

LCQ17: Implementation of Land Titles Ordinance and land title registration system

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (June 27):

Question:

The Land Titles Ordinance (Cap. 585) (the Ordinance), enacted by this Council on July 7, 2004, aims to replace the deeds registration system with a new system for registering the title to land and the interests in the land subject to which the title is held, so as to provide greater certainty to both the ownership of land and title to property, and simplify property conveyancing procedures. However, so far no implementation date for the Ordinance has been fixed since its enactment nearly 14 years ago. On the other hand, some members of the legal sector have said that under the deeds registration system, legal practitioners have to carry out the onerous task of searching land records for property conveyancing and real estate transactions. This, coupled with the fact that their salary is generally low, has resulted in a drain of talents and acute manpower shortage. In this connection, will the Government inform this Council:

(1) as the authorities said that various complex issues had to be resolved before commencement of the Ordinance, for example, the mechanism for converting lands under the existing system to those under the new system as well as the "daylight conversion" mechanism (i.e. automatic conversion at the end of the 12th year after commencement of the Ordinance) might affect the titles to land the registers of which showed indeterminate ownership, and cause the Land Registry to be legally liable for the compensation concerned, of the progress made by the authorities in tackling those problems; whether, according to the authorities' assessment, there is any problem which cannot be resolved in the end;

(2) as the authorities said that after a broad consensus had been reached with the key stakeholders on the implementation of the Land Title Registration System on new land first (the new land first proposal), they would consult the Land Titles Ordinance Review Committee and the Land Titles Ordinance Steering Committee before submitting the proposal and introducing the Land Titles (Amendment) Bill to this Council, whether the authorities will draw up the relevant timetable expeditiously to facilitate members of the public and legal practitioners to make corresponding arrangements early; and

(3) of the estimated amount of administrative expenditure to be saved for the legal practitioners concerned and the number of jobs to be created in the

legal sector under the new land first proposal?

Reply:

President,

The Land Titles Ordinance (Chapter 585) (LTO) aims to establish a new system, which the Title Register will provide conclusive evidence of title to and of interests in the registered land, in place of the present deeds registration system that gives no guarantee to title with a view to providing greater certainty to property titles and to simplify the procedures of checking title documents in conveyancing. The Legislative Council, when passing the Bill in July 2004, requested the Government to conduct a comprehensive review on a number of issues to be settled and consider making further amendments to the LTO in consultation with the stakeholders before its implementation.

Our reply to the various parts of the question raised by the Hon Paul Tse is as follows:

(1) The land title registration system is inherently complicated. It involves complex legal issues and carries significant implications. Since the enactment of the LTO, the Government has conducted thorough review of the LTO provisions, and has put forward different proposals to address and balance the divergent views of and to forge consensus with stakeholders with regard to various complicated issues including the mechanism for converting and bringing existing land to the land title registration system, and rectification and indemnity arrangements which are closely interrelated issues.

To address the key and closely interrelated issues mentioned above, the Government put forward the proposal of Two-Stage Conversion Mechanism, under which existing land will automatically undergo the first stage primary conversion and be brought under the LTO on a designated date; after a 12-year period, the land (unless subject to any restriction against conversion) will automatically undergo the last stage full conversion and be fully converted to registered land under the LTO. During the primary conversion period, the Government will conduct basic screening on the title chain for existing land registers. If a case of broken or multiple chains of title is identified, the Land Registrar may register a Land Registrar's Caution Against Conversion to withhold the land or property from being fully converted to the new system. The affected land or property will remain in the primary conversion stage until the relevant title issue is resolved, whereupon it can undergo full conversion to become registered land. The proposal of Two-Stage Conversion Mechanism also offers solutions to tackle the divergent views of the stakeholders on rectification and indemnity arrangements. The Government has conducted extensive discussions with major stakeholders on the Two-Stage Conversion Mechanism. However, no consensus has yet been reached on the proposal. In particular, there are still divergent views on how the basic screening on the title chain for land registers of existing land be conducted.

The Government will continue to closely liaise with the major stakeholders and strive to seek an acceptable proposal on the necessary amendments to be made to the LTO in light of the comments received.

(2) To enable early implementation of title registration system in Hong Kong, the Government is actively pursuing consensus with the major stakeholders on the "new land first" proposal, including conducting briefing sessions to explain the proposal to the major stakeholders. The Government expects to, after general consensus on the "new land first" proposal being reached, consult the LTO Steering Committee and the LTO Review Committee on the major recommendations in taking forward the proposal. The Government will then refine the "new land first" proposal in light of the Committees' comments and prepare as soon as possible a more concrete timetable for the preparation of the Land Titles (Amendment) Bill and introduction of such amendment bill to the Legislative Council for scrutiny.

(3) As mentioned by the Member, under the present deeds registration system, when conducting conveyancing and property transactions, legal practitioners are required to conduct tedious checking of land records in order to ascertain the title to the property. When title registration system is implemented in Hong Kong, for registered land under the new system, the Title Register will be the conclusive evidence of title to the property (except as stipulated in the rectification provisions). Legal practitioners will no longer be required to trace and check the land records of 15 years or even more in order to ascertain the vendor's title as under the existing practice, but can rely on the Title Register and check the relevant instruments according to the registered matters. The new system will simplify the work relating to checking of land records and thus bring convenience to practitioners and purchasers. On the other hand, we believe that even after title registration system is implemented, legal practitioners will still have an important role to play in rendering legal advices to their clients. Apart from checking the registered matters on the Title Register and the relevant instruments, they will need to prepare the relevant legal documents, advise on the covenants and conditions set out in the relevant government leases, verify the parties' identity, verify the content of the registration applications, check the overriding interests etc. At this stage, it is difficult to assess the actual impact or influence of the "new land first" proposal on the legal profession.