

Chapter 5

Land Titles Ordinance (Cap 585) and the policy on adverse possession

Introduction

5.1 Hong Kong does not yet have a registration system for title to land. Although legislation to this effect has been enacted, it has not yet come into force.¹

Unregistered and registered land system

5.2 Until the new legislation on title registration comes into force, it is important to bear in mind that **the system of land registration in Hong King is a deeds registration system under the Land Registration Ordinance (Cap 128) for recording instruments concerning interests in land. The purpose of it is to facilitate the tracing of title, not to confer title. As the register maintained under Cap 128 is merely an index of instruments, the Ordinance only accords priority to the instruments which have been registered. Whenever there is a property transaction, a purchaser's solicitor has to review the instruments in order to check title. This process needs to be repeated in every subsequent transaction. The regime is time-consuming, complicated and ineffective. There may be no certainty as to title since it can be just a matter of opinion of the solicitor checking the title. However, the existing register provides prima facie evidence of ownership.**²

5.3 In jurisdictions with a registered land title system, the register takes the place of the title deeds and of the matters that would be recorded in the land charges register where the title was unregistered. It has been said that *"(t)he governing principle of the [Land Registration Act 1925] is that the title to land is to be regulated by and ascertainable from the register alone"*,³ subject only to overriding interests which are not protected on the register, but would bind any purchaser of registered land.

¹ Land Titles Ordinance (Cap 585), which was enacted in 2004.

² *Common Luck Investment Ltd v Cheung Siu Ming* [1998] HKLRD (Yrbk) 434.

³ *Abbey National Building Society v Cann* [1991] 1 Ac 56, 78 per Lord Oliver.

5.4 The English Law Commission has set out three major differences between registered and unregistered land:

- "(1) The investigation of title to registered land is very much simpler and quicker than it is where title is unregistered.*
- (2) The **doctrine of notice** has no application to registered land. A purchaser of registered land takes it subject to estates, rights and interests which are protected by an entry on the register and to overriding interests, but to nothing else.*
- (3) Where a person is registered as the proprietor of an estate in registered land, HM Land Registry guarantees that title. This means that if it is necessary to rectify the register to correct some mistake that has occurred, any person suffering loss as a result is entitled to payment of an indemnity from the Registry."⁴*

Land Titles Ordinance (Cap 585)

5.5 In 1988, the then Registrar General established a working party to consider the introduction of a system of registered title so as to improve the efficiency and security of property ownership. A Bill, introduced to the Legislative Council in 1994, lapsed at the end of that session. A revised Bill was gazetted in December 2002, and the Land Titles Ordinance (Cap 585) ("the LTO") was subsequently enacted in July 2004. Commencement of the legislation was made conditional on the Administration's carrying out a comprehensive review and reporting back to the Legislative Council ("LegCo") before proposing a commencement date. In May 2007, by way of a panel paper,⁵ the Administration reported to the then Panel on Planning, Lands and Works that the review had found that substantial amendments to the LTO were needed to ensure efficient operation of the new system; and that an amendment bill would be required.

Progress with amendments to Land Titles Ordinance

5.6 A series of LegCo panel papers⁶ shows that there remain various substantial matters to be resolved before an amendment bill is ready for consideration. These matters include land boundary problems, the conversion mechanism from un-registered to registered land, and modifications to the rectification and indemnity provisions.

⁴ *Land Registration for the Twenty-first Century, A Consultative Document* (1998, Law Com No 254), at para 2.5.

⁵ CB(1)1643/06-07(07).

⁶ Dated from 2008 to 2011.