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Consultation Paper on
Adverse Possession
逆權管有諮詢文件

Law Reform Commission of Hong Kong
Adverse Possession Sub-committee
香港法律改革委員會
逆權管有小組委員會

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Principal Recommendations

主要建議

1. After careful consideration of the situation in Hong Kong, including the existing possession based un-registered land regime, the land boundary problem in the New Territories, and that the existing provisions in the Limitation Ordinance on adverse possession have been held to be consistent with the Basic Law, we are of the view that the existing provisions on adverse possession should be retained since they offer a practical solution to some of the land title problems.

經審慎考慮香港的情況，包括現有的以管有為基礎的非註冊土地機制、新界土地界線問題，以及法庭已裁定《時效條例》的現有逆權管有條文符合《基本法》此一事實，我們認為現有的逆權管有條文應予保留，因為這些條文可為部分關於土地業權的問題提供實際解決方法。

Principal Recommendations

主要建議

2. We recommend that the law of adverse possession should be recast under the prospective registered land system. Registration should of itself provide a means of protection against adverse possession, though it should not be an absolute protection. This is to give effect to the objective of a registered land system – that registration alone should transfer or confer title.

我們建議，逆權管有的法律應在未來的註冊土地制度之下重新訂定。註冊本身應是針對逆權管有的一種保障方式，但這保障不應是絕對的。這是為了達到註冊土地制度的目的——只有註冊能夠轉移或賦予業權。



Principal Recommendations

主要建議

3. We recommend that when a registered title regime is in place in Hong Kong, adverse possession alone should not extinguish the title to a registered estate. The rights of the registered owner should be protected. If, for example, the registered proprietor is unable to make the required decisions because of mental disability, or is unable to communicate such decisions because of mental disability or physical impairment, then a squatter's application will not be allowed. However, such protection would not be absolute. Under the proposed scheme:

我們建議，當香港設有註冊業權制度時，單憑逆權管有不應足以令註冊產業的業權終絕。註冊擁有人的權利應受到保障。舉例來說，如註冊擁有人因為精神上的無行為能力而不能作出所需的決定，或因為精神上的無行為能力或身體上的殘障而不能傳達上述決定，則擅自佔地者的申請不會獲准。不過，上述保障不會是絕對的。在建議的機制之下：

Principal Recommendations

主要建議

- The squatter of registered title land will only have a right to apply for registration after 10 years' uninterrupted adverse possession.
業權已註冊的土地的擅自佔地者，只可在連續逆權管有該土地10年後才有權申請註冊。
- The registered owner will be notified of the squatter's application and will be able to object to the application.
註冊擁有人會獲通知擅自佔地者已提出申請，並可對申請提出反對。
- If the registered owner fails to file an objection within the stipulated time, then the adverse possessor will be registered.
如註冊擁有人未有在規定時間之內提出反對，逆權管有人便可獲註冊。

Principal Recommendations

主要建議

- If the registered owner objects, the adverse possessor's application will fail unless he can prove either: (a) it would be unconscionable because of an equity by estoppel for the registered owner to seek to dispossess the squatter and the circumstances are such that the squatter ought to be registered as the proprietor; (b) the applicant is for some other reason entitled to be registered as the proprietor of the estate; or (c) the squatter has been in adverse possession of land adjacent to their own under the mistaken but reasonable belief that they are the owner of it.

如註冊擁有人提出反對，逆權管有人的申請便會失敗，除非他能證明以下其中一種情況：(a) 基於衡平法的不容反悔原則，註冊擁有人謀求剝奪擅自佔地者的管有權是不合情理的，而在該情況下，擅自佔地者理應獲註冊為擁有人；(b) 申請人基於其他原因有權獲註冊為業權的擁有人；或(c) 擅自佔地者在錯誤但合理地相信自己是毗鄰土地的擁有人的情況下已逆權管有該土地。

Principal Recommendations

主要建議

- If the squatter is not evicted and remains in adverse possession for two more years, then the squatter would be entitled to make a second application, and the matter can be referred to the adjudicator for resolution.

如擅自佔地者未有被逐出並繼續逆權管有土地再多兩年，則擅自佔地者會有權提出第二次申請，而有關事宜會轉交審裁官裁決。



Principal Recommendations

主要建議

4. We recommend that the “implied licence” principle should be abolished, and there should be in Hong Kong a provision to the effect that:

“For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter’s present or future enjoyment of the land.”

我們建議“隱含特許”原則應予廢除，並建議應在香港制定一項條文，訂明：

“就裁定佔用土地的人是否在逆權管有該土地一事而言，不得單憑該人的佔用與擁有人目前或未來對該土地的享用沒有抵觸這一事實，便假定該人的佔用因法律的隱含規定而得到後者准許。”



Principal Recommendations

主要建議

5. The Sub-committee is aware of the possible anomalous situation in which a dispossessed registered owner remains liable for the covenants in the Government Lease. However, we do not recommend devising a statutory presumption or assignment to the effect that the adverse possessor become liable under the covenants in the Government Lease.

小組委員會知道，已被剝奪管有權的註冊擁有人須繼續就政府租契的契諾負上法律責任，而這樣不合情理的情況是有可能出現的。然而，我們不建議制定一項法定推定或法定轉讓，使逆權管有人變成須根據政府租契的契諾而負上法律責任。



Principal Recommendations

主要建議

6. We recommend that Government should be urged to step up its efforts to address the boundary problem in the New Territories. However, we are of the view that a comprehensive resurvey of the boundaries alone could not solve the problem, because persons who suffer any loss or disadvantage under the re-surveyed boundaries may not accept the new boundaries. It would appear that the land boundary problem in the New Territories is best dealt with together and in the context with the implementation of the Land Titles Ordinance.

我們建議，應促請政府加倍努力解決新界的土地界線問題。然而，我們認為單單對界線重新進行全面測量並不能解決有關問題，因為按重新測量的界線而蒙受損失或不利的人可能不會接受新的界線。在我們看來，新界的土地界線問題，最好是在《土地業權條例》的實施過程中一併解決。

Principal Recommendations

主要建議

7. In relation to a mortgagee' s right to take possession of a mortgaged property vis-a-vis the mortgagor, we recommend that legislation should be passed to spell out clearly that the limitation period starts to run from the date of default of the mortgagor' s obligations.

就承按人針對按揭人而取得按揭物業管有權的權利而言，我們建議應通過法例，以清楚說明時效期在按揭人不履行其責任當日起開始計算。



Principal Recommendations

主要建議

8. We are aware that practically speaking adverse possession cannot be established on “Tso” land, but we do not see the need to change the law on this issue.

我們知道在實際的情況下不能在祖地確立逆權管有。然而，我們看不出有需要改變關於這個問題的法律。



Thank You 謝謝

