

HPLB/LTB Paper 51/03

BILLS COMMITTEE ON LAND TITLES BILL

Transmissions, Receivership & Trust

Purpose

This paper responds to the Bills Committee's concerns about Clause 62 (transmission on death of joint tenant), Clause 65 (effect of transmission on death), Clause 67 (transmission on liquidation), Clause 68 (transmission in other cases) and Clause 69 (trusts not to be entered in Title Register) discussed at the 16th Bills Committee on 21.10.2003.

Clause 62 (transmission on death of joint tenant)

Members' Questions

2. Members noted that, according to Clause 62, where one or more joint tenants of registered land, a registered charge or a registered long-term lease dies, the Land Registrar, on proof of his satisfaction of the death, shall remove the name of the deceased from the Title Register concerned. The Administration was asked to :-

- (i) consider whether the name of the deceased should be removed from the Title Register or retained as a historical record; and
- (ii) explain by way of example how transmission on death of a joint tenant is done and provide a sample to show what the Title Register would look like in such a case.

3. Members noted the view of Assistant Legal Adviser that a registered charge involving a deceased joint tenant/chargor should continue to take effect after his death and the name of the deceased should be traceable through the Title Register. Members are concerned how the actual process will work where there is a change to the particulars in the

Title Register. The Administration was requested to :-

- (i) provide examples to show how the actual process will work and samples of Title Register to show how the changes will be presented in the Register within the confines of Clause 10 (Title Register); and
- (ii) provide another sample to show how a case involving more complicated transfers, such as inhibitions, trust documents, etc. will be presented in the Title Register.

4. It is noted by Members that Clause 62(1) provides that where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease dies, the remaining joint tenant or tenants shall be subject to any interests -

- (a) subject to which the deceased joint tenant held the land, charge or lease immediately prior to his death;
- (b) which are unregistered; and
- (c) which are enforceable against the land or lease

5. The Administration was asked to confirm whether it is its policy intent that the remaining joint tenant or tenants shall be subject to the same rights and incumbrances as those before the death of a joint tenant i.e. transmission on death of a joint tenant will not change the status quo apart from the change in ownership, and the remaining joint tenant would hold the land subject to exactly the same rights and incumbrances as before without any alternations. If that is the policy intent, the Administration was asked to consider improvement to the drafting of Clause 62(1) to set out the policy intent clearly.

6. In relation to Clause 62(2)(b), the Administration was asked to explain how the purchaser of a property could come to know that the payment of estate duty has been postponed in accordance with the provisions of the Estate Duty Ordinance (Cap.111), and how such postponement would affect registration of the property and the interests of the purchaser under the land title registration system (LTRS); and in particular where there is a charge on the property as a result of the

postponed payment.

7. The Administration was also asked to consider the view of the Assistant Legal Adviser that a registered charge is not an interest in land chargeable to estate duty and hence may not need to be mentioned in Clause 62(2)(a).

Administration's Response

Joint Tenancy

8. For illustration purposes in this paper the Administration will adopt the same format of Title Register¹ produced in the paper on "Format of Title Registers" (LC Paper No. CB(1)38/03-04(04)), a copy of which is at **Annex 1**.

9. Upon proof of the death of a joint tenant, the Land Register will remove the name of the deceased joint tenant from the column "Name of Owner". An appropriate note will be added in other columns to highlight the transmission of ownership to the surviving joint tenant under Clause 62 of the LTB as shown in **Annex 2**.

10. The application for the removal of the name of the deceased joint owner under Clause 62 shall be supported by a death certificate and a certificate of exemption /payment of estate duty or proof of any other proper arrangements for payment.

11. The historical record containing the name of the deceased owner immediately before the change will be kept as part of the permanent records of the Land Registry and made available for public search upon payment of a prescribed fee.

Sample Title Register with transfer under trust

12. At **Annex 3** is a sample Title Register where the registered owner, FGH, has executed a Trust Deed vesting the legal title of the property to the

¹The final version of the format of the Title Register is still under consideration by the Land Registrar.

trustee ABC to hold it upon trust for a life interest in favour of his wife, PQR, and then for the sole and absolute benefit of his son, XYZ, upon the death of his wife. Under the Trust Deed there are restrictions on the trustee's powers on sale and charge. Upon registration of the transfer under the Trust Deed, FGH has also applied for an entry of a restriction upon the trustee's powers of disposition in order to protect the interest of the infant beneficiary. No particulars of the trust, e.g. the life interest of PQR will be entered in the title register [Clause 69(2)].

Policy Intent under Clause 62

13. The Administration confirms that for transmission upon death of a joint tenant the remaining joint tenant or tenants shall hold the property subject to and with the benefit of the same rights and incumbrances as those before the death of the deceased joint tenant. The Administration will consider improvement to the drafting of Clause 62(1) to make clear this policy intent.

Clause 62(2)(b)- estate duty - sample title register

14. The purpose of Clause 62(2)(b) is to ensure that the estate duty chargeable on the subject property is either paid or properly arranged for. It is up to the surviving joint tenant to produce evidence to satisfy the Land Registrar that it is the case. Until then, the Land Registrar may decline to process the surviving owner's application for registration of the transmission on death under Clause 62. The fact that the surviving owner cannot procure a change of ownership to his sole name may alert the person who wants to deal with the land that there might be a problem with the chargeable estate duty. Just like a Deed of Gift appearing on the land register under the present deeds registration system, the potential purchaser will be alerted to the potential charge of estate duty. He should demand clarification from the surviving owner before he enters into any dealing.

15. If a charge for estate duty has been entered on the Title Register as shown in the sample Title Register marked **Annex 2**, the new purchaser shall deal with it in the agreement for sale and purchase. He may take such precautions and make specific stipulations as he would do if there is an existing mortgage or charge on the title register. The name of the deceased

owner and the date of death in the "Remarks" column provides the link to all previous transactions which were done in the names of both joint tenants.

16. When a purchaser presents his application for caution in respect of his agreement for sale and purchase with the surviving owner and the surviving owner also presents his application for registration for transmission upon death under Clause 62 with satisfactory proof of the death of the other joint tenant, the Land Registrar will cause the particulars under the "Name of Owner" to be changed to the sole name of the surviving owner according to Clause 62. The caution for the agreement for sale and purchase will then be entered as provided for by Clause 70. However, the purchaser may become liable to any chargeable estate duty if he is not considered by a court to be a bona fide purchaser for valuable consideration without notice².

Estate duty on registered charge

17. The Administration agrees to the observations of the Assistant Legal Adviser that a registered charge is not chargeable to estate duty under Section 18 of the Estate Duty Ordinance and that there should be suitable amendment to Clause 62(2)(a).

Clause 65 (effect of transmission on death)

Members' Questions

18. The Administration was asked to improve the drafting of Clause 65 in the same way as Clause 62(1) so as to clearly set out the policy intent that the transmission on death will not change the status quo apart from the change of ownership (i.e. that upon death of the owner of registered land, the personal representative to be registered as the owner would hold the land subject to exactly the same rights and incumbrances as before).

Administration's Response

² See the proviso of section 18(1) of the Estate Duty Ordinance (Cap.111)

19. The Administration will consider improvement to the drafting of Clause 62(1) to make clear its policy intent.

Clause 67 (transmission on liquidation)

Members' Questions

20. The Administration was asked to consider how receivership should be dealt with under the LTRS.

Administration's Response

Legal nature of receivership

21. The case law shows that an appointment of receiver to deal with land and property does not create an interest in the land nor does it create a charge on the property³.

22. In the case of an appointment of receiver by the court by way of equitable execution⁴, the receiver does not receive the rents and profits by virtue of any estate or title in him. He is merely the officer of the court to collect the same upon the title of some persons who are parties to the action. It is an act of contempt of court to interfere or obstruct the exercise of powers by the receiver who is appointed by the court.

23. In the case of a receiver appointed under a fixed charge of a debenture or a legal charge to protect the interest of the chargee, the powers of the receiver is found in the charge document. The receiver may find additional powers implied by Section 50 of the Conveyancing and Property Ordinance unless it is contrary to the express provisions in the charge document. The charge document may also stipulate whether the receiver appointed is deemed to be acting as agent for the charger or as agent for the chargee.

24. Section 50 of the Conveyancing and Property Ordinance (Cap.219)

³ Chitty J in *Vine v Raleigh* (1883) 24 Ch.D. 238 at 243; *Clayhope Properties Ltd. v Evans* [1986] 1 W.L.R.1223, at 1229 C.A.

⁴ Section 21L(1) of High Court Ordinance (Cap.4) & O.30, r.1 of the Rules of High Court - court's power to appoint receiver by way

[CPO] provides that upon default of payment under a legal charge or equitable mortgage by deed, the mortgagee has the power to appoint a receiver of the mortgaged property and collect the income thereof unless there is any provision to the contrary in the deed. A receiver so appointed is deemed to be the agent of the mortgagor in the absence of express provision to the contrary. The powers of the receiver are listed in the Fourth Schedule to the CPO which include a power to take possession, to lease, and to sell and assign the property.

25. Under the LTRS both an appointment of a receiver by court or an appointment under a legal mortgage or equitable mortgage by deed may support an application for registration of a *restriction* if it is at the instance of a mortgagee or chargee of the property.

26. If it is an appointment of receiver made by the court by way of equitable execution upon the application of a litigant in action who is not interested in the land, he should at the same time apply for an *inhibition* under Clause 74 to restrain registration of any dealings inconsistent with the order of appointment of receiver.

Clause 68 (transmission in other cases)

Members' Questions

27. The Administration was asked to examine the need to cover in Clause 68 a person who has become entitled to registered land as a trustee under a court order.

Administration's Response

28. The Administration will consider appropriate amendments to the Bill to cover this point.

Clause 69 (trusts not to be entered in Title Register)

Members' Questions

29. Members noted that Clause 69(1) and (2) provide that the Land Registrar shall not enter particulars of the trust in the Title Register. As restrictions are the exceptions, the Administration was asked to consider amendment to the two sub-clauses to make it clear that they are subject to the provisions on restrictions in the Bill, and to provide a sample to show how restrictions are entered in the Title Register.

Administration's Response

30. The Administration will consider appropriate amendments to make it clear that Clause 69(2) shall not affect the entry of restrictions or cautions which may contain particulars of the trust.

31. At **Annex 3** is a sample of the Title Register containing an entry of the owner's name with addition of "as trustee" and an entry of a restriction on the powers of disposition of a trustee.

December 2003

Housing, Planning and Lands Bureau

FORMAT OF TITLE REGISTER業權註冊紀錄的樣式

擁有權註冊紀錄
OWNERSHIP REGISTER

物業資料
Property Particulars

業權編號
Title No.: A1234
地段編號
Lot No.: Inland Lot No.789
土地不分割份數
Undivided share in land: —
地址/位置
Address/Location: 10 Peak Road Hong Kong

批約
Held under: Government lease
年期
Lease Term: 999 years
開始日期
Commencement of Lease Term: 1/1/1850
每年地稅
Rent per annum: \$10.00
物業備註
Remarks:
首次註冊日期
Date of 1st registration: 1/10/2005

業主資料
Owners Particulars

業主姓名 Name of Owner	身分(如非唯一擁有人) Capacity (if not sole owner)	交易性質 Nature of Dealing	申請編號 Application No.	註冊日期 Date of Registration	成交價錢 Consideration	備註 Remarks
ABC Company Limited		TRANSFER	56789	1/3/2006	\$10,000,000	

產權負擔
Incumbrances

申請編號 Application No.	註冊日期 Date of Registration	交易/申請性質 Nature of Dealing/Application	文書/合約/呈請/命令等 性質 Nature of instrument/ Contract/Petition/Order etc.	受益方/申請人/有關各方的姓 名/名稱 Name of Party in favour of/ Applicant/Relevant Parties	成交價錢 Consideration	備註 Remarks
66821	1/6/2006	Long-term lease	Long-term lease	Chan Joseph	\$1,000,000	Re: Flat 1, 1/F
66825	1/6/2006	Long-term lease	Long-term lease	Yim Eric	\$800,000	Re: Flat 2, 1/F
66833	1/6/2006	Charge	Charge	DE Bank	All monies	Re: Flat 1, 1/F
66845	1/6/2006	Charge	Charge	FG Bank	All monies	Re: Flat 2, 1/F
69955	1/12/2006	Consent Caution	Sale and Purchase Agreement	Chi Tina	\$1,200,000	Re: Flat 1, 1/F
71234	1/1/2007	Non-Consent Caution	Lis Pendens	FG Bank and Yim Eric	—	Re: Flat 2, 1/F

申請紀錄
Applications Record
(Applications Pending Registration 等待註冊的申請)

申請編號 Application No.	呈遞日期 Date of Presentation	交易/申請性質 Nature of Dealing/Application	附連文書性質 Nature of accompanying instrument	有關各方姓名/名稱 Name of parties	成交價錢 Consideration
72233	3/2/2007	Charging Order	Charging Order	FG Bank and Eric Yim	—

A . Before death of joint tenant Lee Lai Ling**Owners Particulars**

Name of Owner	Capacity (if not sole owner)	Nature of dealing	Application No.	Date of Registration	Consideration	Remarks
SZETO Man Lung and Lee Lai Ling	Joint Tenants	Assignment dated 23.11.1990	A0000000	00.00.0000	\$0,000.000.00	

Incumbrances

Application No.	Date of Registration	Nature of Dealing / Application	Nature of instrument /Contract /Petition/ Order etc.	Name of Party in favour of / Applicant/ Relevant Parties	Consideration	Remarks
B0000000	00.00.0000	Easement, right or covenants as contained in the DMC	Deed of Mutual Covenants dated 00.00.0000 ["DMC"]	As per DMC	As per DMC	
B0000000	00.00.2022	Charge	Legal Charge dated 10.12.2000	Chargee: FGH Bank	All monies	

B. After death of joint tenant Lee Lai Ling**Owners Particulars**

Name of Owner	Capacity (if not sole owner)	Nature of dealing	Application No.	Date of Registration	Consideration	Remarks
SZETO Man Lung	Sole Surviving Joint Tenant	Transmission on death of joint tenant under s.62 of LTB	D00000000	20.10.2022	-Not applicable-	Date of death of joint tenant Lee Lai Ling: 10.9.2021

Incumbrances

Application No.	Date of Registration	Nature of Dealing / Application	Nature of instrument /Contract /Petition/ Order etc.	Name of Party in favour of / Applicant/ Relevant Parties	Consideration	Remarks
B0000000	00.00.0000	Easement, right or covenants as contained in the DMC	Deed of Mutual Covenants dated 00.00.0000 ["DMC"]	As per DMC	As per DMC	
C0000000	00.00.0000	Charge	Legal Charge dated 10.12.2000	Chargee: FGH Bank	All monies	
C0000000	00.00.0000	First charge for estate duty	Application dated 00.00.0000 and signed by The Commissioner of Estate Duty pursuant to Section 18(2) of the Estate Duty Ordinance (Cap.111)	The Commissioner of Estate Duty	-Not applicable-	
E0000000	00.00.2023	Consent Caution	Agreement for Sale and Purchase dated 00.00.2023	Purchaser: LOK Sin Wah & Wong Kar Mei (as joint tenants)	\$0,000,000,00	

Owners Particulars

Name of Owner	Capacity (if not sole owner)	Nature of dealing	Application No.	Date of Registration	Consideration	Remarks
ABC (as trustee)	-Not Applicable-	Acquisition as trustee under Trust Deed dated 00.00.0000	A0000000	00.00.0000	Nil	
<u>Restrictions</u> imposed by Land Registrar under Section 74 of LTB:-			D0000000	00.00.0000	Nil	

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 during the infancy of the beneficiary XYZ without the approval of a court order.

Incumbrances

Application No.	Date of Registration	Nature of Dealing / Application	Nature of instrument /Contract /Petition/ Order etc.	Name of Party in favour of / Applicant/ Relevant Parties	Consideration	Remarks
B0000000	00.00.0000	Easement, right or covenant as contained in the DMC	Deed of Mutual Covenants dated 00.00.0000 ["DMC"]	As per DMC	As per DMC	
C0000000	00.00.0000	Charge	Charge dated 00.00.0000	Chargee: AAA Bank	\$200,000	Approved by court order dated 00.00.0000 (for repairs and maintenance)
C0000000	00.00.0000	Lease	Tenancy Agreement dated 00.00.0000	Tenant: BBB Ltd.	As per Tenancy Agreement	