

Reform of the Land Registration System in Hong Kong and Enactment of the Land Titles Ordinance (Cap. 585)

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The *Land Titles Ordinance (Cap. 585)* (“LTO”) was enacted on 23 July 2004. However, its commencement was made conditional on the government’s completion of a comprehensive review of Hong Kong’s land registration regime before proposing a commencement date. The LTO aims to replace the existing deeds registration system under the *Land Registration Ordinance (Cap. 128)* (“LRO”), which has been in place in Hong Kong for over 180 years, with a title registration system.

Current Land Registration System in Hong Kong under the LRO (“Current System”)

The Current System does not provide a guarantee of title to property. Consequently, during property transfers, it is necessary to conduct a thorough review of historical title documents to establish ownership. Key features include:

(i) Title Verification by Purchasers’ Solicitors

Purchasers’ solicitors approve title through methods such as inspecting title documents and ensuring satisfactory replies to requisitions on title.

(ii) Registration of Instruments

The LRO requires registration of all instruments affecting land. Registration serves as a public record of transactions or interests in land and determines priority under the LRO.

(iii) Document Retention

Property owners/ stakeholders must retain title documents for future investigations.

New System in Hong Kong under the LTO (“New System”)

The New System introduces a title registration framework where ownership is conferred by entry into the title register. The register serves as conclusive evidence of title, and the registered owner is legally recognized as the proprietor. Key features include:

(i) Definitive Ownership Proof

The title register is definitive proof of ownership, that has eliminated the need for historical deed tracing. Land ownership is verified via the register. Under the LTO, property owners will be issued mandatory title certificates with anti-forgery features to prevent fraud and verify property owners’ identities.



(ii) Caution Mechanism

The New System provides a caution mechanism, under which unwritten interests (e.g. equitable rights) may be registered to protect claimants.

(iii) Adverse Possession Exclusion

For “new land” (as defined under Section 20 of the LTO), the Limitation Ordinance (Cap. 347) will not apply. This aligns Hong Kong with jurisdictions like Singapore and most Canadian provinces to ensure title certainty.

Definition of “New Land”

Under *Section 20 of the LTO*, “new land” refers to land granted under a Government lease or an agreement for a Government lease on or after the appointed day, which is the day to be appointed by the Secretary for Development by notice published in the Gazette (**the appointed day**) excluding:

- (a) land granted under a short-term tenancy (i.e. with a term of not more than 7 years);
or
- (b) land which was the subject of a pre-existing Government lease/agreement for a Government lease in effect immediately before the appointed day and which is the subject of an instrument executed on or after the appointed day whereby the term of the Government lease or agreement for a Government lease has been extended; the area of the land has been extended; or the provisions of the Government lease or agreement for a Government lease have otherwise been varied.

(iv) Indemnity Framework

Compensation for losses due to fraud or Land Register errors is provided via the Land Titles Indemnity Fund (“**Indemnity Fund**”). The Fund is self-financed through a 0.014% levy on the consideration amount of each property transfer, with a cap of HK\$50 million per claim.

(v) Indefeasibility of Title

The New System proposes to abolish mandatory rectification for new land. A bona fide purchaser for valuable consideration and in possession of the property will enjoy indefeasible title even in the case of fraud. The innocent former owner who loses the property may claim compensation under the Indemnity Fund.

Current System vs New System

	<u>Current System under LRO</u>	<u>New System under LTO</u>
Transfer of Title	Upon deed execution of a valid deed of transfer	Upon registration in the title register



Title Assurance	No statutory guarantee	Conclusive evidence of title
Title Ascertainment	By Review of historical deeds	By check on the title register
Unwritten interests	Non-registrable	Registrable to bind third parties
Liability	Borne by parties	Government-backed Indemnity Fund

Transition Mechanisms

Two mechanisms facilitate implementation: the “New Land First” Proposal (“**New Land First Proposal**”) and the Two-Stage Conversion (“**Two-Stage Conversion**”).

1. New Land First Proposal

Under this Proposal, transactions involving new land adopt the LTO immediately. Existing land transactions remain under the ambit of the LRO temporarily.

2. Two-Stage Conversion

Stage 1 (Primary Conversion):

Individual primary title registers will be opened after basic screening of legal ownership of existing land.

Stage 2 (Full Conversion)

After a 12-year transition period, automatic conversion occurs unless a “caution against full conversion” or “opt-out caution” is registered.

Rectification Rights:

- During Stage 1, former owners may seek court-ordered rectification if title was lost due to a fraudulent or void transaction.
- Post-Stage 2, claims shift to the Indemnity Fund and mandatory rectification is abolished.

Benefits and Practical Challenges

Key Benefits:

1. Certainty of title

The title register is conclusive evidence of ownership of registered property. A bona fide purchaser who has paid valuable consideration and is in possession of the property is entitled to an indefeasible title upon registration as owner.

2. Provision of indemnity

The provision of indemnity (subject to a cap) is available to anyone who suffer loss due



to property fraud that causes an entry to be made in, removed from or, omitted from the title register, resulting in the loss of ownership.

3. Streamlined conveyancing procedure

Title (except for overriding interests) is only subject to registered matters shown on the Title Register. The implementation of the New System will reduce due diligence costs and property transaction time. It will be a major step toward aligning Hong Kong's land registration system with global standards, enhancing efficiency in property conveyancing, improving the business environment, and raising Hong Kong's competitiveness.

Challenges

Overseas experience shows that the transition from a deed registration system to a title registration system can be a lengthy process, and both systems will run in parallel, which may complicate title checks. While the Indemnity Fund mitigates losses, robust verification processes remain essential for fraud prevention.

Conclusion

The LTO marks a pivotal step in modernizing Hong Kong's property regime. While implementation delays persist, proactive preparation, such as understanding indemnity limits and transition mechanisms will ease adaptation. Since the LTO is still subject to amendments to ensure efficient operation of the New System, stakeholders should monitor the updates by tracking announcements via the Land Registry and Legislative Council.

For further assistance, please feel free to contact our team.

Contributors



Psyche S. F. LUK

Partner

+852 2532 5421

pluk@fclklaw.com.hk

This article has also received valuable contributions from our trainee solicitor, Kelly Ng.

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