

For discussion on
11 November 1999

LEGISLATIVE COUNCIL PANEL ON PLANNING, LANDS AND WORKS

The Land Titles Bill - The Way Forward

Purpose

This paper briefs Members on the outcome of our consultation exercise on the draft Land Titles Bill and our proposed amendments to the draft Bill.

Background

2. The present system of land registration governs only the priority of registered deeds. Even if a person is registered in the Land Registry as the owner of a property, he may not be the legal owner because there may be uncertainty or defects in his title to the property. In order to establish title to property, it is necessary in every case to check the Government lease and the title documents recording all the transactions affecting the property that extend to not less than 15 years before the current contract of sale of that property. The uncertainty of

title places purchasers at risk, causes confusion to the general public and reduces the commercial potential of properties in some cases.

3. We consider the current deeds registration system not satisfactory and propose to change it to a new land title registration system through the introduction of the Land Titles Bill. Under the proposed system, the registration of a person as an owner will confer full title to the property concerned, subject only to matters registered on the land register and overriding interests. It will no longer be necessary for the conveyancing solicitors to investigate the title by reviewing all title deed documents as the land register will be the conclusive evidence of the title of the property.

4. Members were briefed on the background to our proposal and on the draft Land Titles Bill in January 1999 through LC Paper No. CB(1) 760/98-99(02). We subsequently issued the draft Bill to concerned parties for comments and organized a number of briefing sessions for them. We have now completed this consultation exercise.

Outcome of Consultation and Recommendations

5. The consultation exercise indicated support in principle for converting the registration system from the present deeds registration system to a land title registration system. However, concerns have been raised over the following issues concerning the proposed system –

- (a) conversion arrangements;
- (b) indefeasibility of title of the purchaser;
- (c) indemnity provisions;
- (d) title certificate;
- (e) solicitors' criminal liability;
- (f) overriding interests; and
- (g) land boundaries.

6. Our detailed response to these concerns and our proposed Annex amendments to the Bill are set out in the Annex. In brief, we propose that -

- (a) the current deeds registration system should be converted to a new title registration system by a gradual process over 15 years after the new Ordinance comes into operation. Conversion to the new system would be effected through

first transfer of a property, through voluntary application and through the registration of titles in respect of all new developments. A solicitor's certificate of good title would be required for conversion during the period. At the end of the 15-year period, all unconverted land would be deemed to be converted to the title registration system;

- (b) the Court should have the power to order rectification of the land register where a failure to do so would be unjust;
- (c) the indemnity provisions should be retained with the upper limit for fraud cases increased to \$30 million for each claim;
- (d) title certificates should be issued as a title document upon application by property owners and payment of a fee;
- (e) a criminal offence in verification would be committed only for fraudulent verification;

- (f) overriding interests should be retained under the Land Titles Bill and adverse possession to be preserved in its present form as an overriding interest; and
- (g) no guarantee of land boundaries should be provided under the new system.

The Way Forward

7. Paragraph 6 above represents our views on the new title registration system. We are in the process of consulting concerned parties again. This second round of consultations will last from September to November 1999. We will then revise the Land Titles Bill and introduce it into the Legislative Council in the 2000/01 legislative session.

8. Members are invited to comment on the above proposals.

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Response to concerns over the draft Bill

The outcome of our consultation on the Land Titles Bill and the proposed title registration system in early 1999 indicated general support in principle. Concerns have been raised over a number of areas and the following represents our response to these concerns and our recommendations on the proposals.

Conversion Arrangement

2. In our previous proposal, land registers held under the current deeds registration system would be deemed to be land registers under the title registration on the appointed day when the Land Titles Bill was to come into operation. This was based on the grounds of simplicity and speed, having regard to the high accuracy of the current land registers.

3. However, views have been received that conversion by operation of law may not adequately protect those with unregistered interests against the potential loss of such interests.

4. We now recommend that conversion from the current system to the new system be a gradual process over 15 years. (A period of 15 years has been chosen with reference to the length of time for which, under the Conveyancing and Property Ordinance and the current system, the Government grant and the title documents recording all the transactions affecting the property have to be checked to prove title to property.) During this 15-year period, conversion to guaranteed titles will occur upon

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- (a) registration of the first transfer of a property after the Bill comes into operation;
- (b) voluntary applications for conversion; or
- (c) registration of title documents relating to all new developments.

A solicitor's certificate of good title will be required for conversion.

5. On the other hand, transmission of property, including the passing of property on the death of a joint tenant, sole owner or tenant in common, or the passing of property to a trustee in bankruptcy or to the liquidator, will not lead to conversion. In these circumstances the registered owners may apply for conversion to title registration through voluntary application during these 15 years.

6. After 15 years, all unconverted land will be deemed to be converted to be registered under the title registration system. On the basis of present statistics, it is estimated that about 60% of the registers will be converted to guaranteed title registers over the 15-year period through the conversion process described in the above paragraph 4.

Indefeasibility of Title of the Purchaser

7. In our previous proposal, the land register would not be rectified so as to affect the indefeasible title of innocent purchaser even in the event of a fraudulent transfer of property achieved through the fraud of a third party. The Government would indemnify the innocent former owner up to a limit and such compensation is recoverable from the party responsible for the fraud.

8. Concerns have been raised over the position of a former owner who is not in possession of a property for various reasons (e.g. being abroad) and who loses the property in favour of the purchaser. There have been strong representations that the principle of indefeasibility should be modified to protect the innocent former owner.

9. We now recommend that the draft Bill should be revised so that on application by the innocent former owner the Court will have the power to order rectification of the land register where the Court is satisfied that a failure to do so would be unjust.

Indemnity Provisions

10. Similar to the major common law jurisdictions that provide

for title registration, our original proposal provided that a person who suffered loss by reason of an entry in or an omission from the land register arising from either fraud affecting the ownership or mistakes/omission of the Land Registry staff would be indemnified. Such an indemnity would be capped at a limit notified in the Gazette from time to time. An initial upper limit for each claim was proposed to be \$20 million.

11. Concerns have been raised that such an indemnity would impose an unlimited financial burden on the Government. However, we have also received views that the \$20 million upper limit should be raised (or there should be no upper limit), and that the indemnity should be widened to cover fraud affecting encumbrances such as mortgages, and fraud occurring before the new Ordinance comes into operation.

12. It is our intention to provide protection for average property owners and not those who will be able to afford their own protection. Our proposal under the Bill is to set up an Indemnity Fund which will be self-financing from a levy on applications for registration. The upper limit for each claim and the scope of the fund to cover only fraud affecting ownership will prevent the fund from being exhausted by an extraordinarily high claim and hence ensure the healthy operation of the fund. As the fund will be built up from levies imposed after the appointed day, it is inappropriate to cover fraud occurring before the operation of the Bill.

13. In light of the above, we propose to retain the indemnity provisions, but to raise the upper limit for each claim to \$30 million. This proposed sum would cover 99.7% of all property transactions.

Title Certificate

14. In our previous proposal, title certificates would not be issued. State of title certificates, which were not title documents and were not required to be produced for registration of dealings in a property, would be issued to a property owner upon application.

15. Various parties, including the Hong Kong Law Society and the Hong Kong Association of Banks, have suggested that this proposal should be reconsidered.

16. In view of the preference for paper-based documents from some quarters, we now propose that a title certificate will be issued to a property owner who apply for such on payment of a specified fee. Once issued the title certificate will be a title document and will be required to be produced and surrendered upon the transfer of a property.

Solicitor's Criminal Liability

17. In our original proposal, a person who verified an application for registration (either a solicitor or a public officer) would commit a criminal offence if he falsely or recklessly verified an application.

18. Concerns have been raised that the criminal liability on reckless verification is too onerous.

19. We now recommend to amend the Bill to the effect that a criminal offence is committed only for fraudulent verification of an application for registration.

Overriding Interests

20. The original proposal provided that land would be subject to overriding interests. These interests include Government rights under the Government lease and other Ordinances, Chinese custom or customary rights affecting the land under Part II of the New Territories Ordinance, easements or rights of way, rights acquired by adverse possession and any rights under any Ordinance for erection or use of public facilities, etc.. These interests would affect the land no matter whether they were registered or not.

21. Some parties have suggested that there should be no overriding interests as such interests would affect the certainty of the title to the property. It has also been suggested that rights acquired by adverse possession should be made voidable against the owner upon payment of compensation.

22. We propose to retain the overriding interests which are necessary rights affecting the land and are not always practicable to be entered into the register. We have already kept a minimum number of overriding interests in the draft Bill in order to confer full ownership of the Government leases subject to these overriding interests similar to other overseas title registration jurisdiction.

23. We also recommend retention of the right of adverse possession as it is a long recognized statutory right which is also recognized as an overriding interest in the United Kingdom and in New South Wales, Australia.

Land Boundaries

24. In our proposal, land boundaries would not be the subject of guarantee. Some parties have suggested the otherwise.

25. It is however known that the survey of the land in the New Territories in the 1900s was not accurate. Hence, we do not propose to guarantee land boundaries under the draft Bill at this stage.

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