

Bills Committee on the Land Titles Bill

Supplementary Paper on Conversion and Certificates of Good Title

Purpose

This paper responds to questions raised by Members at the first, third, fourth and ninth meetings of the Bills Committee with respect to the proposed conversion mechanism and certificates of good title.

First meeting

2. Members requested advice on how cases involving the following circumstances could be dealt with under the proposed land titles registration system :

- (a) uncertainty or defects in the title of the property;
- (b) loss of land deeds or block Government lease;
- (c) unclear land boundaries (e.g. lands in adjoining lots);and
- (d) cases of adverse possession involving legal proceedings.

3. As regards paragraph 2(a), ‘uncertainties or defects in the title’ can cover a very wide range of matters. In the paper ‘Certificate of Good Title’ considered at the fourth meeting, the Administration outlined four main categories covering 13 particular issues. These included matters under paragraph 2 (b) and (c).

4. With respect to paragraph 2 (d), in general terms adverse possession is dealt with as an overriding interest under Clause 24(1)(i) of the Bill.

Third meeting

5. Members requested a sample of the certificate of good title for the Bills Committee’s reference.

6. Our intention is that the certificate of good title should form part of the form to be used in applications for first registration. The certificate has not been drafted yet. We intend to work out the details in consultation with the Law Society.

Fourth meeting

7. Members raised the following concerns.

- (a) When a solicitor issues a certificate of good title, he is required to state that he has examined all the title deeds produced by the vendor in accordance with section 13 of the Conveyancing and Property Ordinance (Cap 219) and is satisfied that the vendor has good title to the property. It is not easy at all for a solicitor to fulfil this requirement because:
 - (i) some of the title problems that need to be resolved before a transfer can take place are in fact very difficult to resolve. For example, if the power of attorney is defective, it is very difficult to locate the donor of the power of attorney to confirm the instrument in question; and
 - (ii) the title defects set out in paragraph 12 of the paper [entitled “Certificate of Good Title”] preclude the issue of a certificate of good title.
- (b) In view of the problems mentioned in (a) above, some solicitors may, for the sake of completing the transaction, issue a certificate of good title even though they are not satisfied that the vendor has good title to the property. The interests of the purchaser will therefore be unduly affected.
- (c) Given the liability involved in the issue of a certificate of good title, there may be a significant increase in the insurance premiums to be borne by solicitors.

8. Members also requested the Administration to work out a mechanism for the settling of disputes over whether a certificate of good title should be issued in respect of the property concerned. A proposed option was that if both the vendor’s solicitor and the purchaser’s solicitor agreed, the case could be brought to the court for determination.

9. The Administration recognizes that there are certain issues that may be difficult or impossible for a solicitor to resolve and thereby render him unable to advise his client that his holding of the property will not be disturbed. In such circumstances the solicitor would be ill advised to issue a certificate of good title. We consider that, as at present, solicitors should exercise professional care in their examinations to establish good title to avoid the situation suggested in paragraph 7 (b), and in turn paragraph 7 (c). We trust that the Law Society will also continue to regulate its members’ professional conduct.

10. As pointed out in the paper “Certificate of Good Title”, the majority of defects in title may be properly dealt with and should not lead to a purchaser’s holding being disturbed. For example, the existence of building orders can be dealt with by requiring the vendor to discharge them before completion or by the purchaser agreeing to take over

the liability under the orders. Nonetheless, the Administration is considering whether and how to give guidance to conveyancing solicitors in handling various title issues that may arise under the title registration system. We intend to do so in consultation with the Law Society. In that context we will consider the need for and form of a dispute resolution mechanism as well (paragraph 8 above).

Ninth meeting

11. Members requested a progress report on the Administration's deliberations with the Law Society on issues relating to the certificate of good title. The Administration has given very careful consideration to the comments of the Law Society in its submissions to the Bills Committee. As many of these comments are couched in general terms, we believe that more in-depth discussions with the Law Society are required to better define the perceived problems in specific terms. In addition to previous less formal discussions, we are now arranging a formal meeting with the Law Society for the purpose, and will advise Members of progress in due course.

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Housing, Planning and Lands Bureau