

**BILLS COMMITTEE ON  
LAND TITLES BILL**

**The Conversion Mechanism  
Supplementary Information**

**Purpose**

This paper provides supplementary information to the paper on the conversion mechanism (LC Paper No.CB(1) 1464/02-03(04)) as requested by the Bills Committee at the 3<sup>rd</sup> and 4<sup>th</sup> meetings held on 23 April 2003 and 5 May 2003.

**Equities and unregistered interests**

2. The legal effect of equities and unregistered interests was stated in paragraph 26(b) of the paper on the conversion mechanism. Members requested the Administration to elaborate on the conversion proposals and demonstrate how different cases would be handled under the proposals, including the case of Wong Chim-ying v Cheng Kam-wing, and advise on the impact of the proposals on existing common law practice.

3. Under the existing law, a bona fide purchaser for value of the legal estate in land without notice will take free of any equities and unregistered interests in the land.

4. The following are examples of unregistered equitable interests -

- (a) equitable mortgages by deposit of title deeds;
- (b) equitable interests created by contribution to purchase price; and
- (c) equitable interests created by way of a resulting trust in nominations, where a previous purchaser has provided the purchase price, but nominated another person to take up the assignment.

5. The case of Wong Chim Ying v Cheng Kam Wing (Civil Appeal No.75 of 1990) is an illustration of the legal status of the equitable interests created by contribution to purchase price. A summary of the case is as follows,

(a) Facts

Cheng Kam Wing, the husband, contributed to the purchase price of the matrimonial home. However, the flat was purchased in the name of his wife. The wife sold the flat to Wong Chim Ying without the husband's knowledge. The wife absconded 2 days after execution of the assignment and Wong Chim Ying applied for possession of the flat.

(b) Decision

It was decided that -

- (a) Cheng Kam Wing had an equitable interest in the property as he had paid the purchase price;
- (b) on inspection of the flat, Wong Chim Ying's daughter was aware that the husband was sharing occupation of the flat with the wife but no inquiry was made of the husband's interests. Accordingly, Wong Chim Ying was fixed with constructive notice of the husband's rights in the flat; and
- (c) the flat was held by the purchaser, Wong Chim Ying on trust for the husband, Cheng Kam Wing and Wong Chim Ying was required to transfer the flat to Cheng Kam Wing.

6. The position under the Land Titles Bill would be as follows.

- (a) If the first registration of land is made upon a first assignment for value, any unregistered equitable interests will not be enforceable against the land. The husband in a case involving circumstances similar to the Wong Chim Ying case would not be able to claim any interest in the land. Equitable mortgages and equitable interests created under nominations will also not be enforceable against the land.

- (b) If the first registration of land is made upon a first assignment not for value or upon the owner's voluntary application, the unregistered equitable interests will continue to be enforceable against the land. However, these equitable interests will cease to be enforceable against the land after the sale of the land to a purchaser for value.

Accordingly, the husband in a case involving circumstances similar to the Wong Chim Ying case can enforce his interest if first registration of land is made upon an assignment not for value or on the owner's voluntary application. However, his interest will not be enforceable after the property is sold to a purchaser for value. The same principle applies to equitable mortgage and equitable interests created under nominations.

### **Compulsory Registration**

7. The Bills Committee has asked whether there are provisions that make registration compulsory with regard to new transactions. The position is as follows.

8. Clause 12(1) of the Bill states that an application for first registration of land shall be made by the assignee upon the first assignment on or after the commencement day. The word "shall" imposes a mandatory requirement on the assignee to apply for first registration of land.

9. Further, under paragraph 72 of Schedule 2 of the Bill, two new subsections 23(1A) and 23(1B) will be inserted in the Land Registration Ordinance to the following effect -

- (a) the Land Registrar shall not register a first assignment under section 12 of the Land Titles Ordinance unless -
- (i) the solicitor has certified that a certificate of good title cannot be issued in respect of the land;
  - (ii) there are stopped deeds in respect of the land under the Land

Registration Ordinance; or

(iii) an application for first registration of the land has been rejected; and

(b) the Land Registrar shall not register any instrument under the Land Registration Ordinance relating to registered land under the Land Titles Ordinance.

10. The effect is that, except in the circumstances under para. 9(a) above, the assignee has to apply for first registration of land under the Land Titles Bill upon the first assignment of the land.

#### **Definition of “land” in clause 12(4)**

11. At the 4<sup>th</sup> Bills Committee meeting, we advised Members of our intention to amend the definition of “land” in clause 12(4). We propose to amend the definition to read as follows -

“ “land” does not include any part of a lot where –

(a) the lot has been subdivided into undivided shares; and

(b) an undivided share in land has not been allocated to that part.”

#### **Deeds of Mutual Covenant**

12. The Bills Committee has asked how the rights and easements created by deeds of mutual covenant will be registered. The matter is provided in Clause 51 of the Bill. The registration of a deed of mutual covenant shall be effected by its registration as an incumbrance and the entry in the Title Register of particulars of the deed. The deed will be recorded on the incumbrances side of the Title Register with the description of the deed, its date and the registration date.

13. Clause 51 further provides that the registration of a deed of mutual covenant effects the registration of any easement, right or covenant provided for in the deed which affects the registered land or the registered long term lease. In

other words, the said easements, rights or covenants will be registered and have the priority from the date of registration of the deed of mutual covenant.

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*Housing, Planning and Lands Bureau*