

**Bills Committee on Land Titles Bill**

**Application of Land Titles Bill**

**Purpose**

This paper outlines what the Land Titles Bill will apply to and what may be registered, i.e., the substance of Clauses 3 and 4 of the Bill.

**Land interests covered**

2. The Bill applies to all land held under a Government lease.
3. “Land” includes land covered by water and fixtures. More specifically, the following interests in land are included -
  - (a) the legal estate or equitable interest in the land;
  - (b) the legal estate or equitable interest in the undivided shares;
  - (c) the interest in a registered long term lease; and
  - (d) an undivided share in the land.

The *legal estate* is the interest in the land held by a Government lessee under a Government lease or an agreement for a Government lease in respect of which a Government lease is deemed to have been issued under Section 14 of the Conveyancing and Property Ordinance (Cap.219).

The *equitable interest* is the interest in the land held by a Government lessee under an agreement for a Government lease in respect of which any condition precedent has not been complied with or has not been deemed to have been complied with under Section 14 of the Conveyancing and Property Ordinance (Cap.219).

“*Undivided shares*” is the type of land ownership in multi-storey building where the interest in the land is held by all owners of units in the building. Land in a multi-storey building is held by all the owners as tenants in common. The number of undivided shares held by each owner are provided for in a deed of mutual covenant.

“*Government Lease*” is a lease of land granted by or on behalf of the Government (as defined in the Interpretation and General Clauses Ordinance (Cap. 1)), and includes an instrument of extension of the term of the lease, an instrument for variation of the lease, an agreement for a lease and a Crown lease.

4. The Bill also applies to long term leases. These are a particular type of lease that may be granted by an owner of registered land to a third party for a period of at least 21 years. Specific provision is made for these leases since they are an occasional feature of conveyancing practice in Hong Kong.

5. The Bill does not apply to Government land or land in respect of which a Government licence has been granted. Government does not need to vest land in itself.

### **Interface with other Ordinances**

6. The Bill also deals with particular instances where land is vested in a person under another Ordinance or where special provisions are made under another Ordinance that affect the validity of transfers. An example of the former is the vesting of land by the Kowloon-Canton Railway Corporation Ordinance (Cap.372). Under this, the vesting of land takes effect upon the Director of Lands depositing in the Land Registry a plan signed by him showing the interests in respect of land being vested. An example of the latter is the requirement under the Housing Ordinance (Cap. 283) to obtain the prior consent of the Housing Authority to any alienation of flats under the Home Ownership Scheme.

7. The Bill provides that if there is any conflict or inconsistency between the provisions of the Bill and those of other Ordinances, the provisions of those other Ordinances will prevail. This ensures that the legislative intent of those particular Ordinances will not be overridden by the general provisions of the Bill.

8. Under the existing conveyancing system, interest in land or property is created or transferred by the conveyancing instrument. Under the proposed title

registration system, it is the registration of the instrument, not the instrument itself, that effects the transfer of the interest. There are other existing enactments governing the formalities of conveyancing documents e.g. the Conveyancing and Property Ordinance (Cap. 219). Section 4 of that Ordinance requires that a legal estate in land may be created, extinguished or disposed of only by deed. After enactment of the Bill, such legal estate can only be created or extinguished by registration of the instrument. To prevent any question as to the validity of instruments required by other Ordinances, the Bill (Clause 3(4)) makes it clear that they will not be rendered void or voidable on the ground that they do not themselves create, extinguish, transfer, vary or affect the interest. It specifies that the instruments required under other Ordinances must accompany any application for registration.

### **Registrable matters**

9. Under the Bill, the following matters can be registered -
- (a) *a matter expressly stated to be registrable under the Bill or in any other Ordinance.* The former includes transfers, charging orders, charges, discharges, leases, easements, covenants and deeds of mutual covenant. An example of a provision in another Ordinance requiring instruments to be registered in the Land Registry is a certificate of compliance under Section 14(3) of the Conveyancing and Property Ordinance (Cap. 219).
  - (b) *a matter that is a dealing in a piece of registered land, a registered charge or a registered long term lease.* A dealing may be a disposition by the owner himself, e.g., his effecting a transfer or a charge. It may also be a transmission of the title from one person to another person by operation of law. Examples are devolution of property on death of the owner, bankruptcy or orders of the Court;
  - (c) *an order affecting registered land, registered charge or a registered long term lease issued or made for the purpose of enforcing a judgment;* This would be a Court order issued for the purpose of implementing the decisions in the judgments. An example will be a declaration on the rights in the land.