

**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

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	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
	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
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
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

Item No.	Follow-up action	Present Position
	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:-

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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
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 clause 29(1) (now s.32(1)) 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 clause 33(8) (now s.35(5)) 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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	<p>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></p>	<p>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.</p>
17.	<p>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></p>	<p>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.</p>
18.	<p>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></p>	<p>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</p>

Item No.	Follow-up action	Present Position
	<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
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
21.	<p>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>)</p>	<p>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.</p>
22.	<p>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>)</p>	<p>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.</p>

Item No.	Follow-up action	Present Position
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
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.

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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
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