

**Bills Committee on  
Land Titles Bill**

**The Conversion Mechanism**

**Introduction**

This paper considers:

- (a) the guiding principles in devising the proposed mechanism for conversion from deeds to title registration;
- (b) the proposed conversion arrangements ; and
- (c) the effect of the conversion mechanism.

**Guiding Principles**

2. In devising the mechanism for conversion of properties from deeds registration to title registration, the Administration has been guided by the following four main considerations:-

- (a) that, in light of past objections to compulsory conversion, conversion should be triggered by acts of owners and purchasers, not imposed by acts of Government;
- (b) that conversion should not be purely voluntary but should also be required in specified circumstances for a substantial number of properties to be brought onto the title register regularly, so that the benefits of title registration can be extended steadily;
- (c) that the mechanism should be straightforward and cost effective for the public; and
- (d) that the mechanism should be simple and straightforward for solicitors and the Land Registry to administer.

3. We have sought to balance 2 (a) and 2 (b) by removing any provision for Government to compel the conversion of any group of properties while requiring purchasers to make an application for transfer when a transaction takes place after implementation of the new legislation. It is the choice of the vendor to sell and the purchaser to buy that triggers a conversion application, not an action by the Land Registry. Also, all new properties created by new Government leases after commencement of the operation of the Bill, if enacted, will be registered under the title registration system, and any owner of existing properties will be allowed to apply for voluntary conversion at any time after implementation.

4. To keep the system simple and efficient we have not created a new mechanism for the scrutiny of title. We are proposing that the same solicitors who check title for their clients should also advise the Land Registry whether a property can be accepted for registration under the title registration system. This would be done by means of a certificate of good title. An applicant would therefore only have to pay for one single process of examination of title.

5. The solicitor signing the certificate of good title will certify that he has examined the title deeds produced by the vendor in accordance with the statutory duty under section 13(1) of the Conveyancing and Property Ordinance and found that the vendor has a good title to the property.

6. Under the existing conveyancing system in Hong Kong, subject to any express agreement to the contrary, the vendor has a statutory duty to prove or show a title extending back at least 15 years from the date of the present contract of sale by producing the relevant title deeds stipulated in section 13(1) of the Conveyancing and Property Ordinance. However, the vendor's duty to show title extends to answering satisfactorily reasonably raised requisitions which extend even to pre-intermediate root title defects, that is, documents existing prior to the 15-year period.

7. In the sale and purchase agreements, the vendor is usually under contractual obligation to prove good title to the property unless there is a special term precluding any objections by the purchaser to a particular defect. A good title is such title as will enable the purchaser to hold the property against any challenger.

### **The Conversion Mechanism**

8. Clause 12 of the Bill sets out the three routes through which a property can be converted from the deeds registration to the title registration system.

#### ***Application on first sale***

9. The first route is by an application for registration from the purchaser upon the first sale of the property after implementation of the title registration system. This will be mandatory. The vendor will be required to disclose all overriding interests of which he has or ought reasonably to have knowledge. The purchaser's solicitor will have to examine the title to the property. Since the need to examine the title is the same, we expect that the searches that the solicitor will have to carry out during this examination will be no different from those required at present in order for the solicitor to be able to advise his client as to the state of title.

10. Where the solicitor finds that the vendor has good title, he will be required to issue a certificate of good title that will accompany the application for registration of the transfer, together with the notice of overriding interests. If all is in order the Land Registry will approve the application and bring the property onto the title register.

11. If the solicitor decides that he cannot issue a certificate of good title, he will notify the Land Registry of this. The assignment will be delivered for registration under the Land Registration Ordinance together with a solicitor's certificate to the effect that he has examined and found that the owner does not have good title to the property.

***Application on issue of new Government Lease***

12. The second route is that the Government lessee must apply for registration of his title on issue of a new Government lease after introduction of the title registration system. No certificate of good title is required. A new title register will simply be opened for the new lease.

***Voluntary Application***

13. The third route is for an owner to make a voluntary application for transfer. This may be done at any time after implementation of the Bill. Any such voluntary applications must be accompanied by a certificate of good title, issued by a solicitor after examination of the owner's title to the property.

***Land Registry action on applications***

14. The Land Registrar will scrutinize the application for first registration to ensure that:-

- (a) the particulars in the application for first registration are accurate;
- (b) the certificate of good title issued by the solicitor, if applicable, accompanying the application for first registration is in order;
- (c) there are no outstanding instruments withheld from registration under the Land Registration Ordinance in respect of the land to which the application for first registration relates;
- (d) any provisions of the Ordinance and of any regulations made thereunder, and any other Ordinance applicable to the application for first registration have been complied with; and
- (e) the prescribed fees have been paid.

15. If the application for first registration is in order, the Land Registrar will register the land by opening an ownership register. All the entries of subsisting legal effect on the land register kept under the Land Registration Ordinance will be transferred over and entered on the new title register.

### ***Special features of Registration in Hong Kong***

16. Landholding in Hong Kong is almost entirely in the form of leasehold interests, that is, parcels of land held under Government leases, or co-owners holding undivided shares in the land with exclusive right to use a flat. The definition of 'owner' of registered land in Clause 2 and the effect on first registration have reflected and taken into full account this pattern of landholding.

17. Upon registration the person entered as owner or lessee in the register holds the property free of any interests except those specifically allowed in the Ordinance.

18. The interests which the Ordinance allows are :-

- (a) the terms and conditions in the Government lease;
- (b) any registered matter affecting the land;
- (c) any overriding interest affecting the land; and
- (d) in the case of an assignment not for value or a voluntary application, any unregistered interests affecting the land existing immediately before the date of the first registration.

### **The Effect of the Mechanism**

19. In 2002 there were 122,714 registrations of assignment, involving about 5% of the total stock of registered property. If this level of transactions were to be maintained, and if there were no application for voluntary conversion, this would be the rate at which properties might come onto the title register in the early years of implementation. Over time the rate of conversion would be expected to fall as there were repeat transactions in properties already brought under the title register.

20. There may be significant demand for voluntary conversion in the early years given the certainty of title that the new system will bring about. Other factors such as the prevailing conditions of the property market may also affect the rate of voluntary conversion.

21. The success of an application will depend on whether there are any defects in title, the nature of defects if they exist and the view taken of those defects. The Administration expects the Law Society to make a detailed submission on the issues raised by particular defects in title and the question of a solicitor's liability. We will deal substantively with these points when that submission is received. It is our general position that the measures being taken to address the problems of missing Government leases, stopped deeds and defective company execution will remove some of the major obstacles to conversion. As for liability, the due diligence of a solicitor in checking title is a key aspect of the conveyancing system.

22. Concern has been raised that one effect of continuing to operate a deeds register along with the title register might be a negative impact on property remaining on the deeds register. As has been noted above, however, when no sale has taken place a property may remain on the deeds register simply through the choice of the owner. The deeds register itself will not, therefore, be an indicator of problems with title on a particular property.

23. For properties that cannot immediately convert to the new system because of title defects, the existence of these defects predates the title registration system. These defects already have an effect on the value of the properties in question. Some defects prevent properties from being sold. Others mean that purchasers are only prepared to offer lower prices.

24. On the other hand, it is expected that the benefits of certainty and ease of transactions under the new system will create incentive for owners to resolve technical defects in title so that their properties can be brought under title registration.

25. The title registration system is a land registration system, and should not be looked to for solving title defects as such. Nonetheless, once a property is under the title register, many existing defects in title that can arise will no longer have effect. This will help avoid the problem that arises under the present system of more and more properties being affected by defects over time without any effective means to clear them up.

### **Curative effect of the conversion**

26. First Registration has the following curative effects:

*(a) Mistakes in the existing register*

The Land Registry will examine all the current entries on the land register kept under the Land Registration Ordinance and exercise care in entering them on the new Title Register. Any mistakes on the existing register should be rectified in the Title Register. In addition, the Land Registrar is empowered under the Bill to make subsequent rectification in the Title Register for these mistakes in case of non-material errors or omissions or with the consents of all interested persons in any other case.

(b) *Equities and unregistered interests*

They are unenforceable against the land if the assignment is for value. They are only enforceable against land if the assignment is not for value or in the case of voluntary application. These equities or unregistered interests will not be enforceable against the land after the sale of the land to a purchaser for value after the date of first registration.

(c) *Overriding Interest*

The vendor – or the owner in a case of voluntary application – is required to give notice of all known overriding interests. This will be recorded in the title register for future reference. The type of overriding interests that can be allowed to affect a property in future is defined and limited by Clause 24 of the Bill.