

# **Part 4: Introduction to Land Registration, Land Search and Property-related Information Systems**

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## TITLE TO LAND AND LAND SEARCH

### *The deeds registration system*

1. Hong Kong currently operates a deeds registration system, established under the Land Registration Ordinance (LRO) and providing for registration of all instruments affecting land.<sup>1</sup> Registration acts as a record of a transaction or an interest in land and gives priority within the terms of the LRO.

Section 2(1) of the LRO provides that the Land Registry is a public office for the registration of “deeds, conveyances, and other instruments in writing, and judgments affecting land”. Any instrument in writing affecting land is registrable under the LRO.

Regulation 5 of the Land Registration Regulations provides that registration of the instrument is effected by registration of a memorial in specified form, containing particulars described in Regulation 6 of the Regulations.

“Judgments”, as referred to in Section 2(1), include judgments and orders of the Court of First Instance, District Court and Lands Tribunal.

2. Under a deeds registration system, ownership in land or of an interest in land cannot be proved conclusively, as a deed may be forged or defective and cannot properly pass legal title in a property. Registration does not act to create title and it does not cause the instrument behind the registration to gain validity. The register is only a record of claims to the estate to the land, or to interests in the land. To prove ownership in a property, it is necessary to examine all title deeds (whether or not registered) and all other documents registered against the property.

### *The effect of registration*

3. Registration of a document gives it priority over unregistered documents and other documents registered after it. However, the terms of Sections 3 to 5A of the LRO should be noted because the date of priority is not necessarily the date of registration:
  - Section 3 provides that registration gives priority, subject to the terms of the ordinance. The date of this priority varies;
  - Section 4 provides that no notice can be taken of a prior unregistered but registrable interest. This means that a party who registers takes priority even if he knows about a prior, unregistered interest. This is an unusual provision because most registration systems prevent a party obtaining priority if he knows about a prior interest;
  - Section 5 provides that if an instrument is registered within one month of execution, then priority is back-dated to the date of the instrument; and
  - Section 5A refers to a charging order (a court order to give notice that a creditor is taking action to sell the land because of a debt owed to it) and a *lis pendens* (a notice indicating that someone is taking action to prove he has an interest in the land). These are court notices and they take priority from the day after registration.

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<sup>1</sup> The Land Titles Ordinance was passed on 7 July 2004. When fully operational, it will replace the current deeds registration system in Hong Kong.

4. The party registering gives notice of his claim to the land or to an interest in the land.

Any party subsequently dealing with the property will have notice of the registered interest, and will probably be bound by that interest;

5. Except bona fide leases at rack rent for a term not exceeding three years (which need not be registered), unregistered documents will lose priority and be absolutely null and void as against a subsequent bona fide purchaser or mortgagee for valuable consideration, even if the purchaser or mortgagee has notice of the existence of the unregistered documents.

## **THE LAND REGISTER**

6. The Land Registry now maintains a computerised land register for each property, in which the particulars of instruments lodged for registration are entered in the land register of the property. A deed or any instrument affecting a property, if registered, will be entered on the land register of that property and identified by a memorial number to differentiate it from other documents. Each document lodged for registration must be accompanied by a memorial, which is a form specified by the Land Registrar containing essential particulars of the document to be registered and verified by the certificate of a solicitor.

After registration, on payment of a fee, the land register and imaged copies of the registered instruments are open to the public for inspection and making copies. The system makes it possible for a person interested in a property, for example, a purchaser or mortgagee, to check and verify all documents affecting the property before entering into a transaction involving the property.

### *Information in the land register<sup>2</sup>*

7. Each register is divided into four sections:

- Property Particulars;
- Owner Particulars;
- Incumbrances; and
- Deeds Pending Registration.

8. Where there is any doubt about any information revealed in the land register of a property, an estate agent should seek legal advice prior to advising his client to enter into any transaction. In particular, if there are incumbrances of a type which are not removed on completion of a sale and purchase agreement (SPA), the purchaser must be advised to consult his legal advisor to ascertain the consequences.

9. Apart from the information on the title of a property, which a search will disclose, it is also possible to ascertain other material information on a property from registered documents. These include:

- the age, size and floor plan of a property. Perusal of the plan will assist in determining whether there have been any alterations to the property; and

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<sup>2</sup> For details of a sample land search, see Note 1 in Appendix 1.

- rental information, rental deposits and the tenanted term from any registered lease or tenancy agreement.

### *Property Particulars*

10. The Property Particulars section provides information on:

- the address of a property;
- the lot number(s) of the piece(s) of land on which a property is situated;
- the share of the lot(s) allocated to a property in a multi-storey building;
- the type of government lease under which a property is held;
- the term or duration of the lease;
- the commencement date of the lease term; and
- the government rent and premium, if any, payable.

Each piece of land in Hong Kong is identified by a lot number and a building can be situated on more than one piece of land. If a lot has been sectioned or partitioned, the section number of the lot will also appear in the Property Particulars.

11. Each piece of land is held from the Government under a government lease (see Part 5) for a specified term of years (“lease term”). The commencement date of a lease term is the date on which the term of the lease begins to run. Thus, in the sample Land Register search given in Note 1 in Appendix 1, the government lease was granted for a term of 75 years commencing on 8 July 1959 and expiring on 7 July 2034.

12. There are various terms and types of government leases in Hong Kong. In the past, these have included:

- Prior to 1 July 1997, leases of land in the urban areas of Hong Kong Island and Kowloon were granted for the term of 999 years or 99 years or 75 years. Except leases for 999 years, many leases were granted as “renewable” leases so that on expiry there was a right for the government lessee to seek a further term from the Government. Most of these leases were for 75 years renewable for a further term of 75 years. Where there is a right of renewal for a further term, such a right will be revealed in the Property Particulars.
- Lessees of non-renewable leases which had not expired by 30 June 1997 may apply to the Government for approval to extend them for a further term of 50 years. Whilst no additional premium is payable for the extended term (if granted by the Government), the annual rent on the lease will be 3% of the rateable value of the land, from time to time. There is no automatic right to this extension of a non-renewable lease. Instead, the extension is wholly at the discretion of the Government and the Government may refuse to grant an extension, for example, if the land is required for a public purpose, or if it is no longer being used for the purpose for which it was originally granted.

13. Practitioners should draw their client's attention to the term of a lease and whether the lease is renewable or non-renewable, and recommend that legal advice be obtained prior to entering into any transaction involving the property.
14. Many leases of land in the New Territories (which includes New Kowloon north of Boundary Street) were granted for the term of 99 years (less the last three days) from 1 July 1898, and so originally they were due to expire on 27 June 1997. All of these leases have been automatically extended to 30 June 2047 by the New Territories Leases (Extension) Ordinance, without payment of an additional premium (but subject to payment as from the date of extension of an annual rent equal to 3% of the rateable value of the land, from time to time).
15. Some leases in the New Territories were granted for terms of 75 years with a right of renewal for 24 years less the last three days from 1 July 1898. These leases were automatically renewed in 1973 until 27 June 1997 and they have now been extended to 30 June 2047 without the payment of an additional premium, but subject to payment of the 3% annual rent.
16. New leases granted after 27 May 1985 (the date when the Sino-British Joint Declaration came into force) have usually been for a term of 50 years from the date of the grant. This has meant that leases granted after 30 June 1997 may extend beyond 30 June 2047.
17. A government lease may contain restrictions on the use of the land (for restrictions in a government lease by way of conditions, see Part 5). Older government leases may, in addition to restricting the land to residential, commercial, industrial or agricultural use, also contain further restrictions.
18. These restrictions may include:
  - Restrictions on the type of dwelling
    - House: if only one house is permitted, the building should have only one main entrance. A building with one main entrance and a back entrance for fire-escape purposes only would be regarded as one house, but a building with more than one unit on the ground floor each with its own entrance would not be regarded as one house;
    - Private dwelling house: if a government lease specifies that no building on the land shall be used otherwise than as a private dwelling house, then only a single private house can be constructed, and a block of flats would not be allowed; and
    - One residence or one villa residence: if only one residence is permitted, then only a building for the accommodation of one family is permitted. A block of flats would not be permitted under this restriction.
  - Restrictions on user
    - 1 Older government leases usually contain an "offensive trade" clause to the effect that:  
 "The lessee, his Executors, Administrators, or Assignees, or any other person or persons shall not, during the continuance of this demise, use, exercise or follow, in or upon the said premises or any part thereof, the trade or business of a Brazier, Slaughterman, Soap-maker, Sugar-baker, Fellmonger, Melter of Tallow, Oilman, Butcher, Distiller, Victualler, or Tavern-keeper, Blacksmith,

Nightman, Scavenger, or any other noisy, noisome or offensive trade or business whatever....”

- Although this offensive trade clause is written in archaic language, it may still be applicable to some businesses today, especially for restaurant use. Removal of this restriction requires the approval of the Government. If granted, it will usually require the payment of a fee to the Government.
  - Height restrictions
    - Some older government leases contain a height restriction of 35 feet. Where this restriction is still enforceable, a full-value premium is payable to obtain its removal. This would be required if a multi-storey building is to be constructed on the land.
  - Restriction on the nature of the building
    - ”Rate and range” clause: this clause requires the lessee to construct a building which “shall be of the same rate of building, elevation, character and description, and shall front and range in a uniform manner with the buildings (if any) immediately adjoining in the same street”.
  - Restriction on design
    - Design, disposition and height: this clause requires the lessee to obtain the approval of Government regarding the design, disposition and height of any building to be constructed on the land.
19. A breach of any of the terms or restrictions contained in a government lease would entitle the Government to re-enter and recover possession of the land and any building or structures erected thereon.

#### *Owner Particulars*

20. This section provides information on the name(s) of the registered owner(s), the mode of ownership (e.g. as joint tenants or as tenants-in-common), the memorial number, the date of registration of the instrument whereby the property was acquired, and the consideration stated in the instrument.
21. It should be noted that the date of an instrument, which is either its date of execution or the date of its issuance, is set out in the column entitled “Date of Instrument”. The Date of Instrument is not the same as the “Date of Registration”, which is the date on which the instrument is lodged for registration at the Land Registry.

#### *Incumbrances*

22. This section provides information on all encumbrances and other documents registered against a property, including documents such as SPAs, legal charges, leases, building orders, court orders, letters of compliance, occupation permits and deeds of mutual covenant (DMCs).
23. An encumbrance is a charge or other liability to which the land or the property is subject. The presence of an encumbrance may render the title defective or defeasible. Unless otherwise agreed, a purchaser is not obliged to accept the vendor’s title to a property with

onerous and undischarged encumbrances. For example, the existence of an unauthorised structure posing a real threat of government re-entry is an encumbrance which renders the title defective. Documents commonly found registered in the Incumbrances section will be discussed in later paragraphs.

### *Deeds Pending Registration*

24. If a document appears in this section, it means that registration of the document at the Land Registry has been “withheld” or “stopped” or is “in the process of registration” and the registration has not been completed, whether due to time or some defect or other reason. For example, there may be typing errors on the memorial lodged for registration or a lack of evidence of payment of stamp duty on the document to be registered, if the document is one chargeable with stamp duty. Should a document or instrument appear in this section, a practitioner should advise his client to seek legal advice before entering into any transaction regarding the land.

### **TYPES OF OWNERSHIP**

25. A property may be held by an owner as the sole owner, or by two or more owners as joint tenants or tenants in common, or by a person as trustee or personal representative of the estate of a deceased owner.

A joint tenancy is a form of co-ownership where all the co-owners own the whole property together but individually they do not own a distinct undivided share in the property. On the death of a co-owner, the property remains vested in the survivors by virtue of the doctrine of survivorship. Under joint tenancy, the co-owner does not own a share in the property and does not have exclusive possession of the property. He has rights in common with the other co-owners of the whole of the property. Joint tenants can end the co-ownership through application to the court under the Partition Ordinance, if they are unable to settle the matter themselves, or they can sever the joint tenancy by way of a notice served by one joint tenant on the other joint tenants or by an instrument signed by all of them.

Where the property is held by joint tenants, all documents affecting the property, such as a provisional or preliminary sale and purchase agreement (PASP), a formal SPA, an assignment or a mortgage have to be signed by them all.

In a tenancy in common, each owner owns a distinct but undivided share in the property. As in a joint tenancy, no one owner is entitled to the exclusive use of the property, but each is entitled to possession and use of the whole property in common with the others. On the death of a tenant in common, there is no right of survivorship, and his distinct share will pass according to his will or the law of intestacy to his successor. All documents affecting the ownership of the property as a whole should be signed by all of the owners.

26. Instead of holding a property as a beneficial owner, a person may hold a property as a trustee. A trustee is a person who has a duty to administer property for the benefit of another or others. A trustee holds the legal estate to the property as owner but subject to the equitable obligation to administer it for the beneficiaries, i.e. those who own it in equity.
27. A personal representative becomes a trustee at a certain point in his administration of the estate of a deceased person. A personal representative will be either an executor or an administrator. An executor is a person named in a will to administer an estate. When a person who has made a valid will dies, his executor applies to the High Court for a grant of probate, which is a confirmation of the authority of the executor to administer the estate. After the grant of probate has been issued by the High Court, it will be registered in the

Land Registry and shown under the section on Owner Particulars in the land register of a property forming part of the estate.

28. Where an owner of a property dies without leaving a will, or where his will is invalid, the High Court will appoint an administrator to administer the estate of the deceased owner, and letters of administration will be issued to such administrator.
29. Where the deceased did make a will but no executors were appointed, or those appointed are not able or willing to act, then letters of administration with the will annexed will be issued to an administrator. In either case, the document will also be registered in the Land Registry.
30. Whenever the current owner of a property is an executor under a grant of probate or an administrator under letters of administration or letters of administration with the will annexed, he is selling the property in his capacity as personal representative. All personal representatives must join in the sale and sign the PASP, the SPA and the assignment together.

## **MAKING A GIFT OF PROPERTY**

31. Sometimes a property is transferred by a deed of gift. This is a deed which effects the transfer of the legal ownership in a property from the owner (the donor) by way of gift to the donee. The gift, evidenced in the deed, may be set aside by the Official Receiver under the Bankruptcy Ordinance in cases where a bankruptcy order has been made against the donor within five years of making the gift.
32. Prior to 11 February 2006, where the donor of property died within three years of the gift, the property may have been liable for estate duty. The Commissioner of Estate Duty is empowered by the Estate Duty Ordinance to impose a first charge on a property in respect of which estate duty is leviable for a rateable part of the estate duty on an estate in proportion to the value of the property, unless the purchaser of the property is a bona fide purchaser thereof for valuable consideration without notice. Since 11 February 2006, estate duty has been abolished. Transitional provisions apply for gifts made by persons who died between 15 July 2005 and 10 February 2006.

## **SEARCHING THE LAND REGISTER**

### *Historical and current land search*

33. There are two types of land registers obtainable on conducting a land search of a property. The first type is a current land register which only contains information on the current ownership of a property. The second type is a historical and current land register which contains both historical and current information on a property. In the historical search, the history of the property can be traced to the crown lease or government lease of the land. It is advisable that a historical and current land search be conducted in all cases.

### *Conducting a land search<sup>3</sup>*

34. The Land Registry introduced the Central Registration System on 12 February 2005. This is implemented by the Integrated Registration Information System (IRIS).

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<sup>3</sup> For details of fees for Land Registry searches, see Note 2 in Appendix 1.

35. Under IRIS, information from the Land Registry can be obtained in the following three ways:
- The Customer Centre on 19/F, Queensway Government Offices provides the Land Registry's full range of services:
    - all deeds of properties, no matter where they are situated, are lodged for registration here;
    - land search and copying services for documents, either over the counter or through self-service terminals;
    - applications for registration of owners' corporations (OC) or search of OC records for Hong Kong, Kowloon and Islands District.
  - The New Territories Search Offices in Tsuen Wan, Tuen Mun, Yuen Long, Tai Po and Sha Tin provide the following services:
    - land search and copying services for documents, either over the counter or through self-service terminals;
    - applications for registration of OCs or search of OC records may be made in respect of the district covered by the Search Office (the Tsuen Wan Search Office provides services to Kwai Tsing district as well as Tsuen Wan).
  - The internet
    - land search and copying services for documents are provided via the internet.
36. The service hours of the IRIS website are from 8:30am to 12:30am (half past midnight) daily, including Sundays and public holidays. For those using the internet, a land search can now be made outside normal office hours.

## **ANALYSIS OF A LAND SEARCH**

### *Checklists for going over a land search*

37. Under Property Particulars:
- Term of the lease and its commencement date: a practitioner should advise his client of this information. If the lease is a non-renewable lease, the practitioner should advise his client of the unexpired term and to seek legal advice, if necessary, before entering into a transaction involving the property.
  - Description of the property under "Address": if a property is sold together with a portion of the main roof, a flat roof, or a garden, this would normally appear in the description of the property. If a property is sold together with a car park which does not appear on the land search of the property, a separate search should be made in respect of the car park.
38. Under Owner Particulars:
- The name of the owner appearing on the land search should be checked against the name on his identity document. A practitioner is required to take all practicable steps

to ensure that the name of the vendor is correct: see Section 13(3) of the Practice Regulation).

- i If the property is owned by more than one owner, whether they hold it as joint tenants or as tenants in common, all owners should sign the estate agency agreement and the PASP. Where a party is unavailable to sign the estate agency agreement and the PASP and a person claims to be his authorised representative in dealing with the property, the practitioner must request the representative to produce a power of attorney duly executed by the absent party authorising the representative to enter into the transaction concerned and execute any relevant document, including but not limited to the estate agency agreement, for and on his/her behalf.
  
- i If the land search shows that the vendor purchased the property at a price higher than the price the prospective purchaser is paying, and the property has been mortgaged, it is possible that the vendor may have a negative equity interest in the property. Practitioners should take appropriate steps to protect the prospective purchaser, such as requiring that all deposits or part of the deposits are paid to the vendor's solicitors as stakeholders. Given that some vendors may for various reasons fail to discharge the mortgage or abscond after receiving the deposit, it is important for the licensee, whether acting as a dual agent for the parties or as a single agent for the purchaser, to advise the purchaser of any possible risks in payment of deposits directly to the vendor and of the desirability of arranging for the stakeholding of all deposits (both the initial and further deposits) by a firm of solicitors, before arranging for the parties to sign the PASP of properties where there is an undischarged mortgage. The licensee should also explain to the vendor and the purchaser the implications of the stakeholding arrangement and the conditions to be fulfilled before the release of the deposits by stakeholders (see Practice Circular 05-07).

### 39. Under Incumbrances:

- Where any of the following documents are noted as incumbrances, it is possible there may be a problem with the title to the property. It should be noted that the following list is not exhaustive and practitioners should recommend their client seeks legal advice before entering into any transaction involving the property.

Documents that commonly appear in Incumbrances include:

- Occupation permit: this is issued by the Building Authority (BA) under the Buildings Ordinance and specifies the user of the units in a building when the building was erected. From this document, one can ascertain the age and user of a property when the building was erected. The document also states the total number of units on a floor. If, for example, an occupation permit states there is one shop on the ground floor but in fact there are two shops, then persons dealing with the shops should find out if such a partition is lawful and authorised by the relevant government departments. Practitioners should recommend their clients to seek legal advice in such cases.
  
- The DMC: this is a contract entered into by the developer of the building, the manager appointed by the developer, and the first person to purchase a unit in the development. It provides for the management of the building and maintenance of the common parts, and sets out the rights and obligations of the respective co-owners of the development as well as the duties and powers of the manager. This document may be described by different names connoting the same meaning and effect.

- Mortgage or legal charge: a document whereby a property is charged by its owner (the mortgagor) to a lender (the mortgagee) as security for a loan or other credit facilities granted by the lender to the owner. To preserve priority, the mortgage/legal charge should be registered within one month of the date of its execution. If a property is not subject to any prior mortgage or charge, a first mortgage/legal charge can be created.

Most mortgages/legal charges are “all monies” mortgages, meaning that under such a mortgage, the property charged is to secure repayment of all sums of monies from time to time due and owing by the mortgagor to the mortgagee. Other security documents having similar effect and those commonly found registered against a property include equitable mortgage, second legal charge/mortgage, further charge, building mortgage and debenture etc.

- Deed of release/discharge/satisfaction: a document whereby a mortgage/legal charge or other charge is released or discharged upon full payment of all monies owed thereunder. Where only part of the monies have been repaid, a deed of partial release will be registered against the property. Where a mortgage/legal charge or other charge has been released or discharged, a deed of release/discharge/memorandum of satisfaction will appear below the relevant mortgage or charge on the Incumbrances section.
- Declaration of trust: a document whereby the registered owner declares that he or she holds the property as trustee for another person. That is, the registered owner is not the beneficial owner of the property and he/she is obliged to act according to the provision contained in the document. It is therefore necessary to peruse the document to verify the extent of the trustee’s power in dealing with the property.
- Letters of administration or grant of probate: letters of administration is an official court document authorising the administrator named therein to deal with the property of a deceased owner. Grant of probate is also an official court document confirming the power of the executor appointed under a will of the deceased owner to deal with the deceased’s property in accordance with the will. Where there is more than one personal representative (administrator or executor), all of them must act jointly in dealing with the deceased’s property and subject to any restriction imposed by the will of the deceased, if the deceased has left a will.
- Deed of family arrangement: an agreement between the beneficiaries of a deceased owner’s estate whereby the beneficiaries agree to vary their respective entitlements in the deceased’s estate either in law or under the will. As the agreement may result in a transfer of beneficial interest between the beneficiaries, the deed should be lodged with the Stamp Office for adjudication on whether any stamp duty is payable.
- Nomination: a document whereby the purchaser (nominator) under an SPA of a property nominates a third party (nominee) to take up the assignment of the property as the new purchaser. If the deposit paid under the SPA is indeed money belonging to the nominee, the nominator should in the document renounce and relinquish all his interests in the property to avoid any doubt as to whether there is a resulting trust of the property in favour of the nominator. A nomination may attract stamp duty as a chargeable agreement for sale of residential property unless the person being nominated to take up the assignment is a trustee or specified relative (spouse or parent or child) of the nominator.

- PASP/SPA: an agreement between the registered owner (vendor) and the purchaser whereby the vendor agrees to sell a property to the purchaser on the terms and conditions therein contained. The agreement will contain terms such as the property to be sold, the purchase price, the deposit paid or to be paid, the completion date and other material terms.
- Memorandum of rescission/Agreement for cancellation: documents purporting to cancel a sale and purchase transaction contemplated by an SPA. If both parties agree with the cancellation, an agreement for cancellation will be signed. Where the vendor exercises unilaterally his/her right to terminate an SPA by reason of a purchaser's breach of contract, the vendor alone will normally sign a memorandum of rescission. Practitioners should advise clients to seek legal advice on the effectiveness of a memorandum of rescission in rescinding an earlier sale and purchase transaction. Because such a memorandum is signed by the vendor only and represents his opinion of the state of the sale and purchase transaction, a solicitor for the subsequent purchaser will examine the vendor's claim, and seek information from the vendor to prove his claim.
- A building order under the Buildings Ordinance

Generally, the registration of an order under the Buildings Ordinance would mean that there is a breach of the relevant provisions of the Buildings Ordinance and the owner is required by the BA to take remedial actions as specified in the order to rectify the breach. The order is an encumbrance on the property. Orders from the BA include:

- an order under Section 24 of the Buildings Ordinance (Demolition and Alteration);
- an order under Section 26 of the Buildings Ordinance (Dangerous Buildings);
- an order under Section 26A of the Buildings Ordinance (Defective Buildings);
- an order under Section 27A of the Buildings Ordinance (Dangerous Hill-sides);
- an order under Section 27C of the Buildings Ordinance (Water pipes, drains or sewers laid in slopes, etc);
- an order under Section 28 of the Buildings Ordinance (Drainage).

The above orders all require some kind of building works be carried out on the building or property or the adjacent land in question, and they represent incumbrances on the property. Once an order has been complied with, a letter of compliance will be issued by the BA and this should be registered in the Land Registry.

If a letter of compliance does not appear in the Incumbrances section, the order is apparently still outstanding and practitioners should check with the owner on the status of the order, including whether and when actions will be taken to comply with the order. The purchaser should also be advised to seek legal and, if necessary, other professional advice, for example, from an architect, before entering into a PASP.

If an order concerns works relating to common areas or facilities of a building, all owners will be jointly liable for complying with the order and each owner will be responsible for the costs (apportioned in accordance with the DMC) required to

discharge the order. If an order is made against the owner of an individual unit, only the owner of such unit is liable for the cost and expenses for its discharge.

The existence of any of the above orders may render the title to a property defective, as the Government may exercise its right of re-entry for breach of conditions of the relevant government grant, unless remedial actions are taken to regularise the breaches in accordance with the orders.

It should be noted that even if the vendor regularises the breach before completion, the purchaser may still object to complete on the basis that what the vendor can deliver after the regularisation work is substantially different from what has been agreed to be sold to the purchaser (for example, the demolition of an unauthorised cockloft which has been included in the sale and purchase).

- Order under Section 33 of the Buildings Ordinance:

Under Section 33 of the Buildings Ordinance, the BA may certify the cost due from an owner for works carried out by the BA, and may register a memorial of such certificate in the Land Registry against the property in respect of which such cost arose. Upon registration, the cost constitutes a first charge on the property. This charge takes priority over any charge created by a bank or other lender.

- Notice under Section 145A of the Crimes Ordinance:

This notice indicates that the property may have been used for the commission of a crime, related to the keeping of a vice establishment, or for prostitution, under the Crimes Ordinance. It is possible that a closure order may be issued and registered against the property. If a closure order is in force, occupation or use of the property is forbidden for a period of six months from the date of the order and inspection of the property is not permitted. The vendor will not be able to deliver possession of the property to the purchaser if completion falls within the closure period.

- Sealed copy of charging order: notice to show cause, and sealed copy of charging order absolute

Where a creditor has obtained a judgment debt against a debtor, and the debtor ("the judgment debtor") fails to pay the amount of the judgment, the creditor can seek to enforce payment of the judgment debt by firstly applying for a charging order against the judgement debtor's property. A "notice to show cause" is served on the judgment debtor giving notice of a hearing to determine whether a charging order should be made. After the hearing, and if the court thinks fit, a charging order absolute will be issued and registered against the property. The judgment creditor will then be able to seek execution against the property by obtaining an order for sale from the court.

The charging order can only be effective against the beneficial interest of the judgment debtor's property. So if he has contracted to sell the property prior to the registration of the charging order, it may be ineffective against the property, but may be effective against the proceeds of sale of the property. Care must be taken in dealing with such orders and legal advice must be sought in such a case.

- Sealed copy of notice of intention to proceed with ancillary relief

This is related to a claim for ancillary relief in divorce proceedings. The court may order the sale or transfer of property to a divorced party.

- Sealed copy of receiving order in bankruptcy

Where an individual is unable to pay his debts, he or his creditor may apply to the court for a bankruptcy order. Once a bankruptcy order is made, the bankrupt's property will be vested in the Official Receiver as the trustee of the estate of the bankrupt. A purchaser should purchase the property from the Official Receiver and not from the bankrupt.

- Winding-up notice/petition

Winding-up is a process whereby a company is wound up and its assets are distributed to the company's creditors and shareholders according to the law. Any disposition of a property by a company made after the presentation of a winding-up petition is void unless the court otherwise orders.

- Sealed copy of writ of summons or originating summons

Registration of a writ of summons or originating summons means there is an action or proceeding pending (*a lis pendens*) in a court or tribunal that relates to the property. Obviously it would be unwise for anyone to have any dealings with the property until the litigation is completed.

- Charge on property recovered under Section 18A of the Legal Aid Ordinance

Section 18A(3A) of the Legal Aid Ordinance enables the Director of Legal Aid to impose a first charge on a property which is recovered or preserved through legal aid proceedings. This charge will have priority over any charge by a bank or other lender.

- Charge of estate duty on property under Section 18 of the Estate Duty Ordinance

Section 18(1) of the Estate Duty Ordinance empowers the Commissioner of Estate Duty to register a first charge on a property for a rateable part of the estate duty payable on an estate. As estate duty has been abolished, there will be no such charges in respect of deaths on or after 11 February 2006.

- Restraint order under Section 15 of the Organised and Serious Crimes Ordinance

This prohibits any person from dealing with property held by a person charged with an offence specified under the Organised and Serious Crimes Ordinance.

## **ADDITIONAL INFORMATION FROM SEARCHES**

### *Date of completion of a building*

40. The year in which construction of a building was completed (required for Form 1 of the prescribed Property Information Forms) can be ascertained from the occupation permit of the building. Usually the occupation permit is registered in the Land Registry as it is one of the documents in the chain of title to the land. A copy can be obtained from the Land Registry (\$100 per copy, \$150 extra for certification) or the Buildings Department (\$45 per sheet for certified copy, \$38 per sheet for non-certified copy).

41. The year in which construction of a “village house” in the New Territories was completed can be ascertained from the date of the certificate of compliance, certificate of exemption (CE) or no objection letter. The certificates or no objection letter will usually be registered in the Land Registry.

*Company registry search*

42. When the vendor is a limited company, a company search should be undertaken in the Integrated Companies Registry Information System of the Companies Registry to ascertain information including:
- its registered office, which should be stated in the PASP;
  - the names of its directors;
  - whether a receiver or liquidator has been appointed; and
  - whether the company is still validly registered, or it has been wound up, struck off (as a defunct company: see Section 291 of the Companies Ordinance (CO)) or de-registered (as a dormant company: see Section 344 of the CO).
43. One or more directors of the company will usually sign the PASP in accordance with the Articles of Association of the company. The company search will verify the names of the directors. Whether or not the signatory of the PASP is a director, it is always prudent to obtain a copy of the resolution of the board of directors authorising the signatory to sign on behalf of the company.
44. A foreign/Mainland company may carry on business in Hong Kong. It may be registered under the CO as an “overseas” company. Alternatively, the foreign/Mainland company does not carry on business in Hong Kong but does have a presence here. In dealing with these companies, legal advice should always be sought prior to entering into any transaction with land registered in the name of the company. Questions will include the status of the company to hold and deal in land in Hong Kong, the form of documentation, and the manner of execution of that documentation by the foreign/Mainland company.

## STATISTICAL AND OTHER INFORMATION<sup>4</sup>

45. Most government departments provide statistical and other information on departmental websites which give information on factors that may be relevant to a purchaser of land in Hong Kong.

### *The Lands Department*

46. The Lands Department publishes detailed information on its website on all land alienated by the Government by way of leasehold, or short-term tenancies, or by other forms of interest. The main forms of disposal of land by the Government include:

- alienation by way of leasehold at a public auction, or by tender;
- alienation by private treaty grant for specific purposes for which the land will be used;
- by exchange of an existing lot of land for another lot;
- by modification of an existing government lease; and
- by a short-term tenancy.

Information on disposal of land by the Government is available on the department's website, including details and the dates of forthcoming land sales, as well as information on alienation by application.

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<sup>4</sup> For details of the information obtainable from various searches, see Appendix 1:

Note 3 on Basic Hong Kong Statistics, Census & Statistics Department

Note 4 on Population Statistics, Housing Department

Note 5 on Housing Authority Programmes

Note 6 on Contacting Relevant Government Departments/Public Bodies