

**For discussion
on 19 December 2022**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Proposal of Implementing
Title Registration on “Newly Granted Land”**

PURPOSE

This paper briefs Members on the proposal of implementing title registration on “newly granted land” (hereafter referred to as “**New Land First**” proposal).

BACKGROUND

2. The present land registration system in Hong Kong is a deeds registration system operating under the Land Registration Ordinance (**LRO**) (Cap. 128) since 1844. Deeds registration system only governs the priority of registered instruments in the land register. It gives no guarantee of title to the property, as the land register is not conclusive of property ownership which may be subject to interests not registered or title defects not reflected in the land register. Therefore, in order to prove title in property transactions, thorough check on historical title documents is required and this has to be repeated for each and every transaction. Also, property owners have to safe keep historical title documents and pass the same to subsequent owners when the properties are sold. Accordingly, the conveyancing procedures under the existing system are rather complicated. Hong Kong is amongst the few economies which still run a deeds registration system.

3. Against the above background, in 2004, the Land Titles Ordinance (**LTO**) (Cap. 585) was enacted to replace the deeds registration system with a title registration system. The latter aims to provide better assurance and greater certainty of title and simplify conveyancing procedures as land

title will be conferred by registration. In general, except for overriding interests¹, the title register (**Title Register**) is conclusive evidence of the title to the property. The Land Titles Indemnity Fund (**Indemnity Fund**), to be established under the LTO, which is to pay indemnity (subject to a cap) to persons who suffer loss in ownership due to fraud also gives added protection for property owners under the title registration system. A comparison of the key aspects of the LRO and the LTO is in the second and third columns of the table at **Annex**.

4. When the LTO was enacted in 2004, the Government undertook to conduct a comprehensive review of the LTO in consultation with the key stakeholders before its commencement to ensure that the various provisions would work effectively in practice. In this connection, the Government has set up committees with representation of key stakeholders² to steer and carry out the review of the LTO. There have been extensive discussions on, amongst others, the following three major issues –

- (a) ***conversion mechanism***: It refers to conversion of land currently registered under the LRO to the title registration system under the LTO and how rights and interests that may exist under the deeds registration system are to be handled during the conversion. There are concerns that potential cases of indeterminate ownership under the deeds registration system may affect the accuracy of the Title Register particularly under an automatic conversion mechanism. Given the significant implications, how the conversion for existing land should be done, especially in respect of how to find out and deal with properties with defective titles, has been a point of contention;
- (b) ***rectification of title***: It refers to how the legally authoritative Title Register can be put right if it is found to be in error particularly owing to a fraudulent transfer of property achieved through the

¹ Overriding interests are interests that affect the property notwithstanding that they are not registered, e.g. rights of way of necessity and lease for a term not exceeding 3 years.

² Including the Consumer Council, the Estate Agents Authority, the Heung Yee Kuk, the Hong Kong Association of Banks, the Hong Kong Bar Association, the Hong Kong Mortgage Corporation Limited, the Law Society of Hong Kong and the Real Estate Developers Association of Hong Kong.

fraud of a third party though such cases are expected to be few and far between. There were divergent views on whether the Title Register should be rectified in favour of the innocent former owner losing title due to fraud or whether the principle of indefeasible title should be upheld in which case the title of the innocent new purchaser shall be unaffected; and

- (c) *indemnity*: It refers to the compensation that will be paid to an innocent party if it suffers loss of ownership by reason of the inaccuracy of the Title Register due to fraud to which there is no rectification or in consequence of the relevant rectification (see paragraph 4(b) above). There were divergent views on whether the indemnity should be subject to a cap which would in turn affect the level of contributions required for setting up the self-financing indemnity fund.

5. We conducted a public consultation in 2009 on a revised proposal for the three major issues in paragraph 4 above. From February 2009 to October 2011, the Legislative Council Joint Subcommittee on Amendments to the LTO under the Panel on Development and Panel on Administration of Justice and Legal Services was set up to monitor the Government's work on the preparation of amendments to the LTO.³

6. Notwithstanding lengthy discussions in the past years, consensus still could not be reached with key stakeholders on the major issues. To enable early implementation of the title registration system, the Land Registry (LR) put forward the "New Land First" proposal as one of the options. After much discussion, all key stakeholders indicated support for the "New Land First" proposal as set out in the ensuing paragraphs.

"NEW LAND FIRST" PROPOSAL

7. The "New Land First" proposal seeks to implement title registration on new land first. Generally speaking, new land covers land granted by the Government on or after the commencement date of the LTO,

³ See "Report of the Joint Subcommittee on Amendments to Land Titles Ordinance" (LC Paper No. CB(1)51/11-12) at <https://www.legco.gov.hk/yr11-12/english/panels/lto/reports/ltoeb1-51-e.pdf>.

including –

- (a) land granted by way of land sale (auction or tender);
- (b) private treaty grant; and
- (c) land exchange (i.e. land regranted after surrender).

subject to certain exceptions⁴. After commencement of the LTO, titles on the new land, including cases where the new land has been divided up (e.g. into undivided shares) and titles subsequently sold to multiple owners, will immediately enjoy the benefits of title registration set out in paragraphs 8 to 13 below.

(A) Title certainty

8. The Title Register will be the conclusive evidence of title to property. A bona fide purchaser of property for value and in possession of the property will be recognised by law as the owner, and his title will not be defeasible. In other words, a purchaser will enjoy **indefeasible title** if he acquires the property after paying for it and has obtained physical occupation and control of the property after acquisition.

9. In line with the principle of “indefeasible title” and the very objective of the title registration system to give title certainty, the mandatory rectification (**MR**) rule⁵ in the enacted LTO will be abolished for new land registered. In other words, a bona fide and innocent purchaser for value and in possession of the property will enjoy indefeasible title even in the event of a transfer of property achieved through the fraud of a third party. In such cases, the innocent former owner failing to recover the property will be entitled to indemnity (please see the section on “Proposed Indemnity Scheme” below). Such an approach is broadly in line with that in other jurisdictions with title registration regimes. On the contrary, if the MR were to remain as a rule

⁴ For example, land let out by Government through a short term tenancy (i.e. with a term not more than 7 years) will be excluded from the definition of new land.

⁵ The MR rule essentially refers to rectification (upon an order by the Court) of the Title Register in favour of a former registered owner (if innocent) if he lost his title by or as a result of fraud, irrespective of whoever is currently the registered owner.

that must be observed, any prudent purchaser will demand investigation into the title history of a property to obtain greater assurance of his title, thus defeating the original purpose of implementing the title registration system. This will undermine the certainty of title and work against the objective of simplifying conveyancing procedures under the title registration system. While we do not propose to apply the MR as a rule, if the purchaser with registered title is not buying the property for value or not in possession of it, the court would still have discretion to decide whether to restore the title to the former owner filing an application with the court to rectify the Title Register, taking into account the circumstances of the case.

10. Moreover, the Government is actively considering the feasibility of dis-applying the adverse possession laws to new land registered under the LTO.⁶ In other words, any claims for adverse possession would be barred for land with title registered under the “New Land First” proposal. We see the logic of doing so if the whole purpose of the title registration system is to give certainty to title.

(B) Simplified conveyancing procedures

11. In general, title will only be subject to registered matters appearing on the Title Register (except for overriding interests). It will no longer be necessary to check or safe keep historical title documents for verifying the

⁶ The Law Reform Commission (LRC) suggested in its Report in 2014 to introduce a prior notification requirement for claiming adverse possession on registered land when a registered title regime is in place in Hong Kong. Specifically, LRC recommended that a new mechanism should be set up for squatters to come forth to apply after the tenth year of uninterrupted adverse possession, and landowners to be notified of such application and have the chance to object. If the landowners do not object within the specified period, the squatters would be registered as the title holder accordingly. We are of the view that the dis-application of adverse possession laws in new land is the better alternative as it best dovetails with the principle of title certainty. We note that some common law jurisdictions (e.g. Canada (most provinces) and Singapore) have indeed abolished adverse possession altogether upon implementation of title registration, while others have retained it with corresponding amendments such as a notification system similar to LRC’s recommendation (e.g. England and Wales). In the case of Hong Kong, the public views gathered so far are more inclined to have adverse possession abolished in future on grounds that private ownership should be respected.

title to the properties. Hence, it will simplify the conveyancing procedures and minimise the space and cost for keeping such historical title documents. The risk of loss of title documents will also be reduced. For land registered on the Title Register, the owner should safe keep the title certificate to be issued by the LR (please see paragraph 13(c) below).

(C) Availability of indemnity

12. Persons who suffer a loss due to fraud that causes an entry being made in, or removed or omitted from, the Title Register and results in the loss of ownership will be eligible for compensation, subject to a cap (please see the section on “Proposed Indemnity Scheme” below).

(D) Enhanced protection to registered owners

13. Compared to the existing deeds registration system, registered owners under the “New Land First” proposal will enjoy additional safeguards against property fraud –

- (a) ***high thresholds set for indefeasible title:*** three requirements will have to be met for conferring indefeasible titles, that is only if the purchaser (i) is bona fide; (ii) has acquired the property for value and (iii) is in possession of the property;
- (b) ***statutory requirement on solicitors’ verification of an application for registration under the LTO:*** solicitors will be required under law to verify applications, including performing checking on the identity, capacity and authority of parties and ensuring due execution of documents lodged with LR;
- (c) ***issuance of title certificates with security features:*** title certificates with advanced anti-forgery features will be issued automatically to registered owners upon, among others, registration of transfer. Upon disposal of the property, the issued title certificate will have to be returned to the LR for cancellation; and
- (d) ***free alert service for registered owners:*** registered owners will receive notification (in the form of e-mail, followed by phone’s Short Message Service (SMS) reminders on the issue of the notification) from the LR when there is an application for registration lodged against their properties and also upon the

completion of registration. The service will enable registered owners to discover possible fraud at an early stage and take appropriate action as soon as practicable.

A fraudster will continue to be criminally liable for his action in a fraudulent transfer as under the deeds registration system.

14. A comparison of key aspects of the LTO and the “New Land First” proposal is in the third and fourth columns of the table at Annex. In line with the Government’s initiative of promoting wider use of electronic services, applications under the LTO may be lodged by electronic means, which will save time and effort for the applicants.

15. The “New Land First” proposal will secure early implementation of title registration in Hong Kong, thus enabling practitioners and the public to benefit from the new system as early as possible. It will be a major step towards bringing Hong Kong’s land registration system in line with that in the Mainland and other jurisdictions (such as Singapore and the United Kingdom), thereby helps enhance efficiency of property conveyancing, improve the business environment and raise Hong Kong’s competitiveness.

16. We expect that the experience gained from the implementation of the “New Land First” proposal will facilitate all parties in reaching a consensus on the implementation of title registration system on existing land. Overseas experience shows that the full migration to title registration can be a prolonged process, and in the interim, the deeds registration system and title registration system will exist alongside.

PROPOSED INDEMNITY SCHEME

17. It is proposed that the Indemnity Fund be established and operate on a self-financing basis, i.e. the indemnity is to be paid out from the Indemnity Fund which is built up by levy on transfers registered under the LTO. Based on the recommendations of an actuarial consultant engaged by LR earlier this year, and taking into account the self-sustainability of the Indemnity Fund as well as the level of public acceptance, we propose

that the indemnity cap be **HK\$50 million** (as compared to HK\$30 million proposed when LTO was enacted in 2004) and a flat levy rate of **0.014%** (as compared to 0.017% proposed in 2004) on the consideration amount of each property being transferred. The proposed cap will provide sufficient protection for the great majority of property owners, as over 99% of assignments registered at the LR in 2020-21 involved consideration up to HK\$50 million.

18. To provide sufficient buffer for indemnity payment, a stand-by loan facility of, say, HK\$150 million for the Fund from the Government may be made available. Such a loan facility is subject to the approval of the Legislative Council Finance Committee.

19. The Government will review the above figures nearer the time during the legislative amendment exercise to implement the “New Land First” proposal if Members support the above indemnity scheme.

WAY FORWARD

20. Subject to the views of the Panel on Development, we will proceed to prepare legislative amendments to the LTO to implement the “New Land First” proposal. Our target is to introduce the Land Titles (Amendment) Bill into the Legislative Council in early 2024. In the meantime, we will continue to engage stakeholders to work out implementation details, including the preparation of subsidiary legislation and practice guides for conveyancing and registration in respect of properties covered by the proposal.

ADVICE SOUGHT

21. Members are invited to comment on the proposal in this paper.

Development Bureau
Land Registry
December 2022

Annex

**Comparison of the Land Registration Ordinance,
the Land Titles Ordinance (as enacted in 2004) and
the “New Land First” Proposal**

Key Aspects	Land Registration Ordinance	Land Titles Ordinance (LTO) <i>(Enacted in 2004 and not yet commenced)</i>	“New Land First” Proposal
Mode of conferring title	<ul style="list-style-type: none"> • title passes upon execution of assignment 	<ul style="list-style-type: none"> • registration is necessary for conferring title 	<ul style="list-style-type: none"> • same as LTO
Effect of registration	<ul style="list-style-type: none"> • only determines priority of registered instruments • does not guarantee title of the property 	<ul style="list-style-type: none"> • determines priority of registered matters • purchaser may not enjoy indefeasible title due to the mandatory rectification (MR) rule 	<ul style="list-style-type: none"> • determines priority of registered matters • MR rule not applied. Bona fide and innocent purchaser for value and in possession of the property enjoys indefeasible title
Title certainty	<ul style="list-style-type: none"> • title may be subject to unregistered interests 	<ul style="list-style-type: none"> • title generally subject to registered matters only 	<ul style="list-style-type: none"> • same as LTO
Means to check title	<ul style="list-style-type: none"> • checking historical title deeds⁷ 	<ul style="list-style-type: none"> • checking the Title Register 	<ul style="list-style-type: none"> • same as LTO
Who retains title under fraud	<ul style="list-style-type: none"> • innocent former owner under common law 	<ul style="list-style-type: none"> • innocent former owner 	<ul style="list-style-type: none"> • innocent registered purchaser

⁷ Where the grant of the Government lease of the property was not less than 15 years before the contract of sale of the property, vendor needs to provide at least 15 years title deeds for proof of title to the property.

Key Aspects	Land Registration Ordinance	Land Titles Ordinance (LTO) <i>(Enacted in 2004 and not yet commenced)</i>	“New Land First” Proposal
Indemnity for loss of title due to fraud	<ul style="list-style-type: none"> • no indemnity 	<ul style="list-style-type: none"> • indemnity subject to a cap 	<ul style="list-style-type: none"> • same as LTO (but with a higher level of cap)