



THE
LAW SOCIETY
OF HONG KONG
香港律師會

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Land Titles Bill

16 December 2003

BY FAX (28017134) AND BY POST

The Hon. Margaret Ng
Chairman of the Bills Committee
on Land Titles Bill
Room 116, New Henry House,
10 Ice House Street,
Hong Kong.

Dear Ms. Ng,

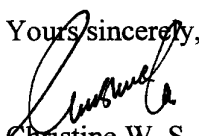
LAND TITLES BILL

We refer to the recent meeting of the Working Party on Land Titles Bill, which you have kindly attended and briefed members on the Bills Committee's concerns.

Our Council has since carefully reviewed the conversion mechanism proposed under the Bill and come to the conclusion that the proposed system is unworkable and cannot be supported.

We propose that "*Midnight Conversion*" is the best and most practical way to implement the Land Titles Bill. However, if this is not acceptable, we would support a "*Daylight Conversion*" system as an acceptable and viable alternative. In this regard, we attach a copy of our letter of even date to Miss Cheung Sui Hing of the Housing, Planning & Lands Bureau, contents of which are self-explanatory, for your kind attention. The short note annexed to the letter will give an idea of the proposed "*Daylight Conversion*" system.

Yours sincerely,


Christine W. S. Chu
Assistant Director of Practitioners Affairs

Encl.
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President	Vice Presidents	Council Members				Secretary General
Ip Shing Hing	Anson K.C. Kan Michael J. Lintern-Smith	Denis G. Brock	Andrew Jeffries	Billy W.Y. Ma	Herbert H.K. Tsoi	Patrick R. Moss
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		Lester G. Huang	Peter C.L. Lo	Sylvia W.Y. Siu		



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Our Ref : Land Titles Bill
Your Ref : HPLB(B) 76/85/08 Pt.69
Direct Line :

BY FAX (28992916) AND BY POST

16 December 2003

Miss Cheung Siu Hing
Housing, Planning & Lands Bureau
Murray Building,
Garden Road, Hong Kong.

Dear Miss Cheung,

LAND TITLES BILL – CONVERSION MECHANISM

Our recent discussions on the Society's concerns on the Bill refer. Our Council has carefully reviewed the conversion mechanism proposed under the Bill. It has come to the conclusion that the existing Bill, which requires a solicitor to guarantee title by the issue of a good title certificate, is unworkable and cannot be supported in the absence of a mechanism by which doubtful cases can be referred to the Land Registrar for review.

Certificate of Good Title or Holding Title

We have already pointed out the difficulties in practice for solicitors to issue certificates of good title given that in many instances, a completely clean certificate of title is not possible.

Whilst the proposed system may be improved by allowing solicitors to disclose defects and providing for regulations to enable a solicitor to know when a qualified certificate will and will not disqualify a title from registration, it is impossible for any modified system to cater for all situations. To make the system work, there would need to be a reference body under the auspices of the Land Registrar to which solicitors can refer in cases of doubt.

We have further considered the possibility of "*lowering the bar*" to require for certificates of "*good holding title*". Again, whatever level of certificate may be required; there will need to be a reference body in cases of doubt. There is also an additional concern with good holding title certificates, namely, the conveyancing profession at large will not be familiar with the concept and this may create an additional level of confusion.

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We understand that the Government are not willing to set up any reference body under the auspices of Land Registrar to act as adjudicators of what will or will not be allowed for first registration in cases of doubt.

Other Options:

Midnight Conversion

The Council considers that Midnight Conversion is the best available method by which Title Registration should be implemented as the “*at the stroke*” conversion and removal of technical title defects will achieve the dual purpose of simplicity and certainty of the system.

There should be a suitable time lag between passing the Bill and an implementation date to allow for publicity both in HK and overseas jurisdictions to alert potentially interested persons and so as to allow the Land Registry to prepare for implementation.

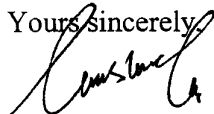
Daylight Conversion

The Council has also discussed as an alternative to Midnight Conversion, a Daylight Conversion system, which is an adaption of some systems that operate in Australia. Attached is a short note of how such a system would operate.

In effect it is a deferred Midnight Conversion. It places all existing titles in incubation for an appropriate period, which is suggested as 12 years which is tied to the general limitation period. No voluntary registration is permissible. For existing titles solicitor would need to check title in the same way as present with an important qualification, namely that it would only be possible to deal with these properties after the Bill was implemented as if they were registered titles i.e. by transactions on the Register and that transactions off the Register would not be recognised as creating interests in land. This is important so as to ensure that during the incubation period no new unregistered rights are created. On expiration of the incubation period all existing titles will be converted unless action has been taken to prevent this.

Recommendations

The Council recommends that Midnight Conversion is the best and most practical way to implement the Land Titles Bill. However, if this is not acceptable, then a system of Daylight Conversion along the lines indicated would be an acceptable and viable alternative which the Law Society would support.

Yours sincerely


Christine W. S. Chu
Assistant Director of Practitioners Affairs

c.c.: Ms. Margaret Ng – Chairman of the Bills Committee on Land Titles Bill

SUGGESTED SCHEME OF DAYLIGHT CONVERSION (Simple Outline)

Part I - The Scheme

- 1) Under the present LRO, the only "interests" that will displace the order of priority of registered instruments are "unwritten equities". Upon commencement date of the bill, no new unwritten equity would have effect. Only registered matters, defined overriding interests or matters existing before the commencement date would be enforceable. In other words as from commencement date, "unwritten" interests *in personam* could be created, enforceable in contract but not *in rem*, enforceable against the land.
- 2) From a designated date, all properties would be placed on a "provisional" or "interim" title register by transferring all the relevant entries kept under the Land Registration Ordinance ("LRO") and upon which LRO will expire. "Cautions" will, as from that date, be permitted to be registered against such "provisional" or "interim" title. The status of a "provisional" or "interim" title is that it will be defeasible, i.e. it could be "defeated" by a claim made under a caution.
- 3) 12 years after 2), all properties on the "provisional" or "interim" register would be brought fully under the title registration system again except where a caution has been lodged. The titles then will be indefeasible except for overriding interests, fraud, etc. as set out in the Bill.
- 4) Cautions against conversion from the "provisional" or "interim" to the final register could be lodged at any time and would lapse one year after lodgment if the cautioner has not commenced court proceedings to assert his claim.

Part II - Advantages

The above arrangements would entail:

- no additional liability on the Government to examine or approve title
- no market pressures or liabilities on solicitors arising from certificates of good title
- all properties are treated alike, avoiding labelling effects that may influence market sentiment.
- Owners of "unwritten equities" will have the "limitation period" (i.e. 12 years) to assert their claims, thus preserving their legal rights.