



THE

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2 July 2025

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 refer to the Development Bureau's response dated 19 June 2025 ("Response") to a submission by the Law Society of Hong Kong on the Registration of Titles and Land (Miscellaneous Amendments) Bill 2025 dated 20 May 2025 ("Submission") and write to provide further comments as follows: -

### Further comments on the Response

#### Clause 3(15) of the Bill (paragraph 4 of the Submission)

##### Paragraph 4.4 of the Submission

1. We note the intention to limit long term leases to leases of the whole of registered lands, so that the interests of holders of undivided shares in a piece of land held under a long term lease are those set out in the proposed new section 26(3) of the Land Titles Ordinance (Cap. 585) ("LTO"), and there will not be any separate long term leases in respect of the undivided shares.

##### Paragraph 4.5 of the Submission

2. The lessee of a long term lease may also have his lease terminated due to breach of other covenants in the lease other than non-payment of any part of the

1



premium for the grant of the lease. The purpose of excluding long leases in respect of which the premium is payable on a periodic basis from the definition of “long term lease” is not easy to understand. Please highlight the purpose behind the different treatments.

**Clause 30 of the Bill (Paragraph 10 of the Submission)**

Paragraph 10.2 of the Submission

3. For paragraph 18 of the Response, we do not agree that historical records are not required to ascertain titles. As an example, reference may have to be made to the previous transfers in every disposition for any exclusion, variation or extension of covenants implied under section 35 of the Conveyancing and Property Ordinance (Cap. 219) (“CPO”). In fact, it is quite common that transfer documents such as an assignment may contain special covenants that may affect parties of the subsequent transfers.

4. It is also a common practice that transfer documents may make (express or implied) reference to previous title documents (e.g. the first assignment) that it is being subjected to. In such scenarios, how would the new proposed arrangement make sure that necessary documents would not be mistakenly moved to “historical records” and restricted from public access?

5. Given that sensitive personal data had already been made available to the public before the documents containing it were moved to form historical records, is it really necessary to restrict searches on historical records to specified persons?

**Clause 36 of the Bill (Paragraph 11 of the Submission)**

6. In paragraph 22 of the Response, we note the Development Bureau’s reply is that in gist, where a charging order and a consent caution for an agreement for sale and purchase (“SPA”) are registered against a property, the validity and effect of the documents will continue to be dealt with by way of common law, whilst the LTO will only determine their respective priority according to their respective dates of lodgement.

7. This approach is unsatisfactory and very confusing to persons dealing with the property. It appears that the burden is then shifted to the vendor's solicitors and the purchaser's solicitors, who will then need to determine the combined effect of

common law (regarding validity of instruments) and the LTO (regarding priority of instruments).

8. We disagree with the Development Bureau's reply at paragraph 20 of the Response that the same issues already exist under the current deeds registration system and will continue to be dealt with as under the current deeds registration system. It should be noted that under the LTO, Mandatory Rectification is no longer available. Under the deeds registration system, the Court will determine the respective priority and effect of the instruments and rectify the register. Whereas under the LTO, once a transfer is registered, it confers an indefeasible title to the purchaser.

9. It should also be noted that under the current deeds registration system, as long as the purchaser submits the SPA for registration within 1 month of signing of the SPA, the SPA will have priority as from the date of signing, and will under no circumstances rank after a charging order created after the signing of the SPA. Whereas under the LTO, priority is based on the date of lodgement but not the date of instrument, therefore a subsequently created charging order could potentially have priority over the SPA if it is lodged before the SPA.

10. In the scenario described in Paragraph 11.4(b) of the Submission (where a charging order has priority over an SPA, but the effectiveness of the charging order may be in doubt because it is granted after the signing of the SPA), if the vendor's solicitors and the purchaser's solicitors continue to complete the transfer despite registration of the Charging Order, and make application to register the transfer, please clarify:

- (a) Will the vendor's solicitors and the purchaser's solicitors be deemed to have confirmed/represented to the Land Registrar that the purchaser can and will take the property free from the charging order since the vendor's solicitor is confirming that the vendor has the right and authority to transfer the title free from encumbrances?
- (b) Will the Registry refuse to register the transfer unless and until the effectiveness of the charging order is explained or resolved to the Land Registrar's satisfaction?
- (c) If the Registry does register the transfer, how will the Land Registry deal with the charging order in such scenario? Will the Land Registry move the charging order to the historical records of the Title Register or will it be shown in the current Title Register as an existing encumbrance?

- (d) If the Land Registry will not move the charging order from the current Title Register even upon a transfer, how long will the Land Registry allow the charging order nisi to remain even when there is no charging order absolute made?

Paragraphs 11.5-11.7 of the Submission

11. It is not fair that the vendor, who is not in the position to “control” when the transfer will be lodged to the Land Registry for registration, remains liable after he/she is no longer the owner and is not in possession of the property, and will have to incur legal fees to defend his/her case or sue the purchaser for damages even if there is provision in the SPA that the purchaser will indemnify the vendor. Will amendments be made to the LTO so that the purchaser will become liable for all such obligations and liabilities from the date of the transfer although legally the purchaser will only become the registered owner on the date of application for registration?

**Clause 43 of the Bill (Paragraph 12 of the Submission)**

Paragraph 12.2 of the Submission

12. Please improve the drafting of the proposed section 41A(2)(a) of the LTO to clarify the legislative intention.

**Clause 46 of the Bill (Paragraph 13 of the Submission)**

Paragraph 13.2 of the Submission

13. Besides our comment on paragraph 18 of the Response, we disagree that the reliance on the implied covenants for title should be substantially less than under the current deeds registration system or the need to access any historical Transfer Form for the purpose of checking any former exclusion, variation and/or extension of the implied covenants by former vendors is expected to be rare.

14. In this connection, please be referred to paragraph 3 of Part II of the First Schedule to the CPO regarding covenants for title implied in an assignment of land to a purchaser for valuable consideration by a person who is expressed to assign as



beneficial owner, which reads: -

*“3. That the vendor now has good right and title to assign the land free from encumbrances save as specified in the assignment and subject to the manner in which the assignment is expressed to be made.”*

15. We understand that such implied covenant for title of the vendor may be excluded or varied in the manner as set out in the specified Transfer Form (see paragraph 31 of the Response) and the said exclusion or variation of implied covenant will be moved to the historical records if there is subsequent disposition of the registered interest. In light of the aforesaid: -

(a) please clarify whether every intended purchaser will have to check all historical records of the subject registered interest so as to confirm that the title of the vendor is not excluded or varied by virtue of the operation of section 35(2) of CPO: -

(i) if yes, it is obvious that the purpose of the LTO to provide certainty in property ownership through the Title Register and obviate the need to check historical title documents for verifying the title to properties will be defeated. Will amendments be made to the LTO to resolve the issue?

(ii) if no, by what means an intended purchaser or his solicitors will become aware of any exclusion or variation of such implied covenant for title and be guarded against any adverse impact on the title to be transferred or mortgaged?

(b) as 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 advise if this also requires the solicitors to confirm that there is no exclusion or variation of such implied covenant for title and the extent of the solicitors' obligations in conducting due diligence.

16. Please clarify how does the LTO affect the vendor's obligations under the CPO to prove title to the purchaser? We note that pursuant to sections 82 and 82A of Schedule 3 of the LTO, sections 13 and 13A of the CPO do not apply to land which is registered under the LTO. Please therefore advise what documents will a vendor be required to provide to the purchaser for proving title.

17. Please also clarify if by reason of negligence of the handling solicitor, an

intermediate Transfer Form or the immediately preceding Transfer Form fails to state an exclusion or variation of implied covenant, or fails to state an encumbrance which was mentioned in previous deeds, what is the effect on the title of the property to be transferred to the purchaser? Will the purchaser obtain good title free from encumbrances, i.e. will the Title Register serve as a conclusive proof of both title and encumbrances such that any encumbrance not shown in the current Title Register should cease to affect the Property? If not, it seems both the vendor's solicitors and the purchaser's solicitors will still be required to conduct due diligence by perusing all historical records and deeds, which will defeat the purpose of LTO.

Paragraph 13.7 of the Submission

18. We note from paragraph 37 of the Response on how a first vendor or developer may ascertain the overriding interests affecting the registered interest. We also note that from paragraph 38 of the Response if the Land Registrar is aware of any inaccuracy or incompleteness of the particulars of the overriding interests before completion of the registration procedures, the Land Registrar will raise requisition and seek clarification from the applicant. Does this mean the Land Registrar will verify the particulars of the overriding interests in the Transfer Form lodged in respect of the first transfer of the registered interest before registering the transfer?

19. Paragraph 37 of the Response stated that the proposed amended section 46(2) of the LTO is a provision between the vendor and the purchaser, and if there is any inaccuracy or incompleteness of the particulars of the overriding interests, the (first) vendor may be liable for any loss that the purchaser suffers. This statement suggests that subsequent purchasers of the registered interest do not have any recourse against the first vendor if there is any inaccuracy or incompleteness in the particulars of the overriding interests in the Transfer Form lodged to register the first transfer.

20. Unless subsequent purchasers who have suffered loss by relying on the particulars of the overriding interests provided by the first vendor have recourse against the first vendor or perhaps the Land Registrar for allowing registration of inaccurate or incomplete particulars of the overriding interests, lawyers acting for the subsequent purchasers may need to conduct due diligence on the overriding interests but doing so defeats the purposes of title registration under the LTO.

21. The proposed new section 28(7) of the LTO does not cure this lacuna. Please address our questions more directly. Please also clarify whether the disclosure of

overriding interests by the first vendor must be a specific one, for example, whether a statement of “subject to all rights and existing right of way” suffice.

**Clause 65 of the Bill (Paragraph 15 of the Submission)**

22. Thank you for confirming that the Administration will consider requiring the personal representative or the new personal representative to register the transmission to him before or at the same time as the registration of the relevant transfer or discharge, and corresponding amendment for change of appointment of trustee in bankruptcy or additional appointment of trustee in bankruptcy.

**Clause 66 of the Bill (Paragraph 16 of the Submission)**

23. We note in paragraph 43 of the Response that it is not a requirement for a “bona fide purchaser” to be “without notice”. However, it is also stated that “bona fide purchaser” is intended to mean a purchaser acting in good faith. These statements appear to be contradictory for the purchaser’s notice of irregularities may affect his good faith.

24. We suggest enhancing the language of the legislation by providing that a purchaser who pays a valuation consideration will have all the rights of the owner or lessee of the interest or of the owner of the charge notwithstanding any notice of irregularities unless he acts dishonestly or in concert with the trustee to prejudice or defraud the interests of the beneficiaries of the trust.

25. In accordance with the standard of reasonable care, solicitors acting for trustees in disposition of a trust property will ask for production of the relevant trust instrument to ascertain that the trustee indeed appears to have the capacity to dispose of the trust property. However, if ascertaining the authority of a trustee to dispose of the trust property would require the solicitor to also ensure that there are no vitiating factors that may affect the trustee’s authority to sell, such as the sale of the trust property to a person or entity connected with the trustee, then the mere inspection of the trust instrument would not necessarily reveal the vitiating factors. Further clarification in the verification guidelines as to what a solicitor needs to do in verifying the trustee’s authority to sell is required.

**Clause 67 of the Bill (Paragraph 17 of the Submission)**

26. We note the confirmation in paragraph 45 of the Response, but would the Administration consider stating explicitly that only any one of the supports stated in the proposed new section 73(3) of the LTO is required?

**Clause 68 of the Bill (Paragraph 18 of the Submission)**

27. We note your confirmation in paragraph 46 of the Response, but would the Administration consider stating explicitly that only any one of the supports stated in the proposed new section 73A(3) of the LTO is required?

**Clause 71 of the Bill (Paragraph 19 of the Submission)**

28. Thank you for pointing out that the intention is registration of an inhibition order shall not prejudice the power of sale of the chargee of the registered land or the registered charge, unless the sale by the chargee is inhibited by the order. Please clarify whether it will be necessary to make an application for removal of an inhibition order from the Title Register after the sale of the registered land or registered charge concerned by the chargee thereof.

29. It appears to us that following registration of the sale by a chargee of the registered land or the registered charge which is not inhibited by the inhibition order, the inhibition order will no longer have any effect. In such a case, we consider that the Land Registrar should take the initiative of removing the inhibition order from the Title Register. Or is it the intention that the inhibition order will be allowed to remain on the Title Register after registration of the sale of the relevant land or registered charge by the chargee thereof in the absence of any application to remove the inhibition order?

**Clause 74 of the Bill (Paragraph 20 and 21 of the Submission)**

Paragraph 21 of the Submission

30. We disagree that in a deferred possession scenario, the vendor continues to occupy the property after completion of the sale and purchase as licensee of the purchaser.



31. In case of a sale and purchase of a property under which possession of the property is to be delivered by the vendor to the purchaser a period of time after completion (deferred possession), as possession of the property does not pass to the purchaser on the completion date, the purchaser is not legally in a position to grant any licence of the property back to the vendor. Instead, the vendor retains possession until expiry of the agreed period when possession will be delivered to the purchaser. It is therefore inaccurate to describe the vendor as the purchaser's licensee pending such delivery of possession.

Yours faithfully,



Eileen Tam  
Assistant Director of Practitioners Affairs

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