

Bills Committee on Land Titles Bill

**Comparison of Deeds Registration
and
Title Registration**

Introduction

This paper provides:

- (a) a table comparing the main features of the current deeds registration system with those of the proposed title registration system; and
- (b) an outline of the proposed arrangements for parallel running of the two systems.

Comparison

2. A table setting out the features of the current deeds registration system and the title registration system proposed under the Land Titles Bill is at the Annex.

Parallel Running

3. While there will be two pieces of legislation governing land registration after enactment of the Land Titles Bill, we plan to have only one single administrative system to handle all registrations. Submission of deeds under the Land Registration Ordinance and applications for registration

under the Land Titles Ordinance will both be made to the same customer service centre of the Land Registry. Each set of documents will then be handled by the Land Registry as required by the ordinance under which it is submitted.

4. There will be a single computerized information system handling all properties irrespective of which ordinance they are registered under. The system will be set up to show clearly which ordinance each particular property is registered under and to provide the supporting information and documents required by that ordinance. The system will serve both the Land Registry and external customers. Internally it will guide Land Registry staff through the correct registration procedures applicable to the property. Externally it will give searchers up to date information on the status of each property.

5. Flow charts showing Land Registry procedures for handling deeds and title registration are contained in a separate paper entitled "Comparison of Procedures".

Housing, Planning and Lands Bureau

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**A comparison of
The Existing Land Deeds Registration System and
the Proposed Title Registration System**

1. Main Features		
	<u>Deeds Registration System</u>	<u>Title Registration System</u>
(a) Registration and its effect	<ul style="list-style-type: none"> – Registration as owner does not confer title. Title is derived from the deeds. 	<ul style="list-style-type: none"> – Registration as owner confers title to the land. The Title Register is conclusive evidence of title in law.
	<ul style="list-style-type: none"> – Registration governs priority only. A registered interest takes priority over others which are not registered or are registered at a later date. Some unregistered interests may be enforceable against subsequent owners. 	<ul style="list-style-type: none"> – Unregistered interests are unenforceable against subsequent purchasers who obtained the property for value.
(b) Title to property	<ul style="list-style-type: none"> – Title is derived from the deeds relating to the property. 	<ul style="list-style-type: none"> – Title is conferred by law and evidenced by the Title Register. The Title Register is the only conclusive evidence of title.
	<ul style="list-style-type: none"> – Title is not guaranteed by Government. 	<ul style="list-style-type: none"> – Title is guaranteed by Government. Indemnity is provided in cases of fraud or mistakes or omissions by the Land Registry which lead to loss, as specified in the legislation.

	<u>Deeds Registration System</u>	<u>Title Registration System</u>
(b) Title to property (Cont'd)	<ul style="list-style-type: none"> - There is no certainty of title. 	<ul style="list-style-type: none"> - There is certainty of title subject to only matters registered in the title register and to overriding interests specified in the legislation.
	<ul style="list-style-type: none"> - Title may be affected by unregistered claims. 	<ul style="list-style-type: none"> - Title will not be affected by unregistered claims.
	<ul style="list-style-type: none"> - Transfer of title to property in the New Territories (NT) is subject to customary rights under the NT Ordinance and the NT Land (Exemption) Ordinance. 	<ul style="list-style-type: none"> - No change. Such customary rights will become overriding interests as specified in the legislation.
(c) Protection for registered property owners	<ul style="list-style-type: none"> - Registered owner's title may be challenged. 	<ul style="list-style-type: none"> - Registered owner has title if he is a purchaser in good faith for value.
	<ul style="list-style-type: none"> - Former registered owner may be able to recover property from the registered owner if the property was transferred to the registered owner by a third party without the consent of the former registered owner in fraud cases. 	<ul style="list-style-type: none"> - Former registered owner can only recover the property from the registered owner who is a purchaser in good faith for value if the Court considers it just to restore the property to him. Otherwise, the former registered owner's financial loss is covered by the indemnity scheme.
	<ul style="list-style-type: none"> - Unregistered interest in the property may be enforceable. 	<ul style="list-style-type: none"> - Unregistered interest will not affect the title to property.

	<u>Deeds Registration System</u>	<u>Title Registration System</u>
(d) Protection for prospective property purchaser	<ul style="list-style-type: none"> - Purchaser may not be sure that he is dealing with the owner of the property. 	<ul style="list-style-type: none"> - Purchaser can easily ascertain from the Title Register the owner of the property.
	<ul style="list-style-type: none"> - Purchaser is expected to take into account unregistered claims or interests which he may be regarded to have notice or knowledge about. 	<ul style="list-style-type: none"> - Purchaser needs only take into account claims or interests entered on the Title Register or allowed under the ordinance.
	<ul style="list-style-type: none"> - A registered purchaser who has completed a purchase in good faith for value may be required to return the property to a person who successfully proves himself to be the former owner if that person has not done any act to contribute to the fraud. Even if the registered purchaser has not contributed to the fraud he may be left without compensation. 	<ul style="list-style-type: none"> - A purchaser in good faith for value in possession will have his title protected by law once he has registered himself as the owner on the Title Register. He cannot be required to return the property to the former owner unless the Court considers it just to do so and he will be compensated financially under the indemnity scheme.
(e) Indemnity for loss	<ul style="list-style-type: none"> - Full indemnity by Government under common law for loss due to negligence on the part of the Land Registry 	<ul style="list-style-type: none"> - Full indemnity by Government under statute for loss due to negligence on the part of the Land Registry.
	<ul style="list-style-type: none"> - Loss by reason of an entry in or omitted from the Land Register/land title records as a result of fraud is not covered by any indemnity scheme. Recovery of loss has to be by way of legal proceedings against the perpetrator of the fraud. 	<ul style="list-style-type: none"> - Indemnity is provided by Government as first line compensator for loss by reason of an entry in or omitted from the Title Register as a result of fraud. A cap on the indemnity in any one case may be provided, but any

	<u>Deeds Registration System</u>	<u>Title Registration System</u>
		shortfall is still recoverable by legal proceedings. Government will seek to recover losses from wrongdoers.
(f) Checking of titles	– Conveyancing solicitor has to scrutinize previous deeds for not less than 15 years relating to the property to ascertain title. Liability is not limited to deeds registered within the previous 15 years.	– Conveyancing solicitor needs to check Government lease, current Assignment, registered matters and overriding interests to ascertain title.
(g) Overriding Interest	– Purchaser is expected to take into account interests such as Chinese customary law, adverse possession or existing rights of ways etc. which he ought to have notice of.	– A list of important unregistered rights that can affect land are set out in law. This limits and clearly defines what overriding interests may be asserted over the property.
(h) Land Boundaries	– There is no avenue for lot owners to apply to the Director of Lands to have their lot boundaries determined and registered in the Land Registry.	– An avenue is provided for lot owners to apply to the Director of Lands to have their lot boundaries determined and registered in the Land Registry.
2. Effects of the new system		
(a) Certainty of Title	– No certainty of title.	– Certainty of title. The title register will be the conclusive evidence of title and members of public can be certain that the registered owner is the owner recognized in law.

	<u>Deeds Registration System</u>	<u>Title Registration System</u>
(b) Simplified conveyancing procedures	– Title checking of deeds is complex and leads to many requisitions.	– It will no longer be necessary to review the old title deeds as title can easily be established.
(c) Indemnity	– No indemnity will be payable by Government in fraud cases. Government is liable for losses due to errors or omissions by Land Registry staff only.	– An indemnity will be payable to compensate an innocent person who suffers loss of ownership by way of a fraudulent entry on the title register or loss due to mistake by the Land Registry staff.
(d) Unregistered interests	– Purchasers may be subject to unregistered interests.	– Purchasers acquiring properties for value and registered under the title registration system will not be affected by unregistered interests.
(e) Completeness of registers	– An owner registered on the deed register is still subject to unregistered interests.	– An owner acquiring property for value and registered on the Title Register will not be subject to unregistered interests. The title register is more complete and accurate.
(f) Compatibility with expectations of modern society	– Deed registration has been or is being replaced by title registration in most common law jurisdictions.	– Title Registration is in line with the best land registration practices, including the application of information technology, in most law jurisdictions .