

The following was a presentation delivered by Mr. Andy Ngan On Tak, Chairman of the Law Society's Working Party on Land Titles Ordinance on the proposed new Land Titles Registration at the talk held on 7 March 2009:

New Proposal for Land Titles Conversion – will this really benefit the public?

The present system of property transactions bears high social costs. The hidden costs become apparent when we observe 'title disputes' being fought out in Courts as a way to wriggle out of 'bad' deals during market down-turn. In this context, the Land Titles Ordinance, which was passed in 2004, benefits the community at large. When deliberating on the legislation, the Legislative Councillors were not totally satisfied with the Bill, and were aware that there were also reservations on the part of different sectors of the society. Nevertheless, the law was passed before the 2004 session, displaying great political acumen on the part of the Legislators. The Administration promised to review the Ordinance after its passage, which is why the Bill was passed but has not yet been implemented.

The assumption behind the 2004 Bill is that all existing titles would automatically be on the Titles Register after 12 years. Those who have claims over titles can take action to protect their interests during the 12-year period. For property owners and purchasers, the new regime represents a straightforward, costs-effective and speedy system. It is also a good compromise taking into account different interests in the society.

Regrettably, the Administration is planning to back-paddle. It has recently proposed to change the conversion system from an 'automatic process' to one requiring 'verification of titles'. In other words, your land titles can only become 'registered titles' after they are accepted by the Government. In the interim, you will be given a 'provisional' title. After 12 years, you will have to apply to the Government to have it 'upgraded' to 'registered title'. The Administration says the reason behind this proposal is because it has discovered some problems in the existing registers. So even though the Administration has 12 years to correct any problematic titles, given their existing workload, they do not think they will have sufficient resources to verify the 2.8 million titles. But it can safely be assumed that there will only be more land titles in the next 12 years. So how will they have enough resources to deal with applications for upgrading titles in the future?

It all boils down to money. The Administration admitted in the Consultation Paper that the new proposal would allow them to charge fees from the public three years later, in order to establish

an 'indemnity fund'. There are two cornerstones of a titles registration system: a complete and accurate registry, and support from the Government. If there are problems to the land titles, the Government would bear the legal responsibility. This is the rationale behind an indemnity fund.

We have to ask: are those problems identified by the Administration really justified? It was only after repeated requests from the Law Society's Working Party on Land Titles Ordinance that the Administration provided four cases of problematic titles. Three cases concern New Territories land. The problem stems from imperfect records-keeping by the Administration for land held under the Block Government Lease, leading to broken chain of titles and resulting in possible multi-ownership over the same piece of land. But these problems have existed for at least more than 30 years. The Working Party believes that if there have been no serious problem with these titles for several decades, it would be absurd to think that they would cause problems in the future. The Working Party has also reviewed the remaining case concerning titles in urban areas, and did not find it a problem.

According to the Administration's proposal, in considering whether titles should be upgraded, the Administration will adopt a 'good holding title' standard – i.e. even if a title is not a 'good title' due to defects, holding under the title would not be affected. This standard is also the same as that adopted by the Land Registry in England. From the experience in England, the time, costs and efforts that would be spent on rectifying title defects far outweighed possible claims against the UK Government.

If the Administration's proposal becomes the law, how would it affect you?

1. If the title of your neighbour's property has been 'upgraded' but not yours, will you be able to sell your property while you apply for your title to be upgraded? Do you think your property can be sold at the price close to that of your neighbour?
2. The Administration has not provided any means through which those titles which cannot be upgraded can be upgraded eventually. Will such titles be condemned in perpetuity?
3. The titles registration system was introduced in England in the mid-19th century. Adopting the method of 'verification of titles', it was almost until 1990, after more than 100 years, that the system covered the whole of England. If the Administration's proposal is adopted, the property market in Hong Kong will be adversely affected by the above factors for a long period of time. It will stifle the healthy development of the property market in Hong Kong.
4. In England, it takes eight to nine months for a title to be verified. The time it takes for a title to be verified in Hong Kong would not be any shorter. If the purchaser requests that the transaction can only be completed after the successful title registration, what would you

do?

5. The Administration has still not indicated how much it would charge for an application for a title to be upgraded. But very often Government charges are not lower than those in the private sector. For example, the Government would charge an application for a certified copy of a deed for \$250. A law firm would charge the same for \$50, plus photocopying fees of \$3 per page. If there are a large number of documents or the document consists of many pages, law firms would usually not charge fully their clients. Considering there are 2.8 million titles in Hong Kong, how much would need to be paid to the Government?

The Administration's proposals would only create affliction to the public. Isn't there a 12-year transitional period in the 2004 law? Are not the 'caution against conversion' and 'caveat' tools introduced in the law for those who may have claims to titles to protect their own interests? In actual life, how many defects in titles would disturb the enjoyment of property rights?

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Mr. Andy Ngan elaborated on the merits and demerits of the proposed new Land Titles Registration System to the audience.



The talk attracted over 100 participants.