

# **OPERATION OF THE LAND REGISTRY**

## **Executive Summary**

1. The Land Registry (LR), headed by the Land Registrar, aims to provide an efficient and effective land registration system to facilitate the orderly conduct of land transactions. In addition to ensuring secure and customer friendly land registration and information services, the LR's missions also include advocating reform of Hong Kong's land registration system through introduction of title registration. The Land Registry Trading Fund (LRTF) was established under the Trading Funds Ordinance (Cap. 430) on 1 August 1993 to manage and account for the operation of the LR. The Land Registrar is the General Manager of the LRTF.

2. The LR is accountable to the Development Bureau (DEVB) and the Financial Services and the Treasury Bureau (FSTB) for its business and financial performance respectively. The DEVB provides policy steer for the LR's work and the FSTB monitors the LR's financial performance. Under the Trading Funds Ordinance, the LRTF is required to achieve a reasonable return on the fixed assets employed. During the 24-year period from 1993-94 to 2016-17, the LRTF achieved the target rates of return on Average Net Fixed Assets (ANFA) except for one year in 2015-16 (actual of 4.1 % against target of 6.9%). The Audit Commission (Audit) has recently conducted a review to examine the operation of the LR.

### **Provision of services**

3. The LR's main services include: (a) land registration services which involve the registration of documents affecting land under the Land Registration Ordinance (Cap. 128 — the LRO) and maintaining up-to-date land registers; (b) land information services for searching land registers and supplying copies of registered documents and related records; and (c) owners' corporation services which involve registration of owners' corporations and maintenance of a register of owners' corporations under the Building Management Ordinance (Cap. 344) (paras. 1.3 and 2.2).

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4. ***Need to update target completion date for tidying up exercise of land registers.*** The LR maintains over 3 million land registers involving registered particulars (accumulated since 1844) of about 23.7 million land documents. Between 1986 and 1997, a computerisation exercise had been conducted to convert the manual land registers to computerised records (which were later converted to records in the Integrated Registration Information System (IRIS) launched in February 2005). According to the LR, in the IRIS: (a) certain information was not shown in some land registers due to reasons including information that might not have been recorded on the manual land registers or not input into the computerised land registers during the computerisation exercise; and (b) some computerised land registers (before implementing the IRIS) contained partial address in the “address” field, with the remaining part of the address in the “property remarks” field, as the length of the “address” field was limited. Since June 2007, the LR has been conducting a tidying up exercise for filling up the related information. However, according to the LR, there might be a slippage in completing the exercise which was originally targeted for completion by the end of 2018 (paras. 2.4 to 2.8).

5. ***Need to enhance accuracy of information in land registers.*** According to the LR, typographical errors or discrepancies in the entries in the land registers (collectively referred to as “errors” by the LR) are identified from time to time through its quality control check and daily operation, and external parties’ amendment requests. From 2012-13 to 2016-17, the total number of errors (classified into conversion, registration and memorial errors) corrected in the land registers each year ranged from 5,737 to 7,564. There is a need for the LR to keep under review the errors corrected in the land registers and, where warranted, perform more detailed analysis (e.g. seriousness and possible causes) of the corrected errors for monitoring and taking measures to enhance the accuracy of the land registers (paras. 2.9 to 2.12 and 2.14).

6. ***Need to keep under review performance of New Territories Search Offices (NTSOs).*** The LR has three NTSOs in Tsuen Wan, Tai Po and Yuen Long providing counter search and copying, and owners’ corporation services. Audit noted that, during 2012-13 to 2016-17, the three NTSOs: (a) had incurred operating losses ranging from \$0.9 million to \$2 million each year; and (b) had low patronage. For each of the five years, the daily average number of visitors requesting search and copying services at two NTSOs was below 55 and owners’ corporation services at each NTSO was not more than 5 (paras. 2.27 and 2.28).

### Implementation of land title registration system

7. At present, Hong Kong operates a deeds registration system for recording land and property transactions under the LRO. The system only confers priority on registered deeds and serves as an index of registered instruments to the public. It provides no proof that the person registered as the owner has good title to the property and gives no guarantee to title. In order to establish title to property, it is necessary for the purchaser's solicitors in every case to check the historical title documents relating to all the transactions affecting the property that extend to not less than 15 years before entering into a new transaction of that property. Since the late nineteenth century, many common law jurisdictions have implemented a land title registration system (LTRS), which provides conclusive evidence of title to property (paras. 1.14 and 1.15).

8. In July 2004, the Land Titles Ordinance (Cap. 585 — the LTO) was enacted. The LTO aims to provide for a new LTRS that registers the titles to and the interests in land, with a view to providing greater certainty to property titles and simplifying conveyancing. However, up to September 2017, the LTO had not yet come into force and the LTRS had not been implemented. Over the years, the implementation of the LTRS involved various complex issues. In general, there were considerable deliberations and divergent views among various stakeholders on three main issues, namely conversion mechanism, rectification arrangements and indemnity arrangements. The LR had made various proposals to address the issues. Up to September 2017, it was still working towards forging a consensus with the stakeholders on the way forward in implementing the LTRS (paras. 1.16, 3.5 to 3.7 and 3.22).

9. *Under-estimation of complexity of the issues and the work involved in implementing LTO and LTRS.* In December 2002, the Government introduced a Land Titles Bill into the Legislative Council (LegCo). During the scrutiny of the Bill by the Bills Committee, the Government proposed to commence the LTO two years after its enactment, and undertook to conduct a review of the LTO during the two-year period between its enactment and commencement (post-enactment review) and to take follow-up actions on various issues raised during the scrutiny of the Bill. In the event, the LTO was enacted in July 2004. However, up to September 2017, 13 years after its enactment, the LTO had not yet been implemented. The LR's post-enactment review found that substantial amendments to the LTO were required. Apparently, the

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LR had under-estimated the complexity of the issues and the work involved in implementing the LTO and the LTRS (paras. 3.9, 3.10 and 3.23).

10. ***Need to set a target LTRS implementation date and devise an action plan.*** During 2004-05 to 2009-10, the LR had set target time and devised action plans for implementing the LTRS, and submitted them to the LTO Steering Committee (established by the LR in November 2004 to steer the review of the LTO) for information. However, since then, the LR had not set a target LTRS implementation date and devised an action plan with implementation timetable for steering and coordinating the various work for implementing the LTRS (paras. 3.12 and 3.26).

11. ***Need to make additional efforts to implement the LTRS.*** In February 2009, a Joint Subcommittee on Amendments to Land Titles Ordinance was established under the LegCo Panel on Development and the LegCo Panel on Administration of Justice and Legal Services to monitor the preparation of amendments to the LTO in a more focused manner and provide input in the bill drafting process. At the meetings of the LegCo Joint Subcommittee held in December 2010 and June 2011, LegCo Members had expressed: (a) disappointment with the poor progress of the Government's work in bringing the new LTRS into operation; (b) concerns that the Government had yet to come to any policy decision after gathering views and concerns from major stakeholders; and (c) regret with the Government's unsatisfactory progress since 2004 in taking forward the LTO amendment exercise. Up to September 2017, the LTO had not yet come into force and the LTRS had not been implemented. To reap the benefits of implementing the LTRS, there is a need for the DEVB and the LR to make additional efforts to implement the LTRS as early as possible, taking into account LegCo Members' concerns (paras. 3.16, 3.29 and 3.30).

## Financial issues and performance reporting

12. ***Need to conduct regular fee reviews of all fee items.*** The LR charges customers statutory fees (specified in the Land Registration Fees Regulations (Cap. 128B)) and non-statutory fees (i.e. those fees not specified in the Regulations) for its services. Since its establishment in 1993, the LR conducted five fee reviews of all fee items at a time interval of 3 to 7 years between each review (i.e. in 1998, 2005, 2008, 2011 and 2016). Audit noted that the fee review in 2016 found that the overall cost recovery rate of non-statutory fees was only 67%. In the event, the LR revised the non-statutory fees in April 2017. The overall fee increase was 75%, with

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certain fee items increased significantly by 100% to 200%. There is scope for the LR to review fees more regularly so that the percentage of fee increase would be more moderate (paras. 4.2, 4.4, 4.7 and 4.8).

13. ***Need to keep under review the business operation and cost recovery of services.*** Registration of document is the LR's main services, which accounted for a high portion of the LR's turnover (ranging from 36% to 56% from 2010-11 to 2016-17). In recent years, the business volume of the services had dropped significantly. The number of land documents delivered for registration had dropped significantly by 45% and the related revenue dropped by 47% from 2010-11 to 2016-17. Audit noted that, for the registration of document services, there was a drastic change from over-recovery of costs of \$93 million in 2010-11 to under-recovery of costs of \$80 million in 2015-16. The significant under-recovery of costs might be one of the factors for the non-achievement of the target rate of return on ANFA in 2015-16 (actual of 4.1% against target of 6.9%). As the LR's business operation is dependent on the property market conditions, there is a need for the LR to keep under review its business operation and the cost recovery of its services, particularly the registration of document services (paras. 4.9 to 4.11).

14. ***Lack of differential pricing for different means of providing a service.*** The LR provides search and copying services by different means of delivery (e.g. counter service and online service). Although the cost for providing a service varied significantly with the means of delivery, the LR charged the same service fee. For example, in 2015-16, the LR charged \$15 for a service fee item while the cost of providing the service through counter was \$105 and online was \$11 (para. 4.12).

15. ***Need to review the compilation of actual performance information.*** Audit examination of the LR's compilation of actual performance information against the 30 performance targets for 2016-17 revealed that, for 24 performance targets, the LR compiled the actual performance information manually on a sample basis. In view of the limited sample size (e.g. 12 working days a year) in the compilation of actual performance information, Audit is concerned whether the compiled results could fairly reflect the LR's actual performance. Audit also noted that the LR relied on a manual system for compiling the actual performance information. There is merit for the LR to consider using more technology in compiling its actual performance information as far as practicable (paras. 4.17, 4.18 and 4.20).

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### Audit recommendations

16. Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Land Registrar should:

#### *Provision of services*

- (a) update the LR's target completion date for the tidying up exercise of the land registers and endeavour to meet the target date (para. 2.22(a));
- (b) keep under review the errors corrected in the land registers and, where warranted, perform more detailed analysis of the corrected errors for monitoring and taking measures to enhance the accuracy of the land registers (para. 2.22(b));
- (c) keep under review and take measures to further improve the performance of NTSOs, taking into account the cost-effectiveness of operating these offices and the need for their services (para. 2.38(a));

#### *Financial issues and performance reporting*

- (d) conduct regular fee reviews of all fee items and revise the fees where necessary (para. 4.14(a));
- (e) keep under review the LR's business operation and the cost recovery of the LR's services, particularly the registration of document services, with a view to taking measures as far as possible to address the impact of the property market conditions on the services (para. 4.14(b));
- (f) consider adopting differential pricing for different means of providing a service (para. 4.14(c));
- (g) critically review the compilation of actual performance information for the 24 performance targets to ensure that the actual performance information is fairly presented (para. 4.26(a)); and

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- (h) consider using more technology in compiling the LR's actual performance information as far as practicable (para. 4.26(c)).

17. Audit has also *recommended* that the Secretary for Development and the Land Registrar should:

### *Implementation of land title registration system*

- (a) fully assess the complexity of the issues and the work involved in taking forward the implementation of the LTRS (para. 3.31(a));
- (b) set a target LTRS implementation date and devise an action plan with timetable for implementing the LTRS as soon as practicable, having regard to the assessment of the complexity of the issues and the work involved, views of stakeholders and the experience gained in the past years (para. 3.31(b));
- (c) report the target LTRS implementation date and submit the action plan to the LTO Steering Committee for consideration (para. 3.31(c)); and
- (d) make additional efforts to implement the LTRS as early as possible, taking into account LegCo Members' concerns and the audit findings on the implementation of the LTRS (para. 3.31(d)).

## Response from the Government

18. The Secretary for Development and the Land Registrar generally agree with the audit recommendations.