

**BIILS COMMITTEE ON
LAND TITLES BILL**

**DISPOSITIONS, TRANSMISSIONS
AND TRUSTS**

Purpose

This paper outlines the provisions on the registration and effects of dispositions, transmissions and trusts as envisioned in the Land Titles Bill, i.e., the substance of parts 5 and 7 of the Bill

Background

2. Under the proposed title registration system, dispositions and transmissions are the main categories of matters that will be registered on the Title Register. They cover a wide variety of conveyancing instruments.
3. Special provisions are also made to deal with trusts under the Bill.

Dispositions

4. Dispositions are acts by the owner of registered land or a registered charge or the lessee of a registered long term lease which affect his rights in the land, charge or lease. Examples of dispositions are transfers, charges, discharges, divisions, leases, easements, covenants and deeds of mutual covenant.
5. After the Land Titles Bill is enacted, any disposition of registered land will only have legal effect when it is registered.
6. In order to encourage timely registration of the matters, an additional fee will be charged for registration made later than three months after the date of the supporting instrument. The additional fee equal to the registration fee shall be payable for each month or part of a month which has elapsed since the date of that instrument. The maximum additional fee will be ten times the registration fee.

7. The Land Registrar is also given the power to serve written notice requiring a person to present the application to him not later than 30 days after the service of the notice.

8. The general principle of priority under the proposed registration system is that matters appearing in the Title Register rank in priority according to the order in which their applications are presented for registration.

9. A person who intends to effect a transaction in registered land, such as a transfer or charge, may register a consent caution in respect of the intended transaction. The priority of a registered dealing will relate back to and take effect from the priority of the first consent caution in respect of the same dealing. An example is that the priority of a registered transfer relates back to the registration of the consent caution on the sale and purchase agreement.

10. A person who claims an interest, whether contractual or otherwise in the land or has presented a winding-up petition against the owner of registered land may register a non-consent caution in respect of the land. The priority of an application that registers an interest which is the subject of a non-consent caution will relate back to and take effect from the priority of that non-consent caution claiming the same interest. An example is where the interest declared by a Court order will relate back to the registration of the non-consent caution of the court proceeding.

Transmissions

11. Transmissions are the passing of title to registered land, a registered charge or a registered long term lease from one person to another person by operation of law. Examples are on the death of owners, the bankruptcy of an owner or the winding-up of a company.

12. The Bill provides for registration of transmission on death of an owner, in bankruptcy cases, on liquidation and in other cases.

13. Where one joint tenant of registered land dies, the surviving joint tenant can apply to the Land Registrar for a transmission supported by evidence of death of the deceased joint tenant and payment of estate duty. The Land

Registrar will remove the name of the deceased joint tenant from the Title Register.

14. Where a sole owner or tenant in common of registered land dies, his personal representatives will obtain a grant of probate of the will or letters of administration of the estate. He may then apply to the Land Registrar to be registered by transmission as the owner in the capacity as the executor or the administrator of the deceased.

15. A personal representative is deemed to be registered as the owner with unrestricted powers of sale over the land and all the rights of an owner who has acquired it for value. Accordingly, purchasers from personal representatives will take the land free from unregistered incumbrances and claims.

16. The personal representative of a deceased sole trustee or any surviving or newly appointed trustee is entitled to be registered as the owner by way of transmission as the owner of the land as trustee.

17. A trustee in bankruptcy and a liquidator in a winding-up shall be entitled to be registered by transmission as the owner of the land with the capacity stated upon production of the relevant Court orders.

18. Where a person has become the owner of registered land under an order of the Court of First Instance or under an Ordinance, the Land Registrar will, on the presentation of the order or other evidence as he may require, register the person as the owner. An example is where a transfer is set aside by the Court as a fraudulent preference under Section 266 of the Companies Ordinance and the company will be registered as the owner of the registered land by transmission.

Trusts

19. Express trusts may either be created by the transfer of land to a person in the capacity of a trustee or a declaration of trust by the owner. If such trustee is described in that capacity in the transfer or declaration of trustee, that person will be registered as the owner with the description “as trustee” on the Title Register. However, the Land Registrar will not enter particulars of the relevant trust in the Title Register.

20. For the purposes of any dealing in the land, the trustee will be deemed to be the owner of the land. A sale by the trustee to a bona fide purchaser for valuable consideration without notice of any breach of the trust shall not be set aside by reason of the breach of trust.

*Housing, Planning and Lands Bureau
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