

**For discussion on
5 July 2002**

**LEGISLATIVE COUNCIL PANEL
ON PLANNING, LANDS AND WORKS**

Land Titles Registration System

PURPOSE

1. This paper informs Members of the revisions that we propose to make to the draft Land Titles Bill following extensive consultation, and seeks Members' views on the major proposals.

BACKGROUND

2. At present, Hong Kong's land registration system is a deeds registration system. In a property transaction it is necessary to peruse the historical title deeds for 15 years to trace the chain of title. Under a title registration system, on the other hand, a person is recognized by law as the owner, upon registration of his property in the land register. The title registration system, therefore, provides better assurance of title. It also simplifies conveyancing procedures and reduces the amount of paper involved in property transactions, thus facilitating electronic registration and transactions. The system is already used in many other jurisdictions.

3. We last consulted the then Legislative Council Panel on Planning,

Lands and Works on the draft Land Titles Bill in November 1999. Subsequently the Administration has critically reviewed and revised various elements of the draft Bill. The Law Society, Heung Yee Kuk, Bar Association and the Hong Kong Institute of Surveyors have been consulted on the general terms of the modified proposals. We are now drafting an amended Bill and Regulations, with the intention of introducing the revised Bill into the Legislative Council in the next legislative session.

4. The following paragraphs set out the main features of the revised legislative package and explain where there have been significant changes from the 1999 position.

CONVERSION ARRANGEMENTS

5. There are broadly two possible approaches of conversion from the deeds registration system to the title registration system, namely, automatic conversion and gradual conversion. Under an automatic conversion arrangement, land registers held under the deeds registration system would be deemed to be land registers under the title registration system on an appointed day. A gradual conversion, on the other hand, would provide for a process of conversion from the deeds registration system to the new title registration system and the two registration systems would be running in parallel over a period of time. During this time conversion to guaranteed titles would occur upon some triggering events, for example, registration of the first transfer of a property after operation of the new law, or upon voluntary application. At the end of the period, all unconverted land and property would be converted

automatically to the title registration system. The proposal in 1999 envisaged a 15-year notification period.

6. Automatic conversion would minimize possible confusion from the operation of two systems of land registration in parallel, and reduce the resources and expenses required. It would speedily confer the benefits of title registration. Affected parties could take action to protect interests that they consider to be at risk under the title registration system during a sufficiently long notification period. At the same time, automatic conversion would extinguish certain rights enforceable, though not necessarily registered, under the existing deeds registration system. This will be the case irrespective of the length of the notification period.

7. A gradual conversion would facilitate an orderly and systematic conversion and provide ample time for the public and legal practitioners to familiarize themselves with the new system. It could, nonetheless, impose extra costs on property owners – solicitors could seek fees over and above those that they currently charge for conveyancing because of the requirement for certificates of good title. The benefits of simplified conveyancing and certainty of ownership for all that title registration brings about would be deferred.

8. We have received strong representations against automatic conversion. We, therefore, propose gradual conversion. No fixed period after which automatic conversion will take place is proposed at this time. We will consider automatic conversion afresh after the community has had time to become acquainted with title registration in practice. This was the approach taken in the

UK before compulsory title registration began to be brought in in the 1960s.

9. Under the revised scheme, conversion of properties to guaranteed titles will occur upon –

(a) issue of all new Government leases; or

(b) registration of the first transfer of a property after the Land Titles Bill comes into operation; or

(c) voluntary submission of applications for conversion.

A solicitor's certificate of good title is proposed in the latter two cases.

INDEFEASIBILITY OF TITLE OF THE PURCHASER

10. One of the key features of the title registration system is the principle of indefeasibility, i.e. the registered owner on the land register would be recognized by law as the owner and his title would not be defeasible. However, some argue that the principle of indefeasibility should be diluted to protect an innocent former owner. For example, an owner who neither occupies nor receives rents from a property for various reasons (being abroad for example) could lose the property, in the event of a transfer of property to an innocent purchaser through a third party's fraud.

11. In 1999 we proposed to amend the Bill to allow the Court to order

rectification of the register if failure to do so would be unjust. In our consultation, some parties consider that the Court should make no intervention but that the register should automatically be rectified in favour of an innocent owner defrauded out of his property. Other consultees have welcomed giving the Court a role but have sought tighter definitions of what the Court may do.

12. We have to strike a balance here. Automatic restitution to an innocent owner is not necessarily the right course in every case. Giving the Court the power to consider restitution to the former owner already weakens the protection given to an innocent purchaser, and is a derogation from the principle of indefeasibility of ownership. It would be unjust to remove all protection for an innocent purchaser.

13. We, therefore, propose to include two criteria that the Court may take into account when considering whether to rectify the title register where a fraud has occurred. These are the acts of the parties and the hardship to the parties. This should go some way towards meeting calls for clear and definitive statutory criteria in the event of a consideration by the Court. We do not consider that the Court's discretion should be further fettered. The Court should be in a position to take into account the particular circumstances of the case.

INDEMNITY PROVISIONS

14. We propose to set up a self-financing indemnity fund to back up the title guarantee under the new system. The fund would be financed by a levy on applications for registration. Indemnity would be payable to a person who

suffers loss of ownership by reason of an entry in or omission from the land register if such entry is made as a result of fraud. The indemnity would also cover loss due to negligence on the part of Land Registry staff.

15. In 1999, we proposed that there would be a cap of \$30 million on the indemnity that would be paid in the event of an entry in or omission from the register due to fraud affecting ownership. We have received representations that there should not be any limit on the indemnity.

16. The overwhelming majority of property transactions, 99.6%, involve values of less than \$30 million. If there was no cap on the value of claims from the indemnity fund, the levy rate would have to be increased greatly for all owners, sellers and purchasers. This would be a disincentive to transactions and a disincentive to voluntary registration of title. It would also be unreasonable and unfair to impose the insurance cost for a minority of very high-value properties upon the majority of property owners.

17. If there is a cap at \$30 million, properties valued at over \$30 million would be protected up to \$30 million, which they do not currently enjoy. Owners of such properties would still have the protection of the Court and could secure title insurance for value in excess of the \$30 million indemnity limit if necessary.

18. On balance, we consider that there should still be a cap on the payment that can be made from the indemnity fund in any one fraud case. This should be set at \$30 million initially.

TITLE CERTIFICATES AND SOLICITOR'S CRIMINAL LIABILITY

19. In 1999, we proposed that title certificates would be issued on application for a fee. In addition, an offence would be committed only if the person intended to defraud when verifying an application for registration. There is general acceptance of these proposals. We propose no further amendments in these respects.

OVERRIDING INTERESTS

20. Overriding interests are important rights affecting land although it might not be practicable to enter such interests in the land register. In 1999, we proposed that under a title register, land would still be subject to overriding interests but these interests would be defined in legislation. This would make them both clearer and more limited than under the present system. In subsequent consultation, some parties have argued that property should only be subject to registered interests.

21. We agree that we should keep the categories of overriding interests to be protected to the minimum, so as to give property owners, purchasers and sellers the greatest possible degree of certainty. However, some interests cannot be registered. For example, rights of adverse possession or Government powers of resumption are latent against any property but cannot be registered until they are successfully asserted in the former case or authorized after

gazettal in the latter. Other rights, such as short term leases, could be registered in theory but the expense and administrative complexity would be disproportionate.

22. We, therefore, propose to define a limited list of overriding interests and remove all other unregistered interests in the draft Land Titles Bill to give clarity and protection of ownership.

LAND BOUNDARIES

23. Under the deeds registration system, land boundaries are not guaranteed. We propose no change in this respect under the title registration system. Some consultees have made representations that the Bill should provide a guarantee of boundaries as well as of title.

24. Hong Kong is not ready for a system of land boundary guarantee now. Land boundary surveys since the establishment of the Geodetic Datum in 1980 only cover less than 10% of all lots. Nonetheless, we propose to provide an avenue for lot owners to apply to the Director of Lands to have their lot boundaries surveyed and registered in the Land Registry. As the number of properly surveyed lots in Hong Kong builds up in future, we may revisit the issue and consider providing a guarantee of land boundaries in due course. We have included this mechanism in the draft Land Titles Bill, but have an open mind as to whether this should continue to be so included, or whether the question of boundaries should be further examined and addressed as a separate issue.

ECONOMIC IMPLICATIONS

25. A title registration system would bring about reduced conveyancing costs and provide better assurance of title. The system would be more user-friendly by reducing title queries and would bring about a greater degree of confidence to property ownership in Hong Kong. The increased efficiency would be beneficial to our economy overall.

26. Our present proposal of a gradual conversion could impose increased compliance cost initially on property owners due to the requirement for solicitors to issue certificates of good title to enable conversion on first sale and voluntary conversion cases. Some solicitors might demand fees over and above those that they currently charge for conveyancing. However, it is difficult to estimate accurately at this stage the likely charges. The issue of a certificate of good title is in any case a one-off requirement.

FINANCIAL AND STAFFING IMPLICATIONS

27. Implementation of the title registration system is estimated to cost \$9 million in capital expenditure. Additional recurrent expenditure of \$13 million per annum has been projected for the creation of 13 new posts for the implementation of the new system. These and the costs for the publicity effort will be met from the Land Registry Trading Fund.

28. The proposed indemnity fund is a self-financing fund which will

be built up by a levy on application for registration under the title registration system. The reserve in the indemnity fund will be accumulated over a period of time to meet unexpected claims.

THE WAY FORWARD

29. Subject to Members' views, we intend to proceed to introduce into the Legislative Council in the coming session a revised Land Titles Bill to provide for a title registration system in Hong Kong.