

**Progress Report on Land Titles Ordinance Review
And
Timetable for Amendment Bill**

Purpose

The purposes of this paper are to :-

- (a) inform members of progress with the follow up work made since enactment of the Land Titles Ordinance (LTO) in 2004; and
- (b) set out the proposed timetable for completion of a Land Titles (Amendment Bill) (LTAB);

Background

2. Before the LTO was enacted in July 2004, during the committee stage discussion of the then Land Titles Bill, Legislators 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;
 - (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;
- (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. From the legal review it has been concluded that an amendment bill needs to be enacted before the LTO can be brought into effect. Preparation of the LTAB is underway. 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 2004 and the amendments proposed in the subsequent legal review.

The Review

4. The post enactment review of the LTO has not been confined to issues raised in Appendix VI to the Bills Committee report. The wording and operation of every section of the LTO has been examined. **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. **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 considered essential before the legislation can be brought into operation.

5. 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 within the Government. 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.

Revision of language and organisation of the LTO

6. The Land Registrar has asked the Law Draftsman to take the opportunity of preparing the LTAB to address concerns that had been raised over the complex language and organisation of the enacted LTO. The proposed revisions are extensive. Almost all parts of the LTO have been rewritten, reorganised or both. A working draft, showing how the LTO would look if the proposed revisions are made was circulated in June 2006 to the Law Society Working Party, Bar Association, HK Association of Banks, Consumer Council, HK Mortgage Corporation, Heung Yee Kuk. 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. **Annex C** contains all comments received to date on the working draft and the responses that have been made to these.

Next steps for the legal review and preparation of the LTAB

7. Several actions are still required before the LTAB may be presented to the Legislature:

- (a) Matters not yet concluded in the review need to be settled;
- (b) Executive Council submission, if necessary;
- (c) A fresh working draft, incorporating all amendments proposed from the review and the consultation on the previous draft, needs to be prepared and presented to interested parties;
- (d) The draft subsidiary legislation needs to be revised in line with the amendments proposed in the LTAB and circulated for comment; and
- (e) The LTAB and subsidiary legislation will need to be cleared by the Department of Justice and considered by the Executive Council.

8. It is not feasible to complete this work in time to introduce the LTAB during the current term of the Legislative Council. This ends in July 2008. It would be unreasonable to expect the Legislative Council to consider an amendment bill containing such extensive changes without ample time for a Bills Committee to examine the changes proposed. But, the process needs to be brought to a conclusion. The Land Registry is aiming to complete the preparation of the LTAB and draft subsidiary legislation by [October] 2008 so that they can be presented to the Legislature for consideration in the early months of the next term.

Administrative Preparation

9. There are three main areas of administrative preparation that have significant impact on the LTAB or on the timetable for commencement of the land title registration system (“LTRS”).

Preparation for conversion

10. 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.

11. Under the LTO, registers opened under the LRO will be converted to the LTRS 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.

12. 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 a 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.

13. 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 Land Registrar cannot determine who has title to the property, nor can he register one title to two or more parties. . The existence of these cases has led to proposals for new provisions for exclusion from conversion, as noted in Annex B.

IT development strategy

14. The second issue is the development of IT support systems for land title registration. If development work does not start until the LTAB and

subsidiary legislation 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.

15. 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.

16. To reduce the time required between enactment of the LTAB and subsidiary legislation 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 LTAB and subsidiary legislation can proceed at an earlier stage. Upon enactment of the LTAB and subsidiary legislation, 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.

17. 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 subsidiary legislation 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.

Operational preparation and training

18. 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.

19. 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

20. 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

21. 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

22. 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 LTAB and subsidiary legislation. 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.

23. 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.

Timetable for Commencement

24. After enactment of the LTAB about one year will be needed to complete the final preparations for commencement of the new registration system. This will include:

- (a) Finalization and enactment of subsidiary legislation;
- (b) Professional and public education;
- (c) Completion of the initial IT system; and
- (d) Gazetting and publicity for the commencement date.

25. On the assumption that the Legislative Council will require about 12 months to consider the LTAB after its introduction, and that it is laid before them at the end of 2008, then the earliest that the LTO may come into effect is at the end of 2010. From that point new land will come under the title registration system. 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.