

LAND REGISTRATION ACT 2002 OF ENGLAND:  
LESSONS ON TITLE REGISTRATION REFORM FOR CHINA

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LAND REGISTRATION ACT 2002 OF ENGLAND:  
LESSONS ON TITLE REGISTRATION REFORM FOR CHINA

*Richard Wu\**

*Abstract*

*In 2002, England adopted the Land Registration Act. This article analyses, first, the evolution of the English legal regime for a title registration system which led to the passage of the Act. It then evaluates the policy goal and major content of the Land Registration Act. Finally, the author argues that China can learn many lessons from the Act. Firstly, the technical quality of legislation is crucial to the successful implementation of a title registration system. Secondly, such successful implementation is dependent on the prevailing political, economic and social conditions. Thirdly, collaboration between government departments responsible for policy formulation and implementation of title registration is also crucial. With regard to electronic conveyancing, China should appreciate that although it strives to achieve a system of 'title by registration' from the existing system of 'registration of title, it is doubtful whether the English system of electronic conveyancing is compatible with the current stage of Chinese development. However, on the issue of indemnity, China can also learn from the Act by stipulating in its own indemnity provision the detailed circumstances under which indemnity would be payable: for example, a formula for calculating the amount of indemnity; a failure or reduction of claim for indemnity in the event of fraud or lack of care, and the recovery of compensation by the registrar from person(s) who cause or significantly contribute to loss through fraud. Finally, China can improve the drafting of its land registration legislation in such a way that the overall powers of these land registrations officers, as well as the circumstances under which they can 'alter' the land registers, are defined more clearly.*

I. INTRODUCTION

A comprehensive system for title registration was first developed in civil law countries.<sup>1</sup> Among common law countries, England and Australia were the two oldest countries to adopt and develop such a title registration system,<sup>2</sup> while in the United States, such a system

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<sup>1</sup> For example, Germany started to develop its title registration system in the thirteenth century. See Stein, R., *The "Principles, Aims and Hopes" of Title By Registration*, 9 ADEL. L. REV. 267, 267 (1983). For an analysis of the development of title registration system in Germany, see MURRAY J. RAFF, M. J., *PRIVATE PROPERTY AND ENVIRONMENTAL RESPONSIBILITY: A COMPARATIVE STUDY OF GERMAN REAL PROPERTY LAW* (2003).

<sup>2</sup> For an discussion of the parallel development of title registration system in Australia and England, see Douglas Whalan, *Immediate Success of Registration of Title in Australia and Early Failures in England*, 2 NEW ZEALAND U. L. REV. 416 (1967).

failed to flourish.<sup>3</sup> This article attempts to answer three research questions. First, how did the English legal system for the title registration mechanism evolve, which ultimately resulted in the adoption of the Land Registration Act of 2002 (“the Act”). . . . Second, what were the major policy objectives as well as the substantive contents of the Act. . . . Finally, what lessons can the Chinese legal system learn from the English experience for an effective implementation of its own future title registration system. . . .

In order to address these questions, this article is divided into two parts: The first part analyses the evolution of the English legal system for a title registration system that ultimately led to the passage of the Act. The second part evaluates the major contents and policy objectives of the Act. Throughout Parts One and Two, certain lessons that China can learn from the English registration system are examined.

## II. EVOLUTION OF TITLE REGISTRATION LEGISLATION IN ENGLAND

The development of the English title registration legislation can be traced back to the passage of the Land Registry Act of 1862, which was subsequently modified by the Land Transfer Act of 1875, the Land Transfer Act of 1895, the Law of Property Act of 1922, and the Land Registration Act of 1925. However, the drafting of the Land Registration Act of 1925 was extremely unsatisfactory. Sir Robert Megarry and Sir William Wade, two eminent property law scholars, commented that the “[Land Registration Act of 1925] was of exceptionally low quality, [and] in need of a thorough overall.”<sup>4</sup> Notwithstanding such an unpromising assessment, the Land Registration Act of 1925 was still exported to other jurisdictions such as Ireland, Nova Scotia, Ontario, and Scotland.<sup>5</sup>

However, on an international scale, the influence of the English title registration statute was far less significant than its Australian counterpart, the latter of which was developed by Sir Robert Torrens in South Australia by way of the Real Property Act of 1858. That is, the Real Property Act of 1858 was not only adopted in all the states of Australia (i.e., Queensland, Victoria, New South Wales, Tasmania, and Western Australia) but also in New Zealand and almost all of the Canadian states including Alberta, British

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<sup>3</sup> For an analysis of the development of registration system in USA, see SHICK, B.C., & PLOTKIN, I.H., *TORRENS IN THE UNITED STATES: A LEGAL AND ECONOMIC HISTORY AND ANALYSIS OF AMERICAN LAND-REGISTRATION SYSTEM* (1978).

<sup>4</sup> MEGARRY, R & WADE, H.W.R., *THE LAW OF REAL PROPERTY* 196 (5th ed. 1984).

<sup>5</sup> SCOTTISH LAW COMMISSION, *DISCUSSION PAPER ON LAND REGISTRATION: VOID AND VOIDABLE TITLES*, ¶ 1.13 (2004).

Columbia, Manitoba, and Saskatchewan.<sup>6</sup> Even in the United States, where only a few states had adopted similar title registration statutes,<sup>7</sup> the Australian title registration statute was well-known as the “Torrens system” with the “Torrens title.”<sup>8</sup> As Whalan pointed out 50 years ago,<sup>9</sup> the relative success of the Australian statute could be attributed to its “functional superiority”<sup>10</sup> over its English counterpart.

It is therefore not surprising that in England there were persistent calls to reform the 1925 Act. As a result, during the 1980s, the Law Commission published two reports on land registration, both of which advocated reforms in the existing title registration system.<sup>11</sup> In 1987, a third report was published which advocated substantive changes to the 1925 Act,<sup>12</sup> and in 1988, the Law Commission published its fourth report, which included proposed changes to the draft of the Land Registration Bill, which was intended to substitute the 1925 Act.<sup>13</sup> However, because these reports were prepared by the Law Commission without the support of the Land Registry, their proposals were never successfully instituted, as they failed to receive sufficient political support of the ruling government at the time.<sup>14</sup>

Finally, in 1996, the Law Commission and the Land Registry started a joint project to reform the land registration system, and in September 1998, they published their joint reform proposals in a consultative document entitled “*Land Registration for the Twenty-First Century: A Consultative Document*.”<sup>15</sup> There were two policy goals behind the proposals contained in this consultative document. First, the mechanism for sale and purchase of “registered

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<sup>6</sup> DOWSON, E. & SHEPPARD V.L.O., *LAND REGISTRATION* 98 (2d ed. 1956).

<sup>7</sup> For development of title registration statutes in USA, see Szypszak, C., *Public Registries and Private Solutions: An Evolving American Real Estate Conveyance Regime*, 24 *WHITTIER L. REV.* 663, 674 (2002-2003).

<sup>8</sup> Thomas W. Mapp, *Torrens' Elusive Title: Basic Legal Principles of an Efficient Torrens' System*, 1 *ALTA. L. REV.* 1, 3 (1978).

<sup>9</sup> Whalan, *supra* note 2.

<sup>10</sup> See Charles Szypszak, *Public Registries and Private Solutions: An Evolving American Real Estate Conveyance Regime*, 24 *WHITTIER L. REV.* 663, 674 (2002-2003).

<sup>11</sup> LAW COMMISSION, *PROPERTY LAW: THIRD REPORT ON LAND REGISTRATION*, 1986-7, H.C. 269 (U.K.); LAW COMMISSION, *PROPERTY LAW: FOURTH REPORT ON LAND REGISTRATION*, 1987-8, H.C. 680 (U.K.).

<sup>12</sup> LAW COMMISSION, *PROPERTY LAW: THIRD REPORT ON LAND REGISTRATION*, 1986-7, H.C. 269 (U.K.).

<sup>13</sup> LAW COMMISSION, *PROPERTY LAW: FOURTH REPORT ON LAND REGISTRATION*, 1987-8, H.C. 680 (U.K.).

<sup>14</sup> CHARLES HARPUM & JANET BIGNELL, *REGISTERED LAND: LAW AND PRACTICE UNDER LAND REGISTRATION ACT 2002* at 2 (2004).

<sup>15</sup> *Id.* at 3.

land”<sup>16</sup> would be changed from one of paper transactions to one of electronic transactions. Second, property laws regarding registered land would be amended in accordance with their unique nature and future needs, particularly in consideration of the possible development of an electronic system for transactions of registered land. Even though there were concerns that such changes may lead to significant differences in property law principles and treatment of registered and unregistered land, these changes were considered necessary.<sup>17</sup>

In July 2001, at the end of the consultation process, the Law Commission and the Land Registry jointly published a set of recommendations in another Report called “*Land Registration for the Twenty-First Century: A Conveyancing Revolution*.”<sup>18</sup> One unique feature of this report was its inclusion of the Land Registration Bill with a set of detailed Explanatory Notes. The goal of this proposed legislative reform in land title registration was the following: “. . . under the system of electronic dealing with land that it seeks to create, the register should be *a complete and accurate reflection* of the state of the title of the land at any given time, so that it is possible to investigate title to land online, with the absolute minimum of additional enquires and inspections.”<sup>19</sup> (emphasis added)

Obviously, the policy goal behind the report was the development of a “conclusive register,” which could enhance the security of the titles in the title registration system. Here, it is noteworthy to recall the “three principles” of a title registration system formulated by Mr. Theodore Ruoff, the former Land Registrar of England sixty years ago – the “mirror principle,” the “curtain principle,” and the “insurance principle.”<sup>20</sup> The “curtain principle” referred to the idea that insofar as a purchaser was concerned, he could rely on the register book as the only source of information on its legal title and therefore, did not need to look beyond it. Viewed from this point of view, this latest legislative reform was but a continuation of the ongoing English effort to strive for the perfection of the “curtain principle” as espoused by Ruoff long time ago.

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<sup>16</sup> In England, land is divided into ‘registered land’ and ‘unregistered land’, see MARTIN DIXON, *MODERN LAND LAW* 19-21 (7th ed. 2010) (defining the distinction between ‘registered land’ and ‘unregistered land’).

<sup>17</sup> HARPUM & BIGNELL, *Supra* note 14.

<sup>18</sup> LAW COMMISSION, *LAND REGISTRATION FOR THE TWENTY-FIRST CENTURY: A CONVEYANCING REVOLUTION*, 2001, HC 114 (U.K.).

<sup>19</sup> *Id.* ¶ 1.15.

<sup>20</sup> Theodore B. F. Ruoff, *An Englishman Looks at the Torrens System*, 26 AUSTRALIAN L.J. 118, 118 (1952).

On 26 February 2002, England adopted the Land Registration Act (“Act”), which took effect on 13 October 2003.<sup>21</sup> Under the Act, all previous title registration laws were repealed, including, among others, the abovementioned Land Registry Act of 1862 and the Law of Property Act of 1925.<sup>22</sup> In retrospect, it was amazing that a legal reform project with such a profound impact on the English title registration system took only six years to complete, beginning with a joint project between the Law Commission and the Land Registry in 1996 and culminating in the passage of the Act in 2002.

The development of the legal system for the title registration system in England provides several important lessons for China. To begin with, the technical quality of the legislation is crucial to the successful implementation of a title registration system, as borne out by the experience of the early failures of the English legislation, especially in comparison with its Australian counterpart. Moreover, a title registration reform does not take place in a vacuum; successful implementation, as shown by the English experience, is highly dependent on the prevailing political, economic and social conditions. As we have also seen, the Act represented a joint legal reform project between the Law Commission and the Land Registry, and it received adequate support of the ruling government. This is in stark contrast with the previous two attempts of the Law Commission to reform the land registration system in the 1980s<sup>23</sup>, which failed precisely because of a lack of co-operation with the Land Registry, as well as a lack of support from the ruling government. This points to the significance of collaboration between the various government departments responsible for the implementation of such a title registration system. Finally, the Land Registration Act of 2002 was adopted in England at an incredible legislative speed because of its inclusion of electronic conveyancing made the legislation politically attractive.<sup>24</sup> The strong public demand for electronic conveyancing contributed to the swift passage of the legislation in the Parliament.

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<sup>21</sup> For a summary of the reform of land registration system leading to the eventual adoption of the Land Registration Act 2002, see ELIZABETH J. COOKE, *THE NEW LAW OF LAND REGISTRATION* ch. 2, at 15-32 (Hart Pub. 2003).

<sup>22</sup> See Land Registration Act, 2002, c. 9, § 135, sch. 13.

<sup>23</sup> See COOKE, *supra* note 21, at 158.

<sup>24</sup> See *id.* at 31.

### III. POLICY OBJECTIVES AND CONTENTS OF THE LAND REGISTRATION ACT OF 2002 – A CRITICAL APPRAISAL

In retrospect, the passage of the Act was groundbreaking and ambitious in its policy objectives, as it intended to fundamentally change the underlying English land registration system since its inception in 1862. It attempted to change the land registration system from “a system of *registration of title* to one of *title by registration*.” In essence, this meant that under the new regime, the act of registration *alone* would confer legal title, though it would only be attainable after the full implementation of electronic conveyancing in England.<sup>25</sup>

#### A. *Electronic Conveyancing*

In order to attain its primary policy objective, a substantial part of the Land Registration Act of 2002 was devoted to electronic conveyancing.<sup>26</sup> To begin with, the law empowered the Land Registrar (“Registrar”) to set up a “*Land Registry Network*,”<sup>27</sup> an electronic communication network for registration or execution of electronic property transactions.<sup>28</sup> As Harpum and Bignell explained, this network could go beyond the legal aspect of the transaction and could cover the whole transaction from the point when a property is put on sale. In other words, the network could not only provide information to the interested parties and the Registrar, but also be used to prepare, communicate, and register the title by the parties and the Registrar.<sup>29</sup>

The Act also laid down the formalities of “*electronic dispositions*.”<sup>30</sup> That is, under the Act, an electronic disposition now had to fulfill several criteria.<sup>31</sup> First, the electronic document had to stipulate its effective time and date, as well as to include electronic signatures of all the parties by whom it purports to be authenticated.<sup>32</sup> Second, every electronic signature had to be certified.<sup>33</sup> If an electronic document complied with these formalities, it was to be regarded by law as a written deed, signed by each individual and sealed by each corporation.<sup>34</sup> Moreover, if an

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<sup>25</sup> HARPUM & BIGNELL, *supra* note 17, at 340-41.

<sup>26</sup> See, e.g., Land Registration Act, pt. 8, sch. 5.

<sup>27</sup> § 92, sch. 5.

<sup>28</sup> § 92.

<sup>29</sup> HARPUM & BIGNELL, *supra* note 25.

<sup>30</sup> Pt. 8.

<sup>31</sup> § 91 (3).

<sup>32</sup> Electronic Communications Act, 2000, c. 7, § 7 (defining “Electronic signature”).

<sup>33</sup> See § 7(3) (defining “Certification”).

<sup>34</sup> Land Registration Act, 2002, c. 9, § 91(4), § 91 (5).

electronic document was authenticated by a person as agent, the document was to be treated to be authenticated by him under the written authority of his principal.<sup>35</sup>

In order to facilitate the development of electronic conveyancing, the Act also authorized the Registry to provide training and education in relation to the use of its network.<sup>36</sup> The Act also envisaged the future adoption of supplementary rules for the communication of electronic documents to the Registry and the electronic storage of such electronic documents.<sup>37</sup>

Another concept developed under the Act was the “*network access agreement*.” One distinguishing feature of the electronic conveyancing system contemplated by the Act was that lawyers were allowed by these network access agreements to make changes to the title or the cautions registers without involving the Land Registry officers.<sup>38</sup> Moreover, any person who was not a member of the Registry was capable of accessing the latter’s network by a separate agreement.<sup>39</sup> While the Registry could regulate the use of its network by rules,<sup>40</sup> it had to enter into a network access agreement with an applicant who fulfilled the criteria laid down in those rules.<sup>41</sup> In addition, the Act spelt out the “overriding” nature of the obligation owed under such a network access agreement, which meant that whenever there was a conflict, such an obligation would “discharge” any other obligation not owed under the agreement.<sup>42</sup> Finally, the Act specified that the network access agreement would enable those persons granted with access to the network to carry out “*qualifying transactions*,”<sup>43</sup> namely, transactions requiring registration that could be effected electronically.<sup>44</sup>

The Land Registration Act of 2002 also conferred powers on the Land Registry to use certain monitoring information from its network to manage the “*network transactions*.” In discharging its monitoring duties, the Registry could disclose such information that it considers appropriate to persons authorized to use its network, and

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<sup>35</sup> § 91 (6).

<sup>36</sup> § 92, sch. 5, ¶ 10.

<sup>37</sup> § 95.

<sup>38</sup> § 92, sch. 5, ¶ 1 (2) (b).

<sup>39</sup> § 92, sch. 5, ¶ 1 (1).

<sup>40</sup> § 92, sch. 5, ¶ 1 (3).

<sup>41</sup> § 92, sch. 5, ¶ 1 (4).

<sup>42</sup> § 92, sch. 5, ¶ 6.

<sup>43</sup> § 92, sch. 5, ¶ 2 (2) (a).

<sup>44</sup> § 92, sch. 5, ¶ 12.

even authorize further disclosure of such information.<sup>45</sup> As Harpum and Bignell explained, this served to enable the Registrar to discharge its “*chain management function*” by disclosing to other parties in the same chain of the electronic conveyancing transactions any newly updated information on other transactions in the chain.<sup>46</sup>

In addition, the Act also developed another concept called “*Do-It-Yourself Conveyancing*.” After the Land Registry Network went into effect, the Registrar was legally obliged to assist persons wishing to use the network to conduct electronic conveyancing transactions on their own, though the Registrar could not give legal advice to such persons.<sup>47</sup> The Act also set out the compulsory nature of electronic conveyancing. For a document that could be granted with legal effect only by being drafted electronically, it had to be communicated to the Registrar electronically, after meeting the relevant registration requirements.<sup>48</sup>

Finally, the Act introduced a system of “*electronic settlement*.” The Act provided that the Land Registrar may take such steps to secure the provision of a system of electronic settlement for electronic conveyancing transactions.<sup>49</sup> If considered necessary, the Registrar could form or participate in the formation of a company, or purchase or invest in a company in connection with this system of electronic settlement.<sup>50</sup> Obviously, these provisions made it possible for the Land Registry to develop an “integrated e-conveyancing and payments system” that enabled the simultaneous execution of all payments upon completion of an electronic conveyancing transaction, including such government charges as stamp duty, land tax, and land registration fees. Also, if necessary, the Registry could be partnered with a private company to form a collaborate venture.<sup>51</sup>

From these provisions of the Land Registration Act of 2002, there are a handful of important lessons that China can learn for its own reformation process. To begin with, the creation of an electronic conveyancing system should be China’s most important and ambitious goal in achieving a system of “title by registration.” The Chinese government should also consider creating the system of “real-time financial settlement upon completion,” through which the banking networks of the law firms, government departments, and

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<sup>45</sup> § 92, sch. 5, ¶ 9.

<sup>46</sup> HARPUM & BIGNELL, *supra* note 25.

<sup>47</sup> § 92, sch. 5, ¶ 7.

<sup>48</sup> § 93 (3).

<sup>49</sup> § 94.

<sup>50</sup> § 106.

<sup>51</sup> HARPUM & BIGNELL, *supra* note 14, at 350-51.

private banks will be linked together in an integrated payment system. If this vision can be accomplished in China, it will truly represent a ‘Conveyancing Revolution.’ Neither is this an infeasible scenario in China because most banks are state-owned, which renders it easier to develop the banking network necessary for accomplishing a real-time financial settlement system for the electronic conveyancing transactions. Note that in England, this reform initiative is apparently being hindered by the practical difficulties faced while developing a banking network that can straddle across both the public sector (i.e., the state) and the private sector (i.e., the banks and law firms). It remains to be seen whether such a real-time financial settlement system, tracing its origins to England, will emerge and flourish in China.

Secondly, the electronic conveyancing system developed by the Act contained some radical concepts like the “Do-It-Yourself Conveyancing” mechanism mentioned earlier, but this will only be viable in a country where the education standard of the general public is high. Moreover, a successful implementation requires a considerable amount of training and education on the part of the government. Therefore, at the moment, it is questionable whether such innovative features of the English system can be compatible with the Chinese system, given that most of the relevant sectors are in their early stages of development.

Finally, the move from the traditional land registry system to one based on a paperless network is innately a mammoth task, requiring enormous human and financial resources on the part of the government. Therefore, it is not surprising that the progress of electronic conveyancing in England has been exceedingly slow over the past decade following the passage of the Act. Thus, we shall see to what extent electronic conveyancing will develop as a model of property transactions in China.

### *B. Indemnity*

Apart from electronic conveyancing, the Land Registration Act of 2002 also contains other provisions that the Chinese government will find relevant in its future title registration reforms, including those relating to indemnity. Under Ruoff’s formulation of the “three principles” of title registration, the “insurance principle” stood for the proposition that if a person suffered losses as a result of an error in the register, the person would be financially compensated to be restored the position where the person would have been had the register were correct. In a way, therefore, the indemnity mechanism

provided by the Act is a reflection of this original “insurance” principle elaborated by Ruoff many decades ago.

The Act set out detailed circumstances under which an indemnity would be payable to persons who suffer loss as a result of mistakes appearing in the Land Registry.<sup>52</sup> These included, *inter alia*, mistakes appearing in official search, in official copy, and in cautions register. The registrar will also be required to indemnify persons suffering loss as a result of rectification of the registrar, and loss or destruction of documents lodged at the registry.

The Act also clearly set out a formula for calculating the amount of indemnities. For example, if a claim for indemnity leads to rectification at the register, its amount will be the value of the interest immediately before the rectification.<sup>53</sup> If the claim does not lead to rectification at the register, its amount will be the value of the interest when the mistake that resulted in the claim was made.<sup>54</sup> The Act also promulgated that a claim for indemnity will not succeed if there is fraud or lack of due care on the part of the claimant.<sup>55</sup> In addition, the Act also authorized the Registrar to recover the indemnity paid from any person who, through fraud, cause or significantly contribute to the loss.<sup>56</sup>

It is noteworthy that an equivalent indemnity provision under Chinese law can be found under the Chinese Property Law, which stipulates that if a party supplies false information in his application for registration and cause losses to others, he should be held responsible for compensation. Likewise, if there is an error in a registration that causes losses to others, the registration authority should be responsible for compensation. After making compensation, the registration authority can seek indemnity from the person responsible for the registration error.<sup>57</sup>

As pointed out by Luo, the abovementioned indemnity provision in the Chinese Property Law was over-simplified in its substance, as it only laid out the general and cursory principles on compensation. That is, it did not stipulate clearly *how* the party or registration authority at fault would bear the legal liability, nor did it spell out whether such legal liability should be one based on fault or strict liability. Also, it failed to articulate whether the compensation

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<sup>52</sup> § 103, sch. 8, ¶ 1 (1).

<sup>53</sup> § 103, sch. 8, ¶ 6 (a).

<sup>54</sup> § 103, sch. 8, ¶ 6 (b).

<sup>55</sup> § 103, sch. 8, ¶ 5.

<sup>56</sup> § 103, sch. 8, ¶ 10.

<sup>57</sup> Wuquan Fa (物权法) [Property Law] (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) 2007 STANDING COMM., NAT'L PEOPLE'S CONG. GAZ. 297, art.12 (China).

should be in full or in part, and omitted any mention of the source of the indemnity fund.<sup>58</sup>

Without doubt, the Chinese Property Law has much room for improvement, and English Land Registration Act of 2002 can be of immense value in the process. For one, the Chinese Property Law can stipulate in detail the circumstances under which indemnity is payable as well as the formula for calculating the amount of indemnity. Furthermore, it can clearly stipulate that a claim of indemnity will fail, either in part or in full, if there is fraud or lack of care on the part of the claimant. Finally, it can authorize the registration authority to recover the compensation paid from *any person* who cause or significantly contribute to the loss through fraud.

### C. The Registrar's Powers

The Land Registration Act of 2002 clearly defined the powers of the Land Registrar, which is another facet of the Act that deserves further analysis. For example, under the Act, anybody can object to an application to the Registrar, upon which the Registrar must give notice of the objection to the applicant, and refrain from making any further decision on the application unless the objection is dealt with.<sup>59</sup> If the objection is impossible to deal with through agreement, the Registrar must refer the matter to the Adjudicator,<sup>60</sup> a post newly created through the Act.<sup>61</sup>

In addition, the Act only authorized the Registrar to make “alterations” to the register under limited circumstances. That is, the Registrar may only alter the registers under four circumstances – namely, to correct a mistake, to update the register, to restore the consequences on any interest wrongly deprived of its registration effect, and to remove any “superfluous” entries.<sup>62</sup>

As Hu elaborates, the powers of the land registration officers in China are unduly large, which can be attributed to the poor drafting of the land registration legislation, which grants the officers an excessive amount of power, which they can take advantage of for

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<sup>58</sup> Luo Jun (骆军), *Woguo Budongchan Dengji Cuowu de Falü Jiuji Tixi Tanjiu* (我国不动产登记错误的法律救济体系探究) [A Study on China's Remedial System for Faulty Real Estate Registration], *SHEHUI KEXUEJIA* (社会科学家) [SOCIAL SCIENTIST], Aug. 2008, at 88, 88-91 (2008).

<sup>59</sup> Land Registration Act, 2002, c. 9, §§ 73 (1), 73 (6).

<sup>60</sup> § 73 (7).

<sup>61</sup> § 107, sch. 9.

<sup>62</sup> § 65, sch. 4, ¶ 2.

their own interests.<sup>63</sup> Here, again, China can emulate the English Land Registration Act, mainly by improving the drafting of its land registration legislation to limit the powers of the land registration officers as well as the circumstances under which they can alter the land registers.

#### IV. CONCLUSIONS

Overall, the English Land Registration Act of 2002 has been hailed as a successful piece of title registration legislation not only in England but also in other common law regimes. According to Cooke, “the Act is a classic instance of law reform that repeals an unsatisfactory statute, and substitutes a better one, making the law more consistent and more workable.”<sup>64</sup>

In addition, we have repeatedly underlined that the English Land Registration Act provides ample lessons for the Chinese counterpart, all of which relates to the superlative technical quality of such a legislation in the successful implementation of a title registration system. Also, we noted that the successful implementation of such a system will be dependent on the prevailing political, economic and social conditions, as well as effective collaboration among government departments responsible for the formulation and implementation of the title registration system.

As far as electronic conveyancing is concerned, although doubtful whether the English system of electronic conveyancing is compatible with the Chinese system, the country should nonetheless strive to achieve a system of “title by registration” by gradually moving away from the existing system of “registration of title.” Regarding the issue of indemnity, the Chinese government should strive to stipulate a set of detailed circumstances under which indemnity is payable; a formula for calculating the amount of indemnity; a mechanism for elimination or reduction of claim for indemnity in the event of fraud or lack of care, and recovery of compensation by the registrar from person(s) who caused or significantly contributed to loss through fraud. Finally, China can improve the drafting of its land registration legislation by clearly defining the powers of the land registration officers, as well as the circumstances under which these officers can alter the land registers.

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<sup>63</sup> Hu Zhigang (胡志刚), *Woguo Budongchan Dengji Zhidu de Xianzhuang Ji Quexian* (我国不动产登记制度的现状及缺陷) [*The status quo and limitations of the China's Real Estate Registration System*], ZHONGGUO FANGDICHAN (中国房地产) [CHINA REAL ESTATE], FEB. 2006, at 65, 65-70.

<sup>64</sup> See COOKE, *supra* note 21, at 158.