

Summary of issues raised in consultation
on Working Draft of Land Titles (Amendment) Bill (June 2006 version) and Response
(as at 1May 2007)

This document consolidates the comments received from the Consumer Council, the Real Estate Developers Association of Hong Kong, the Hong Kong Association of Banks, the Hong Kong Bar Association and the Law Society of Hong Kong and Heung Yee Kuk and the response thereto by the Land Registrar.

Raised By	Issues/Comments	Response by the Land Registrar
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 2(1) – “court”</u> The word “magistrate” should read “magistrate’s court”.	Subject to the Law Draftsman's view, it is proposed to amend the word “magistrate” to “magistrates’ court”.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 2(1) – “land”</u> Paragraphs (c) and (d) should be separated by the word “or”.	The Law Draftsman is being invited to consider.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 2(1) – “long term lease”</u> For a lease to be regarded as a “long term lease”, its remainder term at the time of presentation of the lease for registration should not be a relevant factor but whether the lease was granted for a term of at least 21 years and for a premium. The definition should be revised as – <u>“a lease of land that is granted for a term of at least 21 years by –</u>	Title register should only be created for substantial landed interest. A lease of not less than 21 years at the time of presentation for registration is regarded a substantial interest in land; and it is likely to be dealt with in the same way as land. An example is Robinson Place. The reference to “premium” may not be applicable to all long term leases. It is not uncommon that long term leases were granted without payment of

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	<p>(a) ;</p> <p>(b) but does not include a lease at rack rent”.</p>	<p>premium. Examples are Robinson Place, Dorset House (Taikoo Place) , Cyberport and others as per attached list.</p> <p>For information, it is proposed to further revise the definition of “long term lease” to relate to a lease of a lot (as defined in the Ordinance).</p> <p>[All long term leases already in existence and registered under the Land Registration Ordinance are captured by section 5 of Schedule 1.]</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 2(1) – “owner”</u></p> <p>In paragraph (b), the use of the word “recorded” is preferred.</p>	<p>Subject to the Law Draftsman’s view, there is no objection to the use of the word “recorded”.</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 2(1) – “owner”</u></p> <p>In paragraph (c), the assign of a chargee should also be regarded as an “owner” of a registered charge.</p>	<p>It is proposed to include the transferee of the charge as "owner" of a registered charge.</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 2(1) – “registered property”</u></p> <p>The term “registered property” is sometimes used in the revised Ordinance to refer to “transactions” rather than the physical property.</p>	<p>In the context of the revised Ordinance, the term “registered property” relates to physical property (that is, registered land or registered long term lease).</p> <p>Unless specific sections are identified for further consideration, no amendment is proposed.</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 2(1)</u></p> <p>Whilst references have been made to the term “matter” throughout the revised Ordinance, the definition of “matter” has been deleted.</p>	<p>The Law Draftsman is being asked to consider whether to define "matter" or otherwise.</p>

In order to avoid any

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	<p>possible confusion over the meaning of “matter” without a definition, the revised Ordinance should employ more generic terms like “nothing”, “anything”, “any”, etc. in place of “matter” or omitted the references to “matter” altogether. For example -</p> <ul style="list-style-type: none"> • instead of “registered matter”, only the descriptive word “registered” should be used to describe a transaction, a note or a caution that has been registered or noted on the register; • in section 5(3)(g), “such other matters” can be replaced by “any other things”; • section 10 can be revised as “Nothing shall be capable of being registered ... unless – <ul style="list-style-type: none"> (a) <u>its</u> registration is expressly provided for ...; (b) <u>it</u> is a disposition or transmission ...; (c) it is an order of a court ...; or (d) it affects a registered property...”; • in section 16(1), “<u>No instrument or matter</u> shall be registered in the Land Titles Register ...” can be revised as “<u>Nothing</u> shall be registered in the Land Titles Register ...”, etc. 	
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 4(1)</u></p> <p>Section 4(1) goes too far. Under the present drafting of section 4(1), a purchaser is entitled to proof of ownership of property under the provisions of the Conveyancing and Property Ordinance. This cannot be correct. Section 4(1) should be revised to the effect that the</p>	<p>The Department of Justice is being consulted. Section 4 is being re-examined.</p>

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	Ordinance should generally prevail over other enactments except in certain limited circumstances.	
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 4(1)(a) and section 51</u></p> <p>Has the revised Ordinance effectively dealt with original section 45? Will the implied covenants under section 35 of the Conveyancing and Property Ordinance continue to apply as a contractual issue between the parties under section 4(1)(a) and section 51?</p>	<p>Section 4(1)(a) is a substitute for original section 45(1)(a) and section 51 deals with original section 45(1)(b). Exclusion, variation or extension of implied covenants is dealt with in the Conveyancing and Property Ordinance. It is proposed not to require registration of the exclusion, variation or extension of implied covenants.</p> <p>There is no intention to disturb the contractual issue under section 35(2) of the Conveyancing and Property Ordinance.</p>
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 4(2)</u></p> <p>Section 4(2) has not totally recreated the original section 37(3)(b) of the Ordinance, which should be reinstated.</p>	<p>It is not the intention to recreate original section 37(3)(b) of the Ordinance by section 4(2). Section 4(2) is intended to be more general.</p> <p>For information, the Law Society has raised, at the Bills Committee stage, concern that the scope of section 37(3)(b) might be too limited as it referred to section 44(2) of the Conveyancing and Property Ordinance only.</p>
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 5(2)(b)</u></p> <p>The purpose of the Land Titles Register in the context of the revised Ordinance should be more than just “proof of ownership of interest in land” but to “establish” title. Section 5(2)(b) should be revised to read “establish the ownership of interests in land”.</p>	<p>The purpose of registration under the Ordinance is to “establish” the ownership of interests in land. The purpose of the Land Titles Register, with which section 5(2)(b) is concerned, is to provide the authoritative evidence that the ownership of</p>

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		interests has been “established” by registration. To this end, the word “proof” seems clear and direct, given its dictionary meaning of “that which proves or establishes the truth of anything”. Further consideration is being given to the general structure and wording of section 5(2).
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 6</u> The word “indexes” should be replaced by “indices”.	The Law Draftsman is being asked to consider whether "indexes" or "indices" will be used.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 9</u> What is the extent of liability of the Government under the new system?	The Department of Justice is being consulted. Section 9 (together with section 112) will be further considered.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 12(4)</u> Section 12(4) should be deleted as it appears to be a duplication of section 13(2).	Section 12(4) deals with the Registrar's power to alter the normal order of registration of a charging order or non-consent caution whereas section 13(2) deals with the priority of a charging order or non-consent caution after its registration. Subject to the Law Draftsman’s view, it is proposed to add “that is registered” after the words “non-consent caution” in section 13(2).
The Hong Kong Bar Association (letter dated 6.10.2006)	<u>Section 13</u> In the case of charging order, the time for presentation for registration would depend on the diligence of the solicitors obtaining the charging order and the efficiency of the court clerk in approving the formal order. Thus,	Under section 5A of the Land Registration Ordinance, a charging order will have priority from the commencement of the day following the date of its registration. The "1-month rule" under section

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	<p>one should consider carefully whether one should do away with the 1-month grace period allowed for the registration of the instrument as in the case of the Land Registration Ordinance. Likewise, the declaratory orders from the court may declare that the land is to be subject to certain rights as from a particular date. The question is whether in such case, the effect of such declaratory order would be subject to section 13(1), i.e., the interest recognized by court order would only have priority from the date of presentation of the court order for registration. The whole question of priority would merit careful reconsideration.</p>	<p>5 of the Land Registration Ordinance does not apply to a charging order.</p> <p>Certainty as to the state of the title for those who deal with it is an important feature of title registration. There should be “finality” in the Land Titles Register which provides proof of ownership of interests in land. If a court order (like an instrument providing for a transfer) shall take effect on registration, it gives certainty to the Land Titles Register. It follows that a court order (other than a charging order) shall have priority from the date of presentation for registration. A claimant under a court order may however give notice of his claim before obtaining a court order by registration of a non-consent caution (a “lis pendens” being registrable as non-consent caution).</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 13</u></p> <p>Why has the original section 35(2) of the Ordinance been deleted?</p>	<p>Subject to the Law Draftsman’s view, on reconsideration, it is proposed to reinstate original section 35(2) of the Ordinance.</p>
<p>The Consumer Council (letter dated 16.8.2006)</p>	<p><u>Section 19</u></p> <p>The drafting of section 19 should be improved. The subsections under section 19 have some exceptions which are further qualified or subject to further exceptions that reduce the readability and clarity of the section.</p>	<p>Noted.</p> <p>Matters of drafting are being referred to the Law Draftsman for consideration.</p>
<p>The Hong Kong Bar Association (letter dated 6.10.2006)</p>	<p><u>Section 19(1)</u></p> <p>Under section 19(1), it appears that any court order could not take effect unless and until it is registered. This</p>	<p>Certainty as to the state of the title for those who deal with it is important under the title registration</p>

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	<p>would mean a departure from the existing law that the court order could take effect as soon as it is pronounced by the court and that the drawing up of the order is merely a formality required for the enforcement of the order. Section 19(1) may thus lead to some unintended consequences.</p>	<p>system. Hidden interest should be reduced to the minimum in order to give certainty to the title and better protection for a purchaser. Many other jurisdictions have adopted the approach that court orders shall only take effect on registration.</p> <p>To give notice of a claim to an interest in land, the plaintiff may register a non-consent caution (a lis pendens being registrable as non-consent caution).</p>
<p>The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)</p>	<p><u>Section 19(2)(a)</u></p> <p>Section 19(2)(a) provides that on the registration of an instrument, the instrument become effectual "in accordance with the terms of the instrument". Does it mean that the instrument will become effective as of the date of the instrument? What would be the implications if the instrument is backdated?</p>	<p>An instrument falling with section 19(1) takes effect on the date of the registration of the instrument and not on the date of the instrument. In the case of a transfer of registered property or a registered long term lease, there shall be vested in the owner upon registration of the instrument providing for the transfer the rights and interests as provided in section 46 and section 47 and not the rights and interests as determined by the instrument.</p> <p>Subject to the Law Draftsman's view, it is proposed to delete the words "in accordance with the terms of the instrument" in section 19(2)(a).</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 19(2)(b)</u></p> <p>Section 19(2)(b) may have gone too far in treating easement or covenant to be registered when the transfer creating these interests is registered but for some reasons the interests themselves are not referred to in the application for registration nor in the Land Titles Register. This will defeat the object of the Ordinance, i.e., interests have to be on the Land Titles Register in</p>	<p>Section 19(2) basically follows section 182 of the Land Title Act 1994 of Queensland. The intention is that easement, covenant. etc. created in an instrument providing for a transfer will have to be separately registered as such before they are effectual.</p> <p>The Law Draftsman is being asked to consider any</p>

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	order to be registered. It is suggested that section 19(2)(b) should be deleted.	amendment to section 19(2)(b).
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 19(3)</u></p> <p>Section 19(3) may have the effect of bringing back the doctrine of notice in equity and thus minimizing the effect of section 46(1). Section 19(3) should aim to preserve the current position under the Land Registration Ordinance, i.e., to preserve the right of a contracting party to claim against the other contracting party who has defeated his rights but not against the property.</p>	<p>It is not the intention to bring back the doctrine of notice in a dealing with registered land. Consideration will be given to amend section 19(3) along the line of section 45 of the Land Titles Act of Singapore. Section 45 reads as follows :-</p> <p>“(1) No instrument until registered as in this Act provided is effectual to pass any estate or interest in land under the provisions of this Act, but upon registration of an instrument the estate or interest therein specified shall pass, or the land shall become liable as security for the payment of money (as the case may be), subject to such covenants and conditions as are set forth in the instrument and are capable of taking effect, and subject to such covenants and conditions as are by law declared to be implied in instruments of a like nature.</p> <p>(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract.”</p> <p>The effect would then be that the rights of the contracting parties pending registration will be governed by the general law of contract.</p> <p>Consideration will also be given to add a provision similar to that of section 184(2)(a) of the Land Title Act 1994 of Queensland to ensure that actual or constructive notice of an unregistered interest shall</p>

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		not affect an owner's interests subject to the Ordinance (e.g. overriding interest).				
The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 19(3)</u></p> <p>The effect of section 19(3) is unclear because there does not appear to be any clear provision in the Ordinance to say what interests are capable of registration under the Ordinance. Is the equitable interest of the beneficiary under a resulting trust to be considered as an interest capable of registration under the Ordinance? If not, what would be the position of the beneficiary of the resulting trust under the Ordinance?</p>	Section 10 defines the instruments and matters which are registrable. A person who claims an equitable interest under a resulting trust may apply for registration of a non-consent caution to protect his interest.				
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 20(2)</u></p> <p>The word "respecting" in section 20(2) should be changed to "for".</p>	The Law Draftsman is being asked to consider.				
The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)	<p><u>Section 23</u></p> <p>It would be helpful to know whether the Collector of Stamp Revenue proposes to give any pledges to shorten the time for the stamping and endorsement of instruments submitted to the Stamp Office to ensure that registration is not delayed by the stamping process.</p>	<p>The Collector of Stamp Revenue has advised proposed performance pledges on stamping and adjudication of instruments of transfer of landed property when the Ordinance comes into operation as follows:</p> <p><u>adjudication cases not involving valuation of property</u></p> <p>cases finalized within –</p> <table data-bbox="1422 1276 2094 1380"> <tr> <td>first 3 months</td> <td>85%</td> </tr> <tr> <td>next 9 months</td> <td>10%</td> </tr> </table> <p>(cumulative 95%)</p>	first 3 months	85%	next 9 months	10%
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		<p><u>adjudication cases involving valuation of property</u></p> <p>cases finalized within –</p> <table data-bbox="1424 344 2092 496"> <tr> <td>first 6 months</td> <td>80%</td> </tr> <tr> <td>next 6 months</td> <td>15%</td> </tr> <tr> <td></td> <td>(cumulative 95%)</td> </tr> </table> <p><u>stamping of assignments and chargeable agreements</u></p> <table data-bbox="1424 587 1995 619"> <tr> <td>cases finalized within first 5 days</td> <td>98%</td> </tr> </table>	first 6 months	80%	next 6 months	15%		(cumulative 95%)	cases finalized within first 5 days	98%
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<p>The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)</p>	<p><u>Section 24</u></p> <p>If an instrument submitted for registration contains a reference to another instrument which is not registered, is the requirement of the section satisfied?</p>	<p>Section 24 provides that an instrument shall contain a true statement of the consideration. It does not stipulate the wording of the statement nor whether it can refer to another instrument, not to say whether that other instrument is registered or not.</p> <p>Subject to the Law Draftsman's view, for operational reason, consideration is being given to whether any change should be made to section 24 so that an instrument accompanying an application for registration should contain a true statement of the consideration that can be ascertained from the instrument itself or another instrument that is registered.</p>								
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 27</u></p> <p>There should be provisions dealing with the conversion of an equitable interest to a legal interest following compliance of the terms of an Agreement for</p>	<p>Section 14(1) of the Conveyancing and Property Ordinance covers the conversion of an equitable interest to a legal interest. The Conveyancing and Property Ordinance and the Ordinance will run in</p>								

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	Government Lease.	parallel, and it is not necessary to have a similar provision added to the Ordinance.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 29(4)</u></p> <p>What is the purpose of section 29(4)?</p>	The intention of section 29(4) is that where the lessee of a long term lease (the first lessee) has applied for registration of the long term lease, it is not necessary for the subsequent lessee to register the same.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 30(c) and section 30(d)</u></p> <p>In section 30(c) and section 30(d), “any” should be replaced by “subsisting” to make it clear that a long term lessee will only be subject to “subsisting” registered matters and “subsisting” overriding interests.</p>	The phrase “affecting the land” in section 30(c) and section 30(d) itself carries the meaning of “subsisting”. It is considered not necessary to add “subsisting” in both paragraphs (c) and (d).
The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 32</u></p> <p>There is no reason why easements acquired by prescription should not be made an overriding interest along with implied easements and easements of necessity. Special provision should be made for easements acquired by prescription. This is because the doctrine of lost modern grant presumes that the easement was granted by a deed which has been “lost”. Inasmuch as an interest created by a deed would take effect only from registration, it is difficult to see how the doctrine of “lost” modern grant can operate unless easements acquired by prescription are made overriding interests.</p>	<p>It is not considered appropriate at this stage to expand the list of overriding interests to specifically include easements acquired by prescription. In future, if the court definitely decides on the issue, consideration will be given to amend the Ordinance to include such rights.</p> <p>Under the Ordinance as it stands, if there is a claim for an easement acquired by prescription, the claimant may register a non-consent caution. If a prescriptive right were to be established through court proceedings, then the relevant court order may be registered under section 50.</p>
Heung Yee Kuk (meeting on	<u>Section 32 and section 33</u>	

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26.3.2007)	A person may register his overriding interest in the property in the Land Registry. The property is still to his overriding interest even if the interest is not registered. How can members of the public put their minds at rest when purchasing properties? How can they ascertain that there are no overriding interests above their own interests?	No formal response has been issued by the Land Registrar but the issue was discussed at the meeting held on 26.3.2007
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 34</u></p> <p>Tenants in common do not at present have separate sets of title deeds but only one set which they jointly possess. There should only be one title certificate for a property at any one point in time and section 34(2) and section 34(3) should be deleted. Under the title registration system, title certificates need to be returned for the purpose of dealings and the more title certificates issued, the greater will the risk of loss of the document be and this could impede transactions.</p>	In cases where only one of the tenants in common intends to deal with his own share in the property, it would merely impede him to deal with his own share of interest if only one title certificate is issued and he does not have the title certificate in his possession. The other tenant(s) in common may refuse to tender the title certificate to him.
The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 36</u></p> <p>It is unclear whether section 36 covers severance of joint tenancy. In principle, there is no reason why the old certificate issued in respect of the joint tenancy should not be cancelled and be replaced by separate certificates which correspond with the severed estates. However, there should not be any requirement for surrender of the old certificate. Where the certificate is held by a joint tenant who opposes to the severance, the one who is exercising the right of severance would find it difficult to return the certificate. If return of the certificate is insisted upon in cases of severance, the person wishing to sever his interest may be forced to sue for delivery up</p>	Consideration is being given to add a provision similar to section 36(2) that the Registrar may, of his own volition, cancel a title certificate issued in relation to a registered property held by joint tenants on registration of severance of the joint tenancy.

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	of the title certificate when litigation would not otherwise have been necessary.	
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 36(5)</u></p> <p>It is incorrect to say that title certificates are void for all purposes once they are cancelled. Cancelled certificate should still retain its capacity to be used in court proceedings in some way under section 35(1).</p>	It is proposed to delete section 36(5).
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 37</u></p> <p>Should this section be extended to cover all court orders? If not, should original section 36(5) be reinstated?</p>	<p>Section 37 is intended to cover all court orders except court orders by which title passes (e.g. a vesting order). Such an order will not be registered. It is the instrument that supports an application for registration of transmission.</p> <p>It is not proposed to reinstate original section 36(5) of the Ordinance.</p>
The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)	<p><u>Section 37(4)</u></p> <p>It is onerous and unnecessary to require that an application must be made to the court to discharge a registered charging order.</p>	Section 37(4) merely reflects section 20B of the High Court Ordinance and section 52AB of the District Court Ordinance. The Registrar should not usurp the function of the Court.
Heung Yee Kuk (meeting on 26.3.2007)	<p><u>Section 41</u></p> <p>Would ancient mortgages be removed by the new law?</p>	No formal response has been issued by the Land Registrar but the issue was discussed at the meeting on 26.3.2007 to the effect that LTO does not change the present requirement of obtaining a court order to remove an old mortgage

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The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 43</u></p> <p>The definition of “transfer” means that the operation of section 43 will not cover cases such as –</p> <p>(i) an inter vivos release of interest by one joint tenant in favour of the others by deed;</p> <p>(ii) the resignation of one of the several trustees or the appointment of additional trustees.</p> <p>In principle, the effective date of the change of title in the above cases should be the date of registration of the deed of release or the deed of resignation or appointment as the case may be.</p>	<p>It is proposed to revise the concept of “transfer” to include inter vivos release so that the release can be treated as if it were a “transfer” and all provisions on transfer would apply to inter vivos release. Alternatively, subject to the Law Draftsman’s view, it is proposed to add a deeming provision to deem the release a transfer.</p> <p>Death, resignation and retirement of trustees fall under “transmission” under section 76(1). The passing of title takes effect on transmission.</p>
The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 50</u></p> <p>Is it intended that there should not be any Profit as a specie of interest in land in Hong Kong?</p>	<p>There is little land capable of being the subject of a profit à prendre in Hong Kong, and in practice the right would rarely be found. Further, because by and large the origins of the right rest in the freehold estate, there may be some inherent difficulties translating these principles to leasehold tenure. [paragraph [230.0616] of Halsbury’s Laws of Hong Kong (Volume 16) (2001 Reissue)]</p> <p>A person who does have a claim may register a non-consent caution.</p>
The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 50(1)</u></p> <p>What is the intended consequence if an instrument providing for an easement does not contain all the required information under sections 50(1)(a) – 50(1)(g)?</p>	<p>If any of the required terms are not specified in the instrument providing for an easement, the instrument is not registrable.</p>

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The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 50(1)</u></p> <p>Upon the registration of an instrument providing for an easement purporting to contain all the required information under sections 50(1)(a) – 50(1)(g), must one regard the information so given as conclusive? There are ways that an easement may be lost without the execution of a formal instrument releasing the easement.</p>	The extent of the easement will be determined by the terms of the instrument that is registered. Any modification or extinguishment of easements shall be effected in accordance with section 54 and section 55.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 50 and section 52</u></p> <p>The section headings of section 50 and section 52 should respectively be changed to “Creation of easements” and “Creation of covenants contained in instruments” to make it clear that these sections only concern “new” easements and covenants created after first registration and will not affect the operation of section 32 (overriding interest).</p>	Section 50 and section 52 deal with registration as well as the grant of easements. The inclusion of “creation” in the section headings does not wholly reflect the section. Moreover, under section 18(3) of the Interpretation and General Clauses Ordinance, a section heading shall not have any legislative effect and shall not vary, limit or extend the interpretation of any Ordinance.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 52</u></p> <p>Section 52 should make a saving clause for covenants that are “overriding interests” under section 32(f).</p>	Subject to the Law Draftsman’s view, it is proposed to add in section 52 a provision similar to section 50(4).
The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 53 and section 55</u></p> <p>Section 53 and section 55 appear to envisage that any variation of the provisions in a deed of mutual covenant can only be effected by another deed of mutual covenant. In principle, there is nothing to prevent all those who are bound by a deed of mutual covenant for the time being from modifying some right or obligation in the deed of mutual covenant by each entering into a bilateral</p>	If a deed of mutual covenant is to be modified, then all owners must execute the modification deed. There is no intention of disallowing bilateral agreements made by owners, which would not be a modification under section 54, but only personal obligations enforceable between the parties.

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	<p>agreement with all the other owners in similar terms. The combined effect of the bilateral agreements entered into between each and all the other owners for modifying some right or obligation in a deed of mutual covenant would effectively modify the terms of a deed of mutual covenant or, at the least, take effect amongst the immediate parties to the bilateral agreements without the need for a modification/variation of the provisions in a deed of mutual covenant to be effected by another deed.</p>	
<p>The Hong Kong Bar Association (letter dated 6.10.2006)</p>	<p><u>Section 59</u></p> <p>This section envisages that a lease can only be terminated by an instrument where it “provides for” such termination. An assignment or a purported grant of a sub-lease equal to or exceeding the length of remaining term to the reversioner would terminate the lease by merger although the instrument in question would not “provide for” termination of the lease. A vesting assent of a lease in favour of a specific legatee who is also the reversioner would have a similar effect. There is in principle no reason why these cases should be treated differently from cases of surrender.</p>	<p>Subject to the Law Draftsman’s view, it is proposed to replace “in any manner other than by means of an instrument” in section 59(3) with “in any other manner” so that an instrument like a vesting assent of a lease would be the supporting instrument in proving that the lease has been terminated.</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 63(2)(a)</u></p> <p>There does not seem to be any particular reason why the requirement for submitting a land boundary plan should be deferred under section 63(2)(a) simply because there is a court order or a grant of probate providing for the division of land. It is more appropriate to require the land boundary plan to be submitted on day one so that interested parties can deal with their portions of land as they like.</p>	<p>The deferred requirement is in line with section 30(2) of the Land Survey Ordinance and section 23(3) of the Land Registration Ordinance. If the interested parties want to deal with the divided land, they may deliver the land boundary plan at the same time when they deliver the court order or grant of probate.</p>

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<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 63(2)(b) and section 64</u></p> <p>What are the purposes of section 63(2)(b) and section 64?</p>	<p>Section 63(2)(b) and section 64(1) derive respectively from the original section 44(3) and section 44(2)(b) of the Ordinance. The combined effect of section 63(2)(a) and section 64 is that a land boundary plan is not required for division of land by judgment or will. However, a land boundary plan is required before such divided land can be dealt with.</p> <p>Subject to the Law Draftsman's view, consideration is being given to merge section 63 and section 64.</p>
<p>The Hong Kong Bar Association (letter dated 6.10.2006)</p>	<p><u>Section 64(2)</u></p> <p>Consideration should be given to whether section 64 should be extended to cover the creation of a charge over a portion of registered land or some undivided interest in registered land.</p>	<p>The position of a charge over a portion of registered land is not the same as that of an instrument transferring the title of a portion of land. In the case of the creation of a charge over a portion of registered land, the owner may still wish to deal with the land as a whole after the discharge of the charge. If section 64(2) were amended to cover a charge over a portion of registered land, the owner of registered land would be forced to effect a division of registered land and on discharge of the charge he would have to make an application for combination before he could deal with the land as a whole. It is not considered appropriate to stipulate such requirement in the Ordinance. The chargee can at his discretion require the owner of registered land to effect the division before taking a charge over a portion of the land and it is for the owner to freely agree or not. There is no intention to extend</p>

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		section 64(2) to include a charge over a portion of registered land.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 65(2)</u></p> <p>Section 65(2) does not fit in with the actual conveyancing practice. At present, although a deed of mutual covenant will not be signed until completion takes place, the Land Registry will set up a subdivision register (“SDR”) for the relevant unit upon submission of a schedule of undivided shares by the developer to enable registration of the sale and purchase agreement and equitable mortgage in respect of the unit in the SDR.</p>	<p>It is not the intention to require a deed of mutual covenant to be evidence of allocation of undivided shares. However, it is a new requirement that an application accompanied by an instrument showing the allocation (e.g. a schedule of allocation of undivided shares) has to be made together with the payment of a fee.</p> <p>Subject to the Law Draftsman’s view, the word “evidencing” in section 65(2) may be revised.</p>
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 66</u></p> <p>A standard terms document is likely to be amended from time to time and there should be provisions for registration of new editions of the document.</p>	<p>An amended standard terms document is a new standard terms document; and it may be filed. A new unique identifying number will be given to it. It will be referred to by this new number. The “old” standard terms documents should not be varied or withdrawn because the terms of this document might have already been incorporated into other already registered instruments.</p>
The Hong Kong Bar Association (letter dated 6.10.2006)	<p><u>Section 66 and section 67</u></p> <p>It is difficult to see any justification for the standard terms document to be made registrable. These standard terms document do not affect any interest in land by themselves and the downside of allowing the registration is that the register would be reduced into a miscellaneous register and not just a title register.</p>	<p>The filing process of a standard terms document is not part of the registration process and is independent of and not related to registration. The filing of standard terms document will simplify the documentation required for an instrument. The terms contained in a filed standard terms document can be incorporated into an instrument by reference</p>

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		to the standard terms document without the need to spell out the terms in full in the instrument.
The Hong Kong Association of Banks (letter of Standard Chartered Bank dated 21.8.2006)	<p><u>Section 66 and section 67</u></p> <p>What are the operation constraints on the part of the Land Registry?</p>	At the time of issuing the working draft, it was anticipated that the IT infrastructure for the filing of common terms documents would not be available on commencement. This has now been resolved.
The Hong Kong Association of Banks (letter of Standard Chartered Bank dated 21.8.2006)	<p><u>Section 66 and section 67</u></p> <p>At what time the “filing system” would be in place after the commencement of the Ordinance?</p>	The “filing system” will now be in place at the same time as the commencement of the Ordinance.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 69</u></p> <p>At present, where a purchaser has signed an open contract to buy a property, the property should be conveyed by the vendor to the purchaser free from encumbrances on completion except those encumbrances disclosed by the vendor or of which the purchaser has actual or constructive notice at the time when he entered into the contract. The purchaser is entitled to raise requisitions and either rescind the contract or claim for damages upon discovery of encumbrances which the vendor has failed to disclose, irrespective of whether the vendor in fact has knowledge of the encumbrances. Such contractual rights on the part of the purchaser should be preserved under the title registration system but it is unclear if the revised Ordinance has achieved this.</p> <p>There is concern that as a purchaser under the title registration system has contracted to buy a registered</p>	<p>Overriding interests comprise rights and liabilities which it may not be practicable to register but which, though not recorded in the Land Titles Register, must retain their validity. Overriding interests are considered so important that they should “override”, i.e., all registered property shall be subject to overriding interests irrespective of whether the overriding interests are recorded in the Land Titles Register and irrespective of whether the owner or purchaser has notice of them.</p> <p>Under the title registration system, it remains the vendor’s obligation to give good title to the property. as provided in section 69, provisions for ^{save} requisitions, rescission, etc. are matters of contractual arrangements between the vendor and the purchaser, there is no intention of disturbing the parties in freely contracting in or out</p>

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	<p>title, which by definition is subject to overriding interests, the purchaser will not be able to object to the title purely because of the existence of the overriding interests.</p> <p>In the United Kingdom, the legislation on implied covenants for title in relation to full title guarantee was amended in 1994 so that the transfer will only be subject to any overriding interest of which the purchaser has actual or constructive notice. Section 77 of the Law of Property Act provides –</p> <p style="padding-left: 40px;">“In relation to a disposition of registered land , any covenant implied by virtue of section 76 of the Law of Property Act 1925 in [such a disposition] shall take effect as though the disposition was expressly made subject to – (a) all charges and other interests appearing or protected on the register at the time of the execution of the disposition and affecting the title of the covenantor; (b) any overriding interests of which the purchaser has notice and subject to which it would have taken effect, had the land been unregistered.”</p> <p>It will not be satisfactory to oblige a purchaser to complete a transaction without any right to object to overriding interests which the vendor has failed to disclose particularly in the Hong Kong situation, where property transactions normally take place by the parties signing a binding open contract at the estate agent’s office without an opportunity to make any pre-contract enquiries.</p>	<p>of a sale and purchase. That said, conveyancing practice will have to be adapted to the change from deeds registration system (involving thorough investigation of title from the title documents) to title registration system.</p>

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	<p>In the Court of Final Appeal judgment of <u>Chi Kit Co. Ltd & Anor v. Lucky Health International Enterprise Ltd</u> (19/07/2000 FACV 18/1999), the court has pointed out the divergence between the common law as applied in England, Australia and Singapore and in Hong Kong with regard to risks after an agreement was entered into but before completion of the transaction. The relevant paragraphs of the judgment read –</p> <p>“56. The general principle is well-recognised that as from the date of the contract for the sale of land, if anything happens to the estate between the time of sale and the time of completion, caused without the vendor’s fault, it is at the risk of the purchaser ...</p> <p>57. In England, it seems to have been accepted that the existence of circumstances which create a risk, even a probability, that the property will become liable to a statutory charge or burden does not constitute a latent defect in title ...</p> <p>58. In other jurisdictions, a view similar to that taken in England, has generally prevailed...</p> <p>59. In Hong Kong, the courts have held that there is a latent defect in title where, when the contract is made, there is a significant or substantial risk that an authority would take enforcement action, culminating in a right of re-entry pursuant to a condition in the antecedent Crown or Government lease, in relation to unauthorised structures on the property contracted to be sold</p> <p>60. The approach taken by the courts in Hong Kong</p>	

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	<p>to the existence of a defect in title arising from the presence of an unauthorised structure on land the subject of the sale is now so well entrenched that we should not depart from it ...”</p> <p>Section 69 should be appropriately amended to reflect the current legal position and for the implied covenants provisions under the Conveyancing and Property Ordinance to be amended along the line of the provisions of the United Kingdom.</p>	
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 69(1)(c)</u></p> <p>Section 69(1)(c) should be redrafted to make clear that in the situation therein mentioned, a purchaser can only require the vendor to do either one of the 2 things in section 69(1)(c)(i) or section 69(1)(c)(ii) and the choice should be on the vendor to decide which of the 2 options to adopt.</p>	<p>Section 69(1)(c) is intended to cover sale by personal representative only. It is proposed to amend section 69(1)(c) to the effect that where the vendor is a personal representative but who is not the owner of the registered property, he shall, unless otherwise agreed between the parties, at his own expense, and notwithstanding any stipulation to the contrary in section 77(4), procure the registration of himself as the owner of the registered property.</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 70</u></p> <p>The provisions in section 70 should follow that of section 69.</p>	<p>See above on section 69.</p>
<p>Heung Yee Kuk (meeting on 26.3.2007)</p>	<p><u>Section 75</u></p> <p>The New Territories Ordinance (Cap. 97) stipulates that a manager representing a clan, family or t’ong, with his appointment approved by the Secretary for Home Affairs, has full power to dispose of or in any way deal with the land of the clan, family or t’ong as if he were the sole owner of the land. Why is it necessary to</p>	<p>. No formal response issued by the Land Registrar but the issue was discussed at the meeting held on 26.3.2007.</p>

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	introduce the provisions in section 75?	
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 76(1)</u> Is it correct to refer to “register the <u>person</u> ”?	Subject to the Law Draftsman’s view, it is proposed to make changes to the wording of section 76(1) that a transmission (and not a person) will be registered. It is also proposed that similar changes be made to section 82(3)(b).
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 76(2)</u> Should the reference to “registered property” in section 76(2) be changed to “registered property or registered charge” when by definition “registered property” does not include “registered charge”?	Subject to the comment of the Law Draftsman, it is proposed that a new section be added to the effect that the registration of transmission of a registered charge shall be treated as only confirming that the person registered as the owner of the registered charge is the owner of the registered charge.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 78(2)</u> Is section 78(2) still relevant given the abolition of estate duty?	Section 18 of the Estate Duty Ordinance has not been repealed. There is a possibility that death occurred before the abolition of estate duty and an application for removal of the name of the deceased joint tenant is presented after the property has been converted to registered property. Therefore, the section is still relevant.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 80</u> Section 80 should give the personal representative unrestricted power of sale but this should not relieve him from his personal obligations under any enactments or	For certainty and conclusiveness of title and to give better protection for a purchaser who purchases property from a personal representative, provisions

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	rules of law.	for a personal representative, for the purposes of the sale, to have unrestricted power of sale are preferred. The Secretary for Home Affairs, however, takes the view that the power of sale of a personal representative should be subject to the restrictions imposed by the Probate and Administration Ordinance for the protection of the beneficiary's rights. Further consultation with the Secretary for Home Affairs will be conducted.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 81</u> Section 81 should be revised to similar effect as that of section 80.	See above on section 80. Section 81 is being further considered.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 88</u> Section 88 should be revised to similar effect as that of section 80.	See above on section 80. Section 88 is being further considered.
The Hong Kong Bar Association (letter dated 6.10.2006)	<u>Section 88(2)</u> The wordings seem to confer on all persons registering as trustees all the power of sale and mortgage or disposal as though they are absolute owners and would to a large extent render section 56 of the Trustee Ordinance otiose.	Section 88 is being reviewed together with section 80 and section 81. Whether or not section 56 of the Trustee Ordinance will be rendered otiose depends on the final wording of section 88.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 92(1)</u> The reference to "an equitable mortgage of an uncompleted building or any part of any uncompleted building" is unnecessary and should be deleted.	The reference to equitable mortgage of uncompleted building serves to make it clear that a mortgagee who has taken an equitable mortgage of an uncompleted building or part thereof may register a consent caution in respect of the equitable mortgage. Without such reference, only a person who intends to enter into a disposition may register

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		<p>a consent caution. There is, however, doubt as to whether a mortgagee who has taken an equitable mortgage of uncompleted building is “a person who intends to enter into a disposition”.</p> <p>Subject to the Law Draftsman’s view, as an alternative to making express reference to “an equitable mortgage of an uncompleted building or any part of an uncompleted building”, it is proposed to delete the reference in section 92(1) and add a new subsection to cover transactions by a cautioner (such as the mortgagee of an equitable mortgage of uncompleted building) along the following lines:</p> <p>A person who intends to enter into or has entered into a [transaction] that may affect a registered property or registered charge with the cautioner under a registered consent caution may, with the consent of the cautioner, present to the Registrar an application for the registration of a caution in respect of that [transaction].</p>
<p>The Law Society of Hong Kong (letter dated 6.12.2006)</p>	<p><u>Section 92(1)</u></p> <p>The present definition of “disposition” is too restrictive and does not allow transactions that are currently undertaken to be effected without artificiality under the Ordinance. The definition of “disposition” together with that of “owner” raise doubts as to whether a purchaser (who is by definition not an “owner”) under a yet to be completed agreement for sale and purchase can effect a transaction on his rights thereunder and register his transaction under the revised Ordinance, e.g. by creating an equitable mortgage on the agreement for sale and purchase. Likewise, equitable mortgagee under</p>	<p>A purchaser under a yet to be completed agreement for sale and purchase may register a consent caution in respect of the agreement but is not entitled to be registered as the owner. Section 37 of the Land Registration Act 1925 deals with the powers of a person entitled to be registered as owner but not yet registered. The position of such person is not the same as the purchaser being a cautioner.</p> <p>The concern appears to relate to the interests that may be protected by the registration of a consent</p>

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	<p>such an equitable mortgage may not be able to register sub-mortgage on or the transfer of such equitable mortgage.</p> <p>There is a reasonable argument, although it is not entirely without doubt, that in section 92(1) “.....a person who intends to enter into a disposition” could be interpreted to include a person who intends to enter into a disposition when he becomes the owner. However, a purchaser under a yet to be completed agreement for sale and purchase who elects to sub-sell by way of nomination, which is not uncommon in Hong Kong, will never become a registered owner. He effects the sub-sale by directing the owner to convey directly to his sub-purchaser. It is therefore doubtful whether even given a liberal interpretation to section 92(1), his “nomination” can be registered by way of a consent caution. It is not difficult to perceive that there are occasions when parties wish only to deal with interest under a caution.</p> <p>The Working Party believes that section 37 of the Land Registration Act 1925 of the United Kingdom, which is quoted in full below, can be consulted either for an amendment to the definition of “disposition”, section 92(1) or as an independent new section, so that a person dealing with a cautioner can register as a consent caution his dealing with the cautioner.</p> <p>“ 37. Powers of persons entitled to be registered</p> <p>(1) Where a person on whom the right to be registered as proprietor of registered land or of a registered charge has devolved by reason of the death of the proprietor, or has</p>	<p>caution. It is proposed that additional provisions be added to cover [transactions] by a cautioner that a person who intends to enter into or has entered into a [transaction] that may affect a registered property or registered charge with the cautioner under a registered consent caution may register a consent caution. Thus, it is not necessary to amend the definition of “disposition”.</p>

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	<p>been conferred by a disposition or charge, in accordance with this Act desires to dispose of or charge the land or to deal with the charge before he is himself registered as proprietor, he may do so in the prescribed manner, and subject to the prescribed conditions.</p> <p>(2) Subject to the provisions of this Act with regard to registered dealings for valuable consideration, a disposition or charge so made shall have the same effect as if the person making it were registered as proprietor.</p> <p>(3) Rules may be made for extending the provisions of this section to the case of any person entitled to be registered as first proprietor, and to any other case for which it may be deemed expedient to prescribe.”</p> <p>The Working Party believes that while section 37 of the Land Registration Act 1925 goes to clarify that those who are not yet registered owners but have the right to be registered as such can dispose, the revised Ordinance should be amended in such a way that a cautioner can effect dealings of his rights under a caution and such dealings can be registered as consent cautions.</p>	
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 92(4)</u></p> <p>Should a Statutory Declaration be furnished notwithstanding that the agreement may already have been stamped?</p>	<p>A Statutory Declaration will be required only when the stamped agreement does not accompany the application for registration of the caution. Section</p>

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<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 93(1)</u> The reference to “overriding interests” is unnecessary and should be deleted as registered title is always subject to overriding interests.</p>	<p>92(4) will be revised.</p> <p>It is agreed that a registered property is always subject to overriding interests. Thus, the priority of an overriding interest as a registered matter should not be postponed. The reference to “overriding interests” in section 93(1) makes it clear that notwithstanding the registration of an overriding interest, the overriding interest would not be subject to the priority rules under section 13. On the other hand, if section 93(1) does not exclude overriding interests, the priority of a registered overriding interest will be postponed under section 93(1), because when an overriding interest is registered, it becomes a registered matter. This is not the intention.</p> <p>Subject to the Law Draftsman’s view, it is proposed to strengthen section 33 that registration of an overriding interest would not affect its priority.</p>
<p>The Real Estate Developers Association of Hong Kong (letter date 21.8.2006)</p>	<p><u>Section 93(3) and section 93(4)</u> The drafting and intentions are unclear.</p>	<p>The intention of section 93(3) is that if a first consent caution and a second consent caution are registered, but the second consent caution is presented for registration outside the period referred to in section 93(2)(c), then for an instrument or matter registered after the first consent caution but before the second consent caution, its priority will not be postponed against the disposition. For an instrument or matter registered after the second consent caution but before the disposition, its</p>

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		<p>priority will be postponed against the disposition.</p> <p>The intention of section 93(4) is that if a first consent caution (referred to in section 93(2)(a)) is registered and the second consent caution (referred to in section 93(2)(c)) is not registered, then the priority of an instrument or matter which is registered after the first consent caution but before the disposition will not be postponed against the disposition.</p> <p>The wording of section 93 is being reviewed.</p>
<p>The Consumer Council (letter dated 16.8.2006)</p>	<p><u>Section 94(2)</u></p> <p>Costs implications on an applicant for registration of a non-consent caution when requiring him to produce supporting evidence as the Registrar requires should be borne in mind.</p>	<p>Noted.</p> <p>The application process for registration of a non-consent caution will be simple and not costly.</p>
<p>The Law Society of Hong Kong (letter dated 24.11.2006)</p>	<p><u>Section 94(5)</u></p> <p>“Interest” for the purpose of the section is defined to include a “lis pendens, including an appeal under section 116 (<i>appeals against decision of Registrar</i>)”. The definition of “lis pendens” is too broad and it should be made clear that there must be some substantial claims against the land and the claims should have a direct relationship to the land.</p>	<p>Under the Land Registration Ordinance, a writ seeking a mandatory injunction to require improvement work to a property in order to abate nuisance may be registered as lis pendens. A nuisance claim does not, however, affect title but its registration makes a purchaser aware of the potential liability. If the definition of “lis pendens” in the revised Ordinance is restricted to claims of entitlement to an interest in registered land, some of the currently registrable lis pendens may become not registrable. It is not proposed to amend the definition of “lis pendens”.</p>

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The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 94(5)(c)</u> The word “property” should be replaced by “land”.	The word “property” is in line with the Estate Duty Ordinance. When section 94(5)(c) is read together with section 94(1), there is no doubt as to what “property” in section 94(5)(c) means. It is not proposed to change the word “property”.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 95(4)</u> Is exclusion of winding-up petitions deliberate or should the subclause be extended to also cover winding-up petitions?	A winding-up petition is not required to be re-registered.
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 96(3)</u> Should this section be deleted given the abolition of estate duty?	It should not be deleted. There may be cases where the Commissioner of Estate Duty is not aware of a first charge under section 18(1) of the Estate Duty Ordinance which arises by virtue of a gift inter vivos of LRO land made by a person who dies before 11.2.2006 until after conversion of the LRO land to the title registration system. To protect the first charge, the Commissioner may register a non-consent caution. Registration of a non-consent caution in respect of a first charge under section 18(1) of the Estate Duty Ordinance is provided in section 94(1) and section 94(5)(c).
The Law Society of Hong Kong (letter dated 24.11.2006)	<u>Section 101</u> Why has the original section 81(1)(c) of the Ordinance been deleted?	It is the error or omission in the Land Titles Register that is intended to come under the Registrar’s power of rectification. While an error or omission of the parties may be amended with the consent of such

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		<p>parties, it is not considered appropriate to rectify an error or omission in the Land Titles Register with the consent of the persons interested.</p> <p>It is proposed that section 101 be amended to the effect that the Registrar may, of his own volition or on application, rectify any mistake or omission in the Land Titles Register, whether material or not, if on evidence he is satisfied that it would be unjust not to make the rectification.</p> <p>For information, the rectification provisions are subject to further consideration together with the indemnity provisions.</p>
<p>The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)</p>	<p><u>Section 102(3)(c)</u></p> <p>The requirement in section 102(3)(c) (that in an application for rectification, the former owner must satisfy the court that he did not, by his act or omission, substantially contribute to the fraud) would place a former owner in a position worse than he enjoys under the current law. Section 102(3)(c) should be amended as –</p> <p>“that the applicant did not, by any act or omission on his part <u>in relation to the manner in which the void instrument or false entry was created</u> substantially contribute to the fraud”.</p> <p>Such amendment will give effect to the agreed legislative intent and the undertaking given by the Administration in its letters dated 25.6.2004 to the Association and the Bills Committee.</p>	<p>The Department of Justice is being consulted.</p> <p>For information, the rectification provisions are subject to further consideration together with the indemnity provisions.</p>

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The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)	<p><u>Section 103</u></p> <p>It would be better and simpler to provide in section 103 that a former owner would not be able to make an application for rectification if his title has been extinguished under the Limitation Ordinance, than to define in that section the time when the cause of action is treated to have arisen.</p>	Section 7(2) of the Limitation Ordinance is noted. Section 103 will be reviewed in consultation with the Department of Justice.
Heung Yee Kuk (meeting on 26.3.2007)	<p><u>Section 105</u></p> <p>Could the original owner get back the property if he lost the property as a result of the mistake/omission of the Land Registry staff? How about the liabilities of the staff?</p>	No formal response has been issued by the Land Registrar but the issue was discussed at the meeting held on 26.3.2007
The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)	<p><u>Section 106</u></p> <p>What is the proposed amount of indemnity?</p>	<p>The amount of indemnity is provided in section 106. The cap under section 106(1)(a)(ii) was and still is HK\$30 million. Under section 106(1) as drafted, the amount of indemnity is the value of the interest or HK\$30 million, whichever is the lesser.</p> <p>For information, the indemnity provisions are still under consideration.</p>
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 106(2)</u></p> <p>The words “of that cesser” should be deleted from section 106(2)(b).</p>	The indemnity provisions are under consideration. The words “of that cesser” in section 106(2) will be reviewed.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 112</u></p> <p>Does the term “any other person” in section 112 refer to</p>	Consideration is being given to delete “any other

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	civil servants or the community at large?	person”. Section 112 and section 9 are being reviewed together.
The Real Estate Developers Association of Hong Kong (letter dated 21.8.2006)	<p><u>Section 112</u></p> <p>The section precludes a victim of a fraud from bringing proceedings against a fraudulent specified public officer. This is not acceptable, particularly if the victim is unable to recover the full amount of his loss by reason of the cap on the indemnity. The section, as drafted, benefits the fraudster at the expense of the innocent victim.</p>	Consideration is being given to delete “any other person”. Section 112 and section 9 are being reviewed together.
Heung Yee Kuk (meeting on 26.3.2007)	<p><u>Section 113</u></p> <p>If rectification of a lot’s boundaries leads to the reduction of its area and affects the owner’s interests, legal actions will certainly follow. What schemes are in place to compensate shortfall in measurement?</p>	No formal response issued by the Land Registrar but the issue was discussed at the meeting on 26.3.2007.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 114(1)</u></p> <p>Would the power of the Registrar under section 114(1)(a) and section 114(1)(b) to specify application forms for “any other enactments” be in conflict with the provisions of section 4?</p>	The Registrar’s power to specify application forms for other enactments under section 114(1)(a) relates to the registration of an instrument or matter. Such power would not be in conflict with section 4 because it is unlikely that other enactments would provide for application forms or preclude the use of application forms for registration. As to the reference to “any other enactment” in section 114(1)(b), the Law Draftsman will be consulted.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 117</u></p> <p>Is the use of the word “disposition” in section 117 appropriate when the term “disposition” was defined as</p>	The term “disposition” in section 117 does not refer to an “act” of the owner. Under sub-paragraph (i) of section 117(a) and section 117(b) it is intended to

Raised By	Issues/Comments	Response by the Land Registrar
	“an act of an owner...”?	mean the transaction and under sub-paragraph (ii) the instrument of disposition. The Law Draftsman will be asked to consider.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 125</u></p> <p>If the Ordinance is made subordinate to other enactments under section 4, is it the intention that the reference to “this Ordinance” in section 125 will include other ordinances?</p>	Section 125 deals with offences; and if charges are made, it must be made “under this Ordinance”. It is up to prosecution to decide whether to prosecute under any other enactments.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Section 125(1)(d)</u></p> <p>What is the meaning of “verifies other document” in section 125(1)(d)? Will presentation of evidence to the Registrar under section 76 and section 84 be considered as verifications for the purpose of section 125(1)(d)?</p>	Consideration is being given to delete “or other document” from section 125(1)(d), subject to the view of the Law Draftsman.
The Law Society of Hong Kong (letter dated 24.11.2006)	<p><u>Schedule 1 – Part 2</u></p> <p>There should be provisions in Schedule 1 to the effect that what would be cautions (consent or non-consent) under the Ordinance would be deemed consent or non-consent cautions on conversion.</p> <p>The provisions in section 4(3) of Part 2 of Schedule 1 that unwritten equities are preserved up to “...the sale of the land ... for valuable consideration ... “ is too restrictive. First, “sale of land” is not a concept used in the Ordinance but “transfer”. Secondly, a “registered charge” would appear not to be covered whether under “sale of land” or “transfer”. It is suggested that section 4(3) should refer to registration of consent caution or a disposition, whichever is the earlier.</p>	Schedule 1 relates to the conversion of LRO land and long term leases from the deeds registration system to the title registration system. The provisions in Schedule 1 are not expected to take effect until the 12 th anniversary of the appointed day. Consideration is being given to whether any amendment to provisions in Schedule 1 relating to caveats be made at this stage.