

HPLB/LTB Paper 54/03

Bills Committee on Land Titles Bill

**Part 6 - Instruments
Minors**

Purpose

This paper addresses the following issues raised by the Members during the 16th Bills Committee meeting :-

- (a) how disposition by a minor is dealt with under the English system, in particular whether an arrangement similar to that under Clause 61(2) has been adopted;
- (b) whether there should be a clause in the Bill setting out clearly in simple terms that once a person is registered as the owner of a property, his title is absolute except in certain circumstances e.g. in cases where the purchaser knows that the person selling the property is a minor; and
- (c) how the structure and drafting of Clause 21 and the relevant provisions could be improved so that the effect of registration and any exceptions will be clearly set out in simple terms in a single clause.

U.K. System

Minor

2. In England and Wales, after January 1, 1970, full age was reduced from 21 to 18 years and persons not of full age became known as "minors" in place of "infants".¹ Under Section 1(6) of the Law of Property Act 1925, a minor cannot hold a legal estate in land nor can he be a tenant for life or exercise the powers of a tenant for life.²

¹ Registered Conveyancing, Ruoff & Roper, Sweet & Maxwell 2001, para.10-05

² Registered Conveyancing, Ruoff & Roper, para.10-05

Land Registration Act 1925

3. Under Section 3 (iv) of the Land Registration Act 1925, a minor is **not capable** of being an estate owner and thus the usual rule of law that the legal estate is vested in the registered proprietor cannot apply in the case of a minor.

4. Under Section 111 of the 1925 Act, a purported disposition of any registered land or charge to a minor will not entitle the minor to be registered as proprietor of the registered land or charge until he attains full age. In the meantime the disposition operates only as a declaration binding on the proprietor or personal representative that the registered land or charge is to be held on trust in favour of the minor and the minor's interest is protected by means of a **restriction** on the register. Under the provisions of the Land Registration Act 1925 any limitations on the powers of the trustees should be protected by the entry of a restriction. Otherwise the powers of the trustees would be unfettered.

Land Registration Act 2002

5. The new Land Registration Act 2002 has just come into effect on 13.10.2003 and replaced the Land Registration Act 1925. Under Section 26(1) of the Land Registration Act 2002, a person's right to exercise an owner's power in relation to a registered estate or charge is to be taken to be free from any limitation affecting the validity of a disposition. This section has effect for the purpose of preventing the title of a disponee being questioned [Section 26(3)].

6. In *State Bank of India v Sood* [1997] Ch 276, 284, Peter Gibson LJ stated that " in registered conveyancing it is fundamental that any registered proprietor can exercise all or any powers of disposition unless some entry on the register exists to curtail or remove those powers". In other words, a person can rely upon the register to tell him or her whether there are any limitations on the powers of a registered proprietor and can safely act in reliance upon it.

7. The principle adopted in the Land Registration Act 2002 is that a person's right to exercise an owner's power is unlimited unless there is some entry in the register or limitation imposed by or registered under the Act. This is to prevent the title of the disponee being questioned. It follows that, if the person exercising an owner's power did not have unlimited power, but there was no entry in the register to reflect this fact, then the disponee's title could not be challenged.

Present Position in Hong Kong

8. As a general rule, when a minor enters into a contract, he is not bound by its terms and can avoid performance without being treated as having breached the contract. As against the minor the contract is said to be unenforceable.³

9. Under the existing law, a minor has capacity to hold or own land but has no capacity to deal with the land during his minority. The acquisition of land in these cases is usually by way of succession. A party dealing with the minor owner would seek to rely on the presumption provided under Section 22 of the Conveyancing and Property Ordinance (Cap.219)⁴ to ensure the validity of the transaction.

Clause 61 of the Bill

10. Clause 61(1) does not enable a minor to deal with registered land by virtue of being the owner of the land. Under Clause 61(2), where a disposition by a minor of registered land has been registered and:-

- (a) the person to whom the disposition is made acted in good faith and for valuable consideration; and
- (b) the minority of that minor was **not disclosed** to that person at any time before the registration of the disposition,

that disposition will not be set aside only on the ground of that minority. However, under 61(3) of the Bill, the name of a minor may be registered in the Title Register as the owner of registered land but the words “a minor” will be added after the minor’s name and thus the minority of the minor will be **disclosed**. In such case, as the minority of the minor is disclosed, Clause 61(2) will not apply and the existing common law will apply instead.

11. The intent of this provision is to provide protection for disponees. Such intent is consistent with the fundamental tenet of this Bill that, if there is no limitation or restriction on the vendor’s power to deal with the

³ Hong Kong Conveyancing – Law & Practice, Sihombing & Wilkinson, Vol. 1(A) Ch. X, para [3]

⁴ Section 22 of CPO states that: “ A party to any instrument shall be presumed, until the contrary is proved, to have full legal capacity to execute that instrument, to bind himself in terms of that instrument and to dispose of or hold any property or rights assigned under the instrument.”

property, then, once a person is registered as the owner of a property, the title is vested in him.

12. If the disponee knows that the person selling the property is a minor, the disposition could be set aside. In such case, the position of the existing law that the minor is not bound by the terms of the contract is unaltered. Clause 61(3) provides a simple way through which notice of the minority can be given.

Statement of effect of registration

13. The Administration will consider making appropriate amendments in the Bill setting out clearly that once a person is registered as the owner of a property his title is absolute except in certain circumstances. Such circumstances would include the case mentioned above where the purchaser knows that the person selling the property is a minor.

Clause 21

14. The Administration will consider making appropriate amendments to Clause 21 and related provisions so that the effect of registration and any exceptions will be clearly set out in simpler terms than presently drafted.

December 2003

Housing, Planning and Lands Bureau