

## **Bills Committee on the Land Titles Bill**

### **Doctrine of Notice**

#### **Purpose**

This paper provides a response to Members' questions on the applicability of the doctrine of notice under the Bill.

#### **Background**

2. At the Bills Committee meeting held on 19 June 2003, Members asked the Administration to further elaborate on the intention of the Bill to prevent unregistered interests being enforceable against a purchaser for value even if he had notice of them. In particular, Members were concerned as to -

- (a) whether this policy was proper;
- (b) what effect this policy would have on the interests of the persons; and
- (c) whether the policy was properly reflected in the Bill.

The Assistant Legal Advisor elaborated on these points in his paper of 24 June 2003.

#### **Propriety**

3. Under the Bill, the doctrine of notice will not be applicable. This crucial feature of the Bill is consistent with title registration legislation in other jurisdictions. The intent has been put most clearly by Lord Wilberforce in *Williams & Glyn's Bank Ltd v. Boland* (1981. AC 487):

*“Above all, the system [of title registration] is designed to free the purchaser from the hazards of notice – real or constructive – which, in the case of unregistered land, involves him in enquiries, often quite elaborate, failing which he might be bound by equities....the only provisions in the Land Registration Act 1925, with regard to notice are provisions which enable a purchaser to take the estate free from equitable interests or equities whether he has notice or not. The only kind of notice recognized is by entry on the register.”*

4. The removal of the protection that the doctrine of notice gives to certain parties is justified for two reasons. First is the greater protection given to purchasers. Second is the opportunity given to the holders of interests to secure better protection of their interests.

### ***Purchaser protection***

5. By requiring a purchaser to take notice only of matters that are entered on the register or fall within the category of overriding interests, transactions can be entered into with greater ease and security. The need to investigate the chain of title is removed, as is the need for extensive enquiries of interests of other parties (which ultimately can rarely be conclusive) if the purchaser is to be sure of obtaining what he has negotiated for. With this protection to individual purchasers, land and property may be transferred generally with greater ease and security to the wider benefit of society and the economy.

### ***Better protection of interest holders***

6. Like other title registration systems, the Bill gives the holders or claimants of interests in land or property extensive means to have their interest or claim recorded on the register. Under the Bill, a person may -

- (a) apply for registration of cautions regarding dealings in a particular piece of land or property under Clause 70;
- (b) apply to the Courts for an inhibition under Clause 74; and
- (c) apply to the Land Registrar to impose a restriction under Clause 77.

The registration of the caution, inhibition or restriction is recognized as giving notice of the interest under the Bill.

### **Effect of the Policy**

7. The overall effect of the Bill is that -

- (a) where there is no purchaser for valuable consideration, the position of the holder of an unregistered interest is not changed;
- (b) if the holder of an unregistered interest in a property wishes to protect it against a sale for value by the owner of the property then he has to enter a caution or apply for a restriction or inhibition; and

- (c) if the holder of an unregistered interest has not registered a caution, restriction or inhibition then, once a sale to a purchaser for value has taken place the unregistered interest is not enforceable against the land or property.

**Wording of the Bill – Response to Assistant Legal Adviser’s Paper (LS 141/02-03)**

- 8. The Assistant Legal Adviser in the above paper has raised the following issues,
  - (a) whether the doctrine of notice has been abolished under the Bill;
  - (b) what the legal effect of Clauses 25 and 30 are; and
  - (c) what the legal status of unregistrable mere equities or equitable interests are under the Bill.
- 9. The Administration confirms the intention to abolish the doctrine of notice under the Bill.
- 10. Clause 25 is a clause for avoidance of doubt to confirm one of the basic principles of title registration – every person acquiring registered land or a registered charge is deemed to have notice of every entry in the Title Register.
- 11. Clause 30 does not apply to the situation in Wong Chim Ying case as the wife is not registered as the owner of registered land in the capacity of a trustee.
- 12. The holders of unregistrable interests such as mere equities or equitable interests can register a caution, restriction or inhibition under the Bill to protect their interests.
- 13. Members have questioned the inclusion of the words “without notice” in Clause 30. We agree that the expression appears to reintroduce the doctrine of notice in contravention of the provisions elsewhere in the Bill. We agree that, in line with the objective of the Bill to free purchasers from the hazards of the doctrine of notice, this clause should be amended.

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*Housing, Planning and Lands Bureau*