

THE REGISTRATION OF TITLES BILL, 2013

MEMORANDUM

1. Object of the Bill

The object of this Bill is to amend, replace and reform the law relating to the registration of title to land and interests in land, to guarantee title to land and interests in land, to improve the administration of land titles, to facilitate dealings with land and interests in land; and to provide for related matters.

2. Defects in the Existing law

The current law on registration of title to land in Uganda is contained in the Registration of Titles Act, Cap. 230. This law came in force in 1924. It governs the registration of land titles to land in Uganda, and the registration of key transactions in land, such as mortgages and other encumbrances.

The Act was modeled on the Land Transfer Act, 1915 of the State of Victoria, Australia, which was then the latest Torrens legislation in Australia. The Act introduced the Torrens systems of title by registration in Uganda which has survived with minor amendments to date. As a “Torrens title” statute, it reflects the underpinning concept of state-guaranteed title (“indefeasibility of title”) that is the hallmark of Torrens systems around the world.

However, the Act has remained frozen in time. It has not been updated to reflect changes to, and judicial interpretations of, Torrens statutes in other jurisdictions. While, in principle, its underlying promise of state-guaranteed title still makes it the ideal statutory framework for land registration law, it needs substantial reform if it is to serve the needs of Uganda in the 21st century.

At the time the Registration of Titles Act was enacted, land registers were kept entirely in manual form. The drafting of the Act reflects this. However, under recent reforms, various government policy initiatives and documents in particular the *Land Sector Strategic Plan 2001-2011 (LSSP)* have championed the Government of Uganda’s commitment to developing a computerised land information system.

The LSSP is the guiding document for providing the operational, institutional and financial framework for sector-wide reforms in land management, including implementing the Land Act 1998. Uganda is already in the process of establishing a comprehensive national land information system for the purposes of collecting, maintaining and administering land information.

The LSSP called for reform of the Registration of Titles Act: To provide for decentralisation of the National Land Register, define the role of the centre in view of the concept of state guarantee of land titles; provide for keeping, maintenance and networking of the Register using computers,

admissibility of evidence from computerised records and devices; measures to minimise fraud and malpractice.

One other outstanding difficulty with the existing Registration of Titles Act, Cap 230 is the complexity of this law, which makes it very difficult for non-technical parties to a property transaction to understand.

3. Remedies proposed to deal with the defects

The Bill seeks to repeal and replace the Registration of Titles Act. It permits (but does not specifically require) the Registrar to decentralise the Register.

The aim of the Registration of Titles Bill 2013 is not to change the fundamental premises on which the legislation is drafted, but rather to suggest modifications that will make it better serve Uganda's needs for the 21st century. The Draft Bill is therefore for a “Torrens title” statute, and continues the underpinning concept of state-guaranteed title.

The Registration of Titles Bill 2013 supports the conversion to computerisation. Changes have been made in the new Bill that will ensure that the legislative framework supports the move towards computerisation. The legislation has been drafted in broad terms, to allow for phased development, as part of the development of a comprehensive land information system (LIS).

The Registration of Titles Bill 2013 is an attempt to draft a modern, plain language Torrens statute for Uganda so as to alleviate the complexity and abstruse state of the existing Act. It simplifies a lot of terminology and contains Explanatory Notes that will aid its interpretation. The Plain Language drafting style of the Bill will make the new law understandable to literate users who participate in land transfers and other related transactions.

This Bill contains important provisions designed to help reduce the incidence of fraud. In amongst other things, it proposes to enact a concept of “presumptive indefeasibility”. This is novel. The registered purchaser or mortgagee is “presumed” to receive an indefeasible title. However, that title can be upset if the defrauded wronged owner or mortgagor takes action within 3 years to set the title aside.

As with the Registration of Titles Act cap 230, the Draft RTA 2013 requires the Registrar to issue a certificate of title. However, it differs from the RTA by giving the owner (or any one or more of a number of owners) the right to request the Registrar not to issue a certificate of title, or to cancel an existing one (section 39). By removing the certificate of title from circulation if an owner so desires, the opportunities for fraud are reduced.

Minister of Lands, Housing and Urban Development