

**Bills Committee on Land Titles Bill**

**Roles of Registration Authority and Solicitors  
Comparison with English System**

**Purpose**

This paper outlines the roles of the Chief Land Registrar and of Solicitors under the English Land Registration Acts and compares them with the roles proposed for the Land Registrar and Solicitors in Hong Kong under the Land Titles Bill. This is in response to questions raised by Members at the 11<sup>th</sup> meeting of the Bills Committee.

**Provisions in English Legislation**

2. Section 144 of the Land Registration Act 1925 allows for rules to be made that govern applications for registration, the functions of the registrar – including the examination of title – and the effect of entries in the register.

3. The Land Registration Rules contain the following provisions relating to examination of title:

*25. Where land is proposed to be registered with absolute or good leasehold title, the title shown by the documents accompanying the application shall be examined by or under the superintendence of the Registrar; and he shall make such searches and enquiries and give such notices to tenants and occupiers and other persons as he may deem expedient.*

*26. The whole or any portion of the examination of title may be referred by the Registrar, if he thinks fit, for the opinion of one of the special conveyancing counsel for the purpose of these rules, and the Registrar may act on such opinion:*

*Provided that where the title has already been examined on a sale by counsel of not less than seven years' standing the Registrar may act on his opinion, or he may refer the application to him for further consideration and act on his further opinion.*

*27. All searches, official certificates of search and enquiries which the Registrar may consider necessary in the examination of or in relation to, the title shall be made or obtained by such person and in such manner as the Registrar shall direct.*

*28. (1) Where it appears to the Registrar that the title has been sufficiently investigated on a transfer for value, the examination of the title may be modified in such manner as the Registrar may think fit.*

(2) *In this rule and rule 29 “transaction for value” includes a charge to secure future advances.*

29. *Where on a transaction for value the applicant’s solicitor investigated, or caused to be investigated, the title in the usual way on the applicant’s behalf, the application shall contain a certificate to that effect.*

307. *The Registrar may require an abstract or concise statement of any deeds or documents, delivered to the Registry for perusal in the course of any registration proceeding, to be furnished and duly verified.*

4. The certificate referred to in rule 29 is contained within the application form FR1 and reads:

*“I/We have investigated or caused to be investigated the title in the usual way on the applicant’s behalf on a transaction for value.”*

5. Form FR1 also contains the following caution: “Failure to complete this form honestly and with proper care may deprive the applicant of protection under the Land Registration Acts if, as a result, a mistake is made in the register”

6. Ruoff & Roper’s *Registered Conveyancing* elaborates on the practice followed by the English Land Registry in investigating title (Ruoff and Roper, the original editors of this work, were both Chief Land Registrars). Section 12-45 states:

*“If an applicant for first registration has properly carried out the normal investigation of title demanded by customary conveyancing practice, he has no need to be anxious about the Chief Land Registrar’s examination of the title. Such special provisions regarding examination as are contained in the Land Registration Act **merely serve as a safeguard when there has been no normal investigation immediately before first registration**”*

7. Where there has been a “normal investigation” before the application for first registration is made, and a solicitor has given a certificate of this, the additional scrutiny carried out by the Land Registry is limited. Mr. T.B.F Ruoff, defending the provisions for compulsory registration on sale under the UK legislation has stated: *“This has the advantage that the title to the land has been deduced by the vendor’s solicitor, examined by the purchaser’s solicitor, and usually examined by the mortgagee’s solicitor, so that when the title comes to me I can save a great deal of expense by examining the title cursorily instead of meticulously.”*<sup>1</sup>

8. It may be noted that Chief Land Registrar has been able to make special arrangements with county councils and other bodies to save applicants having to deduce title and the purchaser from having to investigate it on the sale of public housing. Under these arrangements, certificates of title are issued, which the Registrar relies on for the

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<sup>1</sup> See S.Rowton Simpson, *Land Law and Registration* 11.9.10.

approval of title. The certificates must be issued by a solicitor or qualified conveyancer. A 'Title Shown Procedure' is also in place to deal with large estates that are being sold off in numerous lots, to save expensive, repetitive examination of title each time an individual lot is sold. Furthermore, prior to 1989, the Land Registration Act contained provision for the Registrar to act on a certificate issued by a solicitor for upgrading of title in cases of sale of properties worth less than £2,000<sup>2</sup>. The aim of this provision was to save expense for purchasers of modest means. The certificate required the solicitor to declare:

- (a) he investigated the title prior to first registration in the usual way on the applicants' behalf; and
- (b) he believed, as a result of his investigation, that the conveyance or assignment to the first registered proprietor validly conveyed or assigned to him the estate and interest thereby purported to be conveyed or assigned, free from any adverse rights or incumbrances.

9. The importance of the completion of a proper abstract required by Rule 307 is frequently emphasized. Section 12-04 of Ruoff & Roper sets out the documents required to support applications for registration. Next to the statutory application form with its "certificate or statement as to the title" comes:

*"All original deeds and documents (including a normal examined abstract) relating to the title which the applicant has in his possession or under his control, including opinions of counsel, abstracts of title, contracts for or conditions of sale, requisitions, replies and other like documents. It is important that wherever possible the abstract should include every deed containing restrictive covenants which affect the land."*

10. Of the powers of the Chief Land Registrar to carry out further investigations and require applicants or their solicitors to make statutory declarations about disclosure, Section 12-45 states:

*"there is no obligation to make a declaration where a documentary title is shown which would operate as a guarantee in regard to matters not disclosed in the abstract."*<sup>3</sup>

11. The effect of the certificates provided under Rule 29 is elaborated in Section 12-12 of Ruoff & Roper:

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<sup>2</sup> S.30 of the Land Registration Act 1925, repealed in 1989. In 1925 £2,000 would have covered a large proportion of all property transactions. By 1989, very few transactions would have come under this provision. Furthermore, the Land Registry practice of upgrading titles wherever possible had made the provision redundant.

<sup>3</sup> This is stated in Section 144(1)(iii) of the Land Registration Act 1925.

*“The certificates and statements contained in the prescribed form of application for first registration may be relied upon by the Registrar in deciding what class of title is appropriate and in compiling entries in the register. Any failure to complete the application honestly or with care could, therefore, have serious consequences. In particular, if such a failure resulted in an error in the register which was subsequently rectified, the applicant’s ability to claim a full, or any, indemnity might be affected. This is quite apart from any question of liability in negligence which might arise from such failure.”*

12. Where indemnity is paid for loss, the Chief Land Registrar is entitled to recover the amount paid from any person who has caused or substantially contributed to the loss by his fraud. He is also entitled, for the purpose of recovering the amount paid, to enforce any right of action (of whatever nature and however arising) which the claimant would have been entitled to enforce had the indemnity not been paid. In addition, where the register has been rectified, he is entitled to enforce any right of action which the person in whose favour the register has been rectified would have been entitled to enforce had it not been rectified.<sup>4</sup>

13. In summary, the position in England may be said to be:

- (a) that the decision to register a title is that of the Chief Land Registrar;
- (b) in most cases where a solicitor or authorized conveyancer has certified that the title has been investigated in the normal way, the Chief Land Registrar will rely on that and not carry out further investigation of title himself; and
- (c) if an application is made fraudulently or without proper care, the Chief Land Registrar may proceed against the applicant and his solicitor for recovery of any loss incurred in consequence. This occurs when there is erroneous information given by the solicitor in the application or when the solicitor has not investigated title in the usual way.

### **Arrangements proposed under the Land Titles Bill**

14. Under the Land Titles Bill, the decision to register a property will be made by the Land Registrar. He will have to decide, on the basis of the certificate and information supplied to him by an applicant’s solicitor whether a property may be registered under the Bill or should remain under the Land Registration Ordinance. Clause 6 gives the Registrar extensive powers to require persons to produce documents or make declarations. These are similar to the powers of the Chief Land Registrar under English legislation.

15. The Land Titles Bill states that the certificate to be supplied by a solicitor with an application for first registration shall be a ‘certificate of good title’, rather than a certificate that the title has been investigated in the normal way as under the English Act.

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<sup>4</sup> See S.83(10) of the Land Registration Act 1925 or S 10 of Schedule 8 to the Land Registration Act 2002.

Under the English legislation the Chief Land Registrar has discretion to register property with different degrees of title, ranging from absolute title to possessory title. In Hong Kong, the Land Titles Bill does not provide for different classes of registered title. A property should either be brought onto the title register or left under the deeds registration system until whatever defect has prevented registration of title has been dealt with or fallen away with the passage of time. The decision of the Land Registrar in Hong Kong, therefore, simply has to be guided by whether good title to the property has been shown as required in the sale and purchase agreements under the existing conveyancing practice. The certificate of good title is intended as the evidence to the Land Registrar that these existing conveyancing requirements in proof of title have been complied with. It is the counterpart to the certificate required under rule 29 of the Land Registration Act.

16. Clause 86 of the Land Titles Bill gives the Government similar powers of recovery for monies paid out in indemnity to the powers given to the Chief Land Registrar in England. Where an indemnity has been paid due to reliance on a certificate of good title that had been fraudulently or negligently issued by a solicitor the Government would be able to take action for recovery against the solicitor. Similarly, the Chief Land Registrar in England may proceed against a solicitor who has given a certificate and requisite information fraudulently or without proper care.

17. In its main principles and effects the Land Titles Bill is similar to the English Land Registration Act. The significant difference lies in the discretion that the Chief Land Registrar in England has to approve different qualities of title. Prima facie, therefore, we do not see that the system proposed under the Land Titles Bill will bring about significantly increased liabilities for Hong Kong solicitors vis-à-vis their English counterparts in checking titles for conversion cases. Nonetheless, we have invited the Law Society to explain more fully its concerns regarding potential liabilities under the proposed system. We will report the outcome of our discussions in this regard in due course.

*Housing, Planning and Lands Bureau  
September 2003*