

**BILLS COMMITTEE ON
LAND TITLES BILL**

INDEMNITY

Purpose

This paper provides supplementary information for the Bills Committee on indemnity (LC Paper No.CB(1)1664/02-03(01)) as requested by Members at the 6th meeting held on 22 May 2003.

Background

2. The Land Titles Bill provides that indemnity may be claimed under two circumstances -

- (a) loss caused by an entry in or omission from the Title Register as a result of mistakes or omissions on the part of the Land Registrar or public officers assisting the Land Registrar (Clause 82(1)(b)); and
- (b) loss of ownership caused by an entry in or omission from the Title Register as a result of fraud (Clause 82(1)(a)).

Circumstances under which losses will be compensated by the Indemnity Fund

3. As regards paragraph 2(a), a claimant may be entitled to indemnity if an entry has been obtained or omitted from the Title Register as a result of any mistake or omission of the Land Registrar or his officers.

4. The following are examples of a “mistake” of the Land Registrar or his officers -

- (a) erroneous inclusion of land that does not form part of the property (such as a carpark) in the property description on the Title Register;

- (b) entry of an instrument in the wrong Title Register e.g. a transfer of Flat A on 13th Floor is entered in the register of Flat A on 30th Floor; and
- (c) wrong entry of an instrument in a Title Register e.g. the registration of a second assignment in respect of the same undivided share which has already been assigned by the vendor to the purchaser in a previously registered assignment.

5. The following are examples of an “omission” of the Land Registrar or his officers -

- (a) failure to enter an instrument that should be entered in the Title Register e.g. omission to enter a mortgage; and
- (b) omission of some land forming part of the property in the property description on the Title Register e.g. a flat is assigned with the roof and the roof is omitted in the property description.

6. As regards paragraph 2(b), a claimant may be entitled to indemnity if an entry has been obtained or omitted from the Title Register as a result of fraud.

7. The following are examples of fraud -

- (a) forged transfer made by a fraudster forging the signature of the registered owner to assign the property to a purchaser; and
- (b) transfer made by one joint tenant forging the signature of another joint tenant assigning the property to a purchaser.

Circumstances under which the cap on the indemnity will apply

8. The amount of indemnity payable is set out in Cl.83(1) of the Bill as follows -

- (a) in the case of an entry obtained or omitted as a result of fraud by any person (including a member of the Land Registry staff), the value of the interest in the land before the date of the Court order on rectification or the upper limit which is determined by the Financial Secretary (Clause 83(1)(a)). The present proposed cap is HK\$30 million for each case; and
- (b) in the case of an entry obtained or omitted as a result of any mistake or omission of Land Registry staff, the value of the interest in the land immediately before the discovery of the mistake or omission concerned or, if there is a Court order on rectification, the date of the Court order (Clause 83(1)(b)).

9. An example in respect of paragraph 8(a) is as follows.

A is the registered owner of land. B forges A's signature and transfers the land to C who purchases it for value in good faith and enters into possession.

- If the Court does not rectify the Title Register in favour of A, A is entitled to an indemnity of his interest in the land up to the upper limit. In addition, if his interest is worth more than the upper limit, he can seek to recover the excess amount from the wrongdoer (Clause 86(2)).
- If the Court rectifies the Title Register and restores the land to A, B is entitled to an indemnity of his interest in land up to the upper limit. He can also seek to recover any excess amount from the wrongdoer if his interest is worth more than the upper limit (Clause 86(2)).

10. An example of paragraph 8(b) is as follows.

A charge is submitted for registration but Land Registry staff omit to enter it in the Title Register. The property is then sold free of the charge. The chargee is entitled to claim the amount of his loan from the Indemnity Fund.

Financing of the Indemnity Fund

11. The Indemnity Fund will be operated as a separate account and its operation will be governed by regulations to be made under the Bill. Our intention is that the Indemnity Fund should be self-financing. The main sources of finance for the Fund will be -

- (a) levy on registration;
- (b) money recovered from wrongdoers who have contributed to losses by their fraud or negligence and indemnity has been paid in respect of the losses;
- (c) payments from the Land Registry Trading Fund in case of losses caused by mistakes or omissions by Land Registry staff; and
- (d) interests from money in the Indemnity Fund.

Subject to the Finance Committee's approval, the Government intends to make available a stand-by loan to be drawn on if there are substantial claims before the Fund has established reserves of its own to draw on.

Financial burden on the Government under the proposed indemnity scheme

12. Heung Yee Kuk has expressed concerns about the feasibility of the proposed indemnity scheme in its submission dated 21 May 2003. The Administration appreciates this concern. The proposals for the indemnity scheme have indeed been drawn up with a view to managing this risk. Establishing a separate self-financing fund, supported by a levy on registered assignments and with powers to recover monies from parties who have caused payments to be made, and the proposed cap on payments in fraud cases would limit the risks. Furthermore, the whole system of checks embodied in the conveyancing and registration system provides a high level of safeguard against claims arising against the indemnity scheme. While an indemnity scheme may not be essential to the operation of a title registration system, its existence provides an ***additional*** safeguard and will increase overall public confidence in the registration system.

13. The Heung Yee Kuk has asked for past statistics on the amount of indemnity payable in cases involving circumstances under which indemnity would have to be paid under the proposed title registration system. At present, no indemnity scheme is in operation, and accordingly the Land Registry does not have such information. In any case, past data are not necessarily a good basis of future projections given that a new land registration system will be put in place. We are currently examining the assumptions about the level of income reasonably required to sustain a self-financing indemnity fund after implementation of title registration on a long term basis, and will brief Members on the findings in due course.

Way Forward

14. We will further address the points raised by the Heung Yee Kuk and others when making our detailed response to submissions to the Bills Committee on the subject of indemnity.

*Housing, Planning and Lands Bureau
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