



THE
LAW SOCIETY
OF HONG KONG

香港律師會

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Our Ref :
Your Ref : Land Titles Bill
Direct Line : HPLB(B) 76/85/08

BY FAX (28992916) AND BY POST

8 January 2004

Ms Olivia Nip
Housing, Planning and Lands Bureau
Murray Building
Garden Road,
Hong Kong

Dear Ms Nip,

LAND TITLES BILL – CONVERSION MECHANISM

I refer to your letter dated 31 December 2003.

The Law Society's concerns regarding the use of a solicitor's certificate of good title to enable a title to be registered have been set out in previous submissions to the Administration and in various meetings with the Administration. There is therefore no need to repeat these in detail here. We would however emphasise that it has all along been the Law Society's position that for such a system to work, there must be a mechanism by which such certificates may be qualified and there must also be a mechanism in place which would allow titles to be registered notwithstanding qualification.

It is the Law Society's position that we believe a significant number of secondary market titles would require qualification in some way or another. In order to ensure that these titles or the vast majority of them were capable of registration, there would need to be systems in place under which:

1. it was made clear to a solicitor what type of title "*defects*" would be acceptable for registration notwithstanding a qualification made; and
2. a mechanism by which a "*defect*" which fell within a grey area where a solicitor could not be certain whether or not it fell within the parameters acceptable for registration could be resolved.

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The Law Society of Hong Kong

It is our understanding that these proposals are not acceptable to the Administration and due to this, the Law Society has withdrawn its support for the "gradual" conversion mechanism proposed by the existing Bill.

In addition, the Solicitor Indemnity Fund has become extremely concerned as to potential effect of the Bill upon the Fund, believing that, in effect, it is the SIF which will be underpinning title registration. This is neither proper nor appropriate and is a significant inhibition to proceeding in the manner suggested.

Apart from the Law Society's own submissions, we also note other submissions, particularly those from the title insurers, highlight the difficulties of the use of a solicitor's certificate of good title.

Your letter suggests that the Administration is not prepared to re-consider the original concept of "midnight conversion". Whilst that still remains the Law Society's preferred means of proceeding, the concept of daylight conversion was devised with a view to overcoming the objections of those opposed to midnight conversion and appears to the Law Society to be an adequate compromise. There is no foolproof means by which it is possible to ensure that no person will lose a right by virtue of title registration. This is not necessarily as a result of the conversion of the title to a registered one, but also perhaps because a purchaser from the then registered owner takes a property free from any such right which has not been protected on the Title Register. This is why almost all systems provide an indemnity from the Government to protect against loss.

In the Law Society's view, the 12-year incubation period suggested under the daylight conversion scheme is adequate to ensure that such rights are preserved.

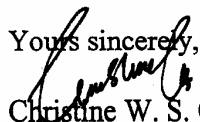
For information, the daylight conversion proposal has been adapted from similar systems which operate in New South Wales and Queensland in Australia where they have operated apparently without significant problems.

Regarding the position of properties on New Grant land, the Law Society notes your position and it is willing to discuss this further with the Administration.

It is not an essential part of the Law Society's proposal that a formal "provisional title register" is necessary.

We agree with your comment regarding cautions against conversion.

Yours sincerely,


Christine W. S. Chu

Assistant Director of Practitioners Affairs

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