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Analysis of the Transitional Protection of Unregistered Equity Interests in Hong Kong—A Structural Analysis of the "New Land Priority" Proposal

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Abstract. The "new land first" reform in Hong Kong has brought the newly approved land into the title registration, and the existing land continues to be subject to the deed registration, which makes the unregistered equity holders fall into the system fault. This paper aims to reveal the fault, demonstrate its unacceptability and put forward the bridging scheme. Using the method of normative analysis and comparative research, this paper criticizes from the perspective of equity and distributive justice, and takes the Land Registration Act 2002 of the United Kingdom and the advance notice registration system in the mainland as a reference. The research shows that the new land is applicable to the supporting warning letter and indemnity fund for the registration of title, and the old land only retains the fragile deed registration rules. This design violates the principle of trust protection in equity, resulting in a pattern that the reform dividend is shared by the whole people and the risk of system transformation is only borne by the unregistered owners of old land at the level of distribution justice. Accordingly, three transitional arrangements (rights and interests filing, compensation fund expansion, possession rules into culture) are proposed to provide an operational plan for the legislature.

Keywords: Unregistered equity interests, new land first, institutional fault, distributive justice, transitional protection

1. Introduction

In September 2025, the Hong Kong Legislative Council voted to pass the title and land registration (Miscellaneous Amendments) Bill 2025, formally establishing the phased reform path of "new land first": Since 2027, the title registration system of the land title Ordinance (Chapter 585) will be applied to the subsequent new land grants, and the existing land in stock will continue to use the deed registration rules of the Land Registration Ordinance (Chapter 128).

This legislative trend marks the most significant change in the land registration system in Hong Kong since the establishment of the deed registration system in 1844.However, one group has been pushed into the crevice: unregistered equity owners on the existing land, including the beneficial owners of the resulting trust, the beneficiaries of proprietary Estoppel and the buyers of specific contracts.

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Under the deed registration system, the "absolute invalidity" rule in Article 3 (2) of the land registration ordinance makes the unregistered rights and interests possible to be eliminated by bona fide buyers, and the warning letter and indemnity fund introduced by the title registration system are only applicable to new land. There are qualitative differences in the protection of unregistered rights and interests between the two systems. The former provides the Contingent Protection relying on accidental factors, while the latter gives the rights holder the initiative protection to freeze the property. It is this difference, coupled with the "new land first" excluding the old land from the new system, that forms the system fault in this paper, that is, the old land owner cannot obtain the warning letter and indemnity fund, and can only rely on the fragile actual possession exception. The reform plan does not provide any transitional arrangements. This fault is unacceptable in the dimensions of equity and distributive justice (see Chapter 3 for details). This paper answers three questions: does the fault exist (Chapters 2), why it is unacceptable (Chapter 3), and how to solve it (Chapters 4 and 5).

At the theoretical level, most of the existing studies focus on the description or criticism of a single system. Alice Lee pointed out that the mechanical application of the absolute invalidity of Article 3 (2) triggered a heated debate [1]. Malcolm Merri is concerned about the equitable protection of informal property arrangements within the family [2]. In terms of jurisprudence, Wong chim Ying [1991] 2 hklr 253 established the exception of actual possession, but the scope of application was limited. In Yim Tin Fook case ([2026] hkcfa 17), the court of final appeal confirmed that the registrable but unregistered instrument was absolutely invalid for bona fide buyers, highlighting the extreme vulnerability of unregistered interests under the old system. The "new land first" reform plan issued by the government only prompted the implementation risk of unregistered rights and interests of old land, but it did not support any targeted transition protection rules, which further magnified the inherent relief vulnerability of unregistered rights and interests under the old system. However, the existing literature lacks a systematic analysis of the transition fault caused by the parallel of the old and new systems, and there are few comparative studies with the Land Registration Act 2002 of the United Kingdom and the advance notice registration system in the mainland. This paper aims to fill this gap.

At the practical level, the legislative documents keep silent on the fate of the transitional period of unregistered equity interests. If it is not arranged in time, the relevant equity holders may suffer property losses without relief. This paper provides an operable plan for the legislative organs to improve the details before the implementation in 2027.

This paper adopts the method of combining normative analysis and comparative research. The normative analysis criticizes the institutional fault from the two dimensions of equity and distributive justice and takes the transitional arrangement of the UK Land Registration Act 2002 as the evaluation benchmark. The comparative study selects British priority system and mainland advance notice registration system to test the principle of portability.

2. Analysis of unregistered owners of existing land

This chapter further examines the two types of unregistered equity holders on the existing land and analyzes the specific mechanism of their exclusion from the protection framework of the new system.

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2.1. Registrable but unregistered equity holders

There are three types of equity interests that can be registered but not registered. The equitable mortgage of the deed of Title deposited, the beneficial right of the resulting trust (such as the spouse's contribution to the house but registered in the name of the other party), and the buyer's rights and interests for the specific performance of the contract. These rights and interests have the ability to register, but being able to register does not mean that they will be registered. It is this tension that exposes such equity holders to the risk of being eliminated by bona fide buyers, while the "new land first" scheme does not provide any transitional arrangements. Understanding its identity is the premise of analyzing its forgotten.

The right to register immediately after the spouse's contribution to the house purchase may damage the family's trust. Although the registration fee is low, it constitutes an obstacle to ordinary people with weak legal awareness. Malcolm Merry pointed out that the resulting trust between family members is often not formally recorded due to trust, but equity should provide protection for such trust [2]. When analyzing the Cheung Lai Mui case of the Hong Kong Court of final appeal, Jeremy Hui Jing pointed out that the new path of remedial restorative trust introduced by the court provided a more flexible analytical framework for the relief of proprietary estoppel, its core judgment standard "unconscionability" requires the court to examine the degree of dependence and the rationality of trust of the obligee [3]. This reveals the deep problem of the deed registration system: it presupposes that rational people will register at a reasonable cost, but does not consider irrational factors such as family trust and information asymmetry. When the rights holder fails to act in the registration window based on trust, he may lose his rights forever. This is the dislocation between the institutional presupposition and the actual behavior. The "new land first" reform has not corrected the dislocation between the institutional presupposition and the actual behavior of the people but has isolated the existing land from the supporting guarantee of ownership registration. As a result, such equity holders are also subject to the strict absolute invalidity rules of the deed registration and cannot enjoy the buffer mechanism of the transition period set by the new system.

Under the "new land first" scheme, the existing land will continue to be subject to the deed registration system. Therefore, registrable but unregistered equity holders cannot make up for defects through the transitional mechanism of supplementary registration or similar warning letters and are always exposed to the risk of being eliminated by bona fide buyers. The legislative document does not provide any transitional arrangements. This is the concrete embodiment of the system fault.

2.2. Unregisterable non written equity holders

Unlike registrable but unregistered equity holders, non registrable non written equity holders do not have a registration channel at all. Such interests are characterized by informal family arrangements, oral agreements or long-term possession, including the beneficiaries and counter owners of proprietary estoppel at the equity level, as well as unregistered short-term lease interests (less than three years) and informal easements at the common law level. The common feature of these rights and interests is that the law has never established legal registration procedures or publicity channels for them. For non-registrable non written equity holders, their trust is the most direct. The court of final appeal established the fundamental principle of proprietary estoppel in the Luo Xing Juan case (2009) 12 hkcfar 1, with objective irrationality as the core to avoid unfair results. This principle has been used until now, and the So Kwai Chung case (2025) hkcfa 8 has confirmed it. Ying Khai Liew made a comparative analysis of the proprietary estoppel relief systems in Singapore, the United

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Kingdom and Australia, providing a comparative law reference for the improvement of the system in Hong Kong [4]. Jeremy Hui Jing further analyzed and pointed out that the Hong Kong Court of final appeal adopted the path of remedial restorative trust in the Cheung Lai Mui case and identified "illegality" as the basis of equitable relief, making the application of proprietary estoppel in Hong Kong more flexible [5]. Such equity holders rely on the exception of actual possession and believe that their own rights and interests can be protected. The reform plan does not provide any alternative protection, which makes this trust completely lost and constitutes an equity injustice.

More importantly, non-registrable equity holders cannot be attributed to their "unregistered" - the system has never provided registration channels for them. There are fundamental defects in the imputation principle of transferring the risk of system transformation to such equity holders. However, the "new land first" scheme does not make any distinction, so that non-registrable equity holders and registrable but unregistered equity holders are excluded from the new system.

To sum up, the nature of the problems faced by the two types of equity holders is different: those who can be registered but not registered are in trouble due to the dislocation of system presupposition and public behavior, while those who cannot be registered are forgotten because the system does not provide the possibility of registration at all. The "new land first" scheme does not distinguish between the normative attributes of the two types of rights and interests and separates the old land as a whole in a "one size fits all" way, which completely defeats the reasonable trust of the two types of rights and interests - whether it is based on the actual possession exception or the expectation formed by the long-term acquiescence of the system - and does not provide any transitional protection. Equity has a saying that "he who seeks equity must do equity". Equity upholds the principle of acting on an equal footing. However, this reform unilaterally allocates the risk of system conversion to the old land owners without supporting corresponding protection mechanisms, which violates the core judgment logic of equity rights and obligations.

3. The unacceptability of institutional fault -- three-dimensional test of equity, distributive justice and jurisprudence

The "new land first" scheme marks a system gap between the old and new land. The unregistered owners of the old land cannot apply for a warning or use the indemnity fund and can only rely on uncertain limited protection. This chapter combines the three dimensions of equity, distributive justice and Yim Tin Fook case to demonstrate the lack of legitimacy of the system fault.

3.1. Equity perspective

The core purpose of equity law is to correct injustice and protect reasonable trust. The estoppel of property rights is a typical applicable rule. If it is unreasonable for one party to pay consideration for the other party's commitment and the other party to renege on the commitment, equity law will intervene. The So Kwai Chung case ([2025] hkcfa 8) established the substantive legal status of the rule in Hong Kong.

Both types of unregistered rights and interests of old land have reasonable trust worthy of protection. First, for non written equity holders who cannot register, both the Luo Xingjuan case ([2009] 12 hkcfar 1) and the So Kwai Chung case established the estoppel of property rights to avoid injustice, this group has long believed that the actual possession can protect their own rights and interests, and the reform has not set up alternative protection, which directly breaks their reasonable expectations and constitutes equity injustice; Second, most of the obligees who have the registration qualification but have not registered have not gone through the formalities due to family trust. The past system has long acquiesced in this practice, and the reform suddenly changed the rules without a transition period, which also violates the equity standard.

3.2. Perspective of distributive justice

The transaction efficiency bonus brought by the ownership registration system is shared by all market entities, but the risk of loss of rights and interests brought by the reform is only borne by the unregistered owners of old land, who cannot use the warning letter and claim the indemnity fund. It is unreasonable to apply the rational person hypothesis in the family trust scenario, and it is not possible to attribute all unregistered rights holders. Once their rights and interests are eliminated by the subsequent bona fide buyers, there is no legal economic compensation channel. Among them, there is no way to register the unregisterable rights and interests, and there is no basis for accusing them of being lazy in registration. The Land Registration Act 2002 of the United Kingdom allocates the transformation cost by means of indemnity fund and transition clause, which can be used as a reference. DTZ Hong Kong Branch pointed out that the "new land first" formed a protection gap between the old and new land, and the compensation and warning mechanism only covered the new land, which was the institutional root of unfair distribution [6].

3.3. Case law perspective

In the Yim Tin Fook case (facv1/2026, [2026] hkcfa 17), the five judges of final appeal unanimously ruled that the documents that can be registered but not registered are absolutely invalid for bona fide paid buyers, and the strict rules are solidified with the highest judicial authority. The rule was set forth in the legislative document as early as 2003, and Li Aili and Gu Shaoxi also pointed out that this provision conflicts with the logic of priority of registration [1, 7]. The legislative document also makes it clear that the rule of knowledge does not apply to unregisterable interests, and such subjects can only rely on the exception of actual possession (ls141/02-03, para). However, the "new land first" did not distinguish between the two types of rights and interests and did not respond to the judicial rules established in the case. The old land rights and interests continued to be exposed to the risk of loss of rights and interests, and the gap between the old and new land judicial protection was further widened.

4. Reference to comparative law

Previously, it has been confirmed that the "new land first" scheme has an institutional fault with respect to unregistered equity interests. This chapter takes the Land Registration Act 2002 of the United Kingdom and the advance notice registration system in the mainland as comparative samples to refine the rules that can be used for reference and provide comparative law support for the improvement of the following countermeasures.

The Land Registration Act 2002 of the United Kingdom is a typical legislation for the transformation of land registration. Paragraph 2 of schedule 3 establishes that the rights and interests of the actual occupier can be opposed to the registration disposition and sets exceptions. Chenyongqiang proposed that the law uses limited credibility to occupy and protect life order, and transitional protection of different unregistered rights and interests [8]. Martin Dixon said that this clause is designed to set a transition buffer for unregistered interests [9]. The UK is a one-time compulsory registration in the whole region. The dual track model of old and new land in Hong

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Kong cannot be completely copied, but the core ideas of classified disposal and written protection of actual possession can be used for reference.

Article 221 of the Civil Code stipulates that advance notice registration can prevent multiple sales of one house. Jin Jian believes that this system is designed to protect vulnerable advance purchasers [10]. Its function is similar to the Hong Kong warning letter, but the mainland is uniformly applicable to all real estate, without distinguishing the time of land transfer; The Hong Kong warning is limited to new land, which proves that the tool itself can cover old land, and only the policy is deliberately differentiated. However, the mainland system relies on the national unified registration system, which is different from Hong Kong's basic conditions, and the comparison highlights the fairness defects of Hong Kong's scheme.

Two core principles of portability. First, the principle of temporary buffer registration: establish a transitional rights and interests declaration mechanism between full registration and no protection. The priority of possession in the UK and the advance notice registration in the mainland are both temporary means of protection in advance. DTZ Hong Kong Branch proposed that the recognition of actual possession is to respect the existing living conditions of the people, and the old land in Hong Kong can be introduced into the rule to reveal the details; Chenyongqiang also stressed that possession protection is the key to the substantive justice of land [6, 8].

The second is to unify the principle of compensation for losses: set up non discriminatory compensation when the system changes damage the rights and interests. The UK relies on the indemnity fund to share risks. The existing indemnity fund in Hong Kong is only applicable to new land. Expanding it to old land can eliminate the protection gap. The two principles will serve as the basis of comparative law for the transition scheme in Chapter 6.

5. Three operable transitional arrangements

It has been demonstrated that the institutional fault formed by the "new land first" scheme is unacceptable in the dimensions of equity and distributive justice. The fourth chapter extracts the principle of temporary registration and the principle of compensation for loss from the comparative law analysis. This chapter proposes three transitional arrangements to bridge the fault.

5.1. Equity filing mechanism

A six-month statutory declaration period shall be set up before the land conversion, allowing unregistered equity holders to submit equity declarations to the land registry for inclusion in an independent filing register for public inspection. "Filing" does not change the priority of Articles 3 and 4 of the Land Registration Ordinance. The record only has the effect of public access, does not produce the effect of constructive notice at the equity level, and is only used as the reference material for the due diligence of the real estate buyer. The applicant shall submit the capital contribution certificate, commitment record and other preliminary evidence and bear the legal liability for false statements. In order to prevent malicious abuse, it may require the provision of security or the filing person to file a lawsuit within 6 months, and the overdue filing is invalid. This mechanism draws lessons from the transitional arrangements of the UK Land Registration Act 2002 and the advance notice registration in the mainland to provide temporary information disclosure channels between permanent registration and non-registration. This measure has the lowest cost but the weakest protection effect. It is only for information disclosure and cannot freeze the property or provide compensation. Therefore, it is positioned as an auxiliary measure.

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5.2. Extension of the scope of compensation fund

It is proposed to extend the indemnity fund established under section 84 of the land title Ordinance to unregistered interests in old land. According to the recommendations of the Actuarial Consultant study commissioned by the land registry in 2022, the government proposed a uniform levy rate of 0.014% for the newly approved land. However, after the indemnity fund is extended to the old land, the risk exposure will be significantly expanded. According to the documents of the Legislative Council, the old land involves about 2.9 million registers, the chain of historical documents is complex, the type and number of unregistered interests are far more than the new land, and the risk of errors and omissions in the register during the conversion process is far higher than that of the new land. Therefore, based on the principles of actuarial fairness and financial sustainability, this paper suggests that the levy rate be moderately increased to 0.015% from the official recommended 0.014% to cover the additional risks caused by the old land. Based on the average property price of HK $8million in Hong Kong (data of rating and Valuation Department in 2025), calculated at the 0.015% levy rate, the levy for each transaction is about HK $1200 (8million × 0.015%), which is still within the acceptable range of the market. The government has proposed to provide a HK $150million standby loan for the indemnity fund as a financial buffer. The expansion compensation fund is directly consistent with the loss compensation principle refined by the comparative law, which can provide legal economic relief for the old land owners, and effectively resolve the compensation defect of the rights and interests loss caused by the reform, so it should be the core transition scheme that should be given priority. The expansion compensation fund is directly consistent with the loss compensation principle refined by the comparative law, which can provide legal economic relief for the old land owners, and effectively resolve the compensation defect of the rights and interests loss caused by the reform, so it should be the core transition scheme that should be given priority.

5.3. Formation of the rule of actual possession

It is suggested to amend Article 4 of the Land Registration Ordinance by adding the proviso: "if the buyer fails to conduct a reasonable inspection of the property, it shall be deemed that he has constructive knowledge of the possession that can be reasonably found during the inspection." For single property such as village houses, reasonable inspection includes peripheral inspection and asking the occupier. For multi-storey sub lease properties such as apartment buildings, the inspection is limited to public areas and unit entrances, and the buyer has the right to require the management office to provide a statement of occupancy. Failure to respond to written inquiries does not alone constitute a presumption of knowledge, but can be used as a reference for due diligence. This proposal draws on the logic of the exception in paragraph 2 (2) of schedule 3 of the UK 2002 act to reverse the buyer's obligation of reasonable inquiry. Chris Bevan systematically reviewed the Centennial evolution of "actual possession" as overriding interests in British law and pointed out that the core legitimacy of the rule was to protect the occupant's peaceful expectation of the residence "home", but its scope of application was also hotly debated in Britain [11]. From the theoretical perspective of "property as a resilient asset", Lorna fox o'mahony emphasizes that the law should pay attention to the substantial dependence of vulnerable groups on residence, which can provide theoretical support for the formation of Hong Kong's actual possession rules [12]. However, its effectiveness depends on the court's interpretation of "reasonable inspection", which is probabilistic, so it is positioned as a supplementary measure.

6. Conclusion

This paper systematically reveals the "system fault" created by the "new land first" scheme in the protection of unregistered equity rights and interests. Unregistered interests in the old land are completely excluded from the warning and compensation fund and can only rely on the fragile actual possession exception. This fault is not the gradient difference of protection strength, but the fault of system coverage. Through the classification and analysis of the two types of equity holders, this paper further shows the specific performance of the fault in different groups and demonstrates the unacceptability of the fault from three dimensions: Equitable trust protection, cost sharing of distributive justice and judicial confirmation of Yim Tin Fook case.

This paper puts forward three transitional arrangements, the rights and interests filing mechanism, the expansion of the scope of the compensation fund, and the formation of the actual possession rules, which can provide direct reference for the legislative organs to improve the details before the implementation in 2027. The three proposals have clear priorities, clear cost-effectiveness, feasibility and fairness. In view of the legislative practice of promoting the transformation from deed registration to title registration in other common law regions, the ideas of classified protection of rights and interests and the supporting principles of hierarchical transition period in this paper have reference and reference significance.

The follow-up study can further quantify and evaluate the scale and distribution of unregistered equity interests and provide an empirical basis for the calculation of compensation funds; After the implementation of this reform, people will continue to track the judicial precedents of new and old land ownership disputes, and observe the actual adjudication effect after the implementation of the rule of possession as a cultural legislative proposal. In addition, extending the analytical framework of this paper to land registration reform in other common law regions is expected to produce more universal theoretical insights.

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