

立法會

Legislative Council

LC Paper No. CB(1)84/2025(04)

Ref: CB1/PL/DEV

Proposed amendments to the Land Titles Ordinance (Cap. 585) to implement title registration on newly granted land

Background brief

Purpose

This paper provides background information on the proposed amendments to the Land Titles Ordinance (Cap. 585) (“LTO”), and summarizes the views and concerns expressed by Members about the relevant legislative proposal at the meetings of the Panel on Development (“the Panel”).

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. In 2004, LTO 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 interests,¹ 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 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.

4. When LTO was enacted in 2004, the Government undertook to conduct a comprehensive review of 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 LTO. There have been extensive discussions on major issues such as conversion mechanism,³ rectification of title⁴ and indemnity,⁵ but consensus still could not be reached with key stakeholders despite discussions in the past years. To enable early implementation of the title registration system, the Land Registry put forward the proposal of implementing title registration on “newly granted land” (“New Land First” proposal) as one of the options.

Major views and concerns expressed by Members

5. The Panel was briefed on the “New Land First” proposal on 19 December 2022, and members of the Panel generally supported 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 three years.

² Relevant key stakeholders include 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.

³ Conversion mechanism refers to conversion of land currently registered under LRO to the title registration system under LTO and how rights and interests that may exist under the deeds registration system are to be handled during the conversion.

⁴ Rectification of title 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 fraud of a third party though such cases are expected to be few and far between.

⁵ Indemnity 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.

proposal. The major views and concerns expressed by Members about the “New Land First” proposal are summarized in the ensuing paragraphs.

Implementation details of the “New Land First” proposal

6. The mandatory rectification rule⁶ under LTO would be abolished under the “New Land First” proposal to the effect that a bona fide purchaser for value and in possession of the property would enjoy indefeasible title. Members considered that this might render original property owners who lost title due to fraud unable to restore the title under LTO, thus undermining the protection for original property owners. Members suggested that the Administration should **step up measures to prevent fraudulent property transfers**, such as setting up a telephone hotline for contacting property owners to verify the identity of sellers involved in property transactions, and **render assistance to victims of fraud cases**.

7. The Administration advised that the proposal of abolishing the mandatory rectification rule for new land registered aimed to tie in with the principle that registered property owners enjoyed “indefeasible title” under the title registration system so that title certainty could be attained. Meanwhile, the title registration system for new land would provide additional measures to protect registered property owners, including setting a high threshold for indefeasible title. In order to be conferred indefeasible title to a property by registration, the purchaser would have to meet three requirements, namely (a) being bona fide; (b) having acquired the property for value; and (c) being in possession of the property (including as the owner-occupier and renting it out). To further protect registered property owners, the Land Registry would send notification to registered owners in the form of e-mail and Short Message Service reminders when registration applications involving their properties were submitted to the Land Registry, so that they would detect unexpected or suspicious instruments delivered for registration against their properties and be aware of possible fraud at an early stage and take action as soon as practicable.

8. Members suggested that the Administration should consider **setting up a voluntary conversion mechanism when it implemented the “New Land First” proposal** to allow owners of existing land who wished to switch from the deeds registration system to the title registration system to make an application for title registration to the Government after verifying their title on their own initiative. Moreover, there was a view that the Administration

⁶ The mandatory rectification 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.

should assess the likelihood of unclear title arising from redevelopment projects on existing land. If it was expected that the risk would not be high, the Administration should **actively consider implementing the title registration system concurrently on both redeveloped properties and new land.**

9. The Administration advised that it would consider the feasibility of introducing voluntary conversion when formulating the conversion proposal for existing land. Given that a consensus had not yet been reached at this stage on the conversion proposal for existing land and the relevant arrangements for the rectification of title and for indemnity, the Administration had no intention to deal with the voluntary registration arrangement for existing land during the implementation of the “New Land First” proposal, lest the “New Land First” proposal could not be put into practice as early as possible. Furthermore, if the Government invoked the Lands Resumption Ordinance (Cap. 124) or other relevant legislation to resume land and revert its ownership to the Government, and redevelopment projects were undertaken by the Urban Renewal Authority on the surrendered land regranted by the Government, such land would be covered by the “New Land First” proposal. As for the redevelopment projects undertaken by private developers, if the land concerned was not granted by way of land exchange, such land would not be covered by the “New Land First” proposal in view of the potential cases of properties with indeterminate title.

10. Some Members pointed out that the “New Land First” proposal put forward by the Administration did not implement the recommendations on adverse possession made by the Law Reform Commission in 2014. In other words, it did not deal with the law on adverse possession in the context of introducing the title registration system. They considered that albeit the inability to implement a conversion mechanism for existing land in the near future, the Administration should **first improve or abolish the law on adverse possession** so as to step up protection of title to existing land.

11. The Administration advised that it was aware of the public’s inclination towards respecting private property rights and their view that it was unfair to the property owner if the squatter could possibly obtain adverse possessory title. In view of this, **any claims for adverse possession would be barred for new land with title registered under the “New Land First” proposal.** Regarding the full implementation of the title registration system on existing land, the Administration would handle the matters relating to the existing law on adverse possession in tandem with the relevant study.

12. Some Members suggested that the Administration should explore **the application of blockchain technology in the Title Register** with a view to promoting the development of real estate technologies and providing more incentives to encourage the use of e-Government services by the public.

13. The Administration advised that it was studying the use of technologies (including blockchain technology) in implementing the title registration system and would explore the feasibility of employing different technology platforms, so as to implement the title registration system in a safer and more precise manner and provide accurate information conveniently and expeditiously for stakeholders and members of the public. In line with the Government's initiative of promoting the wider use of e-Government services, applications for registration under LTO could be lodged by electronic means. The Administration would also consider offering concessionary rates or other means to encourage the use of electronic services by the public.

Indemnity Scheme

14. Under the "New Land First" proposal, the Administration proposed to set an indemnity cap of \$50 million for innocent persons losing title due to fraud, and provide stand-by loan facility of \$150 million for the Indemnity Fund. Some Members took the view that both were on the low side. They further pointed out that an indemnity cap of \$50 million would not provide sufficient protection for higher-value transactions and investments (e.g. those financed by Real Estate Investment Trusts) on the property market. The Administration advised that since the Indemnity Fund operated on a self-financing basis, raising the indemnity cap would cause the levy on property transfers to increase correspondingly. In this connection, some Members considered that given that stamp duty was charged on property transactions, the Administration should consider allocating part of the revenue to support the Fund's operation rather than charging more on property transfers to finance the Fund. Some Members also pointed out that since the Administration envisaged a low likelihood of a deluge of large claims, the insolvency risk of the Indemnity Fund was low even if the amount of the stand-by loan facility and the indemnity cap were raised. **Members suggested that the Administration should review the operation mode as well as the amount of the stand-by loan facility and the indemnity cap of the Indemnity Fund** with a view to providing better protection for property owners and boosting the confidence of property investors.

15. The Administration advised that the actuarial consultancy study of the Land Registry had examined various hypothesized options and the findings revealed that if the indemnity was capped at \$100 million, an eightfold increase in the levy would be warranted. Furthermore, the

insolvency risk of the Indemnity Fund would increase significantly if the cap on the indemnity was removed, and the Fund would be susceptible to insolvency if multiple substantial claims were payable. Data of the Land Registry indicated that over 85% of assignments involved consideration not exceeding \$10 million. In view of the above, the Administration considered it not reasonable for small buyers in the majority to pay the high price for protecting the high-value transactions of investors. After taking into account the self-sustainability of the Indemnity Fund as well as the level of public acceptance, the Government proposed that the indemnity be capped at \$50 million and a flat levy rate of 0.014% be charged on the consideration amount of each property being transferred. Moreover, given the title certainty and the enhanced protection against property fraud for registered property owners under the title registration system, the stand-by loan facility of \$150 million should be adequate for providing sufficient buffer for indemnity payment. The Administration would seek funding approval from the Legislative Council should the actual circumstances call for an increase in the loan size in the future. The Administration advised that it would **review the proposed indemnity cap, levy rate and the amount of the stand-by loan facility provided for the Indemnity Fund** in the context of the forthcoming legislative amendment exercise for the implementation of the “New Land First” proposal.

Full implementation of the title registration system

16. Although the Administration advised that time was still required for the study on how the title registration system could be further implemented on existing land after the implementation of the “New Land First” proposal, Members suggested that the Administration should **introduce a clear timetable and a road map for the relevant work as early as possible**. Moreover, some Members considered that property owners should fulfil their obligation to establish title to property, and the Administration **should specify a clear date for the automatic conversion of existing land to the title registration system** to expedite the full implementation of the registration system. Property owners should establish title to property by appropriate means on their own accord before the specified conversion date.

17. The Administration advised that it would explore the options for converting existing land to the title registration system. It was hoped that a proposal on implementing the conversion of existing land would be put forward for discussion with stakeholders and the Legislative Council after the passage of legislation in relation to the “New Land First” proposal. In preparing the relevant proposal, the Administration would explore various options and draw reference from the experience of regions/countries which had adopted the land title registration system, including the gradual conversion approach. The Administration added that during the review of

LTO enacted in 2004, there was a view that automatic conversion would bring cases of indeterminate title to existing land under the registration system, thus undermining the accuracy of the Title Register. The Administration would examine the potential problems with various options while mapping out the way forward for the conversion of existing land.

Relevant papers

18. A list of relevant papers on the Legislative Council website is in the [Appendix](#).

Council Business Divisions
Legislative Council Secretariat
21 January 2025

Appendix

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List of relevant papers

Committee	Date of meeting	Paper
Panel on Development	19 December 2022	Agenda item III: Proposal of implementing title registration on “newly granted land” Minutes of meeting

Council meeting	Paper
8 June 2022	Question No. 8 : Land title registration system
26 June 2024	Question No. 7 : Adverse possession of land
15 January 2025	Question No. 3 : Supporting documents for ownership of fixed assets