above, subsequent vendors may also be required to provide the purchasers with particulars of overriding interests.

13.6 However, according to Footnote No.2 of the latest draft Form LR002, the box for filling in the particulars of overriding interest affecting the Property is “*only applicable if the application relates to a first transfer of registered land, registered long term lease or undivided share in land held under a registered long term lease*”, which appears to contradict section 46.

13.7 In order to preserve the integrity and completeness of Title Registers, would there be any consequences if the particulars of overriding interests provided by a vendor in a sale or a developer in the first transfer of a registered interest turn out to be incomplete or inaccurate? Which party will bear the consequences if any? Would the Land Registry verify such particulars before allowing the sale or transfer to be registered?

14 Clause 58

14.1 In Clause 58 of the Amendment Bill, section 62(3) and (4) of the LTO are to be substituted by the following: -

“62. Transmission – general

...

- (3) *The registration of a transmission under subsection (1) or other provisions of this Part and the entering of the name of a person as the owner or lessee, or as the owner or lessee in the capacity of trustee or trustee in bankruptcy, of a registered interest is to be regarded as serving the sole purpose of confirming that the person is the owner or lessee or the owner or lessee in the capacity of trustee or trustee in bankruptcy (as the case requires) of the interest.”*
- (4) *The registration of a transmission under subsection (1) or other provisions of this Part and the entering of the name of a person as the owner, or as the owner in the capacity of trustee or trustee in bankruptcy, of a registered charge is to be regarded as serving the sole purpose of confirming that the person is the owner or the*

owner in the capacity of trustee or trustee in bankruptcy (as the case requires) of the charge.”

14.2 On the other hand, by Clause 32 of the Amendment Bill, the new section 32(1) of the LTO will provide that: -

“...no disposition of a registered interest or a registered charge, or of any interest in or over the interest or charge, by an instrument is effectual to create, extinguish, transfer, vary or affect any interest in or over the interest or charge unless the disposition is registered against the interest or charge.”

14.3 Could you please confirm whether the transmission referred to in the section 62(3) or (4) of the LTO is effective at the time of transmission or at the time of registration? To this end, please confirm that the definition of “disposition” in section 2(1) of the LTO excludes “transmission”.

15 Clause 65

15.1 By Clause 65 of the Amendment Bill, a new section 68B is to be added to the LTO. The new sections 68B(2), (3) and (5) are to be as follows: -

“68B. Dispositions by personal representatives, trustees in bankruptcy, etc.

...

- (2) *If the personal representative of a deceased person (within the meaning of section 64(1)), in that capacity, makes a transfer of a registered interest or a registered charge held by the deceased, or discharges a registered charge held by the deceased, the Registrar may, on application lodged, register –*
 - (a) the transfer; or*
 - (b) the discharge**despite the fact that the name of the personal representative has not been entered (in that capacity) in the Title Register as the owner or lessee of the interest or owner of the charge.*
- (3) *If the name of the personal representative of a deceased person (within the meaning of section 64(1)) is entered (in that capacity) in the Title Register as the owner or lessee of a registered interest or the owner of a registered charge, and a new personal representative (**new personal representative**) is appointed under another grant in respect of the estate of the deceased person, the Registrar may, on application lodged, register –*
 - (a) a transfer of the interest or charge by the new personal representative in that capacity; or*
 - (b) a discharge of the charge by the new personal representative in that capacity,*

despite the fact that the name of the new personal representative has not been entered (in that capacity) in the Title Register as the owner or lessee of the interest or owner of the charge....

- (5) *If the name of a trustee in bankruptcy of a person (**original trustee in bankruptcy**) is entered (in that capacity) in the Title Register as the owner or lessee of a registered interest or the owner of a registered charge, and the original trustee in bankruptcy is replaced by another trustee in bankruptcy (**new trustee in bankruptcy**) or an additional trustee in bankruptcy (**additional trustee in bankruptcy**) is appointed, the Registrar may, on application lodged, register –*
- (a) a transfer of the interest or charge by the new trustee in bankruptcy, or additional trustee in bankruptcy, in that capacity; or*
 - (b) a discharge of the charge by the new trustee in bankruptcy, or additional trustee in bankruptcy, in that capacity,*
- despite the fact that the name of the new trustee in bankruptcy or additional trustee in bankruptcy has not been entered (in that capacity) in the Title Register as the owner or lessee of the interest or owner of the charge.”*

15.2 Section 68(B)(2) allows registration of transfer of the registered interest or registered charge or discharge of a registered charge by the personal representative of the deceased owner even though the name of the personal representative has not been entered into the Title Register as owner. Whilst we appreciate that the transmission on death of the original owner's interest in a registered interest or registered charge to his personal representative would happen upon issuance of a grant within the meaning section 64(4) of the LTO to the personal representative, we suggest that the Registrar should make it a condition for registration of a transfer or discharge under the proposed new section 68B(2) or (3) that the personal representative or (as the case may be) the new personal representative must at the same time also lodge the transmission to him for registration. We consider that doing so will be conducive for ensuring the completeness of information entered in the relevant Title Register. In the present land registration regime, the Land Registry will not allow an assignment of a property made by a personal representative of the estate of the deceased owner to be registered if the relevant grant, by which the personal representative is appointed, has not been registered.

15.3 We make a similar suggestion in relation to the new section 68B(5) of the LTO.

16 Clause 66

16.1 In Clause 66 of the Amendment Bill, sections 69 and 70 of the LTO is to be substituted by the following: -

“69. Trusts

- (1) *If a person—
 - (a) becomes the lessee of new land;
 - (b) acquires a long term lease;
 - (c) acquires a charge over a registered interest; or
 - (d) acquires or holds a registered interest,in the capacity of trustee (other than as a personal representative), and is so described in the relevant instrument, the words “as trustee” or “作為受託人” are to be added after the name of the person entered in the Title Register, but the particulars of the trust concerned are not to be entered in the Title Register.*
- (2) *If the owner or lessee of a registered interest or the owner of a registered charge—
 - (a) makes a declaration of trust in respect of the interest or charge;or
 - (b) otherwise comes to hold the interest or charge as a trustee (other than as a personal representative) under an instrument,the Registrar is to, on the registration of the declaration or instrument, add after the owner’s or lessee’s name “as trustee” or “作為受託人” in the entry in the Title Register referring to the declaration or instrument, but the particulars of the trust concerned are not to be entered in the Title Register.*
- (3) *To avoid doubt, subsections (1) and (2) do not prevent the registration of a consent caution, non-consent caution, inhibition order or a restriction order made under section 78(1) by reason only of the fact that the instrument supporting the registration contains particulars of a trust.*
- (4) *If a trustee whose name is entered (in that capacity) in the Title Register as the owner or lessee of a registered interest or the owner of a registered charge, then for the purposes of preventing any dealing in the interest or charge with a bona fide purchaser for valuable consideration from being set aside, the trustee is regarded to have all the rights of the owner or lessee of the interest, or the owner of the charge, as the case requires, who has acquired the interest or charge for valuable consideration.*
- (5) *A breach of any duty to which a trustee is subject in dealing with a registered interest as the owner or lessee of the interest, or with a registered charge as the owner of the charge, does not give rise to a right of indemnity under this Ordinance.*
- (6) *This section does not relieve a person from any duty to which the person is subject as a trustee.*

70. Protection of person dealing with trustees or trustees in bankruptcy

Where the name of a person is entered, in the capacity of trustee or trustee in bankruptcy, in the Title Register as the owner or lessee of a registered

interest or as the owner of a registered charge, the person is, in dealing with the interest or charge, deemed to be the owner or lessee of the interest or the owner of the charge, and no disposition that amounts to a breach of trust by the trustee or trustee in bankruptcy to a bona fide purchaser for valuable consideration is defeasible by reason only of the fact of that breach."

16.2 Sections 69(1) provides that particulars of the trust are not to be entered in the Title Register. However, we understand from the Land Registry that the trust document can be registered as a supporting document which will be available for public search, which seems to be contrary to section 69(1). Section 69(4) provides that for the purposes of preventing any dealing in the interest or charge with a bona fide purchaser for valuable consideration from being set aside, the trustee is regarded to have all the rights of the owner or lessee of the interest, or the owner of the charge, as the case requires, who has acquired the interest or charge for valuable consideration. It would seem that in the absence of any caution registered against the property, the purchaser would be entitled to assume that the powers of the trustee are not restricted. Lawyers are used to the expression "bona fide purchaser without notice" but in the Amendment Bill, what has been adopted to prevent dealings with trustees, personal representatives, and trustee in bankruptcy from being set aside is the expression "bona fide purchaser" without the requirement that such a purchaser must also be without notice. In the case of any dealing by a trustee in breach of the duty he is subject to under the trust, does the dropping of the requirement mean a purchaser from the trustee can still be "bona fide" even if he does not bother to check the terms of the trust when the trust document is in fact available for checking or he actually knows about the breach of duty? What is meant by "bona fide"?

16.3 Solicitors lodging an application to the Land Registry is required to confirm that the party(ies) has/ have the relevant authority/ capacity to enter into the disposition, for the purpose of the verification required under section 14(2) of the LTO. Please clarify and confirm, in the absence of any caution registered, whether a solicitors who acts for a trustee in any disposal of the trust property held by the trustee in such capacity is required to inspect the trust instrument to ensure that the disposition is not in breach of the trust instrument. Please confirm if this also requires the solicitors to confirm that there are no vitiating factors in the transaction, and what is the extent of the solicitors' obligations in conducting due diligence. For example, where a trustee is disposing of a property, the solicitors will inspect the trust deed to verify if the disposal is in breach of the terms of the trust deed. However, the solicitors may not be in a position to confirm that the trustee is not otherwise in breach of fiduciary duty, for example, as a result of the trustee disposing of the property to his connected person in breach of the no-conflict rule.

16.4 We suppose sections 66(1), 67A(1) and 69(4) of the LTO to be introduced by the Amendment Bill intend a purchaser who is "bona fide" in his dealing with a personal representative, a trustee or a trustee in bankruptcy (whatever the expression "bona fide" means in this context) and pays valuable consideration in a disposition of a registered interest or a registered charge would obtain an indefeasible title to the interest

or the charge even if the personal representative, the trustee or the trustee in bankruptcy acts in breach of his duty in the dealing with the purchaser. We have asked for clarification as to whether it is also intended that the “bona fide” purchaser who pays a valuable consideration does not have to look further into the terms of the relevant testamentary, bankruptcy or trust document for restrictions on disposition of the registered interest or registered charge.

16.5 We are aware that in the absence of any clear statutory provisions in the LTO, any ambiguity could be resolved by an application to court and we expect the court to apply the relevant common law principles in the construction of the provisions in question. However, we suggest that all confusions and ambiguities should be addressed and clarified before the relevant provision is enacted into law.

17. Clause 67

17.1 In Clause 67 of the Amendment Bill, section 73 of the LTO is to be substituted. The new section 73(3) of the LTO is proposed to be as follows:

“73. Withdrawal and removal of consent cautions

- (3) *An application for the registration of the removal of a subject consent caution must be supported by—*
- (a) proof to the Registrar’s satisfaction that the cautioner under the caution consents to the removal;*
 - (b) proof to the Registrar’s satisfaction that the conditions specified in subsection (4) are met; or*
 - (c) the original copy or a sealed copy of a court order for the removal of the caution.”*

17.2 We wonder whether the intention is to only require an application referred to in section 73(3) to be supported by any one of the proof or document set out in paragraphs (a), (b) or (c) of that subsection. If so, we suggest adding after the end of paragraph (a) of section 73(3) the word “or”.

18. Clause 68

18.1 In Clause 68 of the Amendment Bill, a new section 73A of the LTO is to be added. The new section 73A(3) of the LTO is proposed to be as follows:

“73A. Withdrawal and removal of non-consent cautions

...

- (3) *The Registrar may approve an application for the registration of the removal of a subject non-consent caution if the application is supported by—*
- (a) proof to the Registrar’s satisfaction that the cautioner under the caution consents to the removal;*
 - (b) proof to the Registrar’s satisfaction that the conditions*

specified in subsection (4) are met; or
(c) the original copy or a sealed copy of a court order for the removal of the caution.”

18.2 We wonder whether the intention is to only require an application referred to in section 73A(3) to be supported by any one of the proof or document set out in paragraphs (a), (b) or (c) of that subsection. If so, we suggest adding after the end of paragraph (a) of section 73A(3) the word “or”.

19. Clause 71

19.1 In Clause 71 of the Amendment Bill, section 77 of the LTO is to be substituted. The new section 77(1)(c) is to be as follows:

“77. Removal of inhibition orders

...

(c) the application is supported by proof, to the Registrar’s satisfaction, that the registered interest or registered charge affected by the inhibition order has been sold by a chargee, unless the registration of the sale is inhibited by the inhibition order; or”

19.2 We consider that section 77(1)(c) should be amended and shall read as follows (the amendments are underlined):

“(c) the application is supported by proof, to the Registrar’s satisfaction, that the registered interest or registered charge affected by the inhibition order has been sold by the owner or lessee or the chargee, unless the registration of the sale is inhibited by the inhibition order; or”

20. Clause 74

20.1 In Clause 74 of the Amendment Bill, section 82 of the LTO is to be substituted by the following: -

“82. Rectification by Court

(1) Subject to subsection (5) and section 83, the Court may, on application by a person for the rectification of the Title Register in relation to a relevant entry, make an order –

(a) for rectifying the Title Register if the Court is satisfied that the entry was registered or omitted by or as a result of –

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

(ii) a void or voidable instrument;

...

(5) No order may be made under subsection (1)(a) so as to affect the title of a person who is the owner or lessee of a registered interest,

who is in possession of the property to which the interest relates and who has acquired the registered interest for valuable consideration, unless the Court is satisfied that—

(a) in the case of fraud—

- (i) the person was a party to the fraud;*
- (ii) the name of the person was entered in the Title Register as the owner or lessee (as the case may be) by, or directly as a result of, the fraud and the person had knowledge of the fraud at the time the application for the registration of the matter pursuant to which the person was registered as the owner or lessee was lodged; or*
- (iii) the person had, by the person's act or by lack of proper care, substantially contributed to the fraud;*

(b) in the case of a mistake or omission—

- (i) the person caused the mistake or omission;*
- (ii) the name of the person was entered in the Title Register as the owner or lessee (as the case may be) by, or directly as a result of, the mistake or omission and the person had knowledge of the mistake or omission at the time the application for the registration of the matter pursuant to which the person was registered as the owner or lessee was lodged; or*
- (iii) the person had, by the person's act or by lack of proper care, substantially contributed to the mistake or omission;*
or

(c) in the case of a void or voidable instrument—

- (i) the person caused the instrument to be void or voidable, as the case may be;*
- (ii) the name of the person was entered in the Title Register as the owner or lessee (as the case may be) by, or directly as a result of, the void or voidable instrument and the person had knowledge that the instrument was void or voidable, as the case may be, at the time the application for the registration of the matter pursuant to which the person was registered as the owner or lessee was lodged; or*
- (iii) the person had, by the person's act or by lack of proper care, substantially contributed to making the instrument void or voidable, as the case may be."*

20.2 The Law Society considers that the "without fault" concept in section 82(5) covers various matters, such as absence of fraud, mistake, omission, void or voidable instrument, but it is unclear who is to bear the burden of proof of "without fault" under section 82. To avoid legal disputes, we suggest that the section should also provide who should bear the burden of proof of the elements in section 82(5).

21. Clause 74

21.1 In Clause 74 of the Amendment Bill, Section 82 of the LTO is substituted. The new Section 82(5) is to be as follows:

“82. Rectification by Court

- (5) *"No order may be made under subsection (1)(a) so as to affect the title of a person who is the owner or lessee of a registered interest, who is in possession of the property... .."*

Section 82(10) is to be as follows:

- (10) *"For the purposes of subsection (5), a person is regarded to be in possession of the property if the property is in the physical possession of -*
- (a) the person;*
 - (b) where the person is holding the property as trustee of a trust - the beneficiary of the trust;*
 - (c) a tenant, mortgagee or licensee of the person or the beneficiary referred to in paragraph (b); or*
 - (d) a tenant or licensee of the tenant, mortgagee or licensee referred to in paragraph (c)."*

21.2 It is not uncommon that sometimes the Vendor does not deliver possession to the Purchaser on completion but at a later date. The Vendor is not the licensee of the Purchaser because possession has not yet been passed to the Purchaser and the Vendor still has exclusive possession of the property so is not a licensee. In such situation, the Purchaser will not be protected under Section 82 which cannot be the intention.

**The Law Society of Hong Kong
20 May 2025**