



Room 525, 5/F., Prince's Building, Central, Hong Kong  
Telephone: 2521 1160, 2521 1169 Facsimile: 2868 5035  
Email: info@hkab.org.hk Web: www.hkab.org.hk

香港中環太子大廈5樓525室  
電話：2521 1160, 2521 1169 圖文傳真：2868 5035  
電郵：info@hkab.org.hk 網址：www.hkab.org.hk

31 March 2009

By Post

The Land Registry  
28/F Queensway Government Offices  
66 Queensway  
Hong Kong

Dear Sirs

**Consultation on Amendments to Land Titles Ordinance**

**A. Conversion of Existing Land and Property to Land Title Registration System**

**B. Rectification and Indemnity Provisions**

We write to give the comments of the Hong Kong Association of Banks (HKAB) on the above captioned consultation papers regarding the Amendments to the Land Titles Ordinance, both of which were published by the Development Bureau in December 2008 for public consultation.

**A. Conversion of Existing Land and Property to Land Title Registration System**

A major implication of the Land Titles Ordinance (LTO) for members of HKAB is in respect of their role as mortgage provider. Under the enacted LTO, the new land granted will be registered under the LTO but existing land granted will continue to be dealt with under the Land Registration Ordinance (LRO) until the end of the 12 year period when every property with some exceptions (such as land against which an existing caution was registered) would be transferred “automatically” to the LTO register. However, the Registrar has concern on its potential liability on automatic conversion and has therefore proposed an alternative scheme to modify it to a gradual conversion (“Alternative Scheme”).

Under the Alternative Scheme, the LTO will also apply to new land immediately but the automatic conversion to land title register will take place after three years although the converted land will remain subject to subsisting interests until “upgrading” which would only be allowed 12 years after the conversion date. Upgrading is when the owner upgrades the land title when there is a transaction by applying to the Land Registry and paying a fee for the upgrade.

Prior to conversion, the solicitors acting for the mortgagee would still need to check the title deeds and physical copies of the deeds will still need to be kept in the bank vault facility until upgrading which may be long after the 12-year period. However, the Alternative Scheme has an important advantage which is that after 3 years, the

*Chairman* The Hongkong and Shanghai Banking Corporation Ltd  
*Vice Chairmen* Standard Chartered Bank (Hong Kong) Ltd  
Bank of China (Hong Kong) Ltd  
*Secretary* Jennifer Cheung

1

主席 香港上海匯豐銀行有限公司  
副主席 渣打銀行(香港)有限公司  
中國銀行(香港)有限公司  
秘書 張學欣



mortgagees will be safeguarded in respect of registered transactions and unwritten equities created thereafter.

On balance, we would prefer the Alternative Scheme subject to clarification on the following areas:

- (i) Paragraph 11(c) – It is unclear as to how much the Land Registry will charge for upgrading the title and the time required by the Land Registry to upgrade the title which will have an impact on mortgagee sale of properties. Due to the volume of transactions in Hong Kong and the limited number of lawyers in the Land Registry, the whole process can be costly and time consuming. In UK, the experience is that it was common for first registration to take 6 to 9 months. After the upgrading process is in place, purchasers may be unwilling to purchase a property which is not upgraded, it is therefore important that the Land Registry would give some indication as to the fee for upgrading and a commitment as to the time required for the upgrading process so as not to delay a sale and purchase transaction.
- (ii) Paragraph 10(d) – This provides that the only new provision requirement will be for a power for the Land Registrar to reject an application for upgrading if there is uncertainty over the title at the time of application. It is essential that the Land Registrar's decision be subject to review of the Court and the owner or mortgagee in possession be entitled to appeal against the decision of the Registrar; otherwise an owner or mortgagee in possession will be unable to sell a property rejected for upgrading by the Registrar unreasonably.

#### B. Rectification and Indemnity Provisions

The above captioned paper raises two major areas of concern to members of HKAB as mortgage providers.

- (i) Paragraph 15 - The proposed amendment to section 84(1) of the LTO would affect the position of a mortgagee unfairly. The proposed new wording "which results in the loss of ownership" to replace "which affects ownership" would deprive a mortgagee from claiming any indemnity under the section which is not acceptable. For example, after a property is mortgaged to Bank A ("Mortgage I"), a fraudulent release is prepared and submitted for registration, Mortgage I will be removed from the Land Registry record and another bank unaware of the existence of Mortgage I and deprived of the opportunity to inspect the release may accept a mortgage in its favour ("Mortgage II"). Even if the fraud is discovered subsequently and either Mortgage I or Mortgage II will be restored or rectified depending on the circumstance of the case, one mortgagee (the mortgagee of either Mortgage I or Mortgage II) will be deprived of its interest in the property and will not be able to claim indemnity, even though the loss is resulted from either the entry of Mortgage II or the entry of Mortgage I being removed from the Title Register without the knowledge of the mortgagee of Mortgage I and Mortgage II. This is no valid

reason for limiting the right of indemnity to “loss of ownership” to exclude a mortgagee from loss of its interest by reason of an entry in or any entry omitted from the Title Register of which the mortgagee has no practical means to investigate and avoid or prevent the fraud.

- (ii) Paragraph 17 – It seems to us that the apportionment of indemnity money amongst multiple claimants to be in proportion to the value of the loss of each claimant discussed here would not apply to a mortgagee situation. We believe that the arrangement applicable to a mortgagee situation as set out in the letter from the Land Registry to HKAB dated 19 April 2005 and as agreed by HKAB and confirmed in its reply to the Land Registry dated 13 May 2005 is still in place and should be reflected appropriately in the amendment provisions.

We look forward to hearing from you in due course on our clarifications raised above in this letter.

Yours faithfully



Jennifer Cheung  
Secretary