

HPLB/LTB Paper 47/03

BILLS COMMITTEE ON LAND TITLES BILL

Inhibitions, Restrictions and Injunctions: A comparison

Purpose

This paper explains the provisions on ‘inhibitions’ and ‘restrictions’ under the Land Titles Bill and their differences from court orders of injunction (‘injunctions’). It should be read in conjunction with the paper ‘Cautions, Inhibitions and Restrictions’ (LC Paper No. CB(1)2464/02-03(06)).

Background

2. At the 13th Bills Committee meeting held on 29 September 2003, Members requested a paper comparing inhibitions (clause 74), restrictions (clause 77) and injunctions, in particular with respect to the following -

- (a) the nature of the restraints imposed;
- (b) the circumstances for application;
- (c) the procedures for handling applications; and
- (d) the legal effect.

Nature

3. In essence, the nature of restraints imposed by inhibitions, restrictions and injunctions is similar. Registration of new matters is prevented or limited while conflicting claims are being resolved, investigations made or until the occurrence of necessary events. The differences lie in who may apply for these restraints, what they may cover and how they may be removed. These differences will influence the circumstances in which each form of restraint may be employed, and are explained below.

Injunctions

4. An injunction is an order issued by a court during or at the end of proceedings that requires a party to do or refrain from doing a particular thing.

It may be permanent or interlocutory (or interim) – an order to hold things in their present status pending completion of a hearing or further order. An injunction may restrain or inhibit action or it may mandate that action be taken¹. At present, injunctions sought in proceedings over land usually simply declare that the owner is prevented from selling, assigning or disposing of the land. They seldom deal with the question of registration. The sanction against a breach of an injunction is a fine or committal of the defaulter for contempt of court. Persons who knowingly assist the breach of an injunction may also be cited for contempt of court.

5. At present, under the Land Registration Ordinance (LRO), only instruments affecting land may be registered. Whether an injunction may be registered under the LRO is not without argument. On the one hand, an injunction may be seen as a personal order and a mere fetter on the owner's powers of disposition. On the other hand, it may be argued that the injunction affects land within the wide meaning of "affected" given by a Court of Appeal decision in Hong Kong². The legal position under the case law is not settled. It is the normal practice of the Land Registrar to accept registration under the LRO of an injunction restraining disposal of land.

Inhibition

6. Inhibitions with respect to registration are a new feature provided under clause 74 of the Land Titles Bill. They remove any doubt as to whether a restraint on dealing ordered by the Court is a matter that can be registered. Clause 75 makes clear that while an inhibition is registered, no dealing inconsistent with the inhibition may be registered. The Court is thereby given a certain way under the title registration system to ensure that its orders are complied with.

7. The category of persons who may make an application to the Court for an inhibition is not limited to a person having an interest in the land as is the case for an application for a restriction.

8. An inhibition will be contained in a court order (an injunction). It may comprise the whole of the order, or the order may contain other matters relevant to the litigation. It is only the specified inhibition itself that would be entered in the register. An inhibition is a specific order granted by the court under clause 74 that stops *the Land Registrar* from registering dealings of the

¹ See Stroud's Judicial Dictionary vol 2, p 1294.

² To quote Huggins J.A. in *Anstalt Nybro vs Hong Kong Resort Co. Ltd.* [1978] HKLR 414, "The statute provides that the instrument in writing or the judgment must be one by which the land may be affected. "Affected" is not a word of art but an ordinary English word, which may have a very large meaning. In the context of Land Registration Ordinance it is the title to the land which must be affected and anything which either calls for a change of title or *which may prevent or limit changes of title* affects the land."

land. An injunction is granted by the court in exercise of its wider jurisdiction under section 21L of the High Court Ordinance and stops *the party concerned* from exercising his powers of disposition.

9. The person who has obtained an inhibition shall present an application to the Land Registrar for an entry to be made on the title register. The application must be accompanied by a sealed copy of the court order. The Registrar is obliged to give effect to the order and shall register the inhibition accordingly [clause 74(2)]. An inhibition will take effect upon registration [clause 74(3)]. While an inhibition is in force, no dealing which is inconsistent with it shall be registered [clause 75].

10. The text of an inhibition will be decided by the Court of First Instance granting it. Likely forms of words are:

“Pursuant to Section 74 of the Land Titles Ordinance (Cap.0000) it is ordered that registration of [all dealings] in respect of the registered [land] [charge][long term lease] described in the Schedule hereto shall be inhibited [until further order of the court][during the validity or extended validity of this order].”

Regulations will be made by the Secretary for Housing, Planning and Lands under clause 100(1) (v) to provide for the manner in which inhibitions are to be registered and removed.

11. Inhibitions may be removed only upon an application to the Registrar. In the absence of a court order for removal, the Registrar may only remove the inhibition under one of the three circumstances specified in clauses 76(a), (b) & (c); he has no discretion in this regard.

Restrictions by Registrar

12. Restrictions are again a new form of restraint introduced by the Land Titles Bill. The purpose is to give the Registrar power to take action to prevent invalidity or unlawfulness in relation to any disposition or to protect rights or claims³. This power may only be exercised on application by a person interested in the land, lease or charge. A restriction may be entered only if the Land Registrar is satisfied that the powers of the owner or lessee should be restricted [clause 77(1)(c)].

13. A restriction may apply to all types of dealings or only to such dealings as are specified in it. A restriction may be expressed to endure:

³ See S 42 of English Land Registration Act 2002.

- (a) for a particular period;
- (b) until the occurrence of an event; or
- (c) generally until further order made by the Land Registrar.

Some likely instances of restrictions and their forms that may be entered on the title register are set out at the **Annex**⁴.

14. A restriction will take effect upon its registration [clause 77(4)]. While a restriction is registered, dealings inconsistent with the restriction shall not be registered except with the consent of the Registrar or by order of the Court of First Instance [clause 78(2)].

15. Once a restriction is entered on the register, the Land Registrar shall, as soon as reasonably practicable, give notice in writing of the restriction to the owner of registered land or registered charge, or lessee of registered long-term lease, affected by it [clause 78(1)]. The owner or any other interested person may apply to the Land Registrar for the removal or variation of a restriction pursuant to clause 79. The Land Registrar shall make a decision after giving the parties an opportunity of being heard in accordance with clause 94. The fees for this process will be prescribed under Clause 98(1)(g). If aggrieved by the decision of the Land Registrar, a party may appeal to the Court of First Instance under Clause 89.

16. An application for removal of a restriction can also be made directly to the Court of First Instance under clause 79(2). The Court may make its own order as to costs. An appeal from the Court's decision may be made to the Court of Appeal.

Restriction and inhibition vs Injunction

17. The introduction of inhibitions and restrictions under the Land Titles Bill will provide a clear statutory basis to ensure that a restraint on dealings is made known to the public on the title register. Under the present system, an injunction is the only avenue available to restrain dealings. Under the Land Titles Bill, inhibitions will extend the scope of injunctions to prevent inconsistent registrations and interested parties will have the additional route of applying direct to the Registrar for a restriction.

⁴ Reference has been made to the examples of restrictions under the U.K. Land Registration Act 1925 as listed out in Para 38-15 of Ruoff & Roper on Registered Conveyancing [Looseleaf Edition: Release 19: May 2001]

Restriction vs Inhibition

18. It is expected that restrictions will be the usual recourse for persons having interests in land, leases or charges who find it necessary to prevent certain dealings taking place. Inhibitions would be available to persons who do not have an interest in the land affected but could show good cause to the Court as to why registration of dealings should be prevented pending some event or further court order. For example, the guardian ad litem of an infant beneficiary may as a person interested in the land apply for a restriction to prevent a fraud or a dealing by the trustee which will jeopardize the infant's interest. Any other relative of the infant beneficiary, who is not a person interested in the land, would have to apply for an inhibition from the Court.

November 2003

Housing, Planning and Lands Bureau

Examples of Restrictions

Object	Form of restriction
Nomination To protect the beneficial interest where a nominee is registered as proprietor	No disposition other than a transfer to [<i>nominator of, etc.</i>] is to be registered without the consent of [nominator]
Covenant Not to Charge in a Charge document To prevent creation of second or subsequent charge in contravention of the terms of First Legal Charge	No second or subsequent legal charge created by the owner is to be registered without the consent of the owner of First Legal Charge in favour of ABC Bank Ltd.
Covenant Not to Let in a Charge document To prevent granting of tenancy or lease in contravention of the terms of a charge or mortgage	No tenancy or lease is to be registered without the consent of the owner of the First Legal Charge in favour of ABC Bank Ltd.
Infant Interest under a Trust To protect the interest of an infant beneficiary under a trust	No disposition of the whole or part of the interest in the property by way of sale, transfer, mortgage, charge or any dealings of similar nature is to be registered during the infancy of the beneficiary X.Y.Z. in the absence a court order
Loss of Title Certificate To prevent fraudulent dealings	No disposition is to be registered without the consent of the registered owner (who has reported a loss of his title certificate on 00.00.0000)
Appointment of Receiver under Debenture or Legal Charge To prevent the owner by-passing the Receiver to dispose of the charged property and collect the proceeds of sale	No sale or charge of property in contravention of the terms and conditions of the appointment of receiver under the Legal Charge dated 00.00.0000 (Reg. Application No.00000) in favour of ABC Bank Ltd. is to be registered without the consent of the [receiver of, etc.]