

The Land Titles Bill Position Report on Main Issues

Purpose

This paper sets out the Administration's present position with respect to the main policy issues in relation to the Land Titles Bill that have been under discussion in the Bills Committee meetings and the Administration's proposals on the way forward.

The Conversion Mechanism

2. Our intention has been that the Land Titles Bill should contain a mechanism that will enable properties that exist before the commencement of the new legislation to be brought under the title registration system cost effectively. It should also be able to extend the coverage of the title register as widely as possible. The Land Registration Ordinance would continue to apply to properties that had not yet converted or were barred from conversion for any reason. All properties created on land for which new leases are granted by Government after commencement of the new legislation would be brought directly under the title registration system.
3. The Bill provides two conversion routes for existing properties. The first is that applications for conversion would be compulsory on the first assignment of any property after commencement of the legislation. The second is that at any time after commencement the existing owner may apply for voluntary conversion. Under either route, an application would need to be supported by a certificate of good title signed by a solicitor.
4. The Bill requires that for conversion of existing properties to the new system, whether by voluntary or compulsory application, a certificate of good title would be required from a solicitor. This provides a safeguard against rights, particularly unwritten third party rights, being cut off by the act of registration of title.

5. The Law Society has raised a number of fundamental concerns about this proposal. They have been of the view that without a mechanism for review and adjudication in uncertain cases, certificates of good title would place an unacceptable burden on solicitors. The Administration does not consider it appropriate for the Land Registry to establish such a mechanism. It will add to the cost and complexity of conveyancing and will be difficult to safeguard against abuse.

6. An alternative of allowing solicitors to issue certificates that are qualified in case of title defects has been considered. However, the Administration and the Law Society have not found a mutually agreeable way to implement such a system.

7. The Land Registry has been asked to examine a mechanism used in certain Australian States. Under this existing properties on deeds registration systems are brought onto the title register after the lapse of a period of time. This period is often linked to provisions under limitation legislation. This approach has been called 'daylight conversion' to distinguish it from the earlier proposals for 'midnight conversion' under which existing properties would be converted to the title registration system after a short period of notice. To this are added amendments to the existing Land Registration Ordinance to ensure that unwritten equities are given reasonable safeguards during the conversion process.

8. Following discussion with the Law Society, The Land Registry has prepared a detailed scheme for the operation of such a mechanism. This is set out in Annex A, together with a table outlining how different categories of property would be handled at different times, as requested by Members at the meeting held on 30th January. We have discussed with the Law Society further on this aspect and we are now awaiting their formal confirmation that they agree that properties under new leases granted by the Government through auction or tender after commencement of the legislation should come directly under the title registration system. On the understanding that this confirmation is likely to be forthcoming, the Administration is of the view that this mechanism is a practical and reasonable way forward. It would:

- (a) enable most existing properties to be converted to the new system all at one time;

- (b) give a substantial period of notice before major change took place;
- (c) provide new routes for holders of interests under unwritten equities that are not registerable at present to protect their interest through registration of notices;
- (d) maintain safeguards for existing interests while ensuring that, over time, a purchaser for value is able to enter into transactions with greater security because he can take free of any unwritten equity that has not been entered on the register by way of notice or caution; and
- (e) not add any costs to property transactions.

9. The initial assessment of changes required to the Bill to provide for the proposed “daylight conversion” is set out in Annex B. The Administration is now approaching other major stakeholders to set out this revised proposal for the conversion mechanism and to seek their views.

Indemnity Provisions

10. Under the Bill, once a property is under the title registration system, a registered owner will be indemnified if he should lose his title due to a fraud of which he is innocent. This indemnity will be capped at \$30 million. Also, any person who suffers loss by reason of an entry in or omission from the title register due to a mistake or omission on the part of the Land Registrar will be indemnified. This indemnity will not be capped.

11. Concern has been raised at the cap in fraud cases, combined with the effect of the provision that leaves a decision on rectification in such cases to the courts. It is recognized that an innocent purchaser for value will be better safeguarded under this arrangement than at present. But, an innocent former owner may be disadvantaged in being less likely to recover property and if the value of the property exceeds the cap limit.

12. The Administration stands by the position set out in previous papers that these provisions are consistent with the Basic Law and Human Rights considerations. The Administration also remains of the view that a cap on the indemnity in fraud cases is necessary in order to keep the cost of

financing the indemnity scheme at a reasonable level for the public. Having reviewed the law in relation to fraud cases, and taking account of the concerns that many existing property owners continue to harbour over these provisions, the Administration intends to modify the rectification provisions under the Bill. We will put forward CSAs that provide for rectification in favour of an innocent former owner where title has been changed as a result of forgery. These proposals are included in Annex A (paragraph 17).

Way Forward

13. Upon completion of the consultation with other parties and provided that the revised approach is found to be generally acceptable, the Administration will consider and take a decision on the above proposals. Meanwhile, to prepare for clause by clause examination of the bill, the Land Registry is arranging for discussion on technical issues with the Legal Advisor to the Legislative Council and the Law Society Working Party.

Revised "Daylight Conversion" Mechanism

General framework

1. From the commencement day of the Land Titles Bill ("LTB"), all 'new land' (which will be defined as land granted by the Government by way of auction or tender on or after commencement day) will come under the title registration system. The new land will be registered under the Bill and the title will be vested in the grantee as registered owner.
2. From the commencement day any claim arising through an unwritten equity created after the commencement day can only affect a purchaser for value if notice of the claim is registered.
3. Upon the expiry of 12 years from the commencement day, all unregistered land will be converted automatically to the title registration system operated under the LTB except where either a caution against conversion stands or where matters lodged for registration under the LRO have not yet completed registration. The current owner on the register kept under the Land Registration Ordinance ("LRO") register becoming the first owner under the LTB title register.
4. During the 12 year interim period, all existing or newly created unwritten equities affecting unregistered land can be protected by registration of a warning notice known as 'caveat' under the LRO. A caveat on the LRO register will survive the conversion to the LTB title register and will continue to protect the interest and automatically take effect as a non-consent caution under the LTB with a priority relating back to the date of its registration under the LRO.
5. If there is a dispute on the title or beneficial interest of an unregistered land, the claimant may forestall the conversion to the title register by entering a 'caution against conversion' under the LRO. The land remains on the LRO system as long as there is a valid caution against conversion on the register.

6. 'Caveats' and 'Cautions against Conversion' are cumulative protections. They may be employed at the same time. Registration of a caveat or caution against conversion without reasonable cause will attract liability for damages.
7. After conversion to title register at the expiry of 12 years, all unwritten equities (other than overriding interest) existing at or prior to the conversion will be null and void as against a registered purchaser or chargee for value unless such equities have already been protected by some form of registration under LRO in the 12 year interim period.
8. Conversion of any land to the title register does not prevent the holders of unwritten equities from protecting their interest against a person who has not acquired the land for value. This may be done by registration of an appropriate caution, restriction or inhibition according to the provisions of the LTB. But, this must be done before a disposition by the first owner to a purchaser or chargee for value.

'Caution against Conversion'

9. For unregistered land, cautions against conversion to the title register can be registered under LRO within 12 years from the commencement day of the Bill. Such cautions may be registered only in respect of any claims of title or beneficial interest in the land.
10. A cautioner may withdraw a caution against conversion at any time. The owner of the property may apply to the court at any time for an order to remove the caution. Any person presenting wrongful cautions without reasonable cause will be liable for any damages caused thereby to the owner.
11. Cautioners are required to take prompt action to bring a conclusion of the dispute on title or interest. Cautions against conversion will lapse after 12 months unless the cautioner has commenced court proceedings to establish his claim. The registration of these cautions can only be extended by the Court at its discretion upon application. Application for extension must be made by the end of the 12 month validity period. No fresh caution may be filed by the same person on the same cause after its validity has lapsed.

Caveat

12. To provide a means for the holders of existing unwritten equities to register their interest, a warning notice called a caveat can be registered under Land Registration Ordinance. This may be done at any time during the 12 years. Such caveats will be deemed to be and will take effect as non-consent cautions against the property upon conversion to the title registration system.

Daylight conversion

13. After 12 years from the commencement day, all unregistered land will be brought under the new system and governed by the provisions of the Bill except for:-
 - (a) land for which a valid caution against conversion still stands on the land register; and
 - (b) land for which an instrument delivered for registration under the Land Registration Ordinance has not yet been registered.
14. Once land is brought under the Land Titles Bill by operation of the daylight conversion mechanism, all subsequent transactions in such land will be registered according to the provisions of the Bill.

Transitional arrangements

15. Unregistered land

Within 12 years from the commencement day, all land transactions and the checking of title in respect of unregistered land not yet brought under the Land Titles Bill will continue to be governed by the Conveyancing and Property Ordinance. The registration of transactions in such land will continue to be governed by the Land Registration Ordinance. The indemnity provisions of the Land Titles Bill will not apply. All the above will also apply to unregistered land that remains under the Land Registration Ordinance after the 12 years period.

16. Registered land

The registration of transactions in registered land (that is, new land granted by the Government by way of auction or tender on or after the commencement day) during the 12 year period will be governed by the Land Titles Bill. The rectification provisions as outlined below and the indemnity provisions currently provided in the Bill will apply.

Rectification

17. Registered land

In respect of all registered land,

- (a) rectification of Title Register will be given in favour of a former innocent owner if the change of ownership is procured by a forgery (that is, a transfer or transmission procured by forged signature, forged document or forged entry or any combination of them). An innocent registered owner in such a case will be given an indemnity up to a capped amount under the Bill; and
- (b) rectification will be allowed in other fraud cases if the court considers it unjust not to rectify the Title Register against the present registered owner. This is at the discretion of the court. Any innocent party who loses title as a result of rectification in such cases will be entitled to indemnity up to capped amount under the Bill.

18. Unregistered land

Before any piece of land is brought under the title register, rectification will continue to be governed by the common law.

Effect of registration of title

- 19. The effect of registration of new land under the title register will be that the land is vested in the registered owner, subject only to

registered matters and defined overriding interests. Title will be defeasible only if there has been a fraudulent dealing.

20. The effect of conversion of existing unregistered land to the title register after the 12 years period will be that the current owner on the register under the LRO will become the first owner under the LTB title register.
21. Where the person becoming a registered owner through conversion is one who has acquired the land for value, the land is vested in him subject only to registered matters and defined overriding interests. Title will be defeasible only if there has been a fraudulent dealing.
22. Where the person becoming a registered owner through conversion is one who has not acquired the land for value, in addition to registered matters and overriding interests the land is vested in him subject to any unwritten equity existing or created before the date of his acquisition. Otherwise, title will only be defeasible if there has been a fraudulent dealing.

Unwritten equities

23. After conversion, unwritten equities will not affect a purchaser for value of registered land unless a caution in respect of the claim has been registered.
24. During the 12 years interim period, unwritten equities created prior to or after commencement may continue to affect a purchaser for value of unregistered land prior to its conversion to registered land (i.e. the existing common law will apply)
25. Upon conversion, unwritten equities created after commencement will not affect a purchaser for value of unregistered land unless a caveat or caution against conversion has been registered under the LRO.

Outline of operation of daylight conversion mechanism

	Prior to Commencement of LTB	After Commencement of LTB and prior to end of ‘incubation’ period	After end of ‘incubation’ period
New Land	Registered under LRO	Registered under LTB	Registered under LTB
Existing property without claims of unwritten equities or claims of title	Registered under LRO	Remains registered under LRO. Any transactions dealt with under CPO and registered under LRO	Converted to title register unless there are matters submitted for registration under LRO which have not yet completed registration.
Existing property with claims of unwritten equities or claims of title	Registered under LRO. A purchaser may find their title affected by a claimant. Donees remain subject to any equity to which the donor was liable.	<p>Remain registered under LRO. Any transactions dealt with under CPO and registered under LRO</p> <p>During the 12 years interim period, unwritten equities created prior to or after commencement may continue to affect a purchaser for value of unregistered land prior to its conversion to registered land (i.e. the existing common law will apply).</p> <p>Donees remain subject to any equity to which the donor was liable.</p>	<p>Converted to title register unless:</p> <ul style="list-style-type: none"> ❑ there are matters submitted for registration under LRO which have not yet completed registration; ❑ a claimant to an interest has lodged a caution against conversion and that caution has not lapsed or has been extended by a court pending resolution of the claim. <p>Upon conversion a purchaser for value will not be affected by a claim existing prior to commencement or created after commencement unless a caveat or caution against conversion has been registered under the LRO.</p> <p>A donee continues to take the property subject to any equity to which the donor was liable.</p> <p>Any property not converted to the title register at the end of the ‘incubation’ period remains under the Land Registration Ordinance until the obstacle to conversion is removed.</p>

Annex B

Assessment of Changes required to LTB to provide for the proposed ‘Daylight Conversion’

	<i>Part/Clause</i>	<i>Requirement</i>	<i>Remarks</i>
1	Pt 1, Cl 2	New definitions for ‘new land’, ‘caution against conversion’ and ‘caveat’.	Not presently defined. Existing definitions will have to be reviewed to ensure consistency.
2	New Part	New part to cover compulsory conversion of the new land to the new system from the commencement day of the Bill.	
3	New Part	New part to cover the following:- 1. Provisions on conversion of land to title register at the expiry of 12 years; 2. Provisions on legal effect of such conversion including effect on unwritten equity; and 3. Provisions for transitional arrangements.	
4	Part 2, Cls.12, 13	Repeal	Replaced by ‘daylight conversion’ mechanism
5	Part 2, Cl. 14	Make any necessary amendments in connection with the new land.	

6	Part 11, Cl. 100	Review regulations to make power for implementation of daylight conversion mechanism.	
7	Schedule 2	<p>1. Make consequential amendments to LRO and regulations to provide:-</p> <p>(a) Provisions for caution against conversion such as its registration, removal, withdrawal and compensation; and its lapse if no court proceedings is to be commenced within 12 months; and</p> <p>(b) Provisions for caveat such as its registration, removal, withdrawal and compensation.</p> <p>2. Make consequential amendments to CPO.</p>	<p><u>Caution against conversion</u> may be registered in respect of any claims of title or beneficial interest in land during the 12 years interim period and any such subsisting caution will prevent the land from being converted into the new title registration system.</p> <p><u>Caveat</u> may be registered in respect of any claims of title or beneficial interest in land during the 12 years interim period. Unlike caution against conversion, such caveat will not prevent the land from being converted into the title registration system. Such caveat will be deemed to be and take effect as a non-consent caution upon conversion to title registration.</p>
8	Part 9, Cl. 81	Provisions to the effect that rectification will be given in favour of the innocent former owner if the change of ownership is procured by a forgery.	