

**BILLS COMMITTEE ON
LANDS TITLES BILL**

RECTIFICATION AND APPEAL

Purpose

This paper sets out the procedures and operation of the rectification and appeal mechanisms under the Land Titles Bill.

Background

2. Under our proposal, the Land Registry will maintain Title Registers of all registered land and registered long term leases. These registers will be conclusive evidence of the titles.
3. The Registrar and the Court of First Instance are empowered under the Bill to rectify the Title Register in specified circumstances.
4. Appeals against the Registrar's decisions may be made to the Court of First Instance under the Bill.

Rectification by the Registrar

5. The Registrar is authorized to rectify any error in or omission from the Title Register –
 - (a) if the errors or omissions do not materially affect the interest of the registered owner or lessee. Examples of this would be where there are obvious typing errors or mistakes in the names of parties or descriptions of the instruments; or
 - (b) in any other case with the consent of all interested persons. This would allow material errors, such as mistakes in the number of undivided shares held by co-owners or in the description of the property, to be rectified.

6. Upon application, the Registrar may also record a change of a person's name if that person's former name has been used in an entry in the Title Register.

Rectification by the Court of First Instance

7. The Court of First Instance may rectify the Title Register by directing that an entry in or omission from the Title Register be removed, amended or entered if the entry has been made or omitted: -

- (a) by the fraud, mistake or omission of any person; or
- (b) by means of a void or voidable instrument.

The Court of First Instance may order rectification in respect of an entry made or omitted before, on or after the date of first registration of the registered land.

8. As regards para. 7(a), frauds may arise through forging or altering title documents or through misrepresentation. The term "fraud" is not exhaustively defined in the Bill but is defined to include dishonesty and forgery. The Administration considers that the full meaning of "fraud" should be determined according to case law. In this connection, it would be useful to note that the term "fraud" is also not defined in the English or New South Wales systems. Similarly, the terms "mistake" and "omission" are not defined in the Bill.

9. As regards para. 7(b), the Court of First Instance may order rectification if an entry in or omission from the Title Register is made or omitted by means of a void or voidable instrument. An instrument will be void if the assignment it makes is illegal. An example of this would be if the owner of an HOS flat sells or assigns the flat to another person without the required consent of the Housing Authority. A voidable instrument is one that has been signed under duress or undue influence.

10. The Court's power to order rectification is constrained where the registered owner or lessee is in possession of the land – which means being in actual occupation, in receipt of rents or having the right to receive rents - and has acquired his interest for value. As a general rule, the register cannot be rectified so that such an owner or lessee loses his interest in the land. This will be the case unless it can be shown that, prior to the transaction he had knowledge that there was a fraud, mistake, omission or a void or voidable instrument, or that he had caused or contributed to such fraud, mistake, omission, voidness or voidability.

11. However, in the case of fraud, an innocent former registered owner or registered lessee can still apply to the Court of First Instance for rectification. This will be allowed even if the new registered owner or lessee is also not a party to the fraud, had no knowledge of the fraud or did not contribute to it by any act, neglect or default.

12. In the situation where there are two innocent parties who both had no knowledge of the fraud and have not caused or contributed to the fraud, the Court has discretion to decide whether to make a rectification order. If the Court, having considered the circumstances of the case, is satisfied that it would be unjust not to rectify the Title Register against the present registered owner or lessee, it can order rectification to restore the title to the former innocent owner or lessee. While specifically mentioning the acts of the parties and the issue of hardship as matters for consideration, the Bill does not limit the factors that the Court may consider in reaching its conclusions. In order to strike a fair balance between certainty of title and justice in the circumstances of each case, the Administration considers that the Court should be given the discretion to consider any factors in the particular case before making its decision.

13. If the Court orders rectification in favour of the former registered owner or lessee, the more recently registered owner or lessee will lose the property but may then claim from the indemnity fund to recover his loss. If no rectification is ordered, it is the former owner or lessee who may claim from the indemnity fund.

Appeal procedures

14. Under the Land Titles Bill, the Land Registrar has power to make a variety of decisions – to accept or reject applications for registration; to amend or remove entries from the register; to accept or reject applications for indemnity. Specific procedures are laid down for appeals to the Court of First Instance in cases relating to indemnity. On an application for indemnity claim, the Registrar can determine whether there is a right of indemnity and make an offer of indemnity to the claimant. He can refuse the claim if there is no right of indemnity. If the Registrar refuses the claim or the claimant rejects the Registrar's offer, the claimant can apply to the Court of First Instance for determining whether there is a right of indemnity and the amount of indemnity. In all other cases:

- (a) the appeal should be lodged within 30 days of the decision that is appealed against – though the Registrar or the Court may allow for an extension of time;

- (b) the Registrar will have to prepare a brief statement of the question at issue and send this to the Court, the appellant and any other affected person;
- (c) after any hearing, the Court can make any order that it thinks is appropriate but is barred from affecting any disposition that has been made in good faith and for value and was registered before the registration of any notice of appeal; and
- (d) the Registrar is required to give effect to the Court order.

Housing, Planning and Lands Bureau
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