

BILLS COMMITTEE ON LAND TITLES BILL

Indemnity Scheme : Government's Role

Purpose

This paper considers the concerns on the role of Government in the indemnity scheme raised by Members at the 5th Bills Committee meeting on 12 May 2003. It is supplementary to the Administration's earlier paper on indemnity (LC Paper No. CB(1) 1664/02-03(01)).

Source of Payments

2. Members have asked whether a person who has suffered loss as a result of a default by a Government employee would be paid directly by Government or by the Indemnity Fund.

3. The intention is that the Indemnity Fund will be the mechanism through which all indemnity payments are made, whether arising from fraud or mistakes or omissions on the part of the Land Registry. However, the Land Registry Trading Fund (i.e., Government) will reimburse the Indemnity Fund for any payments attributable to mistakes or omissions by its staff. We intend to set this out clearly in the regulations governing the Indemnity Fund.

Third Party Monitoring

4. Members have suggested a neutral third party to -

- (a) determine the amount of the indemnity;
- (b) determine whether Government should reimburse the Indemnity Fund; and
- (c) monitor whether Government has repaid the Fund.

5. With respect to paragraph 4(a), the Land Registrar is required by the Land Titles Bill to offer as indemnity "the value" of the claimant's interest at a

specified time. Valuation will be done not by the Land Registry but by a professional valuer. If the claimant disputes the valuation, he may present to the Land Registrar evidence to support an alternative valuation. If the Land Registrar does not accept this evidence, the claimant has the right to seek a ruling by the Court, which the Land Registrar is bound to follow.

6. With respect to paragraph 4 (b) and (c), if the Indemnity Fund has made a payment arising from the mistake or omission of any staff of the Land Registry, this fact will be made public in the accounts of the Fund. The fact of its repayment (or non-repayment) will also be apparent from the accounts of the Indemnity Fund and the Land Registry Trading Fund. The latter are already audited by the Director of Audit and placed before the Legislative Council. We intend to impose similar requirements on the Indemnity Fund through the regulations governing the Fund. The Director of Audit and the Public Accounts Committee will, therefore, be in a position to take action if the Land Registry has not made repayments to the Indemnity Fund that are due. The Administration is of the view that this arrangement is a cost effective and efficient way to oversee the operation of the Indemnity Fund. A third overseeing party is, therefore, not necessary.

Amendment to Clause 8(2)

7. Members have asked whether Clause 8(2) should be amended to reflect the policy intent that if any act or default on the part of Government gave rise to an indemnity under Part 9 of the Bill, there should be no limit to the amount of liability.

8. Clause 8(2) provides that if the act or default of a Land Registry staff gives rise to an indemnity under Part 9, the liability shall not exceed the amount of the indemnity provided under that Part in respect of that act or default. This tallies with the policy intent, i.e. -

- (a) if the loss is made as a result of fraud affecting ownership, whether or not committed by a Land Registry staff, there will be a cap on the indemnity (Clause 83(1)(a)); and
- (b) if the loss is made by the mistake or omission on the part of Land Registry staff, there will be no limit on the indemnity (Clause 83(1)(b)).

As such, the Administration is of the view that Clause 8(2) need not be amended.

Housing, Planning and Lands Bureau

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