

10 April 2003

Clerk to Bills Committee
(Attn : Miss Salumi Chan)
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Chan,

Land Titles Bill

I understand that the Land Titles Bill (the Bill) was introduced into the Legislative Council for consideration in December 2002 and a Bills Committee has been set up to examine the Bill. The Bills Committee is now inviting views from members of the public on the Bill.

In my capacity as Chairman of the Land and Building Advisory Committee, I had the opportunity of being briefed on the main proposals of the Land Title Registration System. Now that the Bill has been introduced into the Legislative Council, I would like to offer my comments on the Bill, in my personal capacity, as set out below.

Conversion Arrangements

I note that the Government now proposes a gradual conversion arrangement. Under the existing deeds registration system, there are a lot of hidden rights and documents that are not well defined or protected, for instance, properties held in trust. I agree that the rights of these owners may be revoked, if automatic conversion is adopted. Hence I agree that a gradual conversion approach should be preferable.

Certainty of Title

In principle, I support the indefeasibility of the title of the purchaser. I am inclined towards the idea of giving the Court jurisdiction to rectify the title register when fraud occurs. The Court could balance the conflicting interests between the vendor and the purchaser and make an equitable decision.

Indemnity Provisions

I welcome the proposal of setting up a self-financing indemnity fund to back up the title guarantee under the new system. This should be an improvement over existing arrangements. At present, a dispossessed party has no assurance at all of recovering any loss. In future, the situation will be much improved.

Overriding Interests

From the point of view of the purchaser, he would need to know all encumbrances and interests affecting the property he wishes to purchase. If such overriding interests are not registered, the title of the purchaser may be subject to challenge. At the same time, I understand that some overriding interests could simply not be registered, and the Bill has already defined and limited overriding interests. The Government should continue to examine how other jurisdictions deal with these issues and try to eliminate the uncertainty arising from unregistered overriding interests as far as possible.

Land Boundaries

Under the proposed system the Government should handle with care land lots where the boundaries are not clearly defined, particularly those land lots in the New Territories. However, in the Hong Kong context, the number of high-rise residential properties that do not have much problem with land boundaries must outnumber those that do.

I hope you will find my comments useful in the examination of the Bill. I do not intend to make any oral presentation to the Bills Committee at the meeting on 12 May 2003.

Yours sincerely,

Yeung Yue-man
Director, HK Institute of Asia-Pacific Studies,
The Chinese University of Hong Kong