LC Paper No. CB(1)274/03-04(03)

Bills Committee on Land Titles Bill

Title Insurance

Purpose

This paper provides, in response to Members' request at the 14th meeting of the Bills Committee, some background information on title insurance.

Title Insurance

2. Title insurance is a system for protecting real interests in property that developed in the United States in the 1870s[1]. A title insurer undertakes to compensate for loss suffered as a result of insured risks. These risks can include:

(a) all defects in title discoverable from the title deeds or public records;

(b) forgery, fraud, undue influence, duress and incapacity; and

(c) third party claims.

3. A title insurance policy usually provides for losses suffered up to a specified insurance amount. Policies can be written to provide for increases in coverage due to inflation in property values, or allow for the topping up of coverage through additional premium payment. Title insurers usually undertake to defend against any claims by third parties at no cost to the insured party.

4. Title insurance policies usually have a number of exclusions. For example, they will not pay if:

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[1] No national system of land registration has been established in the US. A wide variety of recording systems operate at county level. Different systems can operate within the same state. Recording differs from deeds registration or title registration in not giving priority to documents. Deducing title is therefore more complex. Title Insurance mitigates against the risks in conveyancing under this system.

(a) the person suffering the loss has caused or substantially contributed to the loss by his fraud or negligence; or

(b) the person suffering loss has derived title (other than in good faith and for valuable consideration) from a party who contributed to the loss by fraud or negligence.

5. Title insurers usually require a solicitor acting for a purchaser or a bank to give them a certificate in a specified form. The certificate will set out matters that a solicitor ought reasonably to know about if due diligence has been exercised. It also certifies that the solicitor has carried out required steps, particularly to verify the identity of the party to an instrument. Depending on the value of the insurance to be taken out, the title insurer decides whether to issue the policy on the basis of the solicitor's certificate or to conduct further investigation.

6. A title insurance policy to protect ownership interests will usually be paid for by a premium based on a percentage of the value of the property. The premium for properties of the same value may vary due to differences in risk assessment. Interested parties, such as banks, can usually insure their interest for a defined fee.

7. In recent years a number of the larger title insurance companies in the US have started to extend their business abroad. In the UK there has been little interest since the Land Registries there operate indemnity schemes that are open as a first resort to claimants and offer similar benefits to title insurance. In Ontario, Canada, a practice has developed where banks require mortgage applicants to take out title insurance in certain circumstances. This is primarily to protect the mortgage loan. Owners have to take care to ensure that a title insurance policy will protect their interests as well – and may have to pay additional premium for this. The fact that the Ontario indemnity scheme is not open as a first resort to claimants may be a factor that makes title insurance attractive. Similar considerations may apply in Australia, although title insurance has only very recently been offered there and no pattern of use has yet emerged. We know of one office of a US title insurance company established in Hong Kong. There are no regulations that would prevent others being established here, or prevent local insurance companies developing title insurance business.

Comparison with Land Titles Bill

8. Annexed for Members' information is a table setting out a comparison of the main features of title insurance schemes with the proposed arrangements under the Land Titles Bill.

9. The Administration is neither recommending nor advising against title insurance. We are of the view that title insurance is a recourse that an owner may consider if he wishes to cover losses that are not, or are in excess of those, covered under the indemnity scheme currently proposed under the Land Titles Bill. The decision is one that the owner would have to make, weighing up the cost of insurance against the cost of other measures to prevent another party taking possession of the property without a legitimate transaction having taken place.

November 2003
Housing, Planning and Lands Bureau

Annex

Comparison of Title Insurance and Land Titles Bill Provisions

	Title Insurance	Land Titles Bill
Clears technical defects in title	No	Yes
Indemnifies against loss of ownership due to fraud	Yes	Yes
Indemnifies for loss of other interests in fraud cases	Yes	No
Indemnifies for loss due to void or voidable transactions, or for mistakes by parties other than the Land Registry	Yes	No
Indemnifies for loss due to mistakes of omissions of Land Registry	No	Yes
On first registration, indemnifies for loss due to frauds, mistakes or omissions occurring before first registration but only discovered afterwards	Yes	No, but certain claims may be made under S23A of the Land Registration Ordinance

	Title Insurance	**Land Titles Bill**
Cap on indemnity in fraud cases	No general cap. But an insurance amount, i.e., a limit, will be set in each policy	Yes
Position of claimant	Claim can be made directly to the title insurer. Insurer will pay out and pursue other parties for recovery. Insurer will also pay cost of defending against third party claims	Claims can be made direct to Indemnity Fund. Court order needed before payment can be made in a fraud case. Indemnity Fund will pursue claims against other parties for recovery, though claimant retains right to do so if the payment from the indemnity does not cover the full loss sustained.
Costs	Uncertain. May be varied by insurer. Will contain a profit element.	Set by regulations. Fund operation and use open to public scrutiny. No profit element.