

Bills Committee on the Land Titles Bill

**Indemnity Fund Operation
Supplementary Information**

Purpose

This paper provides supplementary information on the operation of indemnity funds requested by Members at the tenth and eleventh meetings of the Bills Committee.

Value and volume of transactions in Hong Kong

2. Annex A sets out the number and value of assignments registered over the last five years. It also lists the total value of assignments exceeding \$30 million in each year, to illustrate the additional liability that would be taken on if there were no cap on the indemnity in fraud cases.

3. Over the last five years the number of assignments each year in Hong Kong has ranged between 4.9% and 7.1% of the total stock of registered property.

4. There are no published figures on the number and value of assignments in the United Kingdom. The total registrations handled by the Land Registry for England and Wales have been over 3 million a year in the past two years, about five times the total volume for Hong Kong. The revenue earned by the Land Registry for England and Wales is equivalent to about HK\$4 billion a year, over nine times that for the Hong Kong Land Registry. This substantial revenue stream gives them considerable capacity to deal with indemnity claims without significant effect on fees and charges.

Funding for indemnity in other jurisdictions

5. In England and Wales, no specific levy to meet indemnity payments is imposed. Provision for indemnity payments is made out of the overall revenue that the Land Registry receives from registration and other services that it provides. Annex B provides information on revenue and indemnity claims for 2001 and 2002, together with the table of fees applicable to first registration.

6. In New South Wales, Australia, a Torrens Assurance Fund has been established as a special deposit account with the Treasury. At present there is a levy of AU\$2 on every registration of a dealing, a caveat or a withdrawal of a caveat. The basic fee for primary applications is AU\$128. The fee for lodging or withdrawing caveats is AU\$64. At the end of 2002, the balance of the fund stood at AU\$ 8,142,000. Information on indemnity payments and revenue for the period 2000 – 2002 is at Annex B.

Implementation of Indemnity Schemes

7. Other jurisdictions have managed the financial risks arising from the introduction of title registration in a number of ways. As noted in paragraph 23 of LC Paper No CB(1)2207/02-03(06) “Indemnity Scheme, Levy Rates and Miscellaneous Matters”, in both England and Wales and New South Wales, applications for conversion were subjected to very stringent scrutiny in the early years, with very few existing properties being brought onto the title registers. Other jurisdictions have also employed examiners of title to review all applications for conversion before they are accepted by the Government. In addition to this, other risk management measures have included:

(a) High levy rates

The first ever title indemnity scheme was set up in South Australia. A levy equivalent to 0.2% of the value of each property registered was imposed (about 10 times the suggested level for Hong Kong if there is an indemnity cap).

(b) Gradual extension of areas covered by title registration

In England, title registration was introduced initially only in London. It was not extended to all parts of the country until 1990, 93 years after the first compulsory registration act. Conversion has also been sporadic, only taking place when transactions occur.

(c) Government selection and scrutiny of properties to be converted

While a number of jurisdictions have provided for the systematic conversion of existing properties without waiting for transactions, these schemes have usually been introduced to deal with a relatively small number of properties left after a title registration system has been operating for a number of years. Examples are Singapore and Queensland. Even then, the criteria for approving registration have tended to be strict. In Queensland, property was effectively brought onto the title register only when long possession could be demonstrated. Malaysia carried out a relatively quick conversion in the 1960s but has not provided any indemnity. Ontario is converting a relatively large number of properties compulsorily, but is proceeding on an area by area basis.

8. The objective in Hong Kong is to introduce title registration in a way that should ensure that most properties can be brought quickly onto the title register without significant impact on the efficiency or cost of the conveyancing process. Having certificates of good title issued by the solicitor acting for the applicant is the mechanism proposed to achieve this. No additional time would be added to the registration process,

nor would there be additional cost imposed by Government, except for the levy to fund the indemnity scheme.

9. If the approach taken in Hong Kong were to be changed such that the Government carries out an additional examination of title before approving registration, there would be two consequences, the cost to the public would increase significantly and the time taken for registration would be lengthened substantially.

10. Based on the assumptions that:-

- (a) applications arising from transactions in the primary market would require little scrutiny;
- (b) only assignments would lead to applications (i.e there would be no voluntary applications); and
- (c) 10% of applications would involve complex title issues

the annual cost if the Government were to undertake a further scrutiny of title before granting registration is estimated at about \$470 million a year at present prices. This would be on top of the existing operating costs of the Land Registry (\$286 million in 2002/03). This would require a nine-fold increase in registration charges for assignments.

11. The best estimate we can make at present of the additional time required for scrutiny is that for straightforward cases (i.e ones where the scrutineer is able to reach a decision based simply on the documentation presented to him, without requiring additional information or actions) about two weeks will be added to the processing period. This will represent a significant increase over the service improvement target that the Land Registry has for reducing the registration time to less than one working week in 2004.

Administrative costs for indemnity scheme

12. The administrative costs for operating the indemnity scheme along the lines proposed under the Bill are estimated at \$3 million a year. This includes staff costs incurred by the Land Registry (\$2 million) and the cost of legal services provided by the Department of Justice (\$1 million).

Levy on voluntary transfers

13. It is the intention that a levy will be imposed based on the value of a property involved in a voluntary transfer. Since the value of the property may not be stated in such transfers we intend to use the same procedure adopted at present for registration fees when no value is stated (for example, on a deed of gift). In such cases, the highest levy

will be paid when the application is submitted. When a valuation is given – usually for the purpose of stamp duty assessment – then any excess payment will be reimbursed. Since the highest levy will be several thousand dollars as compared with the highest registration fee of \$450, we expect that most applicants will obtain a valuation before submitting the application.

Reimbursement of Indemnity Fund

14. The intention behind the proposed arrangement for all types of claim for indemnity to be met from the Indemnity Fund is to keep the application process for any claimants simple and to have a single set of accounts that give a clear picture of the operation of the indemnity scheme. Administratively it makes no difference to the Land Registry Trading Fund (LRTF) whether it pays claimants directly for indemnities arising from mistakes or omissions on its part, or pays them through the Indemnity Fund.

15. The case of the Indemnity Fund having to borrow money to cover a payment for which the Land Registry is liable will not arise. If the Land Registry does not have reserves sufficient to meet any payment for which it is liable it is the Land Registry Trading Fund that would seek a loan from Government – and subsequently meet all interest payments – rather than the Indemnity Fund.

16. The Bill allows for the establishment of the Indemnity Fund under the regulation making powers given by Clause 100(zh)-(zm). The detailed operation of the Fund will be set out in the Regulations. We intend to specify in the Regulations that the Fund is the only source of funding for paying out indemnities under the Bill.

Handling of fraud in England and Wales

17. Under the English title registration system, a person who suffers loss from a rectification of the register is entitled to indemnity. Accordingly, a registered owner who suffers loss from a rectification of the register in favour of the former owner who loses the property through a fraudulent entry is entitled to indemnity. The Hong Kong title registration system is similar to the English system in this respect.

18. A proprietor of any registered land claiming in good faith under a forged transfer is deemed, if the register is rectified, to have suffered loss by reason of the rectification, and he will be entitled to indemnity. Clause 82(1)(a) and 82(6) of the Bill also provides that such owner will be entitled to indemnity.

19. If there is a fraudulent transfer and the register is not rectified in favour of the former owner, the former owner can claim an indemnity for his loss. Clause 82(1)(a) of the Bill provides that such former owner can claim indemnity.

20. The nemo dat rule is abolished in England as the former owner is not entitled to

restore his ownership even though he has not signed the transfer. The Court is given the power to rectify the register if it would be unjust not to rectify the register against the registered owner. Clause 81(3) of the Bill provides the Court in Hong Kong with a similar power.

Acts of Land Registry staff

21. If an entry or omission from the Title Register has been made as a result of mistake or omission of Land Registry staff, any person suffering loss from that entry or omission will be entitled to indemnity (Clause 82(1)(b)). For example, if any incumbrance, charge or lease is entered into the wrong title register, or is omitted from the register, then any person suffering a loss in consequence is entitled to indemnity. The LRTF will reimburse the Indemnity Fund for indemnity payments attributable to that mistake or omission. In general, fraud committed by anyone, including a Land Registry staff, will be covered by Clause 82(1)(a), and the LRTF will not be responsible for reimbursing the Indemnity Fund for indemnity payments made. However, if it can be established that a mistake or omission of the Land Registry has contributed to a fraud by a Land Registry staff or, for that matter, any other person, the LRTF will reimburse the Indemnity Fund for indemnity payments attributable to that mistake or omission.

Annex A**Volume and Value of Transactions in Hong Kong**

	<i>1998/99</i>	<i>1999/00</i>	<i>2000/01</i>	<i>2001/02</i>	<i>2002/03</i>	<i>Average</i>
<i>Assignments</i>	147,351	143,829	151,982	135,598	114,457	138,635
<i>Total Value</i>	\$370,518M	\$318,470M	\$279,800M	\$248,992M	\$201,880M	\$283,932M
<i>Value of assignments exceeding \$30M</i>	\$53,449M	\$43,848M	\$33,499M	\$38,793M	\$19,617M	\$38,041M

Annex B

Indemnity in England and Wales

The Land Registry of England and Wales advises that a portion of the annual fees received by the Land Registry are set aside from the Trading Fund for indemnity claims. There is no separate levy or indemnity fund.

Income and indemnity payments for 2001 and 2002 were as follows:

	<i>2001</i>	<i>2002</i>
Income	£ 298.6 million (HK\$3.6 billion)	£ 342.8 million (HK\$4.1 billion)
Indemnity payments	£ 1.765 million (HK\$ 22 million) for 738 claims	£ 2.508 million (HK\$ 31 million) for 712 claims

Note: The revenue for the HK Land Registry in 2000/01 was HK\$ 430 million. This was less than the Land Registry of England and Wales operating surplus for 2000/01 of £ 38.088 million (=HK\$475 million).

The fees applicable to first registration are:

<i>Value</i>	<i>£</i>	<i>HK\$ equivalent</i>
< £50,000	40	480
£50,000 – 80,000	60	720
£80,000 – 100,000	100	1200
£100,000 – 200,000	150	1800
£200,000 – 500,000	250	3000
£500,000 – 1 million	450	5400
> £ 1 million	750	9000

Indemnity in New South Wales

	2000	2001	2002
Cost of paid claims	AU\$ 475,000	AU\$ 241,000	AU\$ 1,218,000
Revenue	AU\$ 1,749,000	AU\$ 1,599,000	AU\$ 1,962,000

