

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 3 January 2003**

Legal Service Division Report on Land Titles Bill

I. SUMMARY

1. **Object of the Bill** To provide for a system of registration of title to land.

2. **Comments**
 - (a) The Administration proposes a gradual conversion from the existing deeds registration system to the title registration system.
 - (b) Title would vest in the registered owner subject to certain unregistered interests (under particular circumstances) and overriding interests specified in the Bill.
 - (c) Rectification of the Title Register may be made by order of the Court of First Instance.
 - (d) An indemnity against fraud, mistake or omission would be provided by the Government, and funded by prescribed fees and levies.
 - (e) Boundaries may be determined by the Director of Lands on application, but the Bill prohibits any claim for indemnity or proceedings in respect of any discrepancy in the area or measurement of the boundaries.

3. **Public Consultation** The Land and Building Advisory Committee, the Law Society and the Bar Association were consulted.

4. **Consultation with LegCo Panel** The policy aspects of the Bill were discussed at the meeting of the LegCo Panel on Planning, Lands and Works on 5 July 2002.

5. **Conclusion** It is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Object of the Bill

To provide for a system of registration of title to land, and for matters incidental thereto or connected therewith.

LegCo Brief Reference

2. HPLB(B) 76/85/08(02) Pt 55 issued by the Housing, Planning and Lands Bureau in December 2002.

Date of First Reading

3. 18 December 2002.

Comments

Gradual Conversion

4. At present, the Land Registration Ordinance (Cap. 128) provides for a system of registering instruments affecting land. The Bill introduces a new system of registering the title to land and the interests in the land subject to which the title is held. The Administration proposes a gradual conversion from the existing deeds registration system to the new title registration system and would revisit the idea of midnight conversion in due course.

The proposed Title Registration System

5. Under the Bill, an application for a first registration of land—
- (a) shall be made upon the first assignment or the issue of the Government lease on or after the date of commencement; or
 - (b) may be made by owners named in the register kept and maintained under the Land Registration Ordinance.

Except in the case of the issue of a Government lease, applications for a first registration would be accompanied by a certificate of good title signed by a solicitor.

6. The registration of a person as an owner would vest in that person the legal estate or equitable estate in the land or the undivided share in the land subject to certain unregistered interests (under particular circumstances) and overriding interests specified in the Bill. The Land Registrar may issue title certificates on application, and a subsequent transfer or transmission would not be registered in respect of the land or lease unless the certificate is returned for cancellation.

The role of the Court of First Instance

7. The Land Registrar may apply to the Court of First Instance for directions on principles of law in case of doubt or difficulty or in any matter not provided for under the Bill. A person may appeal to the Court of First Instance against a decision of the Land Registrar (except a decision relating to a claim for indemnity). The Court of First Instance may order rectification of the Title Register—

- (a) where it is satisfied that the entry has been obtained, made or omitted by fraud, mistake or omission of any person, or by means of a void or voidable instrument;
- (b) where the owner or the lessee had knowledge of, caused or contributed to the fraud, the mistake or omission, or the void or voidable instrument;
- (c) in the case of fraud, where the court is satisfied that it would be unjust not to rectify the Title Register and has considered such factors as it thinks fit including the acts of the parties and hardship to the parties.

Indemnity

8. The Bill provides that indemnity is payable to a person who has suffered loss by reason of an entry in or omission from the Title Register because of fraud and to which a court order on rectification relates, or because of any mistake or omission of the public officers of the Land Registry. Provisions are made for calculation of the amount of indemnity, the procedure for making a claim, the time limit and the rights of the Government to recover any amount paid by way of indemnity. It is also provided that a professional indemnity insurer shall not be entitled to be subrogated to any rights or remedies of any person against the Government.

9. The Financial Secretary may by notice in the Gazette determine the amount of upper limit for the indemnity. The notice would be subsidiary legislation. According to the LegCo Brief, the limit is proposed to be \$30 million per claim. The Financial Secretary may also by regulation prescribe fees and levy to be paid to the Land Registrar, and it is specified that the Financial Secretary may take account of the indemnity required to be provided by the Government in exercising his power. The Bill expressly provides that the amount of any fee or levy prescribed would not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred.

Land Boundaries

10. The Bill prohibits any claim to indemnity or proceedings in respect of any discrepancy in the area or measurement of the boundaries. An owner may however apply to the Director of Lands for a determination of boundaries under certain circumstances specified in the Bill.

Public Consultation

11. According to the LegCo Brief, the Land and Building Advisory Committee and the legal profession were consulted. The latest views of the Law Society and the Bar Association are set out in paragraphs 21 and 22 of the Brief.

Consultation with LegCo Panel

12. Members of the Planning, Lands and Works Panel were briefed on the background and main features of the proposed title registration system at the Panel meeting on 5 July 2002. Panel members supported the introduction of the proposed system in principle and considered the revised legislative package an improvement to the original one proposed in 1994. They however expressed concerns over—

- (a) the arrangements for conversion from the current deeds registration system to the title registration system;
- (b) the fees and levy to be imposed;
- (c) the proposed cap of \$30 million on the indemnity fund;
- (d) the impact of overriding interests on ownership of properties; and
- (e) the principle of indefeasibility of ownership.

13. Members may wish to refer to the minutes of the Panel meeting (LC Paper No. CB(1)549/02-03) for details.

Conclusion

14. The proposals in the Bill represent a complete change from the existing system of registration. The change has implications on the rights and interests of property owners under the new system. While the Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill, Members may wish to set up a Bills Committee to consider the Bill in detail.

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