

Bills Committee on Land Titles Bill

COMPARISON BETWEEN PROPOSED LAND TITLES REGISTRATION SYSTEM FOR HONG KONG AND OTHER JURISDICTIONS

Supplementary Paper

Purpose

This paper sets out a comparison of the conversion process of the title registration system in England and the system proposed under the Bill. It also provides information on the parallel operation of the old and new registration systems in England and New South Wales. It is supplementary to the paper on “Comparison between proposed Land Titles Registration System for Hong Kong and other Jurisdictions” (LC Paper No. CB(1) 1464/02-03(05)).

Conversion Arrangements in England

A. Applications for Registration

2. Under the Land Registration Act of 1925, an application for registration of title has to be made on the following dispositions of unregistered land -
 - (a) a conveyance of the freehold estate made for value or other consideration or by way of gift, or pursuant to a Court order;
 - (b) a grant of a term of years absolute of more than 21 years from the date of grant for value or other consideration or by way of gift or pursuant to a Court order;
 - (c) an assignment of a term of years absolute which, on the date of the assignment, has more than 21 years to run for value or other consideration or by way of gift or pursuant to a Court order;
 - (d) an assent which is a disposition of the freehold estate or a term of years absolute which, on the date of the disposition, has more than 21 years to run;

- (e) a vesting deed which is a disposition of the freehold estate or of a term of years absolute that, on the date of the disposition, has more than 21 years to run;
- (f) a legal mortgage by the owner of an unregistered freehold estate or of an unregistered term of years absolute which, on the date of the mortgage, has more than 21 years to run; and
- (g) any disposition of, or affecting a legal estate in unregistered land specified in an order made by the Lord Chancellor.

3. An application for registration of title must be made before the end of two months beginning with the date of the disposition or within such further period as may be allowed by an extension order made by the Chief Land Registrar.

4. A disposition subject to the compulsory registration provisions is effective for transferring or granting a legal estate, or creating a legal mortgage in accordance with its terms. When an application is made for registration of title, then, provided that this takes place within the two-month period or any authorized extension of that period, and provided also that the application is in order, registration will be completed as of the date of the application for registration. On that date, the legal estate will be vested in the registered proprietor of the land.

5. If the application for registration is not lodged by the prescribed time, either an extension order may be sought or a replacement disposition may be executed. An extension order will be granted by the Chief Land Registrar if he is satisfied that there is a good reason for extending the period. Examples of good reasons are the incurring of unreasonable expense or an oversight due to lack of familiarity with the requirement. If a disposition is subsequently effected by way of a replacement disposition, the compulsory registration requirement will apply to the replacement disposition.

B. Classification and examination of titles

6. If an applicant seeks to be registered with an absolute title, the title he deduces to the Chief Land Registrar should be such as a willing purchaser, acting under competent professional advice, could properly be advised to accept. A title should always be prepared for registration as if it were being prepared for examination by a purchaser and, in addition to supplying the Land Registry with a properly verified abstract of title, full information should be given on any points regarding which a well-advised purchaser would raise requisitions. The Chief Land Registrar can, if he thinks it necessary, insist upon the deduction of a minimum of 15 years' title commencing with a good root when he is asked to grant an absolute title.

7. After deposit of the necessary documents, the title will be examined by the registrar and requisitions will be issued to the applicant's solicitor if necessary. The registrar may approve the title for registration if he is of opinion that the holding under the title will not be disturbed.

8. There are 7 classes of title –

- (a) absolute title to freehold land;
- (b) possessory title to freehold land;
- (c) qualified title to freehold land;
- (d) absolute title to leasehold land;
- (e) good leasehold title;
- (f) possessory leasehold title; and
- (g) qualified leasehold title.

C. Effect of failure to register

9. If an application for registration is not lodged and the steps in paragraph 5 have not been taken, a disposition purporting to transfer a legal estate will become void and the legal estate will revert to the transferor who will hold it on a bare trust for the transferee. This effect will pass on to all persons who derive title from the purchaser. It is also difficult for a person who has failed to register to provide a good title in the event of a subsequent disposal of the land as he will be unable to force the title on a purchaser. No prudent mortgagee would be likely to accept the title. Furthermore, if there are two or more transferors, they would be able to sell the land free from the equitable interests of the transferee and the transferee could only claim against the sale proceeds. The transferor might also fraudulently, and in breach of trust, convey the legal estate to a subsequent bona fide purchaser, who by the very act of registration would obtain the legal estate. All these factors create a very strong incentive to register.

D. Caution against first registration

10. Any person having or claiming an interest in land not already registered is entitled to object to any disposition of its being made without his consent. He may lodge a caution with the Chief Land Registrar to the effect that the cautioner is entitled to notice of any application that may be made for the registration of that land. The Registrar is then required to prepare a record, under a

distinguishing number, of the details of the caution and of the statutory declaration in support together with a plan showing the extent of the land affected by the caution. The effect of this caution is to prevent registration of the land until notice has been served on the cautioner to appear and oppose it if he thinks fit. If the cautioner comes forward, the Chief Land Registrar may hear the case and determine the dispute. Either party may appeal to the Court from an order of the Chief Land Registrar.

Comparison with Land Titles Bill

11. Under the Bill, applications for first registration must be made on the first assignment for valuable consideration and issue of Government lease after the Bill comes into effect. The types of dispositions subject to compulsory registration are wider in England than under the Bill. This is because in England, the aim is to bring the remaining unregistered properties onto the title register over the next decade or so.

12. A caution against first registration can be lodged in England. There is no such mechanism under the Bill. Any person claiming any rights in respect of the land can register these rights under the Land Registration Ordinance before the application for first registration.

13. The Chief Land Registrar in England examines the title to the land. In Hong Kong, the solicitor's certificate of good title will be relied upon by the Land Registrar as evidence of good title. In practice, the English Land Registry usually relies upon the submissions made by the solicitor for the applicant and warns that any error in the application may bar indemnity in case of loss as well as opening the solicitor to action for negligence. Given the huge volume of transactions in Hong Kong and the need to ensure that any new system of registration should not reduce the efficiency of the current conveyancing process, the Bill proposes to rely explicitly on the applicant's solicitor.

14. There are 7 classes of titles in England. In the system proposed under the Bill, there are 4 classes of titles, that is, legal interest in the land, equitable interest in the land, legal estate of the undivided shares in the land and equitable interest of the undivided shares in the land.

Parallel operation

15. Parallel operation of deeds and title registration systems has been the general practice in most jurisdictions. There has been wide variation in the extent to which transactions were allowed to continue under deeds registration once a title register was introduced – as outlined in paragraph 5 of Paper CB(1)1464/02-03(05). The following paragraphs describe the experience in

England and New South Wales.

A. *England*

16. Compulsory title registration was introduced in 1897 in London. Prior to that, even deeds registration was not systematically carried out across England and Wales. A number of counties had deeds registers but private conveyancing was still extensive. The Land Registration Act of 1925 provided a framework for title registration to be extended, but all counties in England and Wales were not brought under the title system until 1990. 18 million out of about 21 million properties are now registered titles. Instruments affecting unregistered land (i.e. land not registered under the Land Registration Act) continue to be registered under the Land Charges Act (which provides for the registration of incumbrances). The Land Registry hopes to be able to bring all properties under the title registration system by around 2015.

B. *New South Wales*

17. Land grants began in 1789. In 1802 an order was made that 'no assignment of property will be considered legal until it is regularly drawn up...and duly registered'. Deeds registration was carried out administratively until the passage of a Deeds Registration Act in 1825. The 'Old Register' (the pre-1825 administrative registers) and the registers created under the 1825 Act continue to be kept by the NSW Land Registry. The majority (up to 90%) of land is now registered titles under the Real Property Act passed in 1862 but this has been mainly because new properties have been put onto the title register. Conversion of pre-1862 properties to the title register has generally been very slow. The major problems faced in converting the remaining unregistered land is due to the fact that the Torrens System of title registration is plan based whereas the deeds registration system is not. There is no plan at present to bring the remaining properties on the old registers under the title registration system even though other Australian States have either already done so (Queensland) or are working on conversion programmes (South Australia, Victoria).

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