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CONVEYANCING OFFICE
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我們矢志努力不懈，提供盡善盡美的土地行政服務。
We strive to achieve excellence in land administration.

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15 November 2023

**Legal Advisory and Conveyancing Office (“LACO”)
Circular Memorandum (“CM”) No. 85**

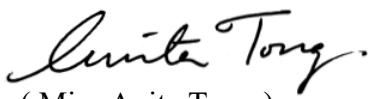
Title Checking in Land Exchange and Resumption Cases

LACO conducts title checking and offers advice to the Lands Department on title issues in land exchange and resumption cases. To enhance transparency of the title checking process undertaken by LACO in land exchange and resumption cases and to facilitate the handling by the relevant parties, LACO’s general procedures in title checking are set out in the Annex to this CM (“the Annex”). Land owners and their solicitors in these cases may refer to the Annex so as to make early preparation for the submission of title documents and take appropriate actions to address title issues that may be identified as early as possible.

LACO’s general procedures and guidelines in title checking set out in the Annex are by no means exhaustive. Specific facts and circumstances in individual cases would be taken into account in the process.

This CM together with its attachments are issued for general reference purposes only and shall not give rise to any expectation on the part of the applicant/land owner that any application submitted to Lands Department or that his title in land exchange or resumption case will be approved. All rights to modify the whole or any part of this CM and its attachments are hereby reserved.

Copy of this CM and its attachments may be downloaded from the Lands Department website at www.landsd.gov.hk.


(Miss Anita Tong)
Deputy Director/Legal
for Director of Lands

To: All Solicitors

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c.c. Consumer Council
The Real Estate Developers Association of Hong Kong
The Hong Kong Institute of Surveyors
The Hong Kong Institute of Architects
The Hong Kong Association of Banks

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Title Checking in Land Exchange and Resumption Cases

This Annex sets out the general procedures and requirements in title checking adopted by the Legal Advisory and Conveyancing Office (“LACO”) of the Lands Department (“LandsD”) in land exchange and resumption cases.

General procedures

2. In land exchange cases –
 - (a) LACO will send a letter to the owner requesting for submission of title documents within two weeks after settlement of LACO administrative fee by the owner.
 - (b) Where unity of title is required, the owners should unify the title as soon as possible.
3. In land resumption cases, LandsD’s compensation offer letter to the owner will enclose a list of title documents to be submitted by the owner within the specified time. A sample list is at Appendix I. Once the compensation offer is accepted, LACO will send a letter to the owner reminding him to submit title documents if they have not been submitted.
4. In both land exchange and resumption cases, LACO will proceed with title checking upon receipt of title documents and raise requisitions as soon as possible. Under normal circumstances, LACO will raise first round requisitions within 6 weeks of receipt of title documents. LACO may need more time to peruse title documents and raise requisitions if the case or the land resumption exercise involves a large number of lots or the title chain is complicated.
5. After receipt of the requisitions, the owner should reply within one month. For subsequent rounds of requisitions, LACO will consider the owner’s replies and raise further requisitions where necessary within a reasonable time. Likewise, the owner is expected to answer LACO’s further requisitions within a reasonable time.
6. If the owner fails to respond to LACO’s request for submission of title documents or LACO’s requisitions, reminders will be issued to the owner. If the owner still fails

to respond after two reminders, LACO will stop processing the case until a substantive reply from the owner is received.

7. In land exchange cases, the owner needs to show and prove that he has good right and title to the land and can validly surrender the same to the Government free from encumbrances and claims. This is because the Government's acceptance of exchange of land with defective title will affect both the title and interest of future purchasers in the regranted lot.
8. In land resumption cases, as a person's right in or over the resumed land will absolutely cease upon land resumption¹, the owner needs to show and prove that he is entitled to receive compensation. Where appropriate, a statutory declaration ("SD") by the former owner confirming his possession of the land coupled with an indemnity to the Government would be acceptable for mitigating the risks of potential third party claims against the Government. Since the Government can pass a good title to future purchasers of resumed land free from encumbrances, a more flexible approach in title checking in land resumption cases may be adopted.
9. LACO will endeavour to complete title checking of straightforward land resumption cases within 12 weeks' net time under normal circumstances². In land exchange cases, the time for completing title checking will depend on the complexity of each case. In general, title checking will be proceeded with in parallel with other procedures, such as preparation of the Conditions of Exchange, in order to expedite case processing.

Submission of title documents

10. To facilitate LACO's title checking, the owner should submit the requested title documents to LACO for proof of title within the requested timeframe as set out in paragraph 2 or 3 above. LACO will make reference to but is not bound by section 13 of the Conveyancing and Property Ordinance (Cap. 219) ("CPO"). For land resumption cases, LACO will normally not request title documents beyond those

¹ Section 5 of the Lands Resumption Ordinance (Cap. 124) provides that upon resumption of the land, all the rights of the owner, his assigns or representatives and of any other person in or over the land or any part thereof shall absolutely cease.

² Generally speaking, straightforward cases are cases involving issues that could be resolved within two rounds of requisitions on title. The 12-week period will be the net time taken by LACO for title checking and is exclusive of the time taken by former owner to reply to LACO's requisitions and the time taken by other authorities/parties/departments to respond to LACO's enquiries.

required to be produced as proof of title under section 13 of the CPO. Subject to paragraphs 11 and 12 below, originals of those title documents which relate exclusively to the land should be produced. If title documents do not relate exclusively to the land, production of certified copies thereof is acceptable.

11. Production of the original or certified copy of the following title documents would not be insisted upon –
 - (a) Gazette Notice, Block Government Lease and Waiver Letter – production is not necessary.
 - (b) Building Order, Letter of Compliance and documents of like nature issued by the Government – production of plain copy is acceptable.
 - (c) Prohibition Order – if the owner is unable to produce the same, SD as to loss is not required but an indemnity has to be executed by the owner.
12. For land in the New Territories where no instrument was created for certain transactions in the old days, for example, succession, appointment/cancellation of manager, appointment/cancellation of trustee and division of property, the owner should inform LACO accordingly and production of plain copies of the relevant memorials would be acceptable.
13. If no title document can be produced, a SD shall be made by the person last known to have had possession of the missing title document to explain its loss. However, if such person cannot be located, LACO may consider accepting a SD made by the owner explaining what efforts had been made to locate such person and confirming that the missing title document has not been passed to the owner by such person. In any event, an indemnity should be executed by the owner. Samples of SD to be made by the person last known to have had possession of the missing document and indemnity to be executed by the owner are at Appendices II and III.
14. Where the land to be surrendered (in land exchange cases) or to be resumed (in land resumption cases) involves a whole lot, the owner would be required to settle the Government rent which was last billed and demanded by the Government. The owner should submit copy of the receipted demand note prior to the acceptance of the surrender of the land by Government (in land exchange cases) or prior to the release of compensation by Government (in land resumption cases).

Handling of common title issues

15. In respect of execution of title deeds by a company –
- (a) A title deed is deemed to have been duly executed by the company if it purports to bear the seal of the company affixed in the presence of and attested by its secretary or other permanent officer of the company and a member of the company's board of directors or other governing body or by two members of that board or body.
 - (b) Where a title deed purports to have been executed by a company not less than 15 years before the date of surrender (for land exchange cases) or the date of reversion (for land resumption cases), it is conclusively presumed that the title deed was validly executed.
 - (c) Unless the presumption under either sub-paragraph (a) or (b) of this paragraph applies, a legal opinion issued by a foreign lawyer should be submitted where the company executing the title deed is a non-Hong Kong company. The foreign legal opinion should certify the following –
 - (i) the company has been duly incorporated under the foreign law;
 - (ii) the company has the power to hold and dispose of landed property in Hong Kong;
 - (iii) the title deed has been properly executed by the company in accordance with its by-laws; and
 - (iv) the person(s) who has/have executed the title deed for and on behalf of the company has/have the power to do so.
16. In respect of execution of title documents by an attorney –
- (a) Where a title document purports to have been executed under a power of attorney not less than 15 years before the date of surrender (for land exchange cases) or the date of reversion (for land resumption cases), it is presumed that the power of attorney was validly executed and production of the power of attorney is not necessary.
 - (b) If the title document was executed by an attorney more than 12 months from the date of the Power of Attorney, either a confirmation by the donor of non-revocation of the Power of Attorney or a SD by the attorney as to non-revocation of the Power of Attorney should be produced. Alternatively, a SD

made by the person dealing with the attorney before or within 3 months of the date of the title document should be produced confirming that he did not at the material time know of revocation of the Power of Attorney.

17. For land subject to undischarged mortgages and the mortgagee is unknown or cannot be located, section 12A of the CPO empowers the court to declare the land to be free from the encumbrance. As undischarged mortgage constitutes an encumbrance on title and may hinder the sale, mortgage or development of the relevant land, section 12A of the CPO was added to the CPO in 2000 to provide for the discharge of undischarged mortgages where the mortgagee is unknown or cannot be located by the court. Various applications have been made to the court for declaration under section 12A of the CPO since its enactment. This option is an effective avenue for land owners to secure discharge of undischarged mortgages under established conveyancing practices. In respect of undischarged mortgages—
 - (a) In land exchange cases, the owner is required to surrender the land to the Government free from encumbrances and claims. Where the land is subject to undischarged mortgage and that the mortgagee is unknown or cannot be located, the owner should obtain a court declaration under section 12A of the CPO.
 - (b) In land resumption cases, LACO would not require redemption or release of the mortgage or that a court declaration under section 12A of the CPO be obtained if—
 - (i) the mortgagee agrees to join in as a party to the Agreement to Compensation and Indemnity (“ACI”); or
 - (ii) the mortgage was entered into a long time ago and the loan secured was small, provided that the owner produces a SD explaining why the mortgage cannot be discharged and executes an indemnity. A sample of the indemnity is at Appendix IV.
18. LACO may raise requisitions on any pre-intermediate root title problems, such as a broken chain of title, which may render the owner’s title defective. The owner should endeavour to answer the requisitions with information and documents available to him. Where LACO considers the title defect acceptable having regard to the circumstances of the case, the owner may be required to make a SD confirming the period which he has been in possession of the land and declaring that his title has never been challenged by third parties. The owner may also be required to execute

an indemnity.

19. For land held by trustee on behalf of beneficiary, section 18 of the New Territories Ordinance (Cap. 97) empowers the District Officer to appoint a trustee of any land vested in a minor (“beneficiary”) during his minority. Upon registration of the appointment of the trustee, the land being the subject of the trust shall vest in the trustee for all the estate and interest of the beneficiary therein. There are cases where the beneficiary has attained majority but no step has been taken to transfer the estate and interest of the land to the beneficiary prior to the death of the trustee or the trustee cannot be found. Unless the instrument appointing the trustee contains provisions for automatic determination of trusteeship and vesting of the legal estate and interest of the land in the beneficiary upon him attaining majority, the following should apply –

- (a) In land exchange cases, to ensure that Government will acquire an unencumbered title and pass a good title to future purchasers of regranted land free from encumbrances and having regard to the established conveyancing practices –
 - (i) Where the beneficiary is the proposed grantee, the surrender may either be effected by both the beneficiary and the personal representative of the deceased trustee (“the personal representative”), or by the beneficiary after he has obtained a court order (such as a vesting order under section 45 of the Trustee Ordinance (Cap. 29) (“Vesting Order”)) vesting the land in him. Alternatively, a vesting assignment from the personal representative to the beneficiary should be produced prior to the surrender.
 - (ii) Where there had been an assignment from the beneficiary after attaining majority and the owner is the assignee from that beneficiary (or his successor or assign), a court order (such as a Vesting Order) should be obtained by the owner for vesting of the land in him prior to the surrender.
 - (iii) Sub-paragraphs (a)(i) and (a)(ii) of this paragraph would not apply where a memorial of removal of trustee or cancellation of trustee was registered in the Land Registry after the beneficiary had attained majority provided that the owner provides a SD confirming the period which he has been in possession of the land and declaring that his title has never been challenged by third parties, and also executes an indemnity.

(b) In land resumption cases –

(i) Where the beneficiary is the owner –

(A) If the trustee can be found or a personal representative has been appointed for the deceased trustee, the trustee or the personal representative should join in as a party to the ACI to signify his consent to the payment of compensation to the beneficiary.

(B) If, as confirmed by the owner, the trustee cannot be found or no personal representative has been appointed for the deceased trustee, the ACI may be entered into by the beneficiary alone.

(ii) Where there had been an assignment from the beneficiary after attaining majority and the owner is the assignee from that beneficiary (or his successor or assign), the ACI may be entered into by the owner alone.

20. Rectification would not be insisted upon for title documents with problems or discrepancies which are minor or clerical in nature. For instance, LACO would not normally require rectification of title documents under the following circumstances –

(a) Where the signatures of an owner are the same in his acquisition assignment and the subsequent assignment, but his signature is different in the agreement for sale and purchase which was followed by the said subsequent assignment, provided that the owner was identified by the same identification document number and his signatures were attested in all the said title documents.

(b) Where the signatures of an owner are the same in two title documents but his identification document are different.

(c) Both English and Chinese names of an owner are shown in one title document but his Chinese name is omitted in another title document, provided that the signatures and identification document of that owner are the same.

(d) Where an owner signed a title document by appending his signature but put a mark “X” in another title document, provided that the identification document of that owner is the same.

(e) Where the street numbers of the land are different in two title documents but other descriptions of the land (such as the lot number, the name of the building,

the floor and flat numbers) are the same in both title documents.

- (f) Where the alias of an owner is included in one title document but not in other title document(s) to which he is a party, provided that the owner's name, identification document and signature in all title documents are the same.
- (g) Where a mortgage has been discharged and there is a minor mistake in the memorial number of the mortgage being referred to in the relevant discharge (for example, one of the numbers of the mortgage's memorial number is omitted), provided that the mortgage can be properly identified by, for example, the same parties' names and description of the mortgaged property.

Lands Department

November 2023

Sample List of Title Documents

Lot No. XXX in D.D. XXX

1. Government Lease of Lot No. XXX in D.D. XXX;
2. Assignment with plan Memorial No. XXXXXXXXXXXXXXXX;
3. Agreement for Sale and Purchase Memorial No. XXXXXXXXXXXXXXXX;
4. Assignment Memorial No. XXXXXXXXXXXXXXXX;
5. First Legal Charge Memorial No. XXXXXXXXXXXXXXXX;
6. Receipt on Discharge of a Charge Memorial No. XXXXXXXXXXXXXXXX;
7. Second Legal Charge Memorial No. XXXXXXXXXXXXXXXX; and
8. Receipt on Discharge of a Charge Memorial No. XXXXXXXXXXXXXXXX.

Appendix II

IN THE MATTER of [*description of the property*] (“the Property”)

And

IN THE MATTER of the Oaths and
Declarations Ordinance (Cap. 11)

STATUTORY DECLARATION

I, [*name of declarant*] (holder of Hong Kong Identity Card No. []) of [*address*],
solemnly and sincerely declare that :-

1. *I acquired the Property by [*description of acquisition title document*] dated []
and registered in the Land Registry by Memorial No. [].
2. [*Please explain, in more than one paragraph if necessary, (a) how the declarant had possession of the missing title document (“the Document”); (b) details of the circumstances in which the Document was lost; (c) what efforts were made to locate the Document; and (d) the results of those efforts.*]
3. I verily believe that [*description of the Document*] has been lost or mislaid and cannot be found.
4. I confirm that [*description of the Document*] has not been deposited or pledged or agreed to be deposited or pledged with any third party as security for any loan or debt for the benefit of any party or for any other purposes.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance (Cap.11).

DECLARED at)
)
)
)
)
)
 this day of , 20)

Before me,

* applicable where the declarant is the owner of the Property

INDEMNITY

To : The Director of Lands (“the Director”) and
The Government of the Hong Kong
Special Administrative Region (“the Government”)

*[Lot(s) to be surrendered: _____ (“the Old Lot(s)”)]

^[Resumption of Land
(G.N. _____ dated _____)
Lot(s) resumed: _____ (“the Lot(s)”)]

In consideration of your agreeing to *[grant to me/us All That piece or parcel of land to be designated as _____ in exchange for the surrender of the Old Lot(s)] / ^[release to me/us a total sum of HK\$ _____ together with interest thereon being the compensation for the resumption of the Lot(s)] in respect of which the title deed(s) and document(s) set out in the Schedule hereto (“the missing title deed(s)”) has/have been lost or mislaid, I/we, %[_____ of _____] / &[_____ whose registered office is situate at _____], do hereby @[jointly and severally] undertake and agree that if and when I/we find the missing title deed(s), I/we shall surrender the same to the Director forthwith and I/we do hereby further @[jointly and severally] undertake and agree to indemnify and keep indemnified both the Director and the Government from and against all liabilities, claims, losses, damages, expenses, charges, costs, demands, actions and proceedings whatsoever and howsoever arising whether directly or indirectly out of or in connection with the missing title deed(s) and my/our failure to surrender the same.

THE SCHEDULE REFERRED TO ABOVE

[enumerate the missing title deed(s)]

Dated the _____ day of _____, 20 ____ .

%SIGNED SEALED AND DELIVERED)
BY _____, holder of Hong Kong)
Identity Card No. _____, in the presence)
of :-)

OR

&SEALED with the Common Seal of)
)
and signed by)
)
in the presence of :-)

OR

&EXECUTED BY)
)
acting through , its sole director)
or)
, its director and)
, its director)
or)
, its director and)
, its company secretary)
in accordance with sections 127(3) and)
127(5) of the Companies Ordinance)
(Cap. 622), in the presence of :-)

Name :

Occupation :

Address :

- * applicable to land exchange cases
- ^ applicable to resumption cases
- % applicable to a natural person
- & applicable to a company
- @ applicable where there is more than one owner

INDEMNITY

To : The Director of Lands (“the Director”) and
The Government of the Hong Kong
Special Administrative Region (“the Government”)

Resumption of Land
(G.N.____ dated _____)
Lot(s) resumed: _____ (“the Lot(s)”)

In consideration of your agreeing to release to me/us a total sum of HK\$[_____] together with interest thereon being the compensation for the resumption of the Lot(s) which was/were at the date of reversion subject to a [*description of mortgage*] in favour of [_____] (“the Mortgage”), the reassignment of which you have agreed to waive but otherwise free from encumbrances, I/we %[_____ of _____] &[_____ whose registered office is situate at _____], do hereby @[jointly and severally] undertake and agree that if and when I am/we are able to obtain a reassignment of the Mortgage, I/we will hand the same to the Director forthwith and I/we do hereby further @[jointly and severally] undertake and agree to indemnify and keep indemnified both the Director and the Government from and against all liabilities, claims, losses, damages, expenses, charges, costs, demands, actions and proceedings whatsoever and howsoever arising whether directly or indirectly out of or in connection with your waiving the reassignment of the Mortgage.

Dated the _____ day of _____, 20 ____ .

%SIGNED SEALED AND DELIVERED)
BY _____, holder of Hong Kong)
Identity Card No. _____, in the presence)
of :-)
)
)
)
)
)

OR

&SEALED with the Common Seal of)
)
and signed by)
)
in the presence of :-)

OR

&EXECUTED BY)
)
acting through , its sole director)
or)
, its director and)
, its director)
or)
, its director and)
, its company secretary)
in accordance with sections 127(3) and)
127(5) of the Companies Ordinance)
(Cap. 622), in the presence of :-)

Name :

Occupation :

Address :

% applicable to a natural person
& applicable to a company
@ applicable where there is more than one owner