

**BILLS COMMITTEE ON
LAND TITLES BILL**

**EFFECT AND BENEFITS OF
TITLE REGISTRATION**

Purpose

This paper examines the effect of registration of property and benefits of title registration envisioned by the Land Titles Bill.

Background

2. As described in paper CB(1)1464/02-03(04) (Conversion Mechanism), under the Land Titles Bill, a property can be converted to the title registration system upon an application on first sale, upon issue of a new Government lease, or upon voluntary application by the owner. The Bill sets out the effects of first registration on ownership (Clause 14), and the effect of registration of subsequent transfers or transmissions (Clause 21) or registration of long term lease (Clause 22).

Effect of first registration of land

3. Where the application for first registration of land is approved by the Land Registry, a Title Register in respect of the land will be opened.

4. The first registered owner will in every case be subject to –

- (a) any terms and conditions of the Government lease;
- (b) any registered matter affecting the land; and
- (c) any overriding interest affecting the land specifically allowed under the Land Titles Bill, as enacted.

5. Where the assignment leading to the first registration has not been for value, or where there is a voluntary application by the owner for first registration, the registered owner will also remain subject to any unregistered interests that affected the land immediately before the date of first registration. These unregistered interests cease to have effect once the property is transferred for valuable consideration.

6. Except in the case where a transfer has been made without valuable consideration (please see paragraph 15 below), the registered owner will hold the land or the undivided share free from all other interests and claims. In effect, no person having any claims under previous title defects can recover the land or claim against a first registered owner who has acquired the property for value.

Effect of registration of subsequent transfer or transmission

7. After a Title Register has been opened, when a subsequent transfer or transmission is registered, the property is vested in the person registered as the owner.

8. A transfer is a disposition by the owner of his interest in the land to another person. Usually this will be upon a sale. A transmission is the passing of title from one person to another person by operation of law. Examples of this are devolution of property on the death of the owner or upon bankruptcy.

9. The registered owner will be subject to –

- (a) any terms and conditions in the Government lease;
- (b) any registered matter affecting the land; and
- (c) any overriding interest affecting the land specifically allowed under the Land Titles Bill, as enacted.

10. Except in the case where a transfer has been made without valuable consideration – circumstances dealt with in paragraph 15 below - a registered owner will hold his interest free from all other interests and claims.

Effect of registration of long term lease

11. A long term lease is a lease granted on or after the date of first registration by the owner of registered land. The lease must give the right to exclusive

possession of the land for a term of not less than 21 years and be given not at open market rent but for a lump sum consideration paid in advance.

12. Upon registration of a person as the lessee of a long term lease, he will be vested with –

- (a) the interest in the lease (that is, the right to use the property during the term of the lease); and
- (b) all rights attaching to the land which may be exercised by virtue of that interest.

He holds this interest and can exercise these rights free from all other interests and claims.

13. The lessee of the long term lease will always be subject to –

- (a) any terms or conditions in the Government lease;
- (b) any registered matter affecting the land; and
- (c) any overriding interest affecting the land specifically allowed under the Land Titles Bill, as enacted.

14. In the case of a long term lease that was granted before the date of first registration, any unregistered interest affecting the land existing immediately before the date of registration of that lease will continue to affect the property.

Transfer Not for Value

15. A person who has acquired the land or long term lease by transfer without value will be subject to –

- (a) the provisions of the Bankruptcy Ordinance (the trustee in bankruptcy may apply to the Court to set aside the transfer if it is an unfair preference given by a bankrupt to the transferee);
- (b) part V of the Companies Ordinance (a fraudulent preference by a company made within the six-month period prior to winding-up will be invalid);
- (c) Section 33(9) of the Buildings Ordinance (the first charge in favour of the Building Authority for the recovery of the costs of building works carried out by the Authority); and
- (d) any unregistered interests subject to which the transferor held the land.

Benefits of title registration

16. The primary advantage of a system of registered title is that the Register has an authoritative role – one that is nearly conclusive – in the system of conveyancing. The only significant exceptions to the “finality” of the Register are overriding interests and the provisions for rectification. Notwithstanding these exceptions, the purchaser no longer has to investigate numerous previous transactions to find out the nature of the title being offered and can assume that the documents registered in support of the current title are valid and effective. This should lead to fewer disputes as to whether title has been established and less actions for breach of contract.

17. In addition, each act of registration has a curative effect. Once a property has been brought onto the title register it will be safeguarded against the defects that can accumulate against the chain of title under the existing system. This is illustrated in the annexed table. Please note that this table deals with the effect of registration after a property has been brought onto the Title Register. As set out in the paper entitled “Certificate of Good Title”, some existing defects may affect consideration of whether a property can be converted to the new system.

18. The possibility of fraudulent dealings off the Register is also reduced since title deeds do not exist and it is the Register alone that proves title.

19. The combined effect of these benefits is that dealings in land should be able to proceed more simply, swiftly and safely.

ANNEX

<i>Issue</i>	<i>Treatment under Deeds registration</i>	<i>Treatment under Title Registration</i>
<p><u>Defective execution of important title documents</u> The most common example is where execution by a company in an assignment was attested by one director only whereas the company's articles of association provide for attestation by two directors.</p>	<p>This is a defect that, once it has emerged, remains in the chain of title. A potential purchaser has to make a judgement whether or not to accept a title that has such a defect.</p>	<p>The problem will not arise. Once a transaction has been registered no defect in the execution can affect the title. No subsequent purchaser needs to worry about them.</p>
<p><u>Unwritten equities in favour of a third party</u> For example, a person who provides the purchase money for the owner has a resulting trust in the property.</p>	<p>The title is defective. A subsequent purchaser can find his title being affected by the claim even though it is not registered.</p>	<p>No unwritten, unregistered equities can be enforced against a purchaser for value. If first registration has been made after voluntary application or is a transfer without being for value, prior unregistered interests remain enforceable until there is a transfer for value.</p>
<p><u>Defective power of Attorney</u> The holder of a power of attorney has not been clearly authorized to execute title deeds.</p>	<p>The title is defective. A subsequent purchaser has to consider whether to accept a property with such a defect.</p>	<p>The problem will not arise. Once the property has been registered, any possible previous defect in power of attorney can no longer affect the title.</p>

<i>Issue</i>	<i>Treatment under Deeds registration</i>	<i>Treatment under Title Registration</i>
<p><u>Stopped Deeds</u></p> <p>These are instruments that have been withheld from registration under the LRO but have not been withdrawn or rectified by the originating parties</p>	<p>These are defects on the title. Any subsequent purchaser will have to consider whether or not to accept the property in the face of the uncertainty raised by these deeds.</p>	<p>Stopped deeds will not exist. Any application for registration that is not rectified following requisitions by the Land Registry within a specified time will be removed.</p>
<p><u>Undischarged mortgages</u></p> <p>The concern is with old mortgages for which there is no record of discharge and uncertainty as to whether they have continued effect.</p>	<p>The property remains subject to the undischarged mortgage. There is case law where Courts have made declarations that old mortgages are no longer capable of having effect.</p>	<p>As well as the Courts having power to make a removal order, the Registrar will be able to remove registration of an old mortgage if he is satisfied that all monies have been paid.</p>
<p><u>Discrepancies in signature and identification documents</u></p> <p>The concern is with documents registered prior to the transaction in hand. If discrepancies are found in the current documentation they must be resolved before registration.</p>	<p>Any such discrepancies in documents remain as defects on title. A purchaser has to consider whether to accept the property when such uncertainties exist.</p>	<p>The problem will not arise. Once an owner has been registered, discrepancies in prior documents can have no effect on title.</p>
<p><u>Ambiguity in wording of a will</u></p>	<p>Ambiguity as to whether an executor has power to sell the property may affect the validity of the deeds. Any subsequent purchaser has to consider whether or not to take the property subject to such uncertainty.</p>	<p>The problem will not arise. Once an owner has been registered, any such ambiguity has no further effect.</p>

