TITLE INSURANCE IN INDIA

26 OCTOBER 2016

To,
Shri. P J Joseph
Member – Non-Life
IRDAI
Hyderabad

Respected Sir,

Report on working group on 'Title Insurance in India'

I have immense pleasure in submitting the report on 'Title Insurance of India' on behalf of the working group constituted by the Authority vide circular dated IRDA/NL/ORD/MISC/115/16/2016 dated 10th June 2016.

The report extensively deals with the following aspects of the subject:

1. Study on the need and scope for 'Title Insurance' under the prevailing conditions of the domestic market and analysis of the products and practices on the subject in the international market.
2. Identification of insurable risk and the most viable compensation structure under the prevailing conditions.
3. Suggestions with respect to the design of the product and framework for assessment of risk, pricing, reserving and accounting for insurers willing to underwrite such products.
4. Ascertainment of the extent of reinsurance support available for risk transfer and knowledge sharing in the international markets for the products.
5. Assessment of the risks (inherent in) and opportunities (to be availed from) pre-risk due diligence of the revenue records available with the government, in view of the fact that a substantial part of the pre-underwriting risk assessment is going to be a vital activity for the insurers opting to write the subject risks.
6. To examine any other aspect relevant to "Title Insurance"

On behalf of the Members of the Committee, and on my behalf, I sincerely thank you for entrusting this responsibility to us. I thank the Authority for giving us the opportunity and support in framing this report.

Suresh Mathur
Chairman of the Committee

Place: **Hyderabad**
Date: **28.10.2016**

Acknowledgements

At the outset, the Working Group expresses its gratitude to the Chairman, IRDAI and Member-NL, IRDAI for providing the opportunity to work on the report on Title Insurance in India and extend its recommendations.

The group would like to thank the members of Central and State Governments, Housing Finance Companies, Real Estate Developers, Lawyers, Re-insurers and Insurers for providing their precious time for the purpose and sharing their valuable inputs and suggestions to the working group to enable the group to structure the present report. The suggestions received were extremely useful in striking a balanced approach while structuring the report.

The group would like to extend its gratitude to the invitees, more particularly Mr. Joseph Lonappan, Managing Director, Marsh and Ms Neera Saxena, DGM, New India Assurance for sharing their valuable time inputs to the group .

The Committee would like to place on record its gratitude to IRDAI, NHB and ICICI Lombard General Insurance Company Limited for providing infrastructure and venue for conducting meetings and carrying out the desired discussions.

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Executive Summary

In the wake of the promulgation of the Real Estate Regulatory Act, 2016 ("the Act"), the Insurance Regulatory Development Authority of India has constituted a working group to study the scope of Title Insurance in the Indian market. The objective of forming this group is:

- to study the need and scope for 'Title Insurance' in the Indian market in comparison to the existing practices internationally.

- the Government has promulgated the Real Estate (Regulation and Development) Act, 2016, which seeks to protect home-buyers and to boost investments in the real estate industry of the country. Section 16 of the Act mandates builders to compulsorily subscribe to adequate Title Insurance cover for their project(s). Given that most states would be setting up real estate regulators shortly and this would be made applicable for new projects of builders, there is a necessity for the Insurers to make appropriate products available for the purpose.

- to suggest the design of the product and suggest the framework for assessment of risk, pricing, reserving and accounting with actuarial inputs keeping in mind the long term sustainability of the product on a standalone basis.

- to ascertain the availability of reinsurance support in the domestic and international markets.

- to assess the availability and accessibility of local revenue records, ascertain the status of digitization of land records in various states and availability of legal expertise to support the underwriting and claims management efforts of the insurer.

- to examine any other aspect relevant to "Title Insurance"

The aim of this report is to highlight all aspects related to Title Insurance in India and create an idea about the possible ways to structure the product/program.

The working group deliberated upon the proposed program/product and the risks and opportunities associated with it. The working group, in the process of constructing a cohesive opinion on the subject, met various stakeholders such as insurance brokers,

builders, revenue authorities of state governments and the union of India, banks and housing finance companies and lawyers/ due diligence agencies to understand their perspective of risks involved in the business.

In careful consideration of the suggestions, opinions and recommendations, the working group has arrived at the following recommendations:

Recommendations

Cover period for this kind of a product should be 7 years. Given the specialised nature of the product and the fact that this product would be reinsurance driven, taking a credit risk to perpetuity (as practiced by certain significant jurisdictions across the globe) may not be advisable. However, in the prevailing circumstances in India, title insurance policies may be considered only for fixed terms.

The policy contemplated at this point in time, is a legal liability policy where the claim liability of the insurer gets triggered on the basis of a judgement rendered by the Tribunal (as contemplated in the Act) or any other court of competent jurisdiction to this effect.

Keeping in view the specialised nature of the risk, the Insurance Regulator may allow underwriting of such long term products by Indian insurers with minimal risk retention till the time, the Insurers attain confidence to the satisfaction of the Regulator that they are fully equipped with necessary data and adequate infrastructure to underwrite such risks independently.

As an additional safeguard, the Regulator may further prescribe that reinsurers underwriting title insurance cover for Indian risks should have a minimum rating of A+ (with Standard & Poor) or equivalent rating of any other international rating agency.

As far as the pricing and reserving practices are concerned, the working group has come up with a model as detailed in the Report itself. Further, the Regulator may prescribe appropriate accounting and solvency practices keeping in view the performance of the product from time to time.

The Act prescribes that the benefit of such cover obtained by the promoters/ builders shall be transferred to the home buyers at the time of transfer of possession of the house through appropriate assignment. In furtherance to the same and keeping in view the fact that banks and financial institutions do accept the projects as security against the finances made available to the promoter/ builder, the benefits of such cover may be made assignable to the mortgagors as long as such banks and financial institutions hold charge against such projects/ assets.

Given the fact that the risk assumption decision of insurers underwriting similar products across the world are dependent upon pre-risk due diligence reports of expert professionals in the field. However, such expertise in India is neither standard nor regulated. In view of

the same, it may be appropriate for the Insurance Regulator to prescribe standards of such practices along with appropriate code of conduct to govern such professionals.

During the course of discussions, the working group observed that the digitisation of land records are at different stages for different states in the country. In view of the fact that due diligence of such records provide critical and vital inputs to underwriting of such risks, it is recommended that the central government should ensure that the requirement of digitisation of land records is implemented and advanced across all states.

Further, the central government may provide a common and standard procedure for title registration and record retention for all states to ensure that registration of transfer and transmission of properties are done only after cross establishing appropriate ownership.

The central government may prescribe a time frame within which the Real estate tribunals should adjudicate the title disputes filed with them, which apart from helping the contesting parties would largely help the insurers to manage their claim portfolios effectively.

In order to minimise security risks inherent to the assets mortgaged to the banks and financial institutions, the Reserve Bank of India and the National Housing Bank may encourage the banks and financial institutions to compulsorily demand for title insurance while considering finance to any civil project.

Securities Exchange Board of India may mandate Title Insurance for all Real Estate Investment Trusts to protect the interests of consumers.

2

Introduction

Real estate is one of the fastest growing sectors in India evidenced by a sharp increase in real estate transactions involving buying, selling, leasing and financing of properties. In addition to transactions in urban areas, there is large scale procurement of land from individuals in villages close to the urban, industrial and commercial centres. Similarly, there has been an increase in leasing (both short and long term) of commercial office space as well.

The substantial increase in the value of real estate transaction combined with the growing participation of the organized sector in real estate has resulted in heightened awareness of the risks involved and consequently, the need for ensuring that the risks are identified and minimized in such transactions. 'Legal due diligence/ Title search' of real property (be it of vacant tracts of land or of constructed residential/ commercial/ industrial properties) is clearly the mode for achieving these objectives.

Land reforms require urgent attention in emerging market economies and there is a vast body of literature that deals the economic impact of various aspects of land reforms, specifically with respect to the issue of property rights and land registration systems. When property rights are not well-defined through land titling systems, those who hold property spend significant resources to defend their rights which could be better spent in other productive uses

The word “title” is a legal term that means legal ownership of the property. Title to property is obtained, when the owner of the property signs a deed (transfer document) in favour of the buyer. Title is then registered in government’s land registration system and buyer gets the ownership of the property. Title insurance has become a fundamental part of most real estate transactions, both commercial and residential. In every real estate transaction, a buyer wants to receive valuable/marketable title to the land and knows the restrictions or encumbrances on the land before purchasing it. The means and methods of assuring this have changed over time and evolved dramatically. State and local restrictions along with easements for utilities and adjacent landowners, take away some of the absolute right of property ownership. As a result, real estate buyers generally bargain for "marketable" title. Marketable title was originally defined as "one which appeared from the records of the Land Title registrar to be good and free from all encumbrances.” Today, title insurance companies are an integral part of real estate transactions, as they provide insurance policies that protects residential or commercial property owners and their lenders against losses related to the property title or ownership.

Pursuant to the broad understanding of commercials, the due diligence exercise is the most important aspect of a transaction involving real estate. This process has the potential of not only impacting the commercials but also determining the genuineness of the transaction itself. While the commercials often pay high importance to expedite the conclusion of a transaction, it is critical in the interests of the players to provide adequate time and attention to a detailed due diligence of the property involved. It is important to realize issues such as title, permitted use, legality of construction, encumbrances and easements which have the ability to impact the very nature of the property and its suitability to the commercial needs of the transaction.

In the Law of property, title in its broadest sense refers to all rights that can be secured and enjoyed under the law. It is frequently synonymous with absolute ownership. Title to property ordinarily signifies that the holder has full and absolute ownership. In real estate, property title is evidenced by a deed (or judgement of distribution from an estate) or other appropriate document recording the public records of the county. Title to property is generally shown by possession, particularly when no proof or strong evidence exists showing that the property belongs to another, or that it has been stolen or known to be lost by another.

The problem of land ownership at present cannot be resolved without understanding the land ownership structure of the past. The past plays an important role in shaping today's perceptions and priorities. Naturally, the solutions for contemporary crisis are affected by the past. Therefore, it is important to see how our ancestors understood land ownership.

VEDIC ERA

In the post-vedic era, due to use of iron implements in agriculture, people started staying in one place. There are reference to land ownership in the post-vedic book Aitareya Brahman in which it is written that when Vishwakarman donated land to the Purohits for performing yagna and subjects of the King protested against such donation. This suggests that it was not possible to donate land without the consent of the community. In other words, land ownership was based on community and there was no concept of individual ownership of land.

According to dharma shastra expert of Mahajanpad period, any property that was the means of livelihood, could not be divided, and this also included land. With the development of villages inhabited by a wide spectrum of communities, the question of ownership of land that was not attached to an identifiable property became equally perplexing. The fact that there was common ownership of land can also be verified in Rishi Jaimini's Mimansa sutras. Under this arrangement, no king can give away all the land of his kingdom since the earth belongs to all.

During the Maurya era, political philosopher Kautilya was in favour of the king's control over all agricultural land, but he did not sponsor the notion that the king should be the owner of all the land. Possibly, Manu was the first person to have talked about king's first right of ownership of the land. But this does not necessarily mean that he is the absolute owner of all the land. According to Manu, the king owns half of all that comes out of mines, because he is lord of the earth and protects it. The concept of king's ownership over all land was first propounded in the post Gupta period by Sage Katyayan who said that the king is the owner of all land and therefore, King has the right to one fourth of all the products of land. At the same time, he also accepts that one who lives on land, should be the man acknowledged as its owner. A similar sentiment is expressed in Narad Smriti.

According to Narad, if a family has been enjoying the fruits of a land for three generations, then they have the legal rights over it. However, the will of the king can facilitate transfer of the land to another farming household. This implies that the king's right can infringe upon the individual's right. Chinese travellers Fahien who came to India during the Gupta period and Hiuen Tsang who came during King Harshvardhan's rule noted that the land belonged to the king. So, division of land and the continuation of accepting it as private property started during the Gupta period. The rules for sale of land were first laid down by Brihaspati. Kautilya talks only about the sale of house and the land attached to it, but does not talk about sale of land per se. After Brihaspati, it was Katyayan who made rules in this regard. According to Katyayan, land which is taxed could be sold to pay the tax. According to Brihaspati, during sale of land one must mention the number of wells, trees, water sources, fields, ripe crops, fruits, ponds, tax houses etc. Here, one may conjecture that Brihaspati was representing terms of selling Land.

According to Gautam and Manu, if a plot of land stays under possession of a person for 10 years or more, then it becomes his property. Yagyavallabh extended this period to 20 years, but none of them talked about land in this context. Vishnu, Narad, Brihaspati and Katyayan increased this period to three generations that is 60 years and also included land under this. With the 11th century Mitakshara law, the time period was increased to a 100 years and in the 13th century under Smriti Chandrika it was increased to 105 years. This makes it clear that the concept of individual ownership of land could not be challenged any further.

ANCIENT INDIAN ERA

So, in the beginning of the ancient period, there was community ownership of land, by the end of the ancient period the stress was on the king's and individual ownership of land, even though it appears that these two rights are in conflict with one another. Due to king's ownership of land, the king could grant land to temple priests, powerful nobles and employees in return of services rendered to the king. And under the concept of individual ownership of land, the person who received a grant of land from the king could hand it over to farmers on patta. From the above it appears that since the early middle ages, there were more than one claimant for land and each had legal backing for it.

MUGAL ERA

A similar situation was prevalent in feudal Europe at that time, though there were some fundamental differences. During 1200s, when the Muslim sultanates were established in north India, there was a change in the pattern of land ownership. The land under the Sultanate was divided into three parts. The first was 'khalsa' land which was directly under the Centre, the second was 'Ekta' which was given to the officers in lieu of their salary. The officers were expected to take their salary from the revenue generated from the land and return the remaining to the Centre. The third type of land was donated to scholars and priests. Since land was in plenty, the question of ownership was relatively less intimidating. Khoot, Mukaddam and Choudhary were the intermediate land owning class. Of them the Khoots had the status of zamindars, while Mukaddam and Choudhary were heads of villages and were prosperous farmers. This intermediate land owning class used to collect tax from the farmers and deposit it in the Central treasury. But, during the era of Allauddin Khilji, the powers of the intermediate class were taken away and the State's employees were given the task of collecting tax directly from the farmers. In the rural society, the land owning farmers and the landless farmers lived side by side, but only the land owning farmer paid the taxes.

During the rule of Sher Shah Suri, the 'Jabt' system was introduced and the tax was based on the size of the holding. All cultivable land was measured and each farmer was given a title deed in which the tax to be levied was also mentioned. The direct relation with the state saved the farmer from exploitation by the zamindars and other intermediaries. During the Mughal period, the situation remained unclear, as had been during the Sultanate regime. It is possible that the state and other sections had right over the same plot of land, but there was no concept of total ownership of land. During this period the influence of the zamindars increased and they amassed enormous social clout. Akbar divided the land under him into 'Khalsa' and 'Jagir'. The Mansabdars, whose salaries were derived from the revenue of the land given to them, were known as the Jagirdars. Along with them there was a large class of Zamindars, who, in turn, were divided into three categories. The farmers were of two types – the 'Khudkashta' and 'Pahikashta'. The former were farmers who tilled their own lands and the latter were landless peasants who tilled other people's land. One may deduce that the settlement pattern during the Mughal period led to the rise of several claimants to the same plot of land.

BRITISH ERA

The question of land ownership once again came to the forefront during the British. It was in Bengal that the British rule first tried to solve this problem. In the beginning, all the land was considered to be that of the ruler and revenue collection was based on contract. The highest bidder of a tract of land was given the right to collect the revenue. After experimenting with several models of revenue collection, the then Governor General Cornwallis accepted that the zamindars had the right of ownership of land and this

ownership passed from father to son. This was done so that if a zamindar failed to give the promised revenue on time, his land could be auctioned. When lands of the zamindars were auctioned, it was the traders who usually purchased them. During the British period, industries had declined and for the traders there was no safer investment than land. However, the zamindars lived in the cities and the problem associated with absentee landlord-ism started cropping up.

The main aim of the absentee zamindars was to extract the maximum amount of revenue from the farmers and little from the tillers. Gradually, the new generation of the zamindars also started living in the cities and their motive too was to extract the maximum amount of revenue from the farmers. Apart from Bengal, the ownership of land was given directly to the farmers in the rest of the country upon the payment of fixed revenue called malguzari. If they failed, their land had to be mortgaged or sold to pay the dues.

In south India, the farmers used to deposit the land revenue directly to the government, while in Punjab and other parts of north India, the Mahal, who represented the farmers, used to collect revenue. Over a period of time, the British increased their demand for land revenue and to ensure that it could be collected, they made land a saleable property. So whenever a zamindar, farmer or Mahal failed to deposit the revenue on the given date, his ownership of the land was auctioned and the land revenue was collected. Prior to the British rule, such auctions of confiscated land was rare. In most of the cases the land on which people could build houses or land that was to be donated for religious purposes were bought and sold. Even during the British period, 40 per cent of the area came under the princely states and the pattern of ownership on this land was based on concepts that varied from the medieval to modern.

POST INDEPENDENCE

After independence, the question of land was discussed in detail at the Constituent Assembly and Parliament. Since India had decided to become a democratic republic, it was decided that a land distribution should be more just and equitable. The State Governments passed the Zamindari Abolition Act and other similar acts to bring about some regularity in the ownership pattern of land. After zamindari was abolished, the zamindars were given compensation of their land and it was distributed among those who had been tilling them. In most of the States, the zamindari system was abolished by 1956. But the absence of land records made it difficult to implement laws abolishing zamindari.

According to one study, the area under kashtakars (share croppers) had come down from 42 per cent in 1950-51 to around 20-25 per cent in the beginning of the 60s. This did not mean that the share croppers had become owners, rather it meant that the landowners had evicted them. The land owners also tried to block the implementation of the Zamindari Abolition Act by misusing the path of judicial remedy. However, by 1960, zamindari was abolished in most parts of the country except in some parts of Bihar. While on the one

hand, the big landowners were the main losers; on the other hand, the share croppers who had been working on the same land for years gained the ownership of the land. According to a rough estimate, due to abolition of zamindari system, two crore share croppers got land. However, to get ownership rights, the share cropper had to deposit a lump sum land revenue. For example, in Andhra Pradesh it was only after the payment of eight years' land revenue that a farmer could acquire rights over the land he tilled.

Under the Hadbandi Act, no family could keep cultivable land above a certain limit. In 1946, the Akhil Bharatiya Kisan Sabha had kept 25 acres as the maximum limit of cultivable land a family could keep. However, there was a great delay in framing the rules under this Act and different State governments fixed different limits as a result of which the impact of this act lost its intensity.

In a country like India where the average holding of 70 per cent of the farmers was less than 5 acres, the threshold limit of land holding fixed by the State was very high. In Andhra Pradesh it was fixed between 27-132 acres depending on the type of land. In most states the threshold limit was fixed on an individual basis and there was provision to increase it. Even with its limitations, this act was an important milestone in the program of land reforms. It greatly succeeded in ending the land market and concentration of land.

It was then that Vinoba Bhave, a close associate of Mahatma Gandhi, started the Bhoodan movement. The movement appealed to the individual landowner to donate land to the landless.

The main thrust of the Bhoodan movement was to address the conscience of the landowner and get him to donate one sixth of his land. The land thus procured was distributed among the landless. By March 1956, the movement started losing momentum after getting more than 40 lakh acres of land. It was found that most of the donated land was either barren or locked in litigation.

Efficient distribution, too could not be ensured. By the end of 1955, the Gramdan movement was also launched. Once again the inspiration of this movement was Gandhiji who believed that all land belonged to God. Under Gramdan, all the villagers had joint ownership over the land in the village. This movement started in Orissa. Even though it held a lot of promise but by the 1960s the Bhoodan and Gramdan movement lost their momentum. But by these movements an effort was made at land reforms which not only complemented land reform legislation but also encouraged the farmers to enter politics and increased the number of farmer producers' cooperatives among other things.

After abolition of Zamindari, the superior tenant farmers became virtual owners of the land. They owned tens and hundreds of acres of land. Many Zamindars themselves kept lot of land in pretext of 'personal cultivation'.

Therefore, Government enacted Land Ceiling Act 1973, it meant to fixing maximum size of land holding that an individual/family can own. Land over and above the ceiling limit, called surplus land. If the individual/family owns more land than the ceiling limit, the surplus land was taken away with or without paying compensation to original owner and this surplus land was then distributed among small farmers, tenants, landless laborers or handed over to village panchayat or given to cooperative farming societies. For e.g., an individual farmer cannot own land beyond say 10 acres. Thus, if a farmer owned 12 acres, government would take away 12-10=2 acres of surplus land from him, and “distribute” it to some landless farmers.

So, the pattern of land ownership changed from community ownership in ancient India to king’s ownership to individual ownership. In the middle ages the king\sultan and zamindar\farmer had concurrent rights over the same plot of land. In the British era, due to excessive land revenue extracted from farmers, land became a saleable product. In independent India, the laws of land ownership were framed to ensure that each farmer had a minimum amount of land with him, but this target is yet be reached.

3

International Practice of Land Registration and Title Insurance

History

Prior to the invention of title insurance, buyers in real estate transactions bore sole responsibility for ensuring the validity of the land title held by the seller. If the title were later deemed invalid or found to be fraudulent, the buyer used to lost his investment.

In 1868, the case of Watson v. Muirhead heard by the Pennsylvania Supreme Court the plaintiff Watson had lost his investment in a real estate transaction as the result of a prior lien on the property. Defendant Muirhead, the conveyancer, had discovered the lien prior to the sale but told Watson the title was clear after his lawyer had (erroneously) determined that the lien was not valid.

The courts ruled that Muirhead (and others in similar situations) was not liable for mistakes based on professional opinions. As a result, in 1874, the Pennsylvania legislature passed an act allowing for the incorporation of title insurance companies.
Joshua Morris, a conveyancer in Philadelphia, and several colleagues met on 28 March 1876 to incorporate the first title insurance company. The Real Estate Title Insurance Company of Philadelphia, was formed which would "insure the purchasers of real estate and mortgages against losses from defective titles, liens and encumbrances," and that "through these facilities, transfer of real estate and real estate securities can be made more speedily and with greater security than heretofore."
Morris' aunt purchased the first policy, valued at $1,500, to cover a home on North 43rd Street in Philadelphia.

Torrents Title System

At present there are two types of title systems used worldwide:
Land registration and land recording.

Most of the industrialized world use land registration systems for the transfer of land titles or interests in them. Under these systems, the government determines title ownership and encumbrances using its land registration and with only a few exceptions, the government's determination is conclusive. Governmental errors lead to monetary compensation to the person damaged by the error but that aggrieved party usually cannot recover the property. The Torrens title system is the basis for land registration systems in several common law countries. Nineteen jurisdictions in the United States, such as Minnesota and Massachusetts, adopted a form of this system between 1896 and 1917, however it fell out of favour after single judgement in Imperial County, bankrupted the state's title indemnification fund, and the vast majority of U.S. states opted for a system of document recording in which no governmental official makes any determination of who owns the title or whether the instruments transferring it are valid.

In the recording system, each time a land title transaction takes place, the parties record the transfer instrument with a local government recorder located in the jurisdiction (usually the county) where the land lies. The government indexes the instrument by the names of the grantor (transferor) and the grantee (transferee) and photographs it so any member of the public can find and examine it. In general, if the transferor then purports to transfer the property to someone else who does not know he already transferred it to someone else, and the first transfer was not recorded, that transfer is void with respect to the second transferee and the second transferee owns the land.

The advantage of the recording system is:

1. In a registration system, the cost and risk are born by the general public, but in a recording system, cost and risk are born by the users of the system

2. In a recording system, an independent authority reviews government land transfers. In a registration system government can decide registration disputes in its favour, preventing separation of powers and the constitutional right to due process of law

3. A recording system can provide for conveyance of land for situations beyond the capacity of public records, such as homesteading and inheritance.

4. A recording system combined with title insurance decentralizes records, creating redundancy. For example, when many records were destroyed in San Francisco's 1906 earthquake, out of town title companies maintained records that allowed landowners prove ownership of their property.

Under this system, to determine who has title, one must:

1) Examine the indexes in the recorders' offices, pursuant to various rules established by state legislatures and courts

2) Scrutinize the recorded instruments

3) Determine how they affect the title under applicable law. The final arbiters of title matters are the courts, which make decisions in suits brought by disagreeing parties.

Historically, the person who wanted to understand the title would hire an abstracter to write a property abstract showing the chain of title. However, if the abstracter makes an error, the client may only be compensated if the attorney is negligent, subject to the limit of his financial responsibility (including his liability insurance). However, the willingness of these professionals to accept strict liability varies.

Title insurers conduct a title search on public records before they agree to insure the purchaser or mortgagee of land. Specifically, after a real estate sales contract has been executed and escrow opened, a title professional will search the public records to look for any problems with the home's title. This search typically involves a review of land records going back many years. More than one-third of all title searches reveal a title problem that title professionals will insist on fixing before the transaction closes. For instance, a previous owner may have had minor construction done on the property, but never fully paid the contractor (resulting in a mechanic's lien), or the previous owner may have failed to pay local or state taxes (resulting in a tax lien). Title professionals seek to resolve problems like these before the transaction closes, since otherwise, their employer, the title insurer, will be required to fix such title defects by paying such unpaid fees or taxes.

Title insurance policies are fairly uniform, and backed by statutory reserves, which is especially important in large commercial real estate transactions where the buyer and their lender have a lot of money at stake. The insurer also pays for the defence of its insured in legal contests.

At least 20 U.S. states have experimented with Torrens title or other title registration systems at one time or another, but most have retreated to title recording under pressure from title insurers or from lack of interest. According to Karl Llewellyn, one Torrens title on one lot in New York City can render the entire block unavailable for large-scale improvement (i.e. skyscrapers) no lender will finance the purchase of such a lot because no New York title insurer will guarantee a Torrens title. The U.S. title insurance industry has successfully opposed land registration systems by saying that they are vulnerable to fraud (a severe problem in most land registration jurisdictions) and that an inherently contingent property system more effectively protects property rights. While it is possible to fortify land registration systems to prevent the registration of forged deeds, the necessary

countermeasures are complex and expensive. A 2007 book attacking the American title insurance "cartel" explicit that "more extensive use of Torrens certification would require setting up a special judicially supervised bureaucracy."

In spite of the differences between the systems of the numerous countries operating a land registration system (either deeds or titles), there are four basic legal principles that can generally be recognized:

a) The **booking principle** implies that a change in real rights on an immovable property, especially by transfer, is not legally effectuated until the change or the expected right is booked or registered in the land register.

b) The **consent principle** implies that the real entitled person who is booked as such in the register must give his consent for a change of the inscription in the land register.

c) The **principle of publicity** implies that the legal registers are open for public inspection, and also that the published facts can be upheld as being more or less correct by third parties in good faith, so that they can be protected by law.

Concerning the public inspection, it can be remarked that in various countries the land register is open for inspection whether by anybody who wishes to do so (The Netherlands, Belgium, France), or by anybody who has a legally recognized interest in what is published (Germany), or by the registered owner or anybody who has a permission of the registered owner (in England, until 1991). In the last case the privacy element is very dominant.

There is a need to open the registers, which were up to now more or less "closed" for inspection by anybody. The register thus can not only assist in the simplification of conveyancing but will also help in identifying the ownership of properties for other purposes, such as conservation and development. Therefore the land register will be an important component of a concept of a broad land information system. Evidence of this need can be found in England, where the Land Registration Act of 1988 heralds the end of the privacy of the register. This Act was brought into force in 1991.

d) The **principle of speciality** implies that in land registration, and consequently in the documents submitted for registration, the concerned subject (man) and object (i.e. real property) must be unambiguously identified.

Depending on the nature and extend of involvement of the state in the conveyancing process, which appears in activity or passivity of the state and which has the root in the "legal" history (in Continental Europe Roman law and Germanic law), there exist two recognized systems of land registration, the **deed** and the **title registration system**.

A **deed registration system** means that the deed itself, being a document which describes an isolated transaction, is registered. This deed is evidence that a particular transaction

took place, but it is in principle not in itself proof of the legal rights of the involved parties and, consequently, it is not evidence of its legality. Thus before any dealing can be safely effectuated, the ostensible owner must trace his ownership back to a good root of title.

Deed registration, whether the "basic" or the "improved" one (based on a survey and on documents of competent notaries as well as on an active role of the register) is usually applied in countries which are mainly based on the Roman law (in Europe: France, Spain, Italy, Belgium, The Netherlands) and also in countries that were influenced by the former ones in earlier times (South-America, parts of North-America, some African and Asian countries).

A **title registration system** means that not the deed, describing e.g. the transfer of rights is registered but the legal consequence of that transaction i.e. the right itself is a title. So the right itself together with the name of the rightful claimant and the object of that right with its restrictions and charges are registered. With this registration the title or right is created.

What is Title Insurance

Title insurance is a form of indemnity insurance which insures against financial loss from defects in title to real property and from the invalidity or unenforceability of mortgage loans. Title insurance will defend against a lawsuit attacking the title, or reimburse the insured for the actual monetary loss incurred, up to the amount of insurance provided by the policy.

Title insurance exists to protect possibly the most important investment a person will make an investment in real estate. Title Insurance ensures that an owner will have an indemnity contract that will reimburse the party for their loss in the event that external factors assert claims against their property covered by the policy. Only through thorough examination of public records are title insurances issued but even then, there are times one cannot be absolutely sure that there are no title hazards.

It protects against risks inherent in the uncertainty of land titles by delineating known defects of title and providing coverage for claims or losses due to the others. This coverage insures against any decrease in property value which would result from a successful challenge to title, and attorney’s fees associated with litigating these title claims.

How Title Insurance Differs From Other Lines of Insurance

Key elements of the title insurance that distinguish it from personal lines classes of property/ casualty insurance in the US are as below:

Features	Title Insurance	PC Insurance
Protection	Against Past Events	Against Future Events
Scope of coverage	Specific	Broad
Actuarially Defined Rates	Evolving	Yes
Administrative / Acquisition Costs	High	Low
Loss Costs	Low	High
Policy Term	Potentially Unlimited	Finite
Premium (GAAP)	Fully Earned at Issuance	Earned Over Policy Term
Rate Regulation	Varies by State	High
Rate Activity	Varies by State	Tied to Inflation and Underwriting Business Cycles
Loss Frequency	Low to Moderate	High
Loss Severity	Low	Moderate
Distribution	Agents / Direct	Agents / Direct /Mass Market
Marketing Success	Based on Service	Based on Rates
Competition	Semi-Concentrated Market	Fragmented Market
Premium Collection	After	In advance
Financial Leverage	Low	High
Sensitivity to Real Estate Markets	High	Moderate

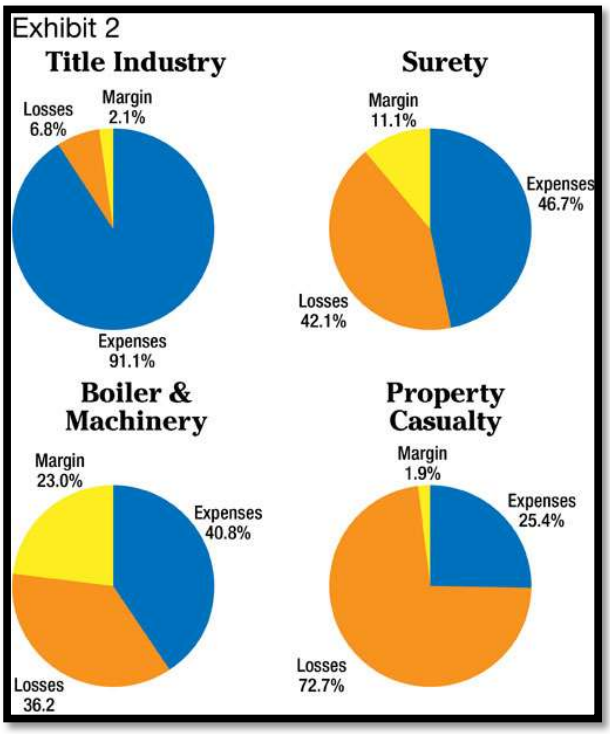
Since title insurance is an evidence-producing/loss-prevention line of insurance, its loss expense is less than - and its operating expense is greater than - that of other property/casualty lines of business. Insurance expenses are loss-prevention, underwriting-related and loss-related.
A typical loss-prevention insurance line - such as title, boiler and machinery or surety - usually has higher operating costs and lower losses than other insurance lines. It should be noted that according to the statutory accounting rules for title insurance, only reported claims are reflected in the loss expense. In other lines, both reported and unreported -, known as incurred but not reported (IBNR) - claims are included in the loss expense. As a result, timing differences occur in the reporting of losses and loss-adjustment expenses for title insurance when compared to other lines. In addition to known claims, title insurers - unlike insurers in other lines - carry a statutory liability known as the statutory premium reserve that provides ultimate loss protection for policyholders. However, it is not counted as a loss statistic.

Because of the large service and underwriting component of title insurance, its closest property/casualty counterparts are service, underwriting and loss-control-intensive sectors. Lines of insurance containing these features include surety, and boiler and machinery.
Operating expenses are the largest component of a title company's costs. A title company's ability to expand its infrastructure and maximize operating profits in good market conditions, and to contract and control costs in poor market conditions, is critical to its long-term financial success and solvency. This isn't necessarily the case with property/casualty companies, where the control of loss costs is more critical to success and solvency.

Because of title insurers' dependency on the health of the real estate market and favourable interest rates - as well as their being required by law in most states to be monoline writers - title industry revenues and profitability are susceptible to volatility. To dampen this volatility, title insurers have:
-Improved their technology and work-flow processes.
-Diversified their operating revenue by introducing new title products and expanding nationally and internationally.
Since title insurance usually involves the acceptance of prior transaction-related risk rather than future risk, the underwriting process in the title insurance industry differs markedly from the typical property/casualty underwriting process. The title underwriting process is designed to limit risk exposure through a thorough search of the recorded documents affecting a particular property. The insurance component of a title product only indemnifies for existing - but unidentified, or specifically underwritten - defects in the condition of a property's title. In other words, title insurance - unlike typical property/casualty insurance - usually does not respond to future occurrences but only to past defects that were in place at the time the property was sold, and not recognized as a problem until after the property was transferred or was insured over.

Property/casualty underwriters are concerned with determining the probability of loss based on the characteristics of the insured risk. Title underwriters, on the other hand, are concerned with reducing the possibility of loss by discovering as much information about the past as possible through extensive searches of public records and stringent examinations of title. No policy or contract of title insurance should be written unless it is based upon a reasonable examination of title, and unless a determination of insurability of the title has been made in accordance with sound underwriting practices.

In the United States, the general underwriting examination and search requirements, coupled with the disarray and geographic dispersion of records, have fostered the development of privately owned, indexed databases or title plants. These title plants must be maintained regardless of the level of real estate activity during any given period. The Financial Accounting Standards Board (FASB) has ruled that a title plant is a unique asset that, if properly updated, does not diminish in value over time. The cost to maintain the economic life of a title plant and continuously update the records is extremely high. This is one factor adding to the higher overall fixed-cost percentage for title insurers as compared with property/casualty insurers. Both property/casualty insurers and title insurers must physically produce policies, but the processes and requirements differ significantly. A typical property/casualty policy might involve filling out a few blanks on a form, while the title policy might require the transcription of a complex legal description unique to the insured property, along with enumeration of often equally complex and unique terms of easements or other special property rights. In property and liability lines, agents' commissions generally are in the range of 10% to 25% of the premium on the policies that agents write. In the United States, title insurance, the agent retains a much larger proportion of the amount charged, typically in the range of 60% to 80% of the premium. Commissions for title insurance are more properly described as agent's retention or agent's labor or work charges.



The title insurance activities of search and examination generally are carried out locally, because the public records to be searched are usually only available locally. This activity might be performed by directly owned branch operations of the insurer or by title agents. Payments to a title agent not only reflect an origination commission but incorporate underwriting, loss-prevention and administration costs that title insurers would incur if policies were issued directly. These unique characteristics of the title insurance industry, combined with the necessity of maintaining a title plant or searching public records, contribute to the high fixed costs, the high ratio of salaries to total expenses and the high percentage of total revenues retained by agents.

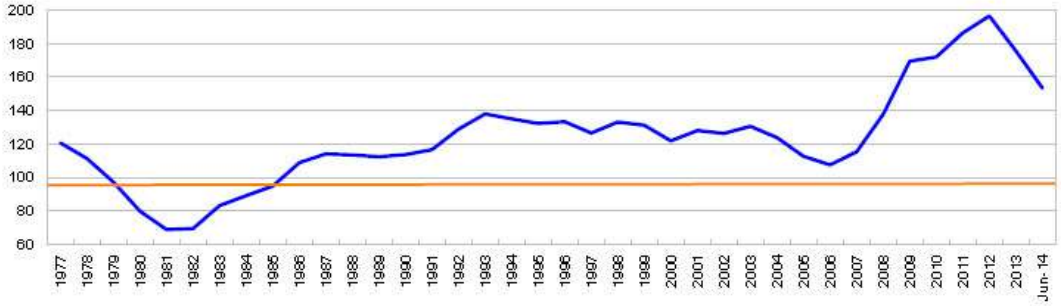
In addition, with the requirement that each real estate parcel be evaluated and insured based upon the myriad and varying local laws, customs and records, the traditional insurance structure of local marketing and home-office underwriting cannot reasonably and cost-effectively be maintained in the title insurance industry. Since real estate laws, customs and practices vary, at least on a state-by-state and sometimes on a county-by-county basis, it has not been practical for underwriting to be performed on a national basis by a team of underwriters in the home office. Therefore, the economies of scale - made possible by establishing a centralized, skilled technical support staff of actuaries and underwriters to price products and make underwriting decisions - are absent in the title industry.

The Title Industry and Real Estate Economics

The title industry is highly dependent on real estate markets, which, in turn, are highly sensitive to mortgage interest rates and the health of the overall economy. Typically, there is an inverse relationship between mortgage rate changes and real estate activity, and therefore, operating revenue for title insurers.

As interest rates fall, real estate transactions generally increase along with the greater demand for title products, and title insurers' operating revenues generally rise. The reverse occurs when interest rates rise. Changes in mortgage interest rates create corresponding fluctuations in title insurers' total operating revenue and pretax operating gains. While this relationship has held to a large degree in previous business cycles, the most recent cycle - characterized by the housing "bubble" in the earlier half of the previous decade (2000-2005) and the subsequent housing market crash beginning in 2006 through 2007 - has exhibited a very different dynamic that has undermined the conventional relationship between interest rates and real estate activity. This is mainly due to the latest business down cycle which was characterized by a collapse of asset prices - particularly housing - and losses taken by banks on mortgage backed securities, which were backed by income produced from loans on these mortgage assets. The subsequent contraction in the availability of credit stemming from these losses has had a significantly negative effect on home sales and prices despite the continued record low interest rate environment. However, one significant countervailing factor in the housing market during the last down cycle has been the federal government's active role in both providing home financing through the FHA, Fannie Mae and Freddie Mac, as well as through certain temporary tax incentives geared towards potential home buyers such as the First Time Homebuyers Tax Credit.

Exhibit 3
U.S. Title – Housing Affordability Index
As of June 30, 2014, the median-income family - with an income of $64,879 - had 153.4% of the income needed to qualify for the median-priced home of $224,300.



Source: National Association of Realtors

One positive result of the decline in housing prices combined with low interest rates has been that housing usually becomes more affordable. The Housing Affordability Index measures housing affordability as represented by a household earning the median income to qualify for a mortgage loan with a 20% down payment on a median-priced home. An index of 100 means a typical family has just enough income to afford a median-priced house. Thus, a higher index score means that housing is more affordable. This figure has continued to show steady improvement since 2006 when the housing boom effectively

ended, and is now at its highest level in several decades. However, the ability to buy is not the same as the facility to buy, as many borrowers are unable to qualify for mortgages due to tighter credit market conditions.

Another measure of improvement or deterioration in the housing market is the supply of existing houses available for sale and the number of months it would take to clear this inventory at the current sales pace. A "balanced" market (i.e. a market evenly matched between buyers and sellers) is thought to be approximately a supply of six months. During real estate down cycles, typically there is a steadily increasing inventory of unsold houses well above that level, putting downward pressure on prices and thus steadily shifting the market to the buyers' favor. This real estate situation causes many homeowners to pull their houses off the market due to inadequate demand and/or mismatches in bid and ask prices, which creates a "phantom" inventory of houses.

Title Insurance and the Real Economy

The demand for title insurance products is largely dependent on the demand for real estate transactions, which are, in turn, critically dependent on the financial factors described above, as well as on a healthy labor market characterized by low or decreasing unemployment rates and generally increasing wages. In addition, a stable inflation environment helps to ensure market stability and consumer purchasing power.

Following favourable labor market conditions in the first half of the previous decade, unemployment rates increased significantly, while wage growth had been relatively muted. This rapid increase in unemployment posed a more traditional threat to the housing market and to the title insurance industry as it hinged directly upon the ability of buyers to purchase homes, and their subsequent need to obtain title insurance.

Core inflation (excluding the prices of food and energy) was relatively tame, as the sharp economic downturn of 2008-2009 and the subsequent sluggish recovery of 2010-2011 unfolded. However, prices of food and energy remained volatile. In particular, the price of gasoline, while fluctuating from quarter to quarter, witnessed an overall upward trend. Food prices have also shown a generally upward trend. Together, they have the effect of reducing household purchasing power, which can have an indirect dampening effect on the decision to purchase high-value, long-term assets such as real estate.

Growth in real (inflation adjusted) per capita income is also a critical determinant in the long-term prospects of the housing market, and by derivation, the demand for title insurance. While this measure rose in years before the downturn of 2008-2009, the sharp contraction in GDP during this period, and the subsequent sluggish growth rates, meant that economic growth did not keep up with population growth, causing per capita income to decline. This decline in per capita income helped contribute to a lack luster demand for housing during this period. Thus, a long-term rate of stable economic growth is a prerequisite for a healthy housing market.

4

Practice of Land Registration in India

Land registration is a process of official recording of rights in land through deeds or as title on properties. It means that there is an official record (land register) of rights on land or of deeds concerning changes in the legal situation of defined units of land. Land registration generally describes systems by which matters concerning ownership, possession or other rights in land can be recorded (usually with a government agency or department) to provide evidence of title, facilitate transactions and to prevent unlawful disposal.

A land title is an official record of who owns a piece of land. It can also include information about mortgages, covenants, caveats and easements. Land titles are held in the state's land titles register, managed by the Registrar of Titles using the Torrens system. Land records refer to those record series that may involve real estate.

Regulation and Indian Registration Act, 1908

Indian Registration Act, 1908 came into force on 1st January 1909. The object of Act was:
(1) To provide conclusive guarantee of the genuineness of documents,
(2) To afford publicity of transactions,
(3) To prevent frauds,
(4) To afford facility of ascertaining whether a property has already been dealt with,
(5) To afford security of title deeds and facility of providing titles, in case of original deeds are lost or destroyed;

But there were few difficulties:

(1) The registration is not by itself absolute proof of the execution of a document,
(2) Mere registration does not prove title nor prove bonafides,
(3) Registration does not confer validity upon an instrument which is otherwise ultra vires or illegal or fraudulent.

Through the course of legislation of the Law of Registration coupled with the Transfer of Property Act, 1882, as amended by Act VI of 1908, the registration of all documents of Sale, Gift and Mortgage of immovable property have been made compulsory and the registration of all leases of immovable properties other than leases granted for purpose of agriculture for a period of one year or less have also been made compulsory.

Section 17 of the Act speaks of documents of which registration is compulsory i.e. , Settlement, Sale, Exchange, Release, Partition, Trust or any other transfer of immovable property and section 18 of the Act speaks of documents of which registration is optional, i.e. Will, Acknowledgement of receipts or payment of any consideration etc. and all other documents not required by Section 17 to be registered.

A document, which is registered under the Registration Act, takes effect, as a result of registration, from the date of execution prospectively; Registration of document in violation of the act nullifies the registration of the document, but does not nullify the transaction which is the subject of the document. The object of registering a document is to give notice to the World that such a document has been executed, to prevent fraud and forgery and to secure a reliable and complete account of all transactions effecting the title of the property.

Process of registration and required documents (subject to state amendments)

I. REGISTRATION IS NOTICE TO PUBLIC

Registered document becomes public document, such document can be inspected and certified true copy of the same can be obtained from registration office by anybody on payment of necessary fees and by observing the prescribed procedure. Certain registered document prevails over unregistered document.
Some documents require compulsory registration and registration of some document is optional.

II. SOME IMPORTANT DOCUMENTS REQUIRING COMPULSORY REGISTRATION UNDER SECTION 17 AND UNDER SECTION 17(A) ARE AS UNDER:-

a. Any instruments of gift of sale/exchange etc. of immovable property of the market value of Rs.100 or more:
b. Any non-testamentary instrument which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.
c. Leases of immovable property, or for any term exceeding one year, or reserving a yearly rent.
d. Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operated to create, declare, assign, limit or extinguish, whether present or in future, any right, title or interest, whether vested or contingent of the value of Rs.100/- and upwards, to or in immovable property.
e. Agreement relating to the depositing title deeds by way of security for the repayment of loan or an existing or further debts.
f. Sale certificate issued by any competent officer or authority under any recovery act.

g. Irrevocable power of attorney relations to transfer of immovable property in any way, executed on or after the commencement of the registration
h. Leave and License agreement for licensing any premises and tenancy agreements which has been entered into after 31-03-2000.
I. Any authority to adopt a son.
j. State government may, by order published in the official gazette, specify the document for registration by the office of the joint sub-registrar as established.
k. The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of the Property Act, 1882 (4 of 1882) shall be registered, if they have been executed on or after the commencement of the registration and other related laws (Amendment) Act, 2001 and if such document are not registered on or after such commencement, then they shall have no effect for the purpose of the said section 53-A]
l. Trust in relation to immovable properties, every mutual fund in form of Trust.

III. SOME DOCUMENTS OF WHICH REGISTRATION IS OPTIONAL (SECTION 18):-

Broadly, any of the following documents may be registered under this Act, namely:-

a. Instruments (other than instrument of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
b. Will
c. Leases of immovable property for any term not exceeding one year, and leases exempted under section 17;
d. instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, or a value less than one hundred rupees, to or in immovable property;
e. Instruments (other than wills) which purport or operate to create declare, assign, limit, or extinguish any right, title or interest to or in movable property;
f. Other document not required compulsory Registration as provided in section 17 of Registration Act.

IV. PROCEDURE OF REGISTRATION

The process of registration mainly involves the following steps and submissions of required documents/papers and payment of registration fees to the Registrar Office:-

1. The party has to first pay the proper stamp duty as per the stamp duty reckoner on blank agreement or on next day of execution of agreement or on same day of execution. The agreement should be typed/printed on one side in black ink on 60 GSM preferably on ledger paper. It is better to pay the proper stamp duty on or before its execution.

2. To execute the agreement, sub-registrar require to put photographs, signature and left hand thumb impressions of all concern parties to execution.

3. Visit any sub-registrars office of that Tehsil / Taluka (According to village) who will determine registration fees payable and issue the Challan/confirms to accept the pay slip. Confirm agreement & its attachments with head clerk/person incharge who will pre-check the properness of documents & finalize it.

4. Pay the registration fees by Challan/pay slip of banks as per procedure laid down by respective sub-registrar. For certain types of documents like development agreement, adjudication is compulsory. For agreements like resale, adjudication is optional provided it is registered within stipulated time of 4 months. It is better to pre check at concern registrar office the stamp duty and exact registration fees payable. Registration fees are to be paid on value of such property rounded off nearest to rupees in thousands. Collector of area who has collected proper stamp duty, However when Document presented by electronic means personal attendance is not required, However the satisfactory inquiry shall be made as per rules.

5. In case of document of property having value above Rs. 5,00,000/- Proof of Permanent Account No. (PAN) of all the parties to the documents is mandatory. If the party does not have PAN, then to file Form No. 60 along with documents to the sub-registrar.

6. Two witnesses with their photos and identification proof should remain present for identification of parties to the agreement for which two witnesses have to put their photo, signatures and thumb impression before registering authority. Such witnesses should not be necessarily same who has signed as witnesses in the agreement. These witnesses should put their photos, thumb impression and sign before registrar as token of identification of the parties to the document. Some registration office takes computerized digital photos, left hand thumb impression of witness and also obtains signature of witness on such document.

7. The property card of land/plot on which the property being registered is situated may be called to produce in certain case. Property card is required to be produced at the time of registration. CTS no./survey no. as appears on the property card provides help to determine true market value of property.

8. For payment of registration fees by government challan or pay-order or bank draft of bank is to be produced. Computer charges/scanning charges etc. based on number of pages in documents are to be paid at Rs. 20/- per page for scanning fees in cash at the time of registration of document. The copy of such pay order/demand draft of bank for registration is to be submitted on one day prior to visit or if asked or on the day of registration.

9. Complete filling up of input Registration form as prescribed by the stamp duty department or Registrar or Sub-Registrar. The input registration form and document are required to be submitted at token window in advance i.e., at least before half an hour of registration. Generally, Registrar Office does check such submissions, in advance before Registration.

10. Adjudicated document will help in faster registration. In such adjudicated document, the registrar need not ascertain the discrepancies / deficiencies for stamp duty payment. In other words, Registrar presumes that proper stamp duty on such adjudicated document is determined properly by collector of stamps and accordingly paid by the party. Adjudication is the procedure by which collector determines the Stamp Duty payable on application made by party.

11. In respect of old building to avail the benefit of depreciation on market value then the attachment of following proofs will help to avail depreciation on age of building:- (1) Municipal tax assessment bill (2) Completion Certificate (3) Occupation Certificate (4) Telephone bill (5) Electricity Bill (6) Society letter (7) IOD/CC etc.

12. For proof of authorize structures, the following documents are required:
    a. If the building is completed before March 25, 1991 the property assessment municipality bill is required to be attached.
    b. If the building is constructed / completed on or after March 25, 1991 in additional to above proof out of following is to be attached :-

- IOD/CC (Commencement Certificate) of building OR
- Building Completion Certificate OR
- Building Occupation Certificate

It is advisable that one has to pre-check such requirements and entire procedure with respective sub-registrar office, so there cannot be any last moment inconvenience at the time of registration.

13. Any proof of determination of market value will help to facilitate the calculation of true market value. The detailed letter from society showing the description of property, age of building, (year of construction), (Property tax bill) built up area of flat, flat no. and floor on which flat is located, details of lift facility available if any, no. of floors of building, types of construction C.T.S. No. survey no, CS no. & Village/Division etc. may help to justify the calculation of proper market value of such property as per Stamp Duty ready reckoner.

14. With effect from 1.5.2001, the deficit stamp duty is payable with penalty @ 2% per month or part of the month, but maximum not exceeding four times of such deficit amount is required to be paid before registration and proof of such payment of stamp duty and penalty is to be attached at the time of registration of document. Prior to 1-5-2001 such penalty was upto 10 times. For Proof of Purchase of stamps original receipt

for stamp duty paid/franking receipt, banks receipts stamp vendors bill, e-stamping proof etc. are required to be produced at the time of registration.

15. Computerized photographs of parties executing the document are also taken digitally by the Registrar's office. The left thumb impression of all the parties to the document is also taken digitally. Through computer generated programming, the thumb impression and photographs are automatically generated and printed on separate paper which has photos of both the parties, to be further signed by all the executors before Joint registrar/sub-registrar or Joint sub-registrar. The details, thumb impressions & photographs of the witnesses are also printed and generated through computer system which is also now becomes part of registration. Such two witnesses has to produce his identity proof, put thumb impression & affixed their respective photographs and also to sign that sheet before and in presence of sub– registrar. From 1.-1-2002, affixing photographs and thumb impression by web camera finger prints scanner are made compulsory for registration of document as regard to property. Registrations of documents are computerized with effect from 1-2-2002. Before final registration, typed papers/sheets describing Name of the seller, buyer and address of property etc. is generally given to party for final checking just before registration, for checking as regard to correctness of data comprised thereon. In view of above, it is advisable to check such data sheet by party as regard to correctness of typed contents thereon. At last the sub-registrar/joint sub-registrar will sign & put page no., total page & number block, his stamp etc. on each page of such agreement and on attachment.

16. Sometime, the documents are executed by power of attorney holder for and on behalf of buyer or seller. Generally in case of builders, his power of attorney holder executes the documents and also signs as attorney, of such builder. In such case copy of duly executed power of attorney is to be attached with the agreement which is also to be registered. Please ensure that power of attorney, is adjudicated and should carry the sign, the photographs and left hand thumb impressions of the executor / executors and of power of attorney holder. Generally all the parties are supposed to go together for registration; however they can go at different point of time but maximum within four months of execution of such document. Registrar also asks to submit declaration in prescribed format that power of attorney, its sum, substance and contents are in force, valid & subsist on the day of registration. In case of corporate assessee, trust, firm proper resolution of Board/Managing Committee/Office bearer as the case may be & such person photos, should be authorized by proper resolution, seal & sign.

17. The sub-registrar first obtains signature of parties and thereafter of two witnesses in his presence along with identification, sign, photos & left hand thumb impression. Thereafter Registrar puts his official seal and affixes unique numbering block on each page including the additional sheets of the documents and signs on the above mentioned sheets which generally carries photographs, signatures, details of parties and witnesses. Party has to pre-check all typed paper/name/address property details, witnesses' details etc. & all other details before registration.

18. The complete documents along with all above mentioned details are then scanned by registrar office and preserved as a permanent record at registrar's office. Stamp duty paid receipts, receipt for Registration fees & scanning charges issued by Registrar which should be preserved with agreement.

19. The party has to submit the copy of pay order / demand draft/R.B.I. Challan for registration fees. The Registrar generally by way of pay slip collects registration fees, computer and other charges at ₹20 per page of document are paid by cash towards scanning for which he acknowledges by issuing receipt. This registration fee is to be paid by challan / pay order / demand draft as per registrar's office procedure and computer processing expenses are paid by cash at Registrar office before the Registration. The pay order should be in the name of respective area's Joint Sub-Registrar or the Sub-Registrar authorized by the department.

20. The original agreement after due registration are returned to party by registrar against sign on delivery of document register by party and also on production of the original registration fees paid receipt on which registrar office put stamp delivered. Registration formalities are completed, after which the documents are returned to party within approximately an hour of completion of registration formalities. If loan is taken than authority letter to collect original documents is taken by banks/financial institution. In such circumstances parties are advised to take index II as well as certified true copies of document from registration office for his future record.

21. The registrar also insists for production and preservation of following documents copies by the parties to the agreement:-
Original stamp duty paid receipt. (earlier manual receipts were issued)
Franking machine receipts/stamp vendor's bill/stamp duty paid receipt issued by bank, However, now in case where franking and e-stamping as far as registration to be made is discontinued on and from 1st April 2013. For e-payment through RTGS transfer in detail obtain from Registrar Office to check properly as per current requirement.

22. Copy of challan/franking receipt of bank/bank slip/stamp vendor's bill through which stamp duty and registration charges are paid, if any or copy of pay slip / demand draft of required registration charges. Particularly, for transfer of land, No Objection Certificate (NOC) under Urban Land Ceiling Act, (if applicable) to be obtain and attach.

23. No Objection Certificate (NOC) from Charity Commissioner, Government or Semi-Government body, if such land is held by trust/statutory authority as the case may be. Now a day's registration process is computerized and simplified. Sub- registrar after completing the registration formalities and thereafter returns the original documents which is given back as duly registered within approximately one hour time.

24. Now the builder or developer have to put the approved plan and schedule of Property in the agreement and also to write the area i.e., measurement of flat/shops etc. in agreement. Further the agreement cannot be executed by the builder/developer before approval of plan by competent authority. Builders have to put all necessary details, carpet/built up area etc. in agreement.

V. THE TIME LIMIT FOR REGISTRATION OF THE DOCUMENT

1. The document is required to be registered within 4 months time from the date of its execution.
2. If the same is not registered within 4 months time from the date of execution, it can still be registered within further period of 4 months from the expiry of first 4 months, on payment of penalty for late presenting the document for registration which can be imposed by the Registrar up to 10 times of registration fees.
3. Even after expiry of 8 months from the date of execution of document, if the parties want to register it then fresh Deed on payment of stamp duty at current market value is to be prepared and sign by both the parties to such document. In such case the document which is subject matter of registration should be attached as annexure to the deed of confirmation. It is better to pre-check in respect of old document the proper fact/procedure, payment of duty and penalty, if any thereon before the registration of such original/fresh document. Many times such old document to be adjudicated through collector and then the Joint Sub-Registrar registers it, However one has first pre-check the matter with joint sub-registrar or concerned stamp duty or registration office or collector offices in detail.

If the deponent dies after signing the document but before registration of such document, in such case it is difficult to complete the formality of registration within 4 months of statutory time limit or during the additional time limit of 4 months. In cases of death of deponent, the legal heirs of deceased has to comply with the registration formalities. In such matter two options are available with the purchaser/transferee.

A Bill to amend the Registration Act, 1908 in a bid to increase transparency of land ownership and its transactions is currently pending in the Parliament. However, despite its good intentions and apparent rational appeal, the sorry state of land records in India, mount several practical challenges to its effective implementation.

Currently a registered sale deed does not confer title ownership and is merely a record of sales transaction. It only confers presumptive ownership, which is liable to be disputed. This amendment would convert land registration into a “guaranteed title certification”. It would herald a paradigm shift in India’s land titling system.

Currently title is established through a chain of historical transfer documents that originate from the first owner. Accordingly, before they purchase land, buyers have to examine all the link documents that establish the title from its original owner. As can be imagined, owners,

especially in urban areas, rarely have access to such a long chain of documents. This increases uncertainty and risks in land transactions.

The amendment would usher in the Torrens system of land titling, whereby title is established by a register of land-holdings maintained by the government. A registration transaction would extinguish all previous rights and become sanctified as a formal title transfer to the purchaser. Prospective land buyers will now only need to examine the land register and purchase from the recorded owner.

This has obvious appeal as it appears to maximise transparency and eliminate uncertainty, apart from considerable simplification of land transaction process. However, this assumes that it is possible to construct an initial register of land-holdings which can support the registration process. Unfortunately it is here that this reform is likely to stumble in its implementation

For something so valuable, land records in most developing countries are archaic. No register, which reliably confirms title, exists anywhere in India. Small experiments in some states to build such register have not been successful. Existing registers suffer from problems arising from lack of up-gradation, fragmentation of lands, informal family partitions, unregistered power of attorney transactions, and numerous boundary and ownership disputes. The magnitude of these problems gets amplified manifold in urban areas.

The creation of a land-holdings register requires that land parcels be identified, with their boundaries, and ownership established. The former requires maps of individual land parcels and their location within an area's land grid, both correlated accurately with the prevailing ground conditions. The latter requires undisputed, litigation-free ownership rights. Both these records will then have to be publicly notified before it takes effect.

Proceeding in this direction with the existing records is certain to open up a Pandora's Box of acrimony and litigation. But revising records is likely to be a long-drawn litigation-filled process, and certain to raise political opposition. The standard approach, like that done in states like Karnataka, Gujarat, Punjab, Chandigarh, Rajasthan and Andhra Pradesh, have been to carry out comprehensive one-time re-survey to document and digitize the latest boundaries, establish ownership by examining chain of documents, and then notifying them before entering in the land-holdings register. They invariably become embroiled in litigations and run into several practical problems.

A more realistic approach would be to let the records evolve over a period of time. In the circumstances, a two-track approach may be more appropriate. New registrations should be done only with a digitized map of the individual land parcel and its location, and ownership established by certification of the documents by a competent authority. The registration will have to be publicly notified and appeals disposed, before the transaction enters the register. The legislative framework being contemplated can govern this process.

All land-related transactions – new property tax assessments, utility service connections, mortgages and bank loans – should be brought under a similar policy framework. Further, existing land owners should be given the option of proactively getting their lands included in the register through this process.

Transfer of Property Act 1882

The Transfer of Property Act regulates the transfer of property and it contains specific provisions regarding what constitutes transfer and the conditions attached to it. It came into force on 1 July 1882.

According to the Act, 'transfer of property' means an act by which a person conveys property to one or more persons, or himself and one or more other persons. The act of transfer may be done in the present or for the future. The person may include an individual, company or association or body of individuals, and any kind of property may be transferred, including the transfer of immovable property.

Under Section 55 in The Transfer of Property Act, 1882, rights of buyers and seller are defined.

Section 55- Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:—

1) The seller is bound—

   a. to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

   b. to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

   c. to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

   d. on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

   e. between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

   f. to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

g. to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same: Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it. The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power: Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts there from as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, intact and secure, unless prevented from so doing by fire or other inevitable accident.

4) The seller is entitled—

a) to the rents and profits of the property till the ownership thereof passes to the buyer;

b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any transferee with notice of the non- payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

5) The buyer is bound—

a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

6) The buyer is entitled—

a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

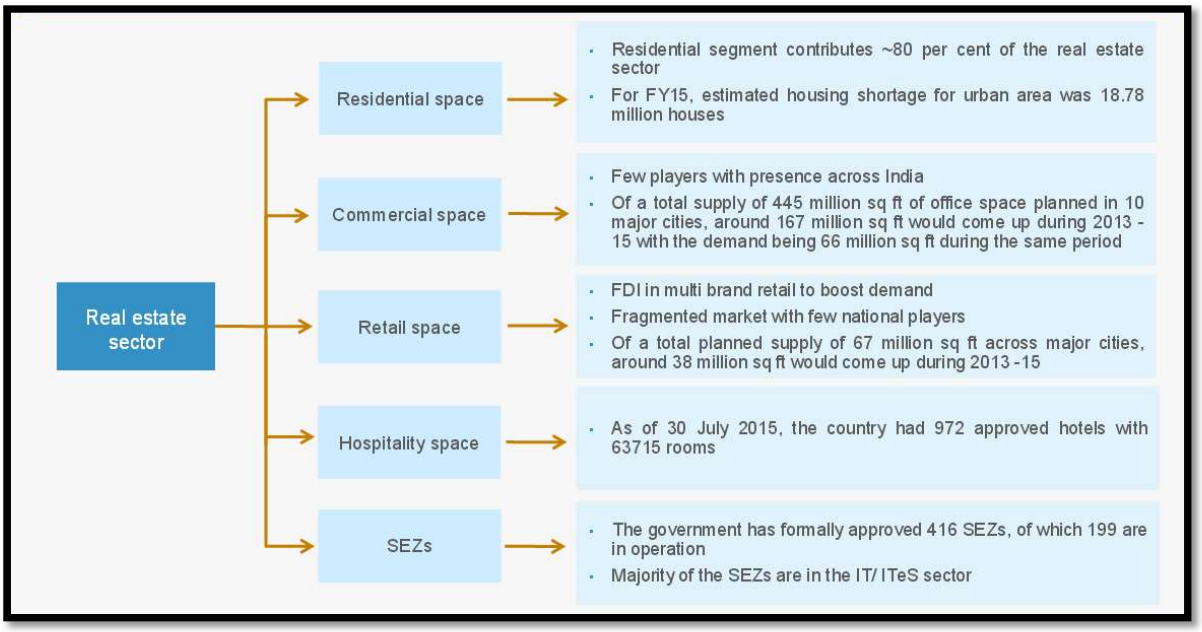
b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission. An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

5

Title Check in India

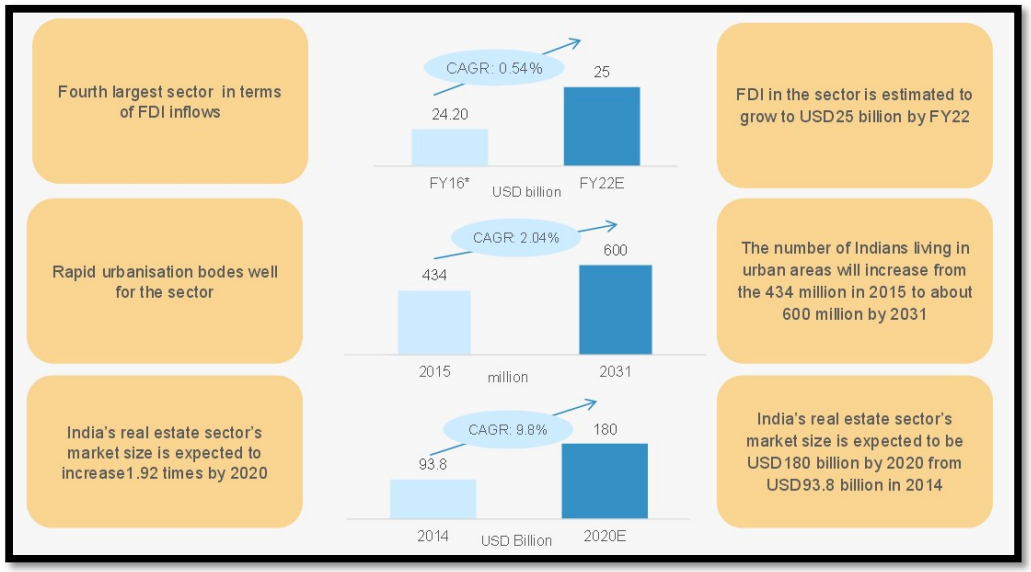
Potential Title Industry Market Size & Indian Real Estate

The real estate sector in India consists of the following segments:

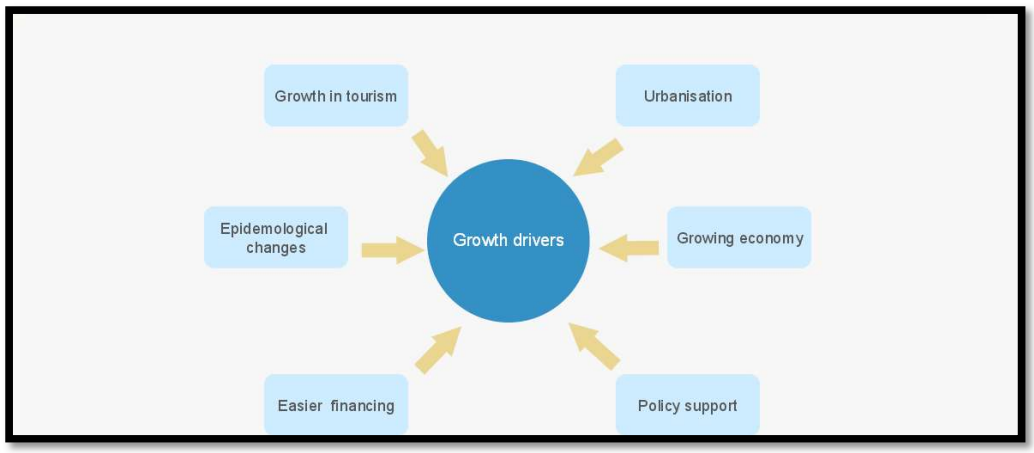


The Indian real estate market is expected to touch US$ 180 billion by 2020. The housing sector alone contributes 5-6 per cent to the country's Gross Domestic Product (GDP). In the period FY08-20, the market size of this sector is expected to increase at a compound Annual Growth Rate (CAGR) of 11.2 per cent. Retail, hospitality and commercial real estate are also growing significantly, providing the much-needed infrastructure for India's growing needs. Private Equity (PE) investments from foreign funds in the Indian realty market increased at a Compound Annual Growth Rate (CAGR) of 33 per cent to US$2,220 million* in year ending December 2015.Deal sizes have also increased in 2015, and residential projects both luxury and affordable have attracted a substantial amount of capital. Private Equity (PE) funds and Non-Banking Financial Companies (NBFCs) in India are seen increasingly investing jointly in real estate projects, in order to hedge risk and undertake bigger transactions.

Below is a representation of the projected growth in FDI, urbanization and market size.



Real Estate growth is driven by policies and the growing economy.



Mumbai is deemed to be the best city in India for commercial real estate investment, with returns of 12-19 per cent likely in the next five years, followed by Bengaluru and Delhi-National Capital Region (NCR). Also, Delhi-NCR was the biggest office market in India with 110 million sqft, out of which 88 million sqft were occupied. Sectors such as IT and ITeS, retail, consulting and e-commerce have registered high demand for office space in recent times.

India's office space absorption stood at 35 million sqft during 2015, which is the second highest figure in the India's history after 2011, and was driven by corporates implementing their growth plans. India had the strongest activity in office leasing space in Asia and accounted for half of Asia's total office leasing in third quarter of 2015, with Delhi being the most active market. Delhi's Central Business District (CBD) of Connaught Place has been ranked as the sixth most expensive prime office market in the world with occupancy costs at US$ 160 per sqft per annum.

Government Initiatives

The Government of India along with the governments of the respective states has taken several initiatives to encourage the development in the sector. The Smart City Project, where there is a plan to build 100 smart cities, is a prime opportunity for the real estate companies. Below are some of the other major Government Initiatives:

- The Make in India initiative has helped to accelerate leasing of commercial property by the manufacturing sector, which has outpaced the Information Technology (IT) sector by registering two-fold increase in office transacted space in the first six months of 2016.
- Brihanmumbai Municipal Corporation (BMC) has introduced a single-window clearance for construction which will cut the time taken for getting approvals for a building project and lead to correction in prices of residential property, thereby giving a fillip to Mumbai realty.
- The Securities and Exchange Board of India (SEBI) has proposed easier regulations for real estate investment trusts (REITs), such as raising the cap of investment of REITs' assets in under-construction projects from 10 per cent to 20 per cent, in order to attract the interest of developers, and also plans to relax the rules for foreign fund managers to relocate to India.
- The Government of India has brought into force the Real Estate (Regulation and Development) Act, 2016 which is aimed at making necessary operational rules and creating an institutional infrastructure for protecting the interests of consumers and promoting growth of the real estate sector in India.
- The Securities and Exchange Board of India (SEBI) has allowed Foreign Portfolio Investors (FPI) to invest in units of Real Estate Investment Trusts (REITs), infrastructure investment trusts (InvITs), and category III alternative investment funds (AIFs), and also permitted them to acquire corporate bonds under default.
- The Rajya Sabha or the upper house of the Parliament has passed the Real Estate (Regulation and Development) Bill, 2013, which aims to protect consumer interest, ensure efficiency in all property related transactions, improve accountability of real estate developers, increase transparency and attract more investments into the realty sector in India.
- The Securities and Exchange Board of India (SEBI) has issued the consultation paper for public issue of Real Estate Investment Trusts (REITs), which include provisions such as capping of allocation to qualified institutional buyers (QIBs) at 75 per cent, among other topics.
- The Government of Rajasthan became the first state to initiate private investments in affordable housing by signing four Memoranda of Understanding (MoUs) with private players for an investment of Rs 5,400 crore (US$ 800.49 million).
- The Ministry of Housing and Urban Poverty Alleviation (HUPA) has commissioned a study by Indian Institute of Technology, Kanpur on testing of new construction technologies, with the objective of promoting new housing technologies in the country.
- India's Prime Minister Mr Narendra Modi approved the launch of Housing for All by 2022. Under the Sardar Patel Urban Housing Mission, 30 million houses will be built in India by 2022, mostly for the economically weaker sections and low-income groups, through public-private-partnership (PPP) and interest subsidy.

- The Government of India has relaxed the norms to allow Foreign Direct Investment (FDI) in the construction development sector. This move should boost affordable housing projects and smart cities across the country.
- The Government of Maharashtra announced a series of measures to bring transparency and increase the ease of doing business in the real estate sector.
- The State Government of Kerala has decided to make the process of securing permits from local bodies for construction of houses smoother, as it plans to make the process online with the launch of software called 'Sanketham'. This will ensure a more standardised procedure, more transparency, and less corruption and bribery.

Title In India

The complexities discussed earlier, brings to form a fundamental question as to 'What is a Title' in the context of Indian system of registration of transfer of immovable properties and the record keeping thereof. Most interestingly in Title Insurance the word Title has not been defined under any statute or administrative law in India although the same has been discussed in the form of certain qualification or determination under different statute or administrative laws of the Country. Title on the basis of land records can not proves the absolute ownership of the property, as settled by various Courts. Few Court judgements are mentioned below:-

Pashupati Das v. The Block Land and Land Reforms Officer & Ors.
Holding that the law on this aspect was settled that the name of a person appearing on the revenue records pertaining to a land did not confer legal title of the land on the person. A Division Bench of the Calcutta High Court set aside the decision of the West Bengal Land Reforms and Tenancy Tribunal which held to the contrary. The High Court declared that the entry in revenue records created only a rebuttable presumption and was not a categorical proof of the title, which could be established only in a civil court. In a recent decision the Bench examined the position of law in the following terms;

".....We are very much surprised to read the order passed by the learned Tribunal below whereby and where under it has been held by the learned Tribunal that irrespective of the order of the Civil Court as the writ petitioner's name was not recorded in the revisional settlement record of rights and thereafter in the L.R. settlement, his application should be rejected. **The entry in the record of rights only has a presumptive value and a rebuttable presumption so far as possession is concerned. It does not vest any title of the property to the recorded person**. Since the writ petitioner set up a case of declaration of his title by decree of a Civil Court, the findings of the learned Tribunal below is contrary to the provision of law."

It is a settled law that entry of the record of rights does not vest any title over the property. Reliance is placed to the judgement passed in the case Narasamma and Ors. – Vs.- State of Karnataka and Ors. reported in 2009(2) ICC 669 (SC) wherein earlier judgement of Jattu Ram vs. Hakam Singh and others was relied upon which was reported

in 1993(4) SCC 403. I**t is held that the revenue record cannot create any title**. In the case Suraj Bhan vs. Financial Commissioner and others reported in 2007(6) SCC 186, the Court held "**it is well settled that an entry in revenue records does not confer title on a person whose name appears in the record of rights. it is settled law that entries in the revenue records or Jamabandi have only 'fiscal purpose' i.e. payment of land revenue and no ownership is conferred on the basis of such entries. So far as the title to the properties is concerned, it can only be decided by a competent Civil Court.**" Same view has been reiterated by the Apex Court in the case Narain Prasad Agrawal (Dead) by L.Rs –Vs.- State of Madhya Pradesh reported in 2007(4) ICC (SC) 105. Very recently in the case Fagruddin (Dead) L.Rs –Vs.- Tajuddin (Dead) L.Rs reported in 2010 (1) ICC (S.C) 457, the Apex Court reiterated the said proposition of law, relying upon Suraj Bhan (supra) and Narayan Prasad Agarwal (supra).

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Jattu Ram vs Hakam Singh And Others 1993 Supp 2 SCR 321: Section 119 of the Transfer of Property Act. 1882 (for short ' The Act') envisages that if any party to an exchange... is by reason of any defect in title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him... for the return of the thing transferred...; The admitted case is that the appellant had exchanged his lands with the first respondent. Due to defect in title, the first respondent had suffered a decree of 2/3rd share of the minors who had admittedly taken possession of an extent of 52 kanals 10 marlas from the appellant. The appellant was deprived of that property and the first respondent is liable to return to the appellant to the extent of 52 kanals 10 marlas. Obviously, in furtherance of the oral understanding the appellant came in possession of 47 kanals 1 marla in exchange. The entry in column 9 thus fortifies the stand of the appellant. The sole entry on which the appellate court placed implicit reliance is by the Patwari in Jamabandi. It is settled law that the Jamabandi entries are only for fiscal purpose and they create on title. It is not the case that the appellant had any knowledge and acquiesced to it. Therefore, it is a classic instance of fabrication of false entries made by the Patwari, contrary to the contract made by the parties, though oral. The first respondent admitted that he received no rent from the appellant. Thus it is clear that the plea of the first respondent that the appellant was his lessee-at-will is a false one. It is not his case that for the loss suffered by

the appellant, the respondent had compensated him by paying the price of that land. It is, therefore, too credulous to believe that he let the appellant in possession of the plaint scheduled property as a tenant-at-will and is a deliberate, desparate and false plea set up by him, which unfortunately found favour with the appellate court and the High Court paid no attention to go into the crucial question and dismissed the appeal as usual, in limine. The contention of Sri Ujagar Singh, the learned Senior counsel that the appellant's sons purchased 8 kanals of land from his client was a step in aid to wood wink the innocent appellant and a self serving. Thus we are constrained to hold that the decree of the appellate court is perverse, apart from manifestly, illegal. It and the High Court decree are accordingly set aside and that of the trial court is restored and the appeal is allowed with costs throughout.

In the case of "Nagar Palika, Jind" (supra), it has been held that where title and possession of respondent had always been disputed by the appellant from the stage of written statement, the suit could not have been decreed merely on the basis of entries in the revenue records. **Nagar Palika, Jind vs. Jagat Singh, (1995) 3 SCC 412**.

In the case of "Union of India & others" (supra), it has been held that the burden to prove title lies on the party making the claim and relief cannot be ground of weakness of defendant's case. It has also been held that the entries in revenue records do not confer title. In the present cases, it is not only the entries in the revenue records which have been considered, but the evasive denials of Suresh/Surekha Kakodkar, in respect of co-ownership of Karmalis and Prabhu Dessai, and the documents of title in respect of the property and supporting oral evidence that has been considered. **Union of India & Others vs. Vasavi Co-op. Housing Society Ltd. & Others,(2014) 1 Supreme 1**.

In the case of "Gurunath Manohar Pavaskar and others" (supra), it has been held that if a person disputes possession of another person over some property, burden of proving shall lie on him. **Gurunath Manohar Pavaskar & Others vs. Nagesh Siddappa Navalgund & Others, (2007) 13 SCC 565**.

In the case of "**Sri Thimmaiah" (supra)**, it has been held that in a suit for permanent injunction, the plaintiff has to establish that he is in possession in order to be entitled to a decree for permanent injunction. It has been held that the general proposition is well settled that the plaintiff, not in possession, is not entitled to the relief without claiming recovery of possession and that before an injunction can be granted, it has to be shown that the plaintiff was in possession. **Sri Thimmaiah vs. Shabira & Others, (2008) 4 SCC 182.**

Type of Due Diligence/ Title Search

Depending upon the nature of the transaction, the property involved and the objective of the participants, a due diligence can be divided into two broad categories:

I. Full search; and
II. Limited search.

Full Search: A full search is usually done while giving a title certificate of the property in instances of sale/ resale/ long term lease transactions and for transactions that involve obtaining of financing by mortgaging the property in question. In a full search, the search regarding status of ownership of the property is generally conducted for a period preceding thirty (30) years (or more) from the date on which the seller in question came to acquire the property.

It also includes a detailed search of all aspects relating to the history of that property such as the status of encumbrances over the property, the status of disputes relating to the property, the applicable regulations and the status of compliance of such applicable regulations relating to the property in question.

Limited Search: A limited search is generally conducted in transactions where the property is taken on lease for a short term (usually under 9 years). In such instances, the period for which the preceding ownership of the property is traced is generally restricted to fifteen (15) years (or less) from the date on which the current owner of the property came to acquire the property.

Unlike full searches, in a limited search, the search relating to the history of the property may be limited to restricted aspects such as recent title history, encumbrances on the property, disputes related to the property etc.

Constituents of a valid title certificate

Based on the information collected by following the steps enumerated above, the report/ title certificate is issued. The question as to what would constitute a valid title certificate under Indian laws has been examined by the Bombay High Court in *Ramniklal Kotak Tulsidas & Others Vs Varsha Builders & Others* (AIR 1992 Bom 62) which lays down some of the principles for issuance of a title certificate. Based on the observations in this case and other relevant matters, in our view, an advocate needs to undertake the following before issuing a title certificate:

a Peruse the title-deeds in original.

a. Undertake searches in the offices of the sub-registrar of properties. This search should cover a period of at least the last 30 years. In case of agricultural land, search should also

be undertaken at the local patwari/ tehsildar's office. In case of companies, a search of the records of the Registrar of Companies should also be undertaken.

b. Obtain an encumbrance certificate.

c. Make enquiries on title and obtain satisfactory answers.

d. Obtain declarations on oath from the relevant persons regarding the factual position before issuing the certificate of title.

e. Public notices should be published in at least two newspapers (one in vernacular and the other in English circulating in the area where the property is situated) inviting claims of members of the public against, or in respect of, the property in question.

Steps involved in conducting such due diligence/ title search

In order to conduct a title search/ title verification, the following aspects would require to be examined:

I. Legal capacity of the present owner of the property (whether the person is legally capable of entering into a binding contract for sale or lease of the property or for mortgaging the property);
II. Nature of current owner's right over the property, and whether such right is transferable;
III. Source of right or title of the current owner;
IV. Legality of the construction;
V. Encumbrances over the property; and
VI. Whether the property is a part of any acquisition process.

We shall now elaborate each of the above and highlight the need to examine these aspects.

Step 1: Legal capacity of the seller:

It is necessary to ensure whether the current owner of the property or any of the predecessor title holders of such owner is a minor (a person, who is below 18 years of age); or a person of unsound mind.

In case of minor's land: If the current owner of the property is a minor, then the property can neither be purchased nor be taken on lease without prior permission of competent authorities. Who or what shall be the 'competent authority' will depend upon the personal laws applicable to the minor. For example, in case of a minor who is a Hindu, permission is required to be obtained from the civil courts under applicable sections of the Hindu Minority and Guardianship Act, 1956 before the guardian of the minor can deal with the minor's property in any manner.

In case the owner is a person of unsound mind: Only a person appointed as a guardian, by a competent court under the Mental Health Act, 1987, can sell the property on behalf a person of unsound mind.

Step 2: Nature of current owner's right over the property:

It is necessary to identify the nature of the right that the current owner has over the property and the transferability of such right. The types of rights that an owner can have over the property can be classified as follows:

a free hold or absolute ownership;
a. right of perpetual lease;

b. tenancy right; and
c. land allotted by State Government/ Central Government under various enactments.

Step 3: Source of right or title of the current owner:

In India, a person can acquire right or title over the property in following ways:

a **By purchase**: In case the title was acquired by purchase, then one needs to examine the registered1 sale deed/ conveyance deed along with the title documents of the predecessors' title holders of the property.

b **By inheritance** (by virtue of entries in mutation register/ jamabhandi [which are maintained by Revenue Office for every village] and/ or court orders): If the title was acquired by inheritance, the basis of such inheritance would require to be determined, i.e., whether by way of a will or applicable laws of inheritance. It would also require to be determined whether there is any other person(s) who would have a similar claim of inheritance over the property. An understanding of the personal laws would also be required in this analysis. If the owner claims inheritance jointly with other persons, then it should be checked whether there was any partition.

Also, in rural properties, the jamabhandi/ record of rights needs to be examined to check if the current owner's name is reflected as owner in possession of the land. The jamabhandi/ record of rights would disclose the name of the recorded owner, name of the person in possession, nature of right, nature of land, and also encumbrances, if any. For urban properties, the records of the municipal authorities should be inspected.

c **By partition:** If the current owner has acquired title over the property by way of partition, then one needs to examine the deed of partition to ascertain whether there were any conditions or restrictions in the deed which may affect the enjoyment/ transferability of property.

d **By gift:** If the title was acquired by way of gift, then the registered gift deed needs to be examined to check if there are any conditions, like reservation of life interest, restrictions for alienation, payment of maintenance, pre-emption etc.

e **By will:** In case, the title has devolved upon the current owner by virtue of a will, it is advisable to examine the will as well as the order passed by the probate court granting probate/ letters of administration of the property, if any.

f **By perpetual lease:** If the title was acquired by perpetual lease, then the deed of lease has to be examined to determine the transferability of the right and the conditions to such transfer. The extent of the rights of the lessor should also be examined.

Step 4: Legality of the Construction:

If the property involves a construction on the land, it also becomes necessary to examine the legality of the construction. Each State government (and the relevant local authorities) lay down their own rules and regulations which govern the manner in which civil constructions need to be carried out in that particular State. Therefore, a lawyer, undertaking a due diligence of land having a structure on it, needs to first get familiar with the local construction laws applicable in the region in which the building is situated, and then, to determine whether these have been complied with, in undertaking the construction of the building in question. The aspects which would need to be examined in this process would be the footprint area (including set-backs), the extent of constructed area, the number of units constructed, the height of the construction and such other aspects.

Step 5: Encumbrances over the property:

It is necessary to verify whether there are any encumbrances, charges, or mortgages on the property in question. The records of the concerned Sub-Registrar of Properties should be examined to ensure that the property is free from all sorts of registered encumbrances or charges or mortgages. It is also advisable to obtain an encumbrance certificate issued by the concerned Sub-Registrar of Properties which would detail the registered encumbrances, if any, on the property. This certificate may be obtained from the office of the Sub-Registrar for Properties, where the property is situated.

In addition, since a mortgage could also be created over the property by way of deposit of title deeds, the original title documents of the property should be inspected to ensure absence of such unregistered mortgages.

Further, if an encumbrance is created over a property which belongs to a company then such encumbrance needs to be registered with the Registrar of Companies. Therefore, if we are conducting due diligence of a property where the current owner is a company then the records of Registrar of Companies need to be inspected in order to ascertain absence of encumbrance over the property in question.

If there is an existing encumbrance, charge or mortgage over the property, it should either be cleared prior to the purchase or provided for in the consideration.

Step 6: Whether the Land is a part of any acquisition process:

It is also important to know if the property is under the process of acquisition by any government authority. If the property has been acquired by the government, then the property ceases to belong to its original owner and becomes the property of the acquiring authority. Thus, the property so acquired cannot be sold or alienated further by the original owner of the said property, unless the property has been released from the acquisition process.

What is a Defective Title?

A defective title, or a title defect, basically means that the title is not marketable. In the context of title to a piece of real estate, a defective title usually means that the land being sold by a party claiming to have good title is actually owned by someone else. Or, it could mean that other factors are involved, such as failing to comply with local real estate document laws.

Having a defective title can have seriously negative effects on a real estate sale transaction. It could cause the title to be declared invalid, which could cause confusion as to the true owner of the property. For this reason, defective titles are also called a “cloud on a title” or “clouded title,” meaning that it’s difficult to “see” who the proper owner is.

Examples of Title Defects

As mentioned, the most common type of title defect is where a person claims to have marketable title to a property, but it is in fact owned by someone else. In addition to this type of situation, title defects can take many, many forms. Basically, any type of factor that would render title invalid can be considered to be a title defect.

These may include:

a. Simple issues with wording in the document that does not comply with real estate standards for the area
b. Improper recording of ownership
c. Failure to include the signature of a party that is necessary to the transaction, such as a spouse
d. Previous liens and other encumbrances have not been removed (the title needs to be free of encumbrances to be marketable)
e. Failure to follow recording or filing procedures when recording real estate documents

For this reason, it is very important that title defects be discovered and properly addressed well before the property is sold or transferred. This often requires close interaction between purchasers, sellers, mortgage companies, real estate appraisers, and lawyers. Investigating the background of any real estate title also involves predicting any potential defects that might arise in the future.

How to Fix a Defective Title Situation

The significance of a due diligence exercise lies in following each of the above detailed steps, the absence of even one of which could render the process inadequate to address the concerns of the participants.

If you have discovered a defect in the title to your property, you will need to remedy the defect to avoid having your title being declared invalid. Most of the time, this can be accomplished by conducting a title search at your state recorder's office. This office stores all the records for real estate transactions, and should reveal the true owner of the property in question.

If this does not shed light on the situation, a dispute over a defective title can be resolved by filing a "quiet title" action. This is basically lawsuit requesting the court to determine who the valid owner of the property is. During the proceedings, the court will examine all the documents and facts involved to reach a conclusion.

Finally, defects in a title can be avoided by examining the records for the property prior to any transfers. However, even good faith attempts at record searching can overlook defects that are hidden or difficult to identify.

Benefits of the Guaranteed Title reform

Clearly providing security of title through robust records, improved registration and guaranteeing title, are significant next generation reforms on land. After two decades of advocacy and recommendations from Planning Commissions, the country is ready to take a leap towards these reforms. The impact of these reforms will be significant.

Social impact:
There will be reliable data on property and land and hence a dramatic reduction in litigations, and encroachments will go down. Government records of land assets that are currently in shambles, will be vastly improved. This in turn will make land available for social development and infrastructure. There will be improved value to property assets, easier access to credit, increasing number of transactions. Transactions on land become simpler, cheaper, quicker, and will be accurate and secure.

Governance impact:
Urban planning and management will be immeasurably improved with reliable data of the individual cadastre that will provide the smallest building block on which layers of data can be built. Data at the property level will be the building block for multiple uses -
accurate assessment of land market valuation by street, updated voter lists, enforcement of zoning laws, etc. Tax and utilities collection will be better administered and allow fewer loopholes. Infrastructure projects will be done faster with clarity on title, and development policies like Transfer of Development Rights (TDR) will have an enabling environment.

Financial impact:

The access to credit through land and property assets is an on-going study. This is especially important for the urban poor, who currently cannot use their property as collateral to access credit, due to lack of certainty of tenure rights. Guaranteed title will unlock the potential of land to generate capital. While the small holdings of the poor might not individually attract credit from formal financial institutions, they could become attractive as aggregated land collateral. For example, the total value of informal urban and rural land Karnataka alone, is estimated to be $90 billion, or Rs. 350,000 crores.(extrapolated from Hernando De Soto data on Asia in “Mystery of Capital”)

Sources of revenue to the state and local governments - direct and indirect – will increase substantially - property tax collection, stamp duty for registration, building licenses, company and individual taxes with employment generation in an improved land development and construction sector. Robust records and secure title bring informal land and property holdings into the formal system. The resultant benefits accrue to the property holders, improved sources of revenue to the local and state governments, and efficiency in social programmes of government.

6

Digitisation of Land Records in India

Introduction

The Government of India have decided to implement the Centrally-Sponsored scheme in the shape of the National Land Records Modernization Programme (NLRMP) by merging two existing Centrally-Sponsored Schemes of Computerization of Land Records (CLR) and Strengthening of Revenue Administration and Updating of Land Records (SRA&ULR) in the Department of Land Resources (DoLR), Ministry of Rural Development. The integrated programme would modernize management of land records, minimize scope of land/property disputes, enhance transparency in the land records maintenance system, and facilitate moving eventually towards guaranteed conclusive titles to immovable properties in the country. The major components of the programme are computerization of all land records including mutations, digitization of maps and integration of textual and spatial data, survey/re-survey and updation of all survey and settlement records including creation of original cadastral records wherever necessary, computerization of registration and its integration with the land records maintenance system, development of core Geospatial Information System (GIS) and capacity building.

Objective of the Program

The main objective of the NLRMP is to develop a modern, comprehensive and transparent land records management system in the country with the aim to implement the conclusive land-titling system with title guarantee, which will be based on four basic principles, i.e.,

i. a single window to handle land records (including the maintenance and updating of textual records, maps, survey and settlement operations and registration of immovable property);
ii. the “mirror” principle, which refers to the fact that cadastral records mirror the ground reality,
iii. the “curtain” principle which indicates that the record of title is a true depiction of the ownership status, mutation is automated and automatic following registration and the reference to past records is not necessary,
iv. “title insurance”, which guarantees the title for its correctness and indemnifies the title holder against loss arising on account of any defect therein.

Scope of the Program

The following is an outline of the components and activities to be taken up under the NLRMP:

1. **Computerization of land records**

   Data entry/re-entry/data conversion of all textual records including mutation records and other land attributes data
   a) Digitization of cadastral maps
   b) Integration of textual and spatial data
   c) Tehsil, sub-division/district Computer centres
   d) State-level data centres
   e) Inter-connectivity among revenue offices

2. **Survey/resurvey and updating of the survey & settlement records (including ground control network and ground truthing) using the following modern technology options:**
   a) Pure ground method using total station (TS) and differential global positioning system (DGPS)
   b) Hybrid methodology using aerial photography and ground truthing by TS and DGPS
   c) High Resolution Satellite Imagery (HRSI) and ground truthing by TS and DGPS.

3. **Computerization of Registration**
   a) Computerization of the sub-registrar‘ s offices (SROs)
   b) Data entry of valuation details
   c) Data entry of legacy encumbrance data
   d) Scanning & preservation of old documents
   e) Connectivity of SROs with revenue offices

4. **Modern record rooms/land records management centres at tehsil/ taluk/ circle/ block level**

5. **Training & capacity building**
   a) Training, workshops, etc.
   b) Strengthening of the Survey and Revenue training institutes

6. **Core GIS**
   a) Village index base maps by geo-referencing cadastral maps with satellite imagery, for creating the core GIS.
   b) Integration of three layers of data:
      1. Spatial data from aerial photography or high-resolution satellite imagery;
      2. Survey of India and Forest Survey of India maps; and

3. GIS-ready digitized cadastral maps from revenue records.

Once the basic plot-wise data is created by the States/Union Territory, seamless integration would be possible for micro and macro-planning and other relevant applications.

7. Legal changes

a) Amendments to The Registration Act, 1908
b) Amendments to The Indian Stamp Act, 1899
c) Other legal changes
d) Model law for conclusive titling

8. Programme management

a) Programme Sanctioning & Monitoring Committee in the DoLR
b) Core Technical Advisory Group in the DoLR and the States/Union Territory
c) Programme Management Unit (PMU) in the DoLR and the States/Union Territory
d) Information, education and communication (IEC) activities
e) Evaluation

All the activities shall be taken up in a systematic, ladder-like manner. These have been framed in the form of two kinds of ladders – primary and secondary. The primary ladder covers activities for reaching the stage of conclusive titling, and the secondary ladder covers archival purposes and strengthening of the revenue administration.

Implementation of the Program

1. The State Governments/UT Administrations will implement the programme with financial and technical supports from the Dept. of Land Resources, Government of India. Union Territory sourcing to the extent necessary for meeting the critical gaps in technological resources shall be permissible, and the States/Union Territory may go for the public-private partnership (PPP) models in the non-sensitive areas.

2. The district will be taken as the unit of implementation, where all activities under the programme will converge. It has been decided to cover the entire country by the 12th Plan period. However, the States/Union Territory which wish to complete the work earlier can do so.

3. Initial funding will be provided to the States/Union Territory based on their eight-year perspective plan and annual plan for the first year. Thereafter, all sanctions will be done on the basis of detailed project reports (DPRs) prepared by the States/Union Territory. Funding will be conditional upon the States/Union Territory signing the Memorandum of Understanding (MoU) with the DoLR and following its stipulations.

Content Management

1. Data Entry, Up-dation & Data Verification/Validation Process
   a. Land records data are available as :
      I. textual data, and
      II. spatial data (cadastral maps).

All textual data including the records of rights (RoRs), mutation data and other land attributes data shall be updated and computerized. All pending mutations shall be updated and the data entry shall be completed on priority basis. All spatial data shall also be updated and digitized as described below.

   b. Each State/UT should fix a reasonable cut-off date after which only computerized RoRs should be issued, and issue of manual RoRs should be discontinued thereafter. After the cut-off date, further mutation and updation of data shall be done in the computerized system on an ongoing basis, after following the procedure in the Land Revenue laws/manuals.

   c. Responsibility of Revenue officials should be fixed to ensure 100% checking, verification and validation of the data entered. The patwari shall carry out 100% checking, and the Revenue Inspector, tehsildar or an officer of the equivalent rank, the SDO and the Deputy Commissioner/District Collector should randomly check 50%, 10%, 3% and 1%, respectively, of the data entered, so as to ensure the accuracy of the data entered vis-à-vis the manual records, or as stipulated in the State/UT laws/manuals. A strict view should be taken where too many errors are found un-checked.

   d. The States/Union Territory which have authorized Gram Panchayats to pass orders on mutation must ensure their inter-connectivity with the corresponding Revenue offices.

   e. As for the encoding standards, the UNICODE should be used for data storage and local language display and support. Any database created using the ISCII or any other font-based solution should be converted to the UNICODE. The necessary assistance in data conversion may be taken from the Center of Development for Advance Computing (CDAC taken from the Centre for Development of Advanced Computing (CDAC).

2. Wherever a State Government/UT Administration adopts any procedure detailed in these Guidelines and Technical Manuals, it must ensure that it is duly inserted in the relevant State/UT laws/rules/regulations/manuals or that the same are duly amended to ensure their legal validity.

3. Digitization of Maps and integration of Textual and Spatial Data of land that can be measured is 1 decimal (1/100th part of an acre) i.e. 435.6 sq. feet. Changes in a cadastral map may take place due to various reasons, e.g., a plot of land may have been further sub-divided into two or more sub-plots and transferred to other persons by way of deed of gift or sale or inheritance, or conversion of classification of land use. The need for indicating these changes in the map arises every time a change arises.

    a. Broadly, there are two ways in which spatial data have been organized in the country. In certain States/Union Territory, village maps with parcel boundaries are used, whereas, in certain other States, ladder data on individual land parcels or tippans or field measurement books (FMBs) or gat maps are used. In most parts of the country, the land parcels depicted in village maps are covered in one or more sheets, depending upon the scale of mapping and area of the village. These village maps/sheets will be considered as the basic input for digitization and mosaicking of the cadastral maps in these States/Union Territory. In other States/Union Territory, where ladder data or gat maps/tippans/FMBs are used, the same will be taken for digitization and further mosaicing of the maps.

    b. GIS-ready digitization of cadastral maps and their integration with RoRs involve the following steps:

        I. Scanning of the village map or part of the village map and feeding this scanned map into the computer to create a computer image of the map which is known as a raster map.
        II. The next step involves going over the outline of the village boundary on the computer image of the map with the mouse and marking the outlines of each plot. This process, known as vectorisation, provides the coordinates of each point on the map.
        III. A printout of this vectorised map is given to the Revenue Department by the digitizing agency (which could be the vendor if the work is Union Territory sourced) for thorough checking with the original cadastral map. The Revenue Department checks the vectorised map on a glass table with the original map placed below it. This process is known as the table check. Every line and point on the two maps have to match. The correctness of the digitized map is certified by the Revenue department. If any error is detected, the same has to be rectified by the vendor/digitizing agency.
        IV. The software used in the digitization process creates a number of files. Each of these files pertains to a GIS-based layer and each layer consists of three files. The GIS data are organized in layers. Each layer contains a subset of information that would be present on a regular, such as (1) geographic information (where something is located), (2) attributes information (what is located at a specific location), and (3) its interlinking information. These three sets of information are represented in three physical files in the computer. For

example, the software used in West Bengal uses 9 GIS-based layers and creates 27 files. In addition, 8 to 11 other files, known as database files and image files, are also created, totalling from 35 to 38 files. All the files are put in a storage device (e.g., a CD) and given to the Revenue Department for checking. If any error is detected, the same has to be rectified.

V. The GIS layers are of three types: point layers, line layers & area layers. Each of the 9 GIS layers mentioned above belongs to one of the three types. Symbols (known as alamats in West Bengal) are used to record the legends that have been made on the map such as wells, temples, etc. These alamats are incorporated in all the three layers, i.e., point, line and area layers.

VI. Once the Revenue Department has cleared the vectorised map and the files, the digitizing agency proceeds to add each of the handwritten information on the original map except the signature at the bottom given out neatly typed.

c. Integration of spatial database with textual RoR data involves the following process:

I. Each plot of land is represented on the digital map as a closed polygon. Each polygon is identified by a unique plot number, which, for example, in West Bengal is a 5 digit number. In the textual RoR database, each plot is also referenced by this unique plot number. This provides a basis for integration of digital map data with the textual RoR data.

II. The basic textual RoR database consists of several tables (in West Bengal, 7 main tables & several master tables) which provide information on ownership, land classification, etc. All the tables are linked by certain common data fields, for example, in West Bengal, by two common data fields, which are:
Idn: a seven digit code to identify a Mouza (2 digit for District, 2 digit for Block & 3 digit for the Mouza)
Plot No: a five digit Plot number

III. After integration of the textual and spatial RoR data, the digitized map is shown on the computer, which indicates through colour codes the plots which do not have a corresponding textual detail or plot number, or where the textual and spatial data do not match each other. Such plots require patch survey using TS and GPS and re-entry of the correct data to produce a 100% correct digitized map. Thereafter, computerized and digitized RoRs can be issued to property owners.

d. Citizen Services

The integration software facilitates citizen services, some of which are:

i. RoR with plot map (parcel map), showing dimensions of each side, area & the adjoining plots.

ii. Deriving various maps based on possessions, land use classifications, Sizes of plots, sources of irrigation, types of crops etc.
iii. Textual RoR updation in sync with spatial data updation.

e. Two models of digitization of maps have been described viz. Model-1 based on the West Bengal experience, and Model-2 based on the use of satellite imagery. The States/Union Territory may adopt either of the models as per their convenience or develop a model suitable to the State/UT, in which case the details may be communicated to the Department of Land Resources.

Tehsil, Sub-division/ district computer centres

A computer centre at the tehsil/sub-division is necessary for maintaining the village-wise property records and for easier services to the citizens. District-level databases may be maintained for data analysis, planning, verification, etc. at the district level. The tehsil/taluka/sub-division Computer Centre will consist of computer systems comprising of appropriate level server and client computers with local area connectivity (LAN), switches, storage area network (SAN) where feasible and necessary, UPS, printer (including map printer), scanner, touch screen kiosk, biometric/smartcard readers, and CD writers. The server room will be secured and separated from the public area. Proper arrangements shall be made for land records/data storage in compactors as well as computerized and indexed data retrieval system. There should be enough space for seating the public in a proper reception area. District Computer Centre will collate the land records data of all the sub-divisions and tehsils in the respective districts. These district data centres too will be equipped with appropriate level computer systems with sufficient storage provided with LAN connectivity and switches.

State Level Data Centres

In order to maintain data repository and backup, each State/UT may need to establish a dedicated data centre for the land records data (including maps and registration data) at the State/UT level. This data centre would have estimated storage capacity scalable from 2 to 20 terabytes, depending upon the volume of records, along with high speed processors, switches, fiber optic channels, software and security devices. Further, these would have appropriate backup media (like CDs and tape devices, etc.) for high volume storage. Storage area network (SAN) may also be set up where feasible and necessary. Action for setting up of the SLDCs may be taken up when sufficient data has been created in the districts for storage at the State/UT level.

Inter Connectivity among revenue and registration offices

All the land record offices, from the State/UT level to the tehsil or equivalent level, as well as the registration offices may be securely connected via local area network (LAN) or wide area network (WAN) in an appropriate configuration based on the functional and technical requirements. In order to achieve functional integration among the tehsils, districts, SROs and State data centres, each location would be provided with network connectivity with 2 mbps link for last mile connectivity from the point of presence (PoP) of the State Wide Area Network (SWAN). From there upwards, the data would ride over the NICNET network. In addition, each site would require one set of switch/ router and modem. Time required for this would vary, depending upon the progress made on the SWAN project of the Department of Information Technology. However, alternative approaches can be taken for connectivity in the interim period, such as broadband/leased line with virtual private network (VPN) infrastructure for secure data transmission. This network may have a centralized architecture connecting the tehsils, sub-registrar offices, sub-divisions, districts and the State/UT Data Centres for enabling online data updation, easy access and sharing of data. The network may be designed by or with input from the NIC and by enforcing the approved security protocols and access control protocols of the DIT, GoI. Where the SWAN is available, horizontal connectivity to tehsils or SR offices may be drawn from the nearest available PoP using leased lines or other secure connectivity. At places where the SWAN is yet to be implemented, other options such as broadband with VPN or VSAT connectivity could be established. From the district upwards, the system could ride over the NICNET network.

Survey/ re-survey and updation of survey & settlement records

1. India has about 6.4 lakh villages. Most of the villages were surveyed and corresponding village (cadastral) maps were prepared at 1:4,000 to 1:10,000 scales during late 19th and early 20th century. However, where original cadastral survey is yet to take place, the States/Union Territory will need to draft the laws/manuals/guidelines for the purpose, and Government of India would be willing to extend necessary help in this regard.

2. The cadastral survey of an area which has already been surveyed earlier is known as Resurvey. This may be required under the following circumstances:
    a. When the framework of survey in field has completely broken down. In such cases, the boundaries shown in the records do not tally with the actual conditions on the ground. This may happen due to obliteration of field and sub-division of boundaries and/or due to misplacement of a large percentage of the local ground control point markers, as a result of which it is difficult to identify the fields with reference to the records.
    b. Resurvey is also necessary in the case of sudden development of the area due to causes such as:
        i. Sub Divisions
        ii. Transfer of dry lands into wetlands
        iii. Large scale transfer of holdings

3. Factors influencing the mode of survey/re-survey: In place of the conventional, chain survey, plane table survey and theodolite methods of survey, modernized technology in the form of Total Station (TS) and Global Positioning System (GPS) are now available. The selection of technology for cadastral survey depends upon several factors. These are enumerated below:

    - Terrain conditions (hilly, undulating, plain): Where the land area is within a gradient of 15%, aerial photography or high-resolution satellite imagery is expected to give adequately accurate output. However, in undulating terrain and hilly slopes, pure ground method using TS+GPS may be used for cadastral survey.

    - Vegetative cover (dense, sparse): Dense vegetation obstructs the line of sight in the vertical direction, thus preventing the aerial and satellite images from capturing the field boundaries. Pure ground based methods using TS+GPS are suitable in these conditions. In open areas, devoid of vegetation, aerial photography or satellite imagery is likely to give adequately accurate output. However, sparse vegetative cover prevents pinpointing the field corners and in these conditions, aerial photography or satellite imagery should be supplemented by ground truthing.

    - Built-up areas**:** In urban areas, high-rise buildings prevent aerial/satellite images from capturing building corners and boundaries. A lot of shadow areas appear in the remote sensing data, depending upon the height of the buildings. In these conditions, pure ground based methods using TS+GPS are preferable for cadastral survey. Where there are lower built-up areas, aerial images or high-resolution satellite images are likely to give better results.

- Size of survey area: In a small survey area, ground-based survey will give faster output, but in a larger area, such as a district, aerial photography or high-resolution satellite imagery is likely to suffice.

- Accuracy: In cadastral survey, the scale of the map and precision of the instruments greatly influences its accuracy. The accuracy of the survey is the highest with TS followed by, plain table and chain survey, respectively.

- Timeliness: Pure ground truthing methods of cadastral survey such as chain, plain table and total station, which require 100% measurement to be made on the ground, are time-consuming. Ortho-products from aerial photos and satellite images supplemented by ground validation greatly reduce the time factor in preparation of cadastral maps.

- Cost: The cost is the driving force in adopting a particular technology for cadastral survey. High-resolution satellite images from CARTOSAT series are cost effective, compared to digital aerial images and pure ground methods.

4. For reaching the stage of conclusive titling, the States/Union Territory shall undertake survey/re-survey using modern technology of surveying & mapping, i.e., aerial photography or high resolution satellite imagery combined with ground truthing using TS+GPS so as to ensure true ground depiction on cadastral maps and land records, adopting the methodology most appropriate for the terrain, location, etc. and update the survey & settlement records.

5. For fresh survey, in areas where cadastral maps are not available, the following options are suggested:
   a. TS + DGPS
   b. Aerial Photographs + TS + DGPS

In open areas, the process will be greatly facilitated by the use of aerial photography, combined with TS+DGPS for ground truthing. In densely vegetated areas, use of TS+DGPS is suitable. In hilly areas, use of terrain-corrected aerial photographs (digitally-rectified ortho-photographs) with TS+DGPS for ground truthing may be appropriate. All efforts should be made to arrange for aerial photography; however, where it is not possible to arrange for aerial photography, TS+DGPS must be adopted for completing the work with the desired level of accuracy.

6. For resurvey, aerial photography (wherever possible) and TS+DGPS for ground truthing is recommended.

7. Where large open areas and large land holdings are there, e.g., arid and semi-arid areas, and good quality and reasonably up-to-date cadastral maps are available, the vectorized cadastral maps may be geo-referenced using high resolution satellite data and GPS control points. The geo-referenced cadastral maps shall be overlaid on the high resolution satellite imagery (HRSI) to study the discrepancy, both qualitatively and quantitatively. If the discrepancies are high, ground truthing using TS+DGPS is recommended.

Computerization of the Registration Process

1. Registration is one of the major components of the NLRMP. This component was not covered under the schemes of CLR or SRA&ULR. Computerization of registration is necessary not only for making property registration efficient and hassle-free but also for integrating land records and registration. The sub-registrars‘ offices (SROs) in the States/Union Territory carry out registration and recording of various types of documents related to the transfer of immovable property. Though functions and working procedures of the systems are as per the Registration Act, 1908, many States/Union Territory have made certain rules and procedures as per their Registration Manuals.

2. The manual (non-computerized) registration process involves maintenance of paper copies of all the registered documents. This procedure of maintaining and registering property documents often results in misclassification of documents, misrepresentation of facts, and other such losses. Searching of reports, records and issuance of non-encumbrance certificates also take long time and turn out to be cumbersome tasks.

3. Under the NLRMP, all the SROs will be fully computerized with adequate hardware, software, process re-engineering, staff training and connectivity with the revenue records maintenance system, banks, treasuries, etc. Also, the following functions will be computerized:

- Register of minimum guidance values or circle rates, so the transacting parties can ascertain stamp duty liability online. This may be done by preparing the list of prevalent rates, list of properties, list of plots, floor space, nature and year of construction, etc., or by computerizing the guidance values/circle rates for different kinds of land and properties.
- Re-engineer the process, wherever necessary, by fixing the formats of the deeds in 2-3 pages. The first page may contain the parties' details, second page property/land details, and the third page may contain legal issues and conditions, or as the State/UT may decide and place the format(s) on the web.
- E-stamping or franking system, etc. for depositing stamp duty should be implemented as soon as possible.
- Computerizing the registration process involves verification of identity of the presenting person, taking photographs, fingerprints, other biometric identification, verification of stamp duty, etc.
- Entry/scanning of legacy registered data for distribution of copies of registered deeds and non-encumbrance certificates.
- Integration of the registration process with the land records maintenance system so that mutation notices and mutation remarks in the corresponding RoRs are generated automatically after registration.

Modern record rooms/ land records management centres

Support for upgrading modern record rooms/land records management centres with a) a storage area with compactors/storage devices for physical storage of records and maps, b) an operational area with computers/servers, storage area network (SAN), printers, etc., and c) a public services area for waiting/reception, etc. The land records details may be indexed and stored. A document management system, i.e., scanning of old records, digital storage and retrieval system should be introduced for online storage and retrieval of the records, indexing of data and images, etc. so as to move towards cyber record rooms/maintenance of land records in the dematerialized (demat) format.

Training & Capacity Building

States/ Union Territory are required to draw up a comprehensive training programme to develop their human resources for effective maintenance and sustenance of the NLRMP, covering the policy makers, heads of the departments of revenue, survey, registration and their offices and staff, master trainers and field-level functionaries including the surveyors, village accountants and other revenue staff, who will be trained for operating the system including mutation and updating of land records, issue of authenticated copies of RoRs with maps-to-scale, handling modern survey equipment such as GPS, TS and photogrammetry.

Expert organizations like the Survey of India, NIC and Indian Space Research Organization (ISRO), etc. should be involved in imparting training to master trainers, who in turn, will train the State/UT staff on TS/GPS, survey methodologies, scanning, digitization, GIS and ICT activities. For better outreach, e-learning and video-conferencing facilities may be used. The capacity building programme should include awareness/appraisal workshops, long-term training programmes for field-level officers with hands-on training, and short-term training modules for senior-level officers.

The capacity building programme should cover not only technical contents, but also quality procedures, technological advancements, out sourcing procedures, project management, etc. The States/Union Territory may tie up with leading training institutions for this purpose. A core group of officers and staff from the States/Union Territory may be sent on exposure visits to other States/Union Territory which have demonstrated considerable success in implementing the project. Discussion forums and help lines may be established to guide the field staff in solving technical problems.

Choice of Software and Standards

Based on the process and functionality requirements, user-friendly application software for capturing, editing and updating land records textual data, integration of textual data and maps, registration system work flow, integration of registration with mutation, and proper authentication mechanism using digital signature/public key infrastructure (PKI), etc. may be required by the States/Union Territory.

In order to have uniformity, standardization and integration, the software development and software maintenance support may be provided by the NIC, which may set up core development teams consisting of IT and GIS experts at the Central level, supported by State/UT-level teams for software customization, technical coordination and State/UT-wide support. While it will be open for the users to select the operating system for their client machines—Windows-based or Linux-based, but in so far as the server machines are concerned, open-source platforms that implement mandatory access control policies are preferred.

Data security

1. Assuring security and effective performance

The land records information system management gives rise to new concerns and new functions that need to be properly understood and addressed. These concerns relate to security of information system assets and data integrity. One important information system function, therefore, is asset safeguarding and data integrity. At the international level, two sets of standards have been codified by the International Organization for Standardization (ISO): one is the ISO/IEC 27001, also called the information security management system (ISMS) standard of 2005; the other is ISO/IEC 27002:2005, a codification of practices for information security management. The ISO/IEC 27001 (earlier called ISO/IEC BS-17799) lists the standards required from any management in implementing information system security function. This lays down standards for the management to perform four core functions: planning determining the goals of information systems function and the means of achieving this goal; organizing gathering, allocating and coordinating the resources needed to accomplish the goals; leading--motivating, guiding and communicating with personnel; and controlling--comparing actual performance with planned performance as a basis for taking any corrective action that may be needed. This also deals with management processes: plan-do-check-act (PDCA) model. The ISO 27002 lists the security controls (such as password controls). The two standards, together, imply that unless the management itself is serious about security and goes about doing it in a systematized way (ISO/IEC 27001).

2. User and Data Authentication

User authentication is the process of identifying a user. The information system must satisfy itself that the user is the one who he/she claims to be. There are a number of ways a user can be authenticated. Password authentication is sufficient for the purpose of extracting user-related information. However, for users who are to have more privileges on the database than that of merely reading it, then stronger forms of authentication are recommended. For such users, a two-factor authentication scheme is recommended; for example, authenticating a user both with a password and the biometric technology.

Besides authenticating the user, every land record data that is entered into the database needs to be approved/ authenticated by the officer who is competent for the purpose as per the local revenue manual. The land information system should provide a user interface for performing this task. Once a data item has been approved/ authenticated, the application system does not allow any further changes to it. That is, there is no user interface provided to make any change directly to an approved record. If any change does occur, a new record is entered, verified and authenticated. Thus, the information system also records a history of the changes occurring to any piece of data.

In a database environment, the database administrator (DBA) may have all privileges on the database, i.e., he/she can insert any record, change any record or delete any record, irrespective of the fact that he/she is not the approving authority as per the local revenue manual. Such overriding privileges with a single person must be used with propriety; otherwise, these can be abused. On the one hand, centralizing certain functions to be performed in the database environment improves communication, coordination and control. On the other hand, vesting substantial powers in the DBA role runs contrary to the fundamental principles of sound internal control. This problem is not unique to land management information system, but is common to all e-Governance initiatives that use databases. Therefore, the States/Union Territory must take remedial measures for reducing the risks associated with the DBA role.

Purchase Procedures

The States/Union Territory shall follow their Governments'rules and procedures in purchase of services, hardware, equipment, etc. with comprehensive 3-5 year warranty, wherever applicable.

Public- Private Partnerships (PPP)

The NLRMP has generated an enormous workload on the existing Revenue and Registration machinery. It also requires a high level of technological in Union Territory at almost every stage. Capacity building of the staff is essential but is likely to take time. In order to streamline the implementation of the Programme and to achieve the targets within the proposed time frame, the States/Union Territory may like to go for the PPP models in respect of certain activities under the Programme or Union Territory source them on a turnkey basis.

All Union Territory sourcing/PPP arrangements under the NLRMP shall be subject to the following conditions:

a) No Union Territory sourcing or PPP should normally be allowed in the sensitive districts/areas, as identified by the appropriate Government.
b) All legal duties/actions required under the State/UT laws shall continue to be performed by the designated officials.
c) The State/UT must work out a modus operandi and affix responsibilities of Departmental officials to conduct and verify 100% quality check of the work done by the Union Territory sourcing/PPP vendor(s). Union Territory sourcing/PPP is merely a convenience and will in no way absolve the State/UT from its legal obligations.
d) Full control and responsibility for the execution and monitoring of the Union Territory sourced/PPP works, as well as of utilization of funds released by the DoLR, shall

rest with the concerned State/UT, which will be responsible for rendering the accounts thereof, to the DoLR.

e) No extra funding beyond the approved cost norms shall be provided by the DoLR.
f) Proper tendering processes must be followed for Union Territory sourcing/PPP.
g) The technical output of the out sourced /PPP works must be compatible with the IT system architecture/parameters being followed in the State/UT in areas relevant to the NLRMP.

Where the State/UT opts for a private agency for implementing any work under the NLRMP, it may be beneficial to the State/UT to involve the NIC in an advisory role in the following areas:

- Support and advice the State/UT on relevant technical matters.
- Help the State/UT in formulating the terms of references (ToRs) for Union Territory sourcing/PPP and in establishing the relevant milestones and time frames.
- Vet the relevant deliverables including the architecture, standards, technical specifications, business process re-engineering (BPR), functional requirement specifications (FRS), software/system requirement specifications (SRS), etc. from the vendor(s) and give specific recommendations on these to the State/UT.
- Support the State/UT in the evaluation of the technical and financial bids.
- Assist the State/UT in reviewing the progress and quality of the work carried out by the vendor(s).
- Bring to the notice of the State/UT any deviations from the standards for software development on the part of the vendor(s) responsible for the development and integration of application software.
- Assist the State/UT in exercising strategic control over critical components including data, database, applications, network and security components for maintaining sovereignty and accountability of the State/UT, and to help the State/UT formulating a strategic control policy for the purpose.
- Interface with the certifying agencies for third-party certifications for the IT infrastructure and software developed and deployed by the vendor(s).

These must be ensured at the time of signing the MoU with the oot sourced agency, and the State/UT may consider entering into a tripartite MoU with the vendor and the NIC in this regard. However, the overall decision-making responsibility, supervision, monitoring and control in respect of these matters shall rest with the State/UT.

Given below are some of the activities that can be considered for out sourcing/PPP:

1. Preparation of the NLRMP Perspective Plan/Detailed Project Report (DPR) for the State/UT and district, respectively.
2. Survey/resurvey work using modern survey technology.
3. Ground-truthing through TS/GPS.
4. Data entry/re-entry of textual records.

5. Preparation of records of undisputed mutations for the approval of designated authority as per the relevant laws.
6. Data entry of approved mutation records, subject to mandatory authentication by designated Departmental officials as per the State/UT laws.
7. GIS-ready digitization of cadastral maps and integration of digitized textual and spatial records.
8. Computerization of the Sub-Registrar‘s office.
9. Data entry of legacy data regarding property.
10. Data entry of property valuation details.
11. Scanning and preservation of old records.
12. Setting up of, preferably self-sustaining, information kiosks.
13. Training and capacity building.
14. Drafting of legal changes/framework for conclusive titling.
15. Information, Education and Communication (IEC) activities.
16. Evaluation.

Role of the Panchayati Raj institutions & NGOs

Gram Panchayats (GPs) can play a significant role in updation of land records and identification of property owners in the course of the settlement operations. The Gram Sabha could be involved to facilitate survey/re-survey, wherever necessary. The States/Union Territory can think of giving the power of doing undisputed mutations to the gram panchayats. Where GPs are involved in carrying out undisputed mutations, interconnectivity with tehsils may be worked out by the States/Union Territory with their own funds or by dovetailing funds from other sources. The District Administration may take help from the Panchayati Raj Institutions and reputed NGOs in building up awareness about the Programme. The District Monitoring and Review Committee, of which the CEO/EO of Zila Parishad is also a member, may give due weightage to the recommendations of the PRIs in the implementation of the Programme.

Technical Support to the States/ Union Territory and Implementing Agencies

The necessary technical guidance and hand-holding support to the States/Union Territory and the implementing agencies shall be arranged through the Core Technical Advisory Group created for the NLRMP in the DoLR with members from the national-level technical agencies such as the NIC, Survey of India, NRSC, ISRO, C-DAC, Forest Survey of India, Soil & Land Use Survey of India, and experts in the field. The States/Union Territory may also approach the regional offices of these technical agencies, wherever necessary. Specifically, technical support of the following nature could be expected from these agencies:

(A) Survey of India: Training to the survey staff/master trainers, guidance in application of modern survey technology.

(B) NRSC/ISRO: Guidance in aerial photography and use of high resolution satellite imagery for survey/re-survey purposes.

(C) C-DAC: Guidance in Indian language computing.

(D) Forest Survey of India: Guidance in mosaicing of the cadastral maps with forest boundaries.

(E) Soil & Land Use Survey of India: Guidance in data coding of the relevant data.

(F) NIC: Software development and customization, training of staff/master trainers, ICT support to the State/UT staff in computer applications, data coding and digitization of map systems and standards, interfaces for integration of textual and spatial data, data centre specifications at various levels, inter-connectivity amongst revenue and registration offices, computerization of registration, technical guidance in setting up of land record management centres and strengthening of survey and

revenue training institutes, data security/backup and disaster recovery, authentication mechanism, wherever necessary.

Monitoring and Review Mechanism

The following monitoring and review mechanism at different levels is to be adopted under the Programme.

District-level Monitoring and Review Committee:

All the districts need to have a District-level Monitoring and Review Committee under the Chairpersonship of the District Collector/Deputy Commissioner/District Magistrate, along with ADMs/SDMs dealing with land revenue matters, CEO/Executive Officer of the Zila Parishad, Sub-district Registrar, Survey & Settlement/Consolidation Officer having jurisdiction over the district, and District Informatics Officer of the NIC as members. Representatives from other technical agencies such as the SoI, NRSC/ISRO, C-DAC, FSI, and SLUSI may be involved as per the need as special invitees. The Committee will review the progress of implementation of the Programme at least once a quarter, and the District Collector/Deputy Commissioner shall submit report to the State-level Monitoring and Review Committee. Online monitoring reports shall be submitted by the District Collector/Deputy Commissioner to the State Govt. as well as to the DoLR as per the MIS reporting formats and periodicity prescribed.

State/UT-level Monitoring and Review Committee:

A State/UT-level Monitoring and Review Committee shall be constituted in each State/UT for the NLRMP under the chairpersonship of the Chief Secretary/Chairman, Board of Revenue. It is recommended that a representative from the Board of Revenue, Principal Secretary/Secretary of the Departments of Revenue, Registration, Finance, Planning and IT, the Divisional Commissioners, Inspector General of Registration, Commissioner/Director of Survey & Settlement and of Land Records, State Informatics Officer of the NIC and any other expert as decided by the State Government/UT Administration should be its members. The Committee shall monitor and review the progress of implementation of the Programme, facilitate the necessary process re-engineering, and guide the implementation authorities. The Committee shall submit quarterly progress reports in the prescribed format. The States/Union Territory shall develop a system of spot checks by the State/UT officers through field visits.

Monitoring and Review at the National Level:

At the national level, for sanctioning of projects and monitoring and reviewing of the programme, a Project Sanctioning and Monitoring Committee has been set up under the Chairpersonship of the Secretary, Department of Land resources. The Committee will

monitor and review progress of the NLRMP work in the country. Area officers from the Department of Land Resources would also be visiting the States/Union Territory to review the implementation of the Programme.

Evaluation of the Programme

To get the impact assessment and feedback about the actual implementation of the Programme at field level, the DoLR will get the concurrent and terminal evaluation of the Programme carried out through reputed organizations such as the Lal Bahadur Shastri National Academy of Administration (LBSNAA), the National Institute of Rural Development (NIRD), State Administrative Training Institutes (ATIs), etc. The States/Union Territory are also advised to carry out concurrent evaluation and impact assessment through in-house teams/experts to assess the on-site progress vis-à-vis deliverables of the sanctioned projects and suggest the measures for improving the system. These concurrent evaluation results must be intimated to the DoLR for obtaining the second instalment of Central funding.

Funding

Allocation of Funds and Fund Flow Mechanism

The NLRMP is a demand-driven scheme. Funds will be allocated to the State Governments/UT Administrations or their designated implementing agencies for carrying out the activities under the NLRMP. Funds for various components of the NLRMP will be provided at different scales by the Central Government. The following will be the funding pattern and sharing of costs between the Centre and the States:

a) Computerization of land records (100% Central funding – maximum upto the approved unit cost norm)

- Data entry/re-entry/data conversion/mutation data entry
- Digitization of cadastral maps and integration of textual and spatial data
- Tehsil, sub-division, and district data centers
- State-level data centres
- Inter-connectivity amongst revenue offices

b) Survey/resurvey and updating of survey & settlement records (including ground control network and ground truthing) (Central funding - maximum upto 50% of the approved unit cost norm for the States and 100% for the Union Territory)

c) Computerization of registration (Central funding - maximum upto 25% of the approved unit cost norm for the States and 100% for the Union Territory)

- Data entry of valuation details
- Data entry of legacy encumbrance data
- Scanning & preservation of old documents
- Connectivity to SROs with revenue offices

d) Modern record rooms/land records management centres at tehsil/taluk/block level (Central funding - maximum upto 50% of the approved unit cost norm for the States and 100% for the Union Territory)

e) Training & capacity building (100% Central funding to the extent approved by the Project Sanctioning & Monitoring Committee)

- Training, workshops, etc.
- Strengthening of Revenue training institutes

Perspective Plans and proposals for the year would be submitted by the States and Union Territory in the prescribed format. Proposals would be scrutinized and approved by the National-level Project Sanctioning and Monitoring Committee.

It has been decided that the Central share shall be released in two instalments, the first instalment being 75% of the sanctioned amount. The State Government shall ensure release of the Central share as well as the State share within 15 days from the date of receipt of the Central share. Upon utilization of 60% of the first instalment, States/Union Territory will be eligible to get the second instalment of 25%. Before releasing the second instalment of 25%, the following documents would be required by the DoLR:

(i) Closing balance in respect of the grants sanctioned under the NLRMP for the project so far.

(ii) Utilization Certificate (financial year-wise) towards release of first instalment, showing date of release of the State share and expenditure, i.e., 60% or more of the total amount of the first instalment including the State share.

(iii) Audited Statement of Accounts (ASA), financial year-wise, where due.

(iv) Interim evaluation report.

(v) Physical progress achieved with the amount utilized.

Operational and Maintenance (O&M) Costs

States/Union Territory may make provision for O&M costs and also fix suitable user charges on deliverables for sustainability of the Programme and meeting the expenses of hardware maintenance and obsolescence, etc. The State/UT may consider putting in place appropriate institutional mechanisms for the purpose, wherever necessary.

Publicity

States/Union Territory may arrange for wide publicity about the advantages of the Programme at the revenue village, gram panchayat, tehsil, district and State levels, involving elected representatives in different media and fora. States/Union Territory may highlight the success stories of the Programme through newspapers, radio, television, cinema slides, posters, video films, road shows, publications, literature, etc.

7

Need and Scope for Title Insurance in India

India's Title system

India does not have a registered title system. As such, there is no state guarantee for title – the government does not provide an indemnity for loss suffered as a result of lack of ownership. It is common for title challenges to arise because of the lack of conclusiveness of the registers. To ascertain ownership, a purchaser needs to go through all the transactional documents for at least the past 30 years. It is only now that we are seeing some new developments in India. Some states are moving at a faster pace than the others.

Registration

India operates a deeds registration system. Instruments pertaining to property are registrable and are registered pursuant to the Registration Act 1908 with the concerned registration office as a record of the transaction. Extracts from the land office are only evidence of title but not themselves documents of title because it is common for a whole series of transactions to take place off-record and for those to go unrecorded for months or even years. This is particularly the case in the commercial transactions in Indian cities.

Searches

It is possible to conduct searches of property upon payment of the prescribed fees. The time frame for conducting a search is generally dependent on the period for which the search is being conducted and the number of transactions recorded over the property during the period. Typically, a search for a period of 10 years could be completed within a week. There have been several instances where a search does not show a particular registered transaction because until 2005, the records of the registry were kept manually and the authorities are now in the process of recording documents electronically. Hence, there is always a possibility of an error and a search may sometimes fail to reveal a particular transaction over the property.

Title issues

All title issues have the same effect – someone else may have an interest in the property. Where the title is subject to title issues, notwithstanding the purchaser has paid the market price for the property, he may not be able to have a clean title. Here are some examples of title issues and their risks:

Title issues	Risks
Original title deeds cannot be produced	An equitable mortgage has been created
Seller does not have authority to sell the property	The transaction is not valid for lack of authority
Seller does not have proper title or his name is not included or updated in the land office	The transaction is not valid
Encroachment	Someone else may have an interest in the property
Adverse possession by third parties	The adverse possessor may have an interest in the property
Pending litigation affecting the property	The property cannot be assigned free from encumbrance
Encumbrances created against the property e.g. a mortgage	Someone else may have a prior interest in the property

Granted land. "Granted land" is where the government grants a piece of land and the grant is made in a form of a letter, not a title deed and is not registered in the land registry. Where the grant imposes a restriction on sale within a given period, it is possible for the grantee to sell the granted land within the restriction period without the purchaser knowing about it. When the government finds out about the breach, the transaction is void for breach of the grant. This is a situation pre-dominant in the Southern states and in the northern heartlands.

Easement right acquired by prescription.
Easement rights can arise by long use over a certain period of time. Only physical inspection can reveal these rights.

Property Lending
In the lending sector, due to the lack of a secondary debt market (i.e. lack of purchasers for loan books), local banks are unwilling to offer prudent property developers loans which match the duration of their exposure. Therefore, developers are forced to take short-term loans to cover long term liabilities – a recipe for disaster in a falling property market, which

in itself causes more loan failures. Title insurance for bankers helps lenders break out of this cycle by making their loans more attractive in the secondary market and allowing the development of a secondary mortgage market.

This also applies for low and middle income housing, where mortgage financing is often not available due to perceived (and real) title risks. The resilient risk management process that title insurance due diligence brings to the loan origination process provides banks with the comfort they need to originate loans and secondary purchasers of those loans, such as the secularization market, to develop.

Title Insurance Risk Managed through Careful Underwriting

The risks inherent in Indian land titles can be mitigated through careful due diligence by expert local lawyers and insurance underwriters. Title insurance can be offered only on new developments, where the land titles may be more clear, and on existing properties where the title records are satisfactory. Moreover, where necessary, specific risk issues can be excluded from cover. Further, at least in the early years of the program, title insurance can be limited to larger transactions, where it is cost effective to undertake detailed legal due diligence and underwriting.

In a country like India, demand for Title insurance products is largely dependent on the demand for real estate transactions, which are critically dependent on financial factors, healthy labour market, low unemployment rates, stable inflation environment and increasing wages. Increasing unemployment rates pose a threat to housing market and title insurance industry as it is directly dependent on the ability of buyers to purchases homes. Per capita income is also a long term critical dependent. A stable economic growth is a prerequisite for healthy housing market.

Similarly, the demand for commercial property development will be a significant factor in the growth of the title insurance market. The more investment in commercial property, including office, industrial, retail, logistics and hospitality, both from domestic and foreign investors, the more demand for title insurance.

Benefits of Title Insurance

Benefits of title insurance in recording form benefits which emerged as a result of title insurance in the recording system are as follows:

Title Insurance Could Play a Stabilizing Role

Title Insurance Could Play a Stabilizing Role for Investors in India as It Did in the United States at the Turn of the 20th Century. In early 20th century United States, real estate demand changed in at least two ways. First, investors became interested in land across state lines, where they did not have connections. Second, the market type for investments expanded to include a new secondary mortgage market. These two changes increased purchaser unfamiliarity and uncertainty, and catalysed the need for title insurance. In India, demand has changed in terms of proximity of investor and investment, and a change in type of investment market could be forthcoming with respect to location, the institutional demand to invest in real estate across state lines was a large part of the establishment of title insurance in the U.S.126 Similarly, the institutional investors interested in India want to invest in large properties located far from where they operate. Many of the investors are not familiar with and do not have access to the local public records systems located on paper in Indian government offices. The creation of title plants and the insurance against claims could provide the institutional investors sufficient security in their transactions. This security would allow for investors to place their confidence in the title insurer and system of insurance as opposed to previously unknown sellers of property. The type of real estate investor has changed as well. During the early1900s, title insurance companies in the United States were able to generate enough revenue to launch their businesses because large investors – life insurance companies - entered real estate and drove demand for a secondary mortgage market. While these types of secondary investors (insurance companies and pension funds) have been slow to emerge in India, there has been an entrance of another kind of large investor - foreign and non-resident Indian (NRI) investors. Their entrance in India parallels the entrance of life insurance company investors in the U.S. in a few ways. These large foreign institutional investors have different needs than the Indian real estate market has previously had to meet. These investors want standardized protection and wide coverage, and, importantly, they are capable of paying for it. Title insurance offers the stability needed in order for international investors to be confident in their investments in projects and companies.

The Indian case has provided, a convincing account of the role that title insurance could play in achieving certainty and predictability inland holdings. Since the 1990s, economic growth, a rising middle class, and willing FDI have been driving a sustained demand for real estate in India. Even more FDI is waiting in the wings. However, lukewarm government attempts to facilitate the flow of this FDI through financial reforms have not been adequate. Many impediments in the real estate market remain, such as liquidity, complex land use regulation, poor infrastructure, and uncertain title. Uncertainty of title negatively impacts individual deals as well as the real estate market structurally. A title insurance regime could

alleviate some of the problems described above by reducing the risk present both in individual deals and across the market. Title insurance companies provide more comprehensive searches and records than are currently available in India under either the recording system or the Torrens system. Such a regime could also provide insurance against future claims and losses. Though title insurance offerings in India would have to adjust premium levels to account for the current cloudy state of title, many commentators are hopeful that international investors would have the deep pockets necessary in the beginning stages of implementing title insurance. Such a system would be best conceptualized through a public- private hybrid, which could harness the public reach and access, and private resources and efficiency. If the hybrid model were to prove effective in the Indian context, with its size, complexity, and current state of fragmented records, a convincing case could be made for adapting such a system outside of India as well – to both recording and Torrens systems.

Increased Efficiency

Title plants are more efficient than public records because they include more information than is gathered by public records. They include “recorded instruments, records of real estate tax payments, probate court records, and records of judicial proceedings [such as] quiet title suits, actions resulting in liens on reality, foreclosures and divorce proceedings.” They may also include “unofficial plants and indexes to title descriptions” for un-planted urban land. Mandating and maintaining registration of all taxes, encumbrances, claims to title in a single place in the public record would be expensive and ineffectual. The increased efficiency from the use of title plants could lead to quicker negotiation processes, decreased transaction costs, and more deals with less risk. Title insurance companies also provide expedited negotiation and settlement of claims which arise. They can settle disputes faster and with less disruption to the defendant than courts. Insurance holders can conduct their daily business without having to be dragged to court at every dispute.

Aligned Incentives

As explained above, a system of title insurance aligns the risk of pay out with the insurer’s incentive to perform their searches well. If they do not correctly assess current title and encumbrances, they may face a payout. Furthermore, because they are not only searching the records, but also keeping and maintaining them, they have a clear incentive to keep accurate, up to date, and searchable records. Or even if they do have to pay out, it comes from public coffers, not private profits. Therefore, because privately created title plants move the cost of creation and maintenance to the private actors who have the incentive to do the job well, title insurance leads to a reduction of the potential losses take non by buyers and title insurance companies. These reduced risks include fewer unknown claims and encumbrances, less potential litigation suffered by buyers, and fewer claim amounts issued over time. These effects are of the aligned incentives of title insurance companies to do comprehensive upfront searches and reports in order to prevent pay out. Additionally,

the entire system of insurance reduces overall risk through transfer of risk to insurers and distribution of risk across pools of insurance policies. As such, “risks experienced by individuals as random and unpredictable become quantifiable when transferred to insurers.

Knowledge Creation

Not only do title insurers have greater incentives than public record keepers to maintain their records and therefore to maintain more comprehensive and easily searchable records in “superior indexing systems,” they also add their own diligence and notes to the public record. Their title plants include information about title, taxes, and other particulars of the land holdings which often draw from different public sources and also often include information gained from their own private due diligence. Some risks are discoverable only upon actual inspection of real property, which title insurers would uncover as part of their diligence, but which would fall outside the realm of public record.

Appropriate Allocation of Risk (and Reward)

The question of appropriate resource allocation arises at multiple points during a sales transaction and records search. Title insurance places much of the dynamic part of the record keeping function in private hands, which are the same actors who will benefit from a job well done. In some places (such as India, as I will explain below), placing it in public hands does not lead to more effective records. Questions regarding appropriate resources also come up in regards to dispute resolution. Dispute resolution in the Torrens system would depend on the judiciary to settle claims, whereas a system of title insurance institutes a process of due diligence and negotiation which could more efficiently eliminate potential disputes. Relying on the judiciary to settle disputes leads to slow resolution of cases, inefficient use of public funds, public budget limitations regarding indemnity funds,52 and perhaps seven a violate separation of powers.

Broader Insurance Coverage

Finally, private title insurance goes beyond the coverage of public title insurance in Torrens. Torrens systems typically have gaps in protection, such as the ability to attack initial registration only for a limited period, the lack of coverage between settlement of the deal and registration of title, and lack of protection against all encumbrances or unrecorded mechanics' liens. This inadequate protection has been "sufficient to deter many institutional lenders from loaning on Torrens titles." Title insurance generally offers protection for these gaps by insuring for the risks such as challenges to title after settlement which prevents an owner's interest in the land from being registered; rights, easements, or rights of way; other rights arising out of a lease, contract, option, right of possession or access order; defects in title from fraud, forgery, duress, incompetency or incapacity; and any other defects which affect title. Therefore title insurance generally runs from the date of settlement, as opposed to the date of registration, and a buyer may purchase additional coverage from the date of the contract for purchase, and offers additional protections for encumbrances.

8

The Real Estate Act 2016

'Title Insurance' assumes a significance importance in view of passing of this bill. We provide herewith the relevant clauses extracted from the Real Estate (Regulation and Development) Act, 2016.

We paste the key provisions outlined below:

1. CHAPTER III – FUNCTIONS AND DUTIES OF THE PROMOTER – CLAUSE 16

(1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —

(i) title of the land and building as a part of the real estate project; and

(ii) construction of the real estate project.

(2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

(3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.

(4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

Penalty: Chapter VIII - Offences, penalties and adjudication. Clause 61 – Penalty for contravention of other provisions of this Act -5% of estimated cost of the project

2. CHAPTER VIII – OFFENCES PENALTIES AND ADJUDICATION – CALUSE 61

If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

3. CLAUSE 14(3): STRUCTURAL DEFECT – PROMOTER liable for structural defect for a period of 5 years -

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

As per the latest Real Estate Bill 2016, Registration is compulsory and consequently title insurance is compulsory too:

* if land area exceeds 500 sq mtr and if number of units exceeds 8.

*in case of ongoing projects on the date of commencement of the Act which have not received a completion certificate, the promoter of such project shall make an application to the Regulatory Authority for registration of their project within a period of three months of the commencement of the Act.

* Projects where the completion certificate has been received prior to the commencement of the Act

*Projects for the purpose of renovation or repair or re-development which does not involve marketing, advertising, selling and new allotment of any apartment plot or building.

The application for registration must disclose the following information:

i) Details of the promoter (such as its registered address, type of enterprise such proprietorship, societies, partnership, companies, competent authority);

ii) A brief detail of the projects launched by the promoter, in the past five years, whether already completed or being developed, as the case may be, including the current status of the projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

iii) An authenticated copy of the approval and commencement certificate received from the competent authority and where the project is proposed to be developed in phases, an authenticated copy of the approval and commencement certificate of each of such phases;

iv) The sanctioned plan, layout plan and specifications of the project, plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof and the locational details of the project

v) Proforma of the allotment letter, agreement for sale and conveyance deed proposed to be signed with the allottees

vi) Number, type and carpet area of the apartments and the number and areas of garages for sale in the project

vii) The names and addresses of the promoter's real estate agents, if any, and contractors, architects, structural engineers affiliated with the project; and

viii) A declaration by the promoter supported by an affidavit stating that:
a) he has a legal title to the land, free from all encumbrances, and in case there is an encumbrance, then details of such encumbrances on the land including any right, title, interest or name of any party in or over such land along with the details;
b) the time period within which he undertakes to complete the project or the phase; and
c) 70% of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

Upon receipt of an application by the promoter, the Regulator Authority shall within a period of 30 days, grant or reject the registration.

Furthermore, The advertisement or prospectus issued or published by the promoter should prominently mention the website address of the Regulatory Authority, where all details of the registered project have been entered and include the registration number obtained from the Regulatory Authority and other similar details.

Rajasthan Title Bill

The Rajasthan government has managed to pass the Rajasthan Urban Land (Certification of Titles) Bills 2016 in the state assembly which is a shift from the presumptive titling system to the conclusive titling system for recording land titles. This law is a big step toward a rules-based regime for land titling. Furthermore, the Bill states that any person who enters into an agreement for consideration with the title holder on basis of a certificate of title issued under the act and thereby incurs any loss due to any defect of title other than that specified in the certificate is entitled to be compensated by the Certification Authority on behalf of the state government as guarantor, for such loss to such extent as they are attributable to such defect. Again, the amount of compensation payable shall not exceed the amount of the value of the land.

The salient features of the GLT in Rajasthan are the following:

• Addressing the challenges of urban land title separately from rural land title

• Making GLT entirely a voluntary process. Those who want to retain their land holdings in the current form can continue to do so. Letting market forces drive demand is the principle – dematerialisation of shares from paper to electronic is a good parallel.

•Taking an incremental approach – get all government distributed land and developments under guaranteed title. Simultaneously incentivise private owners through tax rebates. The state is prepared for the process of conversion to land title to take a decade or more.
• Guaranteed land title is eligible only to owners that have converted land from leasehold to freehold.

• Creation of a new Act for guaranteed land title instead of amendments in multiple acts.

• Linking the Registration process to GLT given that the central registration Act does not allow Registration to verify ownership in transactions.

• Mapping in complete detail the processes related to title on land: change in proprietorship, change in property, financial charges and lien and inquiry on land.

• Using technology as backbone to maintain records and manage the title system. The process of actual issuance of freehold and guaranteed title will depend on the quality of the documents held by the owners – the clearer the documents, the easier the issuance of the freehold and title papers. What it allows is building a database of land records and create a negative system that in itself will create a check.

•Granting provisional title for two years that converts to indisputable title if unchallenged. A 1% DLC fee is charged that goes into an indemnity escrow.

•Designing an institutional structure that moves towards a single repository of all records,

This Bill will give a clear title to the owner and will reduce litigations in the courts. This is seen as one of the key steps towards land reforms and Rajasthan has become the first state to introduce in the country. Please find attached with this document the Rajasthan Title Bill 2016.

9

Title Insurance Policies

Title insurance policies are issued by private insurance providers after completion of a public record search (ideally covering any encumbrances on the land and any amounts due which, if not satisfied, would become a lien). A title insurance policy is not a representation that defects do not exist. Defects may be acknowledged, negotiated, and then insured against. Even if an exception is carved out from coverage, the buyer still has the benefit of knowing it exists and weighing the risk accordingly. The nature of the risk that title insurance covers is distinct from that of other insurances. In the latter insurance, the risk is assessed in regards to what might happen after the policy is issued (fire, accident, etc.), whereas with title insurance, the risk concerned is “whether or not the actual title and encumbrances differ on the date of the policy from the title and encumbrances specified in the policy in existence at the time that the policy is issued.”

On the date of the policy, the possible specific cause for later damage exists, though the claimant (who brings with him/her the actual damage) may arise on a later date. This phenomenon has clear implications for the role of the insurer. In the “common” kind of insurance, the insurer is in no way implicated in the disaster that occurs after the policy is issued. “A house burns, a man is insured or a vessel is lost, but the insurer could not in any way control the cause of the fire, of the injury or of the shipwreck.” With title insurance, however, it is the role of the insurer to accurately assess the state of the title and whether they will have to pay out directly depends on its ability and care in assessing the current title situation for a given property. “Extraneous causes have no effect upon its liability. It simply insures that in its opinion, based upon searches and legal knowledge, a title is of a certain quality and the property is subject to certain encumbrances.” A mistake on a title insurer’s part implies that they have incorrectly assessed the current state of title, not the likelihood of some exogenous event (as in the case of common insurance).

Title insurance policies therefore serve a dual function. First, they assume and spread risk, like other kinds of insurance. Second, and uniquely, they operate to eliminate risk as well. The more rigorously record searches and negotiations are completed, the fewer uncertainties and risks that will exist. Because the title insurance companies are responsible for both uncovering and eliminating defects, as well as paying out claims that may arise as a result of faulty searches, they have a clear incentive to conduct thorough searches and maintain substantial records (“title plants”), thereby reducing actual risks in transactions.

Wordings

A. **Retail**
   For a retail product, it is proposed that all insurers follow uniform standard wordings.
B. **Corporate**
   A corporate policy can have flexibility in terms of wordings.
   -Owners Policy
   -Lenders Policy
   For the above classes, wordings to be as supported by the re-insurers.

Title Insurance has lesser loss expense and greater operating expense than that of other property/casualty lines of business. Expenses incurred are for loss prevention, underwriting and loss related. In addition to known claims, title insurers unlike insurers in other lines carry a statutory liability known as the statutory premium reserve that provides ultimate loss protection for policyholders. However, it is not counted as a loss statistic.

What is covered?

- ✓ Defects in the Title
- ✓ Fraud, Forgery
- ✓ Errors in recording
- ✓ Erroneous description of land
- ✓ Tax and liens
- ✓ Invalidity of document upon which title is based
- ✓ Access to Land
- ✓ Restrictive covenants on Title limiting the use of land
- ✓ Invalidity of Mortgages
- ✓ Adverse Possession
- ✓ Unpaid maintenance fees as of policy date
- ✓ Defence Costs

What is excluded?

- ✓ Risks created, allowed or agreed by the insured
- ✓ Risks materialised at policy date known to the insured but not to the insuring company
- ✓ No loss
- ✓ Pending Litigation
- ✓ Sovereign ownership claims. Ex: Expropriation
- ✓ Claim to Natural resources: water, minerals etc.
- ✓ Actual amount/ Area of land
- ✓ Consequential Damage. Ex: Loss of future profits
- ✓ Future administrative events. Ex: Zoning, Permits etc.

Basis of sum insured

In the case of the acquisition of an existing property, for example, an office building or hotel, the sum insured (the "Limit of Indemnity") is the purchase price, which is presumed to be the fair market value. In the case of a development property, the initial Limit of Indemnity may be the purchase price of the land, and the Limit is increased periodically as the project is built out, so that at completion, the Limit is equal to the full value of the project. As units in a residential or commercial project are sold, individual policies may be offered to the unit buyers, with the Limit in each policy equal to the full purchase price of the unit.

- According to the real estate bill, all projects larger than 500 square metre in area and exceeding 8 flats has to be registered with the Real Estate Regulatory Authority and all projects registered herein require mandatory title insurance. In cases where the project is developed in phases, each phase is considered a separate project.

- It is recommended that in the nascent stages of the program, there should be a minimum predefined value of properties to be covered by Title insurance. These may include commercial and residential properties, where the entire development is insured with the potential for additional policies issued out of sale of the units.

Title Insurance protects a buyer of Land against (1) a third party claiming to have ownership of the Land, or some part of it; and (2) a third party claiming to have a right or interest in the Land.

When does a claim trigger?

The title insurers would step in as soon as the purchaser of insurance is intimated of a claim by any third party claiming its right on the land/ property. The Title Servicing Administrator would take over the entire claims defence and would be leading the entire process and be responsible for all aspects including but not limited to litigation, out of court settlement and final settlement.
Section 44 of the Real estate bill states that the appropriate government shall, within a period of one year from the date of enforcement of the act, establish an Appellate tribunal to be known as the 'Real Estate Appellate Tribunal' to hear appeals on matters listed under the Real estate bill. The tribunal should ensure timely and rightful closure of matters in order to avoid long drawn cases and piled on costs.

When does a claim become payable?

The insurer / reinsurer would defend the claim including payment of all legal and defence costs and would have the right to either settle the claim out of court at an early stage depending on the merits of the claim or defend the policy holder in court till the entire litigation is completed and the court arrives at a ruling. The Insurer pays a claim only if that legal defence is unsuccessful in court, or if the Insurer determines to reach a settlement with the claimant.

It is recommended that in the nascent stages of the program, there should be a minimum predefined value of properties to be covered by Title insurance. These may include commercial and residential properties, where the entire development is insured with the potential for additional policies issued out of sale of the units. In terms of geography, Title insurance should be focussed on regions with high potential demand such as metros and other fast developing areas.
Risk factors related to each region will vary and this is crucial.

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Types of Insurance Coverages

Following are the key types of Title Insurance policies available globally:

1. **Owner's Policy**:

This type of Title Insurance Policy is issued to the buyer of the Land. In the case of property developments, an initial policy may be issued to the developer, and upon completion of the project, additional policies may be issued to buyers of units in the project (residential or commercial).

a. **Limit of Indemnity:**

-Under Construction Property: In under construction properties, the Limit of Indemnity may initially cover just the purchase price of the unimproved land, with provision for endorsing the policy over time to increase the limit as the development is built out.

–Operational Ready Property: The limit of indemnity is the total cost of land and the cost of the structure built on it.

b. **Period:** A fixed term. We propose that the Period be 7 years. The Policy is personal to the Insured. In the event the Land is sold to a third party, the Policy lapses.

c. **Premium:** A percentage of the Limit of Indemnity. This rate will need to be determined, and there may be a range of rates, depending on the relative degree of risk of the particular transaction. There will be a one time upfront premium payment for a full period of 7 years.

Loss Payee: The Insured can assign rights of payment of indemnity under the Policy to a bank providing mortgage finance for the buyer's purchase of the land, thereby protecting the bank against claims against the Owner's title.

2. Lender Policy:

A typical lender's policy includes protection for loss or damage as a result of the clauses above, as well as: the invalidity or unenforceability of the lien of the insured mortgage upon the title; the priority of any lien or encumbrance of the lien of the insured mortgage; the lack of priority of the lien of the insured mortgage over certain statutory liens for services, labor, or materials; assessments for street improvements which have gained priority over the insured mortgage; or the invalidity of unenforceability of any assignment of the insured mortgage, provided the assignment is detailed in the policy. The lender's policy also typically includes litigation and defense costs.

Excluded from such policies are: defects disclosed by the title examination or that would have been disclosed by a physical inspection and survey, losses resulting from violations of government land use or police power regulation; defects occurring subsequent to the policy; defects known, created, assumed, or agreed to by the insured prior to the date of the policy; title to personal property; and "hidden defects not disclosed by a competent examination of public records, physical inspection of the premises or survey."

This type of Title Insurance Policy is issued to the bank or other financial institution providing mortgage finance for the purchase of the Land, and in the development case, for construction of the project.

a. **Cover:** The Lender Policy will cover the same risks as the Owner's Policy, thus protecting the Lender's interest in the collateral of the Land. Potentially, the Lender Policy also could cover issues relating to the mortgage itself, specifically the proper recording of the mortgage and the priority of the mortgage.

b. **Limit of Indemnity:** The principal amount of the mortgage loan. In development transactions, there may be a provision for endorsing the Policy over time to increase the Limit as the development is built out and the amount of the loan is increased.

c. **Period:** A fixed term, equivalent to the maturity date of the mortgage loan, but no longer than proposed term of 7 years with option for automatic renewal.

d. **Premium:** A percentage of the Limit of Indemnity. This rate will need to be determined, and there may be a range of rates, depending on the relative degree of risk of the particular transaction. The Title Insurance Premium is paid only once, upon issuance of the Policy.

3. Retail/ Residential:

a. **Cover:** The Retail policy will cover the same risks as the Owner's Policy, thus protecting the retail buyer's interest in the Land/ property.

b. **Limit of Indemnity:** In the case of the acquisition of an existing property, for example, an office building or hotel, the sum insured (the "Limit of Indemnity") is the purchase price, which is presumed to be the fair market value. In the case of a development property, the initial Limit of Indemnity may be the purchase price of the land, and the Limit is increased periodically as the project is built out, so that at completion, the Limit is equal to the full

value of the project. As units in a residential or commercial project are sold, individual policies may be offered to the unit buyers, with the Limit in each policy equal to the full purchase price of the unit.

c. **Period:** The policy will be issued for an initial fixed period of 7 years.

d. **Premium:** There will be a one time upfront premium payment for the initial policy period of 12 years. For retail consumers, the sum insured should be either the purchase value on which stamp duty has been paid. In case of existing assets, the rate can be as per the circle rate of the property. For commercial properties, it should be the full cost of land plus the full cost of construction and should be allowed to be indexed for inflation on an annual basis or declaration by the insured supported by and based on certified valuation report subject agreement by the underwriters.

As a pre-requisite to Title Insurance, a retail buyer should also have a home insurance policy. The Home insurance policy should cover both the structure and the contents of the home.

4. Lessor/ Lessee:

Policies for Lessor/ Lessee can be as issued as follows:

A Lessor or Landlord's policy covers risks to his property title and in some cases by endorsements, legal risks associated with the enforceability of the lease itself.

A Lessee or Tenant's policy covers the risk that the Lessor does not have good title to the property and by endorsement, the legal risks associated with the enforceability of the lease itself.

5. Specified Interests

Title Insurance policies do not provide a "business interruption" cover. However, specified and identified risks such as loss of rental income, additional interest expenses etc. can be covered by endorsement to a standard title insurance policy upon additional premium payment.

6. Endorsements

Endorsements can be provided for other coverages or extensions.

As an example, an Endorsement can be passed to cover a legal challenge to the property's access to a public road, and also to provide cover for rental income which the Insured may lose during the interval in which access is not available. Similarly, an Endorsement can be passed to cover a legal challenge to a building permit on a property development and to provide cover for the additional interest expense on the Insured's construction loan, resulting from construction delays during the challenge period.

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Policy Term

Title Insurance in US markets and certain other international markets is issued for perpetuity. Given the specialised nature of the product and the fact that this product would be reinsurance driven, taking a credit risk to perpetuity on international reinsurers is not advisable and to start with, in India policies will be considered only for fixed terms. A defined term additionally simplifies accounting and reserving of the policies. The committee has agreed that a fixed policy period for 7 (seven) years would be provided. The policy can be renewed by the client upon additional premium payment. Any additional extension on terms can be mutually agreed upon.

The Reasoning for a fixed policy term of 7 year is as follows:

- Reinsurance policies / treaties with a defined term will be more attractive for the reinsurers for accounting, actuarial and risk reasons. It also helps manage the risk profile.

- A policy with a defined term would be less expensive for the insured.

- Title insurance began in Europe as an offering of US title insurers. European title insurance policies, which were reinsured by the US parent insurers, were issued with undefined terms. However, the US title insurance industry issues policies to property buyers / investors ("Owner's Policies") with a term which extends for the period of ownership of the property and thus is undefined. The US title insurance industry is driven not by property buyers, but by mortgage lenders who require "Loan Policies", and loan policies effectively have a defined term which is the maturity date of the mortgage loan.

- The amount of reinsurance capacity required to support the Indian title insurance program could be very large, and in order to attract sufficient capacity (whether from Lloyd's or others), a product which appeals to the broadest range of reinsurers makes sense.

- Indian policies with a 7 year term, with automatic renewable option (to cover the 12 year statute of limitation on title challenges) would work well given that reinsurance placed in the London markets on US title insurance policies has been limited to 7 years as per the Lloyds market Bulletin. Therefore, the US title insurers have not

been able to achieve reinsurance terms which match the undefined terms of the ceded risks.

Title insurance policies issued abroad are typically for an indefinite period. In India, it would be advisable and feasible to issue Title insurance policies for a definite period at least providing cover for statute of limitation of 12 years. The same will be achieved by issuing the initial policy period of 7 years along with an option for renewal with additional premium. Upon expiry, the policy cover could be extended for a period of 5 to 7 years each time for payment of additional premium and a secondary due diligence as on the time extension.

The twelve year policy protection need is as follows:

The claim to rights and interests in relation to property on the basis of possession has been recognized in all legal systems. Uninterrupted and uncontested possession for a specified period, hostile to the rights and interests of true owner, is considered to be one of the legally recognized modes of acquisition of ownership. The prescription of periods of limitations for recovering possession or for negation of the rights and interests of true owner is the core and essence of the law of adverse possession. Right to access to Courts is barred by law on effluxion of prescribed time.
Both Section 64 & 65 are rules of limitations, the only difference being that in the former the onus lies on the plaintif to prove his possession within 12 years. While in the 2 latter it is for the defendant to prove when his possession became adverse.

Concept of 'Adverse Possession'

The concept of 'adverse possession' contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of true owner. Possession to be adverse must be possession by a person who does not acknowledge the others rights, but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show, by clear and unequivocal evidence, that his possession was hostile to the real owner and amounted to a denial of title to the property claimed. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person, in denial of the owner's right excluded him from the enjoyment of his property. Therefore, the party claiming to hold the immovable property aversely must at least go on to prove that it was in denial of the owners title and that he excluded him from the enjoyment of his property.

The maxim that "law and equity does not help those who sleep over their rights" is invoked in support of prescription of title by adverse possession. In other words, the original title holder who neglected to enforce his rights over the land cannot be permitted to renter the land after a long passage of time. The justification for the law of adverse possession is quoted as that possession is "nine points of the law".

QUALITIES FOR ADVERSE POSSESSION

- The person claiming adverse possession must hold possession by denying the title of the true owner or by showing hostility by act or words or in cases of trespasser as the case may be as against the owner of the property.

- The person claiming adversely must have requisite animus. Unless it, mere long standing possession cannot be termed as adverse possession.

- Adverse possession must be a unilateral act and there is no question of any contract or agreement giving rise of adverse possession.

- Physical possession and excluding adversary from possession must exist.

The concept of adverse possession contemplates a hostile possession i.e. the possession which is expressly or impliedly in denial of the title of the true owner to the knowledge of the true owner and claiming the title as an owner in himself by the person claiming to be in adverse possession. In other words such hostile possession shall not be secret and 4 persons in adverse possession must not acknowledge the title of the true owner but has to deny the title of the true owner. The adverse possession must be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the formers hostile action. This shows that the possession must be nec vi nec clam nec precario i.e. in continuity, in publicity and in extent. This shows that permissive possession is not hostile possession. Also mere long possession even for 100 years is not adverse possession.

The law on adverse possession is contained in the Indian Limitation Act. Article 65, Schedule I of The Limitation Act prescribes a limitation of 12 years for a suit for possession of immovable property or any interest therein based on title. It is important to note that the starting point of limitation of 12 years is counted from the point of time “when the possession of the defendants becomes adverse to the plaintiff”. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title. Article 64 governs suits for possession based on possessory right. 12 years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which bears the heading –“Extinguishable right to property”. It lays down: “At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.” Article 65 as well as Article 64 should be read with Section 27 which bears the heading–“Extinguishment of right to property”. It says “At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.” That means, where a cause of action exists to file a suit for possession and if the suit is not filed within the period of limitation prescribed, then, not only the period of limitation comes to an end, but the right based on title or possession, as the case may be,

will be extinguished. The section assists the person in possession to acquire prescriptive title by adverse possession.

In cases under Article 64 the period of twelve years runs from the date of dispossession or discontinuous of possession and if the original owner does not come forward and asserts his title by process of law within the period of limitation his right extinguishes and the person in possession acquires absolute title. In Article 65, the starting point of limitation of 12 years is counted from the point of time "when the possession of 6 defendants becomes adverse to plaintiff". Article 65 is an independent Article applicable to all suits for possession of immovable property based on proprietary title as distinct from possessory title.

SOURCES OF ADVERSE POSSESSION IN INDIAN LEGAL SYSTEM

The law on adverse possession is contained in the Indian Limitation Act. Article 65, Schedule I of The Limitation Act prescribes a limitation of 12 years for a suit for possession of immovable property or any interest therein based on title. The starting point of limitation of 12 years is counted from the point of time when the possession of the defendants becomes adverse to the plaintiff. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title.

Suits for possession based on possessory right. 12 years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which lays down as follows;
"At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished."
Section 27 of the Law of Limitation is an exception to the well accepted rule that limitation bars only the remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy. It means that since the person who had a right to possession has allowed his right to be extinguished by his inaction, he cannot recover the property from the person in adverse possession and as a necessary corollary thereto, the person in adverse possession is enabled to hold on to his possession as against the owner not in possession.

PLEADING:-

The important question is as to which is the date or approximate time when date can't be ascertained when adverse possession commences to run. The date is not only required to be leaded, but is also required to be proved. (Krishnamurthy S, Sethur V.O.V. Narasimha Setty and others (AIR 2007 SC 1788).

Important judgements in respect of the date when adverse possession commences to run, Yesu Sadhu Nimagre and others v/s. Kundalik Babaji Nimagre and another, (1977

Mh.L.J.130), the suit was for possession of an encroached land wherein, the defendant denied the title of the plaintiff to the 8 disputed strip i.e. alleged encroached land and claimed his own title it being, according to him, from his land. On measurement, the disputed strip was found from the land of the plaintiff. Till the date of measurement, none of the plaintiff and the defendant was aware whether the disputed strip of the land was from the plaintiff's land or defendant's land and as such both the parties were uncertain till the date of measurement as to the boundary between their lands. Hence, it was held that no question claiming hostile title by the defendant to the disputed strip could arise prior to the measurement. Hence at the most the date of commencement of adverse possession by the defendant was the date of measurement. Our High Court has, therefore, held that plea of adverse possession is not always a legal plea. It is based on facts which must be specifically raised to that effect in the pleading and then it is to be proved.

The Supreme Court has held in case of S. M. Karim V/S. Mst. Bibi Sakina (AIR 1964 SUPREME COURT 1254) Para 5 reads as under: Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in Bishun Dayal v/s.Kesho Prasad, AIR 1940 PC 202 the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.

MERE POSSESSION AND LONG POSSESSION – NO ADVERSE POSSESSION.

The Apex Court has held in para 22 in Annarkili V/S. A. Vedanayagam & others (AIR 2008 SUPREME COURT 346) as under: Claim by adverse possession has two elements: (1)the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, 10 not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.

PRINCIPLE OF TACKING.

To tack means “to fasten”, “to stitch together”, “to annex” or “to append”.
In view of the principle of tacking if someone derives a title from a person in adverse possession he can tack the period of adverse possession enjoyed by earlier person so as to complete his title as an owner by adverse possession for a total period of 12 years. Thus, a person can usefully claim for the purpose of his adverse possession even the adverse possession of his predecessor from whom he derives right. However, a trespasser cannot tack adverse possession of earlier trespasser, since second trespasser does not derive possession from earlier trespasser. (Gurbinder Singh & another Vs. Lal Singh & another, AIR 1965 SC 1553) Declaration of title can't be sought on the basis of adverse possession.

No declaration of title can be sought on the basis of adverse possession. Even if the plaintiff is found to be in adverse possession he cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if the proceedings are filed against person found in adverse possession he can used as adverse possession as a shield/defence. (Gurudwara Sahib Versus Gram panchayat Village Sirthala & another AIR 2014 (4).

Permissive possession is not adverse till the defendant asserts an adverse possession (AIR1954SC758, Sheodhari Rai & Others Versus Suraj Prasad Singh & Others).

Symbolical delivery of possession whether legal or otherwise would interrupt the adverse possession where the person is setting up adverse possession in a party to the execution proceedings and time under Article 65 commences from that interruption. (AIR 1966 SC 470, M.V.S. Manikayala Rao Versus M. Narasimhaswami & Others)

Mere possession even of a trespasser will not constitute adverse possession unless accompanied by open assertion of hostile title. Where a suit is filed within the period of 12 years from the point of time since the defendant claimed adverse possession, the claim of adverse possession cannot be supported (AIR 1976 Calcutta ,Premendu Bhushan Mondal Vs Sripati Ranjan Chakravarty).

An entry in the revenue record does not per-se indicate that the person in whose favor the entry has been made is in adverse possession nor is the entry any proof of adverse possession.(AIR 1973 J.&K. 53)

NO ADVERSE POSSESSION AFTER INSTITUTION OF SUIT

For constituting the adverse possession, the defendant must be in possession of the property adversely. Once the suit for possession is institute against the defendant in possession, his adverse possession is not continued thereafter.

POSSESSION IN LIEU OF MAINTENANCE

Where the person is in possession in lieu of maintenance for his life, his possession is not adverse to the person entitle after his death. The basis of this rule is that a person who has a lawful title to the possession, cannot disclaim that title and claim to be in wrongful possession. for example: where a land was given to a Hindu female in lieu of maintenance, she had an interest of life time only and on 13 alien action of the land by her, the possession of the a linee becomes adverse to the reversioner only on the death of widow, the limitation against reversioner starts from the date of possession become adverse. i.e. from the death of limited owner.

POSSESSION OF PROPERTY WHICH BELONGS TO PERSON UNDER DISABILITY

Where a de-facto guardian enters in the property of the person under disability, the possession of such person would be presumed to be that of a bailiff or agent of the person under disability and not adverse to him. For claiming adversely, the guardian ought to show that he enters in to the possession on his own behalf adversely to the person under disability. However, it is shown that he enters as a guardian, his possession will be so continued as a guardian even after the ward attain majority or remove from disability. In PadmaVuthoba Chakkayya vs. Mohd.Multani AIR 1963 SC 70. The Hon'ble Supreme Court held that, "where the owner of the mortgaged property who is a minor sells the property to the mortgagee in possession but the sale is invalid, the possession of the mortgagee which is lawful at its inception cannot become adverse to the minor as the minor is incapable of giving consent to the agreement entered in to with the mortgagee".

POSSESSION OF THE CO-OWNERS

The possession of the co-owner who is entitle as such co-owner to be in possession of the property must be referred to that title only and cannot be considered adverse to the other co-owners. If there is ouster or something equivalent to it, then the possession of the co-owner will be adverse to others. If there is no ouster or exclusion, the possession of one co-owner is not adverse tot eh others. The possession of the co-owner will be deemed to be the possession of all even if some co-owner are not in actual possession.

In Hindu Joint Family, there is a community of interest and unity of possession among all members of joint family and every co-parcener is entitle to joint possession and enjoyment of the coparcenery property. The mere fact that any of the coparcener is not joint in possession does not means that he is ousted from property unless clenching evidence.

ADVERSE POSSESSION OF TRUST PROPERTY

Any person who has accepted as a position of trustee and acquired property in that capacity cannot be permitted to assert an adverse title on his own behalf until he obtain a valid discharge from the trust with which he has clothed himself.

ADVERSE POSSESSION- VENDOR AND VENDEE

Where a person sells immovable property to another but continues in possession of the property, the vendor's possession is adverse against the vendee from the date of the sale. In such a situation the remedy of the vendee is by a suit for possession to which Art.144 of law of limitation applies and not by suit for specific performance of a contract to which to which Art.113 will apply. It is not enough that vendor is in possession even after sale, the possession must be adverse to the real owner. If there had been an agreement, the possession of the vendor would not be adverse.

Title by adverse possession cannot be obtained in case of Inam Lands, watan Land and Debater:
In Madhavrao Waman Saundalgekar & Ors. Vs. Raghunath Venkatesh Deshpande & Ors., A.I.R. 1923 Privy Council 205, their Lordships of the Privy Council dealt with a case of Watan lands and observed that it is somewhat difficult to see how a stranger to a Watan can acquire a title by adverse possession for 12 years of lands, the alienation of which is, in the interests of the State, prohibited. The Privy Council's decision was notice din Karimulla khan s/o Mohd. 16 Ishaq khan & Anr. Vs. Bhanupratap Singh, A.I.R. 1949 Nagpur 265 and the Hon'ble High Court noted non availability of any direct decision on the point and resorted to borrowing from analogy. It was held that title by adverse possession on Inam lands, Watan lands and Debater was incapable of acquisition.

Defense of adverse possession is not available to others in the cases of land belonging to tribal:-Acquisition of title infavour of a non tribal by invoking the Doctrine of Adverse

Possession over the immovable property belonging to a tribal is prohibited by law and cannot be countenanced by the court. A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to Para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogeneous reading. [Amrendra Pratap Singh vs Tej Bahadur Prajapati & Ors AIR 2004 SC 3782.

It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. It was clarified by a three Judge Bench of the Supreme Court in Kshitish Chandra Bose v. Commissioner of Ranchi, AIR 1981 SC 707 “All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded, but that is not the case here.” It thus clear, that if possession is open and exclusive and in assertion of one’s own right, the fact that the possessor did not know who the real owner was, will not make his possession any the less adverse. There are certain passing observations in some judgements of the Hon'ble Supreme Court Appeal (civil) 7062 of 2000, date of judgement :24/04/2007 & The State Bank Of Travancore vs Aravindan Kunju Panicker And Ors. on 19 March 1971, AIR 1971 SC 996; rendered by a bench of Hon'ble two Judges that the plea of adverse possession is not available if the adverse possessor does not know who the true owner is but the law declared by the larger Bench 18 decisions of the Hon'ble Supreme Court obviously prevails.

Adverse possession between co-tenants/cosharer :

In Jagnnath Mevari Vs Smt.Chandini Biln, 67 I.C. 31, the question of adverse possession arose as between cotenants and it was held that in order to establish adverse possession as between the co-sharers there must be evidence of an open assertion of a hostile title by one of them to the knowledge of others. Mere non-participation in the profits by one party & exclusive occupation by other is not conclusive.

Plea of adverse possession of an occupant in continuation of the possession against prior adverse possessor:- The doctrine of “tracking” permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous possession of the statutory period. If the adverse possession of an occupant is a continuation of the possession of a prior adverse possessor claiming title, and such occupant claims title from such prior possessor, then the possession of the occupant may be tracked to that of such prior possessor.

A suit for declaration by a person claiming ownership of immovable property by way of adverse possession is not maintainable. Bhim Singh & others Vs. Zile Singh & others AIR 2006 P & H 195.

RELOOK TO THE DOCTRINE OF ADVERSE POSSESSION

The Hon'ble Supreme Court of India, has in two recent decisions, namely, Hemaji Waghaji vs. Bhikha bhai Khengar bhai AIR 2009 SC 109 and State of Haryana Vs. Mukesh Kumar AIR 2012 SC 559, has pointed out the need to have a fresh look at the law of adverse possession.

By appropriating the word from the judgement of the High Court (Chancery Division) of England in J.A. Pye (Oxford) Ltd. vs. Graham, the Hon'ble Supreme Court in the former case, held that: "the law of adverse possession as irrational, illogical and wholly disproportionate and extremely harsh for the true owner "and a windfall for dishonest person who had illegally taken possession of the property".

In Hemaji Waghaji's case, the Hon'ble Supreme Court held on the facts that the appellant had miserably failed to prove adverse possession. However, the Court went further and made the following observations at paragraphs 34 to 36. "Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken passion of the property of the true owner. The law ought not to benefit a person who in clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose its possession only because of his inaction in taking back the possession within limitation. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession.

In State of Haryana Vs. Mukesh Kumar, it is clear that the Hon'ble Supreme Court deprecated the law of Adverse Possession in so far as it benefits a rank trespasser who had wrongfully taken possession of the property belonging to another. The observations in para 35 reinforces this view point quite clearly. A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the

European Commission. This Court in Revamma (supra) observed that to understand the true nature of adverse possession, Fairweather vs. St. Mary lebone Property Co. (1962) 2 WLR 1020 can be considered where House of Lords referring to Taylor v. Twin berrow (1930) 2 K.B. 16 termed adverse possession as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law. As against the rights of the paper owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi faceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The changing attitude of the English Courts is quite visible from the judgement of Beaulane Properties Ltd. vs. Palmer (2005) 3 WLR 554.

In both the decisions there is a hard hitting disapproval to the doctrine of adverse possession and reiterate that the law of adverse possession as archaic and needs a serious re look in the larger interest of the people.

In Gurudwara Sahib Vs Gram Panchayat Village Sirthala and Anr. The Hon'ble Supreme Court held that: "Relief of ownership by adverse possession denied holding that such suit not maintainable when appellant is in possession of suit property since 13.4.1952 and has granted decree of injunction. It obviously means that possession of appellant cannot be disturbed except by due process of law. Even if plaintiff is found to be in adverse possession, it cannot seek declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against appellant and appellant is arrayed as Affirmed defendant then it can use plea of adverse possession as shield/defense."

In this decision the Hon'ble Supreme Court stretches that the person in possession of suit property can resist interference from another who has no better title than himself and get injunction as a shield but cannot used it as a sword.

From the above discussion it is crystal clear that Limitation to challenge property can go upto 12 years as per the Limitation Act 1963. The relevant sections of Limitation Act is reproduced for ready reference and perusal:

Limitation Act 1963

Sec. 64	For possession of immovable property bases on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
65	For possession of immovable property or any interest therein bases on title. Explanation. –For the purposes of this article. – (a) Where the suit is by a reminder-man, a reversioner (other than a land lord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainder man, reversioner or devisee, as the case may be, falls into possession; (b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female the possession of the defendant shall be deemed to become adverse only when the female dies; (c)Where the suit is by a purchaser at a sale in execution of a decree when the Judgement-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgement-debtor who was out of possession.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
66	For the possession of immovable property when the plaintiff has become entitled to plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.
67	By a landlord to recover possession from a tenant.	Twelve years	When the tenancy is determined.

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Policy Structure

The policy wording would follow the same wording as made available by the reinsurers, but the following key principles should be followed:

The policy should have two structures: One for litigations and one for claim.
In India, if you admit to litigation costs, it implies admitting liability on the claim. Hence, severability of litigation and claims needs to be clearly defined.

A. **Policy Period**

In India most policies are annual in nature. Given title insurance would be purchased both for ready projects and also for new developmnets by builders , it is porposed that the initial term of the policy be limited to 7 years from the date of policy inception or sale of the property, whichever happens earlier. The policy can be renewed by the client at additional premium

B. **Premium Payment:**

An upfront minimum quote developed fees and if the client accepts the terms and conditions, then a one time full payment for the entire policy period. An option of increasing the sum insured on an annual basis to provide for inflation and increase in capital value can be provided subject to additional premium and agreement of underwriters.

C. **Title Servicing Administrator:**

A Nominated title servicing administrator to be provided upfront in the policy which is approved and managed by the reinsurer.

D. **Limit of Indemnity:**
-Land:
Normally the purchase price of the Land, which is presumed to represent the fair market value of the Land.
-Residential property:
The sum insured should be either the purchase value on which stamp duty has been paid. In case of existing assets, the rate can be as per the circle rate of the property.
-Commercial property: In development transactions, the Limit may initially cover just the purchase price of the unimproved Land, with provision for endorsing the

Policy over time to increase the Limit as the development is built out.

-Commercial Built:

The limit will be the value of purchase or the circle rate, whichever is higher.

E. Compensation:

a. Compensation is the most critical.
b. The compensation structure varies for Lenders and for Owners.
c. For the lender, it is the value which is lent.
d. For the owner, it is based on the market value (indexed to the fair value as per increase of the price. indexed to the published registered price for the locality) at the time of loss.
e. It should be ensured that the value of the property for which the title insurance is issued should not be more than the value declared by the insured at any given time on any other policy pertaining to the said property.

F. Deductible:

Given that this class of business is new and to ensure that the Insured takes adequate checks on himself also whilst purchasing the property, there will be a 10% copay on claims borne by the Insured for this class of business for all claims including the legal and defense costs for corporate clients. For Retail/ Residential clients, each company may device a suitable deductible.

G. **Brokerage/ Agency Commissions:**

Title Insurance would be classified under the miscellaneous class of business and brokerage would be as per the limits set out by IRDA on payment of commission or brokerage on general insurance businesses.

H. **Assignment**

As per the Real estate bill upon completion of the project, the promoter shall execute a registered conveyance deed in favour of the allottee along with undivided proportionate title in the common areas to the association of allottees or the competent authorities. In addition to this, the title insurance policy for which the promoter has paid up the premium will also be assigned to the allottee/ association of allottees.

I. Law and Jurisdiction

a. The law and jurisdiction would be India/ Indian courts
b. Any decision of the real etsate ... would be bening on .....

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Premium Rating

Title insurance policies are not paid in instalments, but rather as an upfront premium.
In the United states, once the policy goes into effect, it continues as long as the insured can suffer any loss from the risks covered. Therefore, a lender's policy ends when the mortgage is paid, and an owner's policy ends when the insured conveys all his interest in the property. However, in the UK and Europe, the practice is developing to issue title insurance policies with a definite term, typically ranging from 5 to 10 years.

The Premium rate reflects the country-level systematic title and conveyancing risks, and is adjusted on a case to case basis for specific risks of individual transactions.

Following are incorporated into the rate charge for both all-inclusive and risk rate premiums:

- Maintaining current title information on property local to that operation, ie; title plant
- Searching and examining the title to subject properties
- Resolving or clearing defects to title
- Policy issuance cost
- Amount retained by agents
- Marketing & Distribution costs
- Data & Administrative costs
- Insurance broking, insurance commissions and allowing for reasonable profit
- Anticipated losses & loss adjustment expenses from underwriting the risk

Premium Reserve

(To be discussed in consultation with an actuary)

Rate Regulation

Like the rates for other forms of insurance, in the United states, rates for title insurance are regulated by state governments to ensure that premiums are not excessive, inadequate or unfairly discriminatory to the public. Some states allow the insurers to set rates, but require them to publicly file their rates. However, in many cases, rates on larger commercial policies may be established by negotiation between the Insurer and the Insured. The types of rate regulation used are:

- **Promulgation** — State regulatory body sets the rates.

- **Prior Approval** — Insurers propose rates, which must be reviewed formally and approved explicitly or deemed approved by the regulatory body before they can be charged.
- **File and Use** — Insurers set rates, but they cannot be charged until the regulator has been notified and has allowed time for review and action, if necessary. In some prior-approval states, almost the same result is achieved through a deemer provision. Under a deemer, rates proposed by insurers are deemed approved if the regulatory body takes no action to disapprove a filing within a specified time, and the filer notifies the state that the rates are being deemed approved.
- **Use and File** — Insurers set rates that can be charged immediately, as long as the new rate schedule is filed with the regulatory body.
- **No Direct Rate Regulation** — Insurers set rates that can be changed at an insurer's discretion. Even in this apparent unregulated situation, a regulatory body still is charged with overseeing the title insurance industry and can question the propriety of a rate that appears to be unfairly discriminatory or otherwise violates statutory standards.

Summary

Title insurance premium rates largely are determined by operating and acquisition cost factors, as compared with property/casualty rates that are based on the actuarial determination of expected losses. The risk of title loss is a function of many factors, which can vary considerably from jurisdiction to jurisdiction and transaction to transaction. Also, the services covered by the title insurance premium vary significantly from state to state. It is difficult to compare a pure title insurance risk premium with an all-inclusive rate that covers not only the risk of loss but also the title search, examination, title opinion and closing.

On pricing/ rating the following can be adhered to:

a) **Retail/ Residential properties:**
   For retail/ residential policies, a fixed initial tariff can be agreed upon. A similar model can be referred to. Annexed with this document is the Texas title premium rate sheet and the New Jersey Title Rate manual for reference.
b) **Large Commercial properties:**
   In case of large commercial properties, where the value is greater than or equal to Rs. 2500 crores, the rate can be agreed by the reinsurers.

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Title Servicing Administrator

It is envisaged that given the specialised nature of this business for which currently Indian Insurance market has no experience, the help and support of dedicated title servicing administrator for title insurance would be required. Similar to the role of' Title Plants' in American title insurance, the Title servicing administrator in India would prepare the due diligence files and do all the work in accordance with the due diligence requirement templates for the insurer and the reinsurers, but the insurer would be responsible for underwriting and policy issuance.

Given the product will be through reinsurance support, it is important that the title servicing administrator is approved by the reinsurer upfront and it carries out the process as per the requirements of the reinsurers so that there are adequate checks in their processes and the reinsurers have adequate comfort in providing protection for title risks in India.

The title servicing administrator should purchase the following insurances:

a) Fidelity policy for its employees for a minimum limit of USD 10 mn

b) PI policy for the firm for an amount equivalent to 3 times the revenue but not greater than INR 100 cr.

The scope of the title servicing administrator will include:

a) Bringing in the best practices in Title Search

b) Data collection and maintaining records:
   Assembly of data for each file on a standardized, electronic basis, based on legal due diligence reports prepared by expert counsel. The program would create or more centres which would assemble the data for each file on a standardized, electronic basis; The title servicing administrator will maintain records of all title not only for duration of policy period but also 10 years henceforth.

c) Creating a common framework for underwriting:
   The program would deliver a complete file including all relevant data pertaining to the land, the mortgages if any along with the standard form of legal due diligence report for each transaction.

d) Conducting detailed title checks:
To facilitate underwriting, the firm will prepare these detailed check reports in a standardized format to allow underwriters to easily identify the quality of land title.

e) Tieing up with respective lawyers to undertake title checks:
Identifying and maintaining an expert panel of real estate lawyers from each relevant jurisdiction to prepare legal due diligence reports on each transaction.

f) Legal Due Diligence Reports:
To facilitate underwriting, counsel will be required to prepare these reports in a standardized, electronic format. This format will allow the Underwriters to easily identify the quality of the Land title, as well as any issues affecting title.

g) Due Diligence for Renewals:
The title servicing administrator will also carry out the task of scrutinising reports and carrying out due diligence process during title insurance policy renewals.

h) Approvals:
The format and content of these standardized files, as well as that of the rating matrix, should be approved in advance by both the Insurer and the Reinsurer, so underwriting approval can be facilitated.

i) Provide Legal expertise to support the underwriting and claims management effort of the insurer.

j) To ensure it follows the due diligence requirements as set out by the reinsurer /insurer including review of the due diligence conducted by the buyer and their lawyers.

k) Claims coordination:
Title Services Administrator will coordinate all the claims on behalf of insurer & reinsurer and will be responsible for retaining lawyers as required to defend the insured's title to minimize the loss.

l) Comfort Letters:
The title servicing administrator would provide a comfort letter based on initial due diligence to potential buyers on their recommendation for their availability of title insurance product if the client were to move forward with the transaction. This is generally required as most clients would want to know prior to the purchase or transaction if title insurance would be available for the transaction or not and considering title insurance can be made available only after the purchase of the property. Thus the comfort letter would act as an enabler to the transaction. Any such comfort letter prior to issue to a client/prospect needs to be discussed and agreed upon by the insurer/reinsurer.

m) Assignment:

The Real Estate Bill states that upon completion of the project, the policy should be assigned to the association of allottees. The title servicing administrator will provide support for any such assignment and due diligence which may be required at the time of assignment.

An important feature of Title Insurance Policies is that they not only indemnify the Insured for loss, but also provide that the Insurer is responsible for any legal expenses associated with defending the Insured's title against third party claims.

The title servicing administrator will coordinate with all lawyers on behalf of insurers/ reinsurers and have the responsibility of providing services in a consistent format with required check. In case of a claim, the same services firm will be responsible for undertaking litigation actions through lawyers. Such firms should have relevant experience of title insurance internationally and need to be approved and the process managed by the lead reinsurer/s which are providing the capacity. Given this would be approved and managed by the reinsurer the title service admisntrator will not be an IRDA regulated entity. Given the nature of business of the Title Servoce Adminstrator, they would be required to: the following insurances:

a) Purchase Fidelity policy for its employees for a minimum limit of USD 10 mn

b) PI policy for the firm for an amount equivalent to 3 times the revenue but not greater than INR 100 cr

c. have necessary international experience in title insurance industry for such business

d. Take a unique identification number from IRDA

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Reinsurance

Given the specialised long term nature of the insurance, all insurers should be required to have a reinsurance program at least for the first 5 years from the start of their operation. The local policy should follow strictly reinsurer's wordings. There should be no gap in between the reinsurer and the local policy wordings given the long term nature of the business.

Policy Tenure

Given this being a new product and the Indian land records not being at the same level as in other developed countries, the policy for initial years should be made available to the customers for a fixed period only.

This is in line with the emerging practice in the international reinsurance markets and is supported as per Lloyd's Market bulletin as below.

Lloyd's Market Bulletin

Ref: Y4886
2 April 2015

4.9.3 Title Insurance
From 1st January 2016, a new risk code, TT, will be introduced for Title Insurance (formerly coded under risk code P), defined as follows:
• TT ("Title Insurance"): This provides cover indemnifying the insured against actual loss arising from a legal ownership defect which, together with any legal costs and expenses incurred in defending the title or reaching a settlement, results in either:
i) Loss of title or usage of land and buildings or their reduction in value
ii) Loss of mortgage security (or priority for the mortgage) over the land and buildings
NB: Period of coverage is usually limited to a maximum of 7 years, but in certain circumstances Lloyd's may approve a policy period of up to 10 years.

Lloyds of London by above circular has ruled out a one-time policy to perpetuity and thus only defined term policy should be taken in India also.
Title insurance policies issued abroad are typically for an indefinite period. In India, it would be advisable and feasible to issue Title insurance policies for a definite period of 7 years should be issued. Upon expiry, the policy cover should be extended for a period of 7 years each time for payment of additional premium and a secondary due diligence done at the time extension.

The additional reasoning for a seven year policy is as follows:

a. Most of the title defects/claims are discovered in the first three years from policy attachment. Thus capturing an additional 2 years for tail risks and a benefit of another 2 years ensures that the seven year period is adequate for most cases.
b. In actual experience, most policies lapse within 7 years as a result of the Insured selling the Property.
c. By the 7th year after inception, the Policy is less relevant, because (1) the Limit of Indemnity, or amount insured, no longer reflects the value of the Property and (2) the title research is out of date, and any number of events affecting title could have occurred during that period.
d. A 7 year program is more cost economical for the consumer as it keeps the reinsurance cost minimal allowing consumer a lower price.
e. Accounting and reserving are more scientific given a finite duration for policy period.
f. It allows the insurer to conduct an update additional due diligence and update the underwriting
g. This allows the client to revise values to factor inflation at least once every seven years.

Reinsurance Policy Rating

The current reinsurance guidelines in India dated 17th May 2016 require the following:

Every Indian Insurer/Indian reinsurer/foreign reinsurer branch shall place their reinsurance business outside India with only those cross border reinsurers based on the following eligibility criteria:-

a) The cross border reinsurer is a legal entity in its home country, regulated and supervised by its home regulators/ supervisors.
b) The financial strength, quality of the management and adequacy of technical reserving methodologies of the cross border reinsurer should be monitored by its supervisory authority, in the home country.
c) The cross Border reinsurer having atleast a credit rating of BBB (with Standard & Poor) or equivalent rating of an international rating agency for immediately preceding three years.
d) The Cross Border Reinsurer should be registered and/or certified by the home regulator of the country of domicile, with which the Government of India has signed Double Taxation Avoidance Agreement.
e) The Cross Border Reinsurer having solvency margin/capital adequacy not less than as stipulated by the home regulator for previous three continuous years.
f) The past claims performance of the cross border reinsurer is found to be satisfactory.
g) Any other requirements as stipulated by the Authority from time to time.

Given that title insurance is a long term specialised product, it is prescribed that reinsurers underwriting title insurance cover for Indian risks should have a minimum rating of A+ (with Standard & Poor) or equivalent rating of any other international rating agency.
In addition, all the other provisions of the reinsurance regulations are to be followed.

Structure of reinsurance

Subject to negotiation with the reinsurer, the insurer may choose any of the following reinsurance structures:

- Proportional Reinsurance
- Excess of Loss Reinsurance
- Stop Loss Reinsurance
- Auto Facultative facility

The above program would continue to cover all risks attaching in that period and would continue to cover the risk for 7 years or the sale of property, whichever is earlier.

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Accounting, Reserving and Claims

Given the long term nature of this project, one needs to arrive at a suitable accounting and claims reserve policy for this class of business. This needs to be undertaken with a combination of right tax advisory services keeping in mind accounting standards and inputs from actuaries. A consistent accounting and reserve framework needs to be created which will be common to all insurance companies prior to approval of the product.

Premium Accounting

- All-inclusive premium- premium charge includes title search & title examination fees
- Risk rate premium- premium charge excludes title search & title examination fees
- Other title fees & service charge– includes conveyance/re-conveyance fees, foreclosure fees, title servicing administrator access fees, reinsurance fees, and exchange fees. Also, includes title search and examination fees in risk rate jurisdiction.

Underwriting

Each policy is underwritten on an individual basis and is rated according to the degree of risk associated with the Land covered by the Policy. In the case of a Lender Policy, which includes cover for the mortgage, the underwriting also will consider the degree of risk associated with the mortgage. This normally involves evaluating the procedures which the bank follows in issuing mortgages.

i. Risk Rating: The rating process will determine whether the risk is acceptable, in which event a policy may be issued, and if so, what Premium rate should apply to the Policy.

ii. Legal Due Diligence: The underwriting is based on legal due diligence prepared by expert, local real estate counsel, who are responsible for their written legal due diligence reports and / or legal opinions.

Reserving Characteristics

Title insurance companies in the United States file annual financial statements (National Association of Insurance Commissioners Form 9) with their respective state insurance regulators in accordance with statutory accounting principles. Statutory accounting principles are more conservative than generally accepted accounting principles (GAAP) because assets and liabilities are valued on a liquidation basis versus a GAAP going-concern basis. As a result, all statutory balance-sheet items are valued as though the company intended to discontinue its business and discharge all liabilities immediately,

including claims, before a final distribution of remaining assets to its shareholders. As such, only assets that consist of cash - or those that can be converted into cash in a relatively short period - generally are allowed to be admitted to a company's financial statement under statutory accounting principles. Assets that are contingent in nature, whose values are uncertain or whose collectability is questionable, are not assigned value and are classified as non-admitted assets.

In the United States, by statute, title insurers are required to carry two liability reserves: known claims and statutory premium. The known claims reserve is the aggregate estimated amount required to settle all claims submitted to the company and unpaid as of the balance sheet date. The known claims reserve is similar to the property/casualty industry's case reserve. Over the decades, most title insurers have established reasonable baseline case reserves by tracking and analyzing historical claims data. Based on these data, individual known claims reserves are estimated by a company and are modified for special circumstances. These estimates must be reviewed at least annually and adjusted as necessary.

The statutory premium reserve is a liquidation reserve, the amount of which is determined by state-mandated formulas that establish a liability reserve and a charge to income based on the amount of business written. Defined by a formula, the initial reserve is reduced gradually, with an offsetting gain to income over a stated period, generally 10 to 20 years, depending on the rules of the domiciliary state.

Since title policies have no termination date, the statutory premium reserve is required and is reduced gradually to reflect the long-tail nature of the company's liability. The statutory premium reserve is equivalent to the property/casualty industry's IBNR reserve, which also is established and held for many years for long-tail liabilities. The major difference is the statutory premium reserve is determined and reduced by prescribed state formulas, whereas a property/casualty company has more discretion in establishing and reducing its IBNR reserves.

The statutory premium reserve is considered a liquidation reserve, since state statutes also require a company to segregate investment-grade assets in an amount equal to its statutory premium reserve. If a title insurer becomes insolvent, such segregated assets can be used only to pay future claims or to purchase reinsurance to settle future claims.

These segregated assets may not be used to pay current claims, operating expenses or distributions to shareholders. This feature is unique to the title industry. In contrast, the assets of a property/casualty company are not segregated and are available to pay any claims.

The required segregation of assets to support reserves assures policyholders that the company will not utilize these funds to pay losses or other expenses in the ordinary course of business or make distributions to shareholders. This provision and its protections are part of the title insurance industry's regulatory framework, and much of the industry's financial structure is built around these statutory reserves.

Statutory premium reserve formulas vary significantly from state to state and reflect a state's underlying title framework and customs, but not necessarily its loss experience.

Under GAAP, the statutory premium reserve is not recognized as an expense and isn't included as part of a title insurer's liability. It does, however, exist as restricted equity. Title insurers that are required to file GAAP financial reports, or are part of a consolidated group of companies that are required to file under Securities and Exchange Commission (SEC) rules, normally develop an IBNR component like any other insurance line and include it as part of their GAAP liabilities.

For the property/casualty industry, IBNR is derived from actuarial predictions of future occurrences based on current loss data, and it is an unsecured liability. The title industry's statutory premium reserves are set by statute at a rate that is somewhat arbitrary. Few states, if any, currently can support the establishment or change of their statutory premium reserving levels based upon their title industries' actual loss experience. This situation has created inconsistent statutory premium reserves among companies across the country.

Additionally, since the statutory premium reserve is a charge to income, variances for individual title insurers' operating results (operating gain or loss) often reflect different statutory premium reserve requirements rather than actual differences in operations.
In addition to the statutory premium reserve and the known claims reserve, the title insurers' statutory financial statements provide for a supplemental reserve. Title insurers are required to have an actuarial certification of the adequacy of their reserves. If the actuary indicates that the statutory premium reserve plus the known-claims reserve is less than the estimated dollar value of known-plus-expected future claims - plus expected loss-adjustment expenses - the title company would have to fund the shortfall in the supplemental reserve. Since the supplemental reserve is not tax deductible, it is in the best interest of title insurers to have the statutory premium reserve as close as possible to actuarial estimates, if not actually more than the estimates.
In regions that experience significant real estate appreciation, turnover of homes is higher as owners sell their homes and use their realized gains to buy more expensive homes. Depressed regions of the country generally experience slower real estate activity as homeowners wait for the turnaround and try to avoid losing the equity in their homes.

IBNR (incurred but not reported) reserve

-Additional reserves for polices issued
-Generally set and reviewed quarterly by actuaries, with results reported to Senior Management
-Reserves are calculated by policy year (a “policy year” is the group of policies issued during a given calendar year)
-Age of a policy is measured in months from the beginning of the policy year (e.g. policy year 2015 is at “age 12” on 12/31/2015, “age 24” on 12/31/2016)
IBNR for each policy year is determined by applying several actuarial methods
Information and data used include type of business written, age of policy year, claims reported and paid to date, historical claims emergence for prior policy years, loss ratio experience for prior policy years and economic data on real estate, mortgage markets.

A more detailed framework would be provided in consultation with actuaries and international prevalent practices in such business.

Investment Income Characteristics

Important differences exist between title insurers and traditional property/casualty companies in their abilities to generate investment income. Property/casualty insurers collect premiums in advance and hold them until they must indemnify claimants for losses. These premiums constitute a large cash flow that companies generally invest in intermediate and long-term, investment-grade assets. The investment income generated is reinvested, and a company's asset base grows at a compounded rate until losses on policies materialize and are paid. Claims for the long-tail casualty business lines might take decades to appear and the accruing premiums can add significantly to a company's assets. As a property/casualty company's ratio of written premiums to surplus (equity) increases, the fraction of total assets that are financed by advanced premiums from policyholders also increases. In other words, writing property/casualty insurance can create financial leverage.

These property/casualty reserves are debt, in that if a policy is cancelled, the reserves are owed to the former policyholder, yet they bear no rate of interest. Hence, this kind of financial leverage does not burden the property/casualty insurer with additional fixed charges and, as long as rates are adequate, it provides all the conventional benefits of leverage without much of the downside risk.

Title companies collect premiums after the largest component of their costs - operating expenses - has been incurred. Title companies' expense ratio typically averages more than 90 in the United States, though the ratio is much lower in the UK and in Europe, while the property/casualty industry's expense ratio is less than 30. The title industry's higher expense ratio results in a significant reduction in available cash flow for companies to invest. Although the remainder of the title premium is available for investment, the relative percentage of premium collected and invested is significantly less than that of the property/casualty industry. As such, the title industry's financial leverage is relatively low. Title insurers use much of the premiums collected to cover the underwriting costs associated with the issuance of a title insurance policy. In contrast to property/casualty insurers, title insurers expend premium dollars before collection, and therefore do not retain most of the premium dollars before they are expended in the ordinary course of business.

On the other hand, the loss tail for title insurers is much longer than that of most other lines of insurance, and it constitutes a form of leverage where some percentage of premiums is set aside and held for future claims. The loss-tail leverage constitutes only a small percentage of the premiums, however.

Claims

An important feature of Title Insurance Policies is that they not only indemnify the Insured for loss, but also provide that the Insurer is responsible for any legal expenses associated with defending the Insured's title against third party claims. Indeed, experience with Title Insurance claims in North America, the UK and Europe demonstrates that the majority of losses are for legal expenses, not indemnity. As a result, globally, loss ratios generally are below 10%. Although large title claims are infrequent, they do occur. They can arise in the context of the transfer of upscale, single-family residential properties; single family or multifamily real estate developments; or office buildings, shopping centers or other commercial developments. Overlapping tasks and regulatory hurdles involved with these complex transactions complicate these claims. For instance, often there are entitlement issues, easement, ingress/egress issues and mechanic-lien risks associated with construction.

Title losses vary by a wide array of factors, including the:

- Local patterns and practices of land holding.
- Local record-keeping system.
- Value of the actual property.
- Length of time the property has been owned or encumbered by mortgages or liens.

The average loss experience for the title industry improved over the past twenty years due to better up-front underwriting as well as more stringent monitoring of agents to help avoid defalcations. However, once the housing boom (from 2000 through 2006) ended, there was a subsequent rapid increase in defaults and foreclosures that led to a significantly greater incidence of title claims arising out of those calendar years.
Title insurance policies abroad have no set termination date and no limitation on filing claims. However, the only fees collected are the one-time premium when the policy is issued. Thus, losses reported in any one year will affect that year's profitability for statutory accounting purposes but are not, in the main, generated by that year's business activity. By the nature of the business, most title losses are reported and paid within the first three to five years after policy issuance. However, the tail for title policy claims is at least 20 years. All insurance companies require adequate loss reserves to cover all known and future losses, as well as adequate surplus levels to provide a cushion for reserve shortfalls, contingencies and unexpected losses from underwriting and investment activities. For title companies, the potential adverse loss-reserve development is not as problematic as it is for casualty lines of business, since losses are a relatively small percentage of the total. Although large title claims are infrequent, they do occur. They can arise in the context of the transfer of upscale, single-family residential properties; single family or multifamily real estate developments; or office buildings, shopping centres or other commercial developments. Overlapping tasks and regulatory hurdles involved with these complex transactions complicate these claims. For instance, often there are entitlement issues, easement, ingress/egress issues and mechanic-lien risks associated with construction.

The term of a title policy generally ends upon the sale, transfer or refinancing of the underlying property, which means that title insurers are unable to determine which and how many of its policies still are in force. This situation arises because the title insurer is not advised of the new policy, unless that insurer is fortunate enough to have written both the new and the old coverage. This feature provides for significant differences in the nature of

claims and the reporting of financial information between the property/casualty business and that of the title insurer.

Two major types of claims reserves:

a) Reserve assigned to specific claims that have already been reported
b) Generally set by claims personnel and reviewed as needed

Loss Characteristics among Companies

Title insurance loss experience varies considerably among individual companies based on a wide array of factors, including:

1. Experience and technical competency of agents and title underwriters.
2. Quality and quantity of title documentation and evidence (both public and private) underlying the search-and-examination process.
3. Regional differences in title insurance customs and practices, underlying title insurance risks, the mix of residential sale, residential refinance and commercial business, and defalcation risks.
4. Adequacy and effectiveness of underwriting controls and agency management systems.
5. Differences in the proportion of agency business versus direct business.
6. Differences in the proportion of commercial versus residential business.
7. Differences in claim-administration processes, such as claim recognition, evaluation, timing of settlement and recoupment.

Loss Experience in the Title Industry

In the United States, the average loss experience for the title industry improved over the past twenty years due to better up-front underwriting as well as more stringent monitoring of agents to help avoid defalcations. However, once the housing boom (from 2000 through 2006) ended, there was a subsequent rapid increase in defaults and foreclosures that led to a significantly greater incidence of title claims arising out of those calendar years. In Europe, in contrast, the loss experience from title insurance underwriting has been stable at very low rates.

Title insurance policies have no set termination date and no limitation on filing claims. However, the only premium collected is the one-time charge when the policy is issued. Thus, losses reported in any one year will affect that year's profitability for statutory accounting purposes but are not, in the main, generated by that year's business activity. By the nature of the business, most title losses are reported and paid within the first three to five years after policy issuance.

All insurance companies require adequate loss reserves to cover all known and future losses, as well as adequate surplus levels to provide a cushion for reserve shortfalls, contingencies and unexpected losses from underwriting and investment activities. For title companies, the potential adverse loss-reserve development is not as problematic as it is for casualty lines of business, since losses are a relatively small percentage of the total.

Although large title claims are infrequent, they do occur. They can arise in the context of the transfer of upscale, single-family residential properties; single family or multifamily real estate developments; or office buildings, shopping centers or other commercial developments. Overlapping tasks and regulatory hurdles involved with these complex transactions complicate these claims. For instance, often there are entitlement issues, easement, ingress/egress issues and mechanic-lien risks associated with construction.

The term of a title policy generally ends upon the sale, transfer or refinancing of the underlying property, which means that title insurers are unable to determine which and how many of its policies still are in force. This situation arises because the title insurer is not advised of the new policy, unless that insurer is fortunate enough to have written both the new and the old coverage. This feature provides for significant differences in the nature of claims and the reporting of financial information between the property/casualty business and that of the title insurer.

Title losses vary by a wide array of factors, including the:

- Local patterns and practices of land holding.
- Local record-keeping system.
- Value of the actual property.
- Length of time the property has been owned or encumbered by mortgages or liens.

However, without the ability to pinpoint the exposure from in-force policies, companies are unable to translate this loss/claims information into definitive reserving data. Instead, they use assumptions and extrapolation methods that are detailed in Reserving Characteristics.

Title claims experience has an emergence pattern similar to that of a property/casualty product line with a moderate-length tail, such as personal automobile. Like personal auto, title insurance experiences a high frequency of low-dollar claims, occasionally generating a severe claim. Title underwriters have the ability to cure modest defects that occur frequently at a nominal cost. In many cases, the defect can be solved and the title loss averted simply by recording a document to correct, or confirm, the true property interests of the parties. However, a severe title defect or agent defalcation can result in a costly claim that might take years to settle.

The typical property/casualty company operates with a loss and loss-adjustment expense ratio between 70% and 80%, depending on its lines of business. This compares with a typical title company's loss and loss-adjustment expense ratio of 5% to 10%. This difference appears dramatic and leads most property/casualty-oriented analysts to assume that the business must be extremely profitable. However, the low loss and loss-adjustment expense (LAE) ratio is the result of the large expense component associated with underwriting and servicing a title product. This brings the overall profitability of title insurance, as measured by the combined ratio, more in line with property/casualty products

Much of the stability in the title industry's loss ratio stems from the relatively low risk inherent in title insurance. The bulk of title insurance claims occurs shortly after closing and represents low-dollar costs. In these instances, the title company or its agent amends or corrects the title documentation and makes any required re-filings and notifications. The policyholder might not be made aware of these technical corrections and does not receive any cash payment. Typically, the title company uses a staff underwriter or counsel to correct the problem, and the loss cost is relatively small.

Some of the most severe and difficult claims involve agent defalcations. Defalcation is the act of diverting fiduciary escrow funds without authority and without applying those funds to satisfy or pay off the existing mortgages, liens and encumbrances on the property that is the subject of the escrow. Defalcation losses are similar to catastrophe losses experienced by property/casualty insurers. Agent defalcation claims are the only shock-loss type of claim that has a concentrated geographic effect, depending upon the region controlled by the defrauding agent.

Because the title industry's loss reserves are more stable, have less-adverse development and represent lower exposure to the industry's surplus, it follows that less surplus is required to protect against unexpected or catastrophic underwriting events. This differs significantly from the experience of property/casualty companies, which require a relatively

larger surplus cushion to protect property underwriters from catastrophes or casualty underwriters from adverse loss-reserve development.

Title Insurance Profitability

The financial strength and surplus of title companies, however, might be more critical than that of property/casualty underwriters. The title industry's premium volume and profitability is highly dependent on real estate sales and mortgage-refinancing activity. Since large infrastructures of personnel and title plants must be maintained to provide title services, a title company's profitability is highly sensitive to real estate market activity. In the United States, a significant portion of a title company's cost structure is fixed, and the variable component largely is related to personnel. It is as difficult for a company to reduce its costs of doing business in the face of a downturn in real estate activity as it is to reacquire trained staff when activity rebounds. In the UK, Europe and in other markets, however, the insurers maintain much greater flexibility, and much lower expense ratios, through outsourcing of title due diligence to local counsel.

Surplus plays a critical role by providing a cushion that permits a title insurer to ride out poor real estate markets, since not all of its costs are variable and able to be reduced. Property/casualty companies have a built-in level of demand. Many property/casualty coverages are required by law or business judgment and have to be purchased annually. As with every industry, the title industry has certain inherent risks that must be understood to properly evaluate an individual company's operational strengths and weaknesses, balance-sheet vulnerabilities and volatility of earnings. The major business risks a title insurer faces are:

-Volatility of revenue;
-Expense control;
-Mix of business;
-Distribution mix (agency or direct);
-Defalcations;
-Rate adequacy and stability; and
-Legislative reform.

The title industry's revenue is more volatile than that of the property/casualty industry. Cyclicality in a line of insurance creates challenges but isn't always a negative quality, since it creates opportunities for well-managed companies. In such businesses, management must make sure the company's operating structure is flexible and responsive to both increases and decreases in revenue over a relatively short period. A well-managed company must be able to access trained staff to service business adequately when demand for title insurance is rising. Likewise, when the demand for title insurance is sharply reduced, a company must be able to downsize its infrastructure and personnel in an efficient and orderly manner so that servicing of its current orders is not interrupted. Property/casualty insurers, in general, are larger and therefore have a more difficult time fluidly adjusting expenses around macroeconomic cycles; whereas the title industry's margins have historically been more controlled.

Temporary personnel do not provide a total solution to this problem. Unskilled and part-time personnel can satisfy the need for an increase in title messengers or clerks, but they typically cannot fill the roles of more highly skilled positions, such as title searchers and underwriters. Title plans also are a significant component of fixed costs. They are important because they are the raw material of the underwriting process and require both an initial investment and constant updating of various records. Even in slow markets, title plants must be current, with each day's recordings entered into the plant's database. If a title plant becomes outdated, it will become a source of errors and lead to title insurance losses.

In the UK, Europe and in other markets, however, the insurers maintain much greater flexibility, and much lower expense ratios, through outsourcing of title due diligence to local counsel. The acquisition and maintenance of title plants gradually is becoming more cost effective as the business becomes computerized. Modern title insurance companies feature the computerization of order taking, title search and examinations, and policy issuance. These advances have permitted companies to increase premium volume capacity dramatically with only a modest increase in personnel. This capability not only enhances the profitability of a title company but also makes it easier to manage expense levels during slow real estate markets.

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Recommendations

India, as a country has a tradition and customs of independent land holding. Over the period the property owners of India have been accrue with the title by different means and modes. Such accrued of title has undergone changes from time to time in last 2500 years and presently at the stage where the title or the ownership of the property is vested upon the acquirer through composite rights occurred through different documents and operations of different laws, for example property laws, personal laws and revenue laws. The word title/ownership being subjected to different laws and having derived from different documents, it is but obvious that such title or ownership is exposed to various risks and formalities. However, there is no insurance coverage available in India that mitigates such risks, inherent to the property transactions. In many countries of the world, the concept called title insurance has become popular of late.

The Real Estate Regulation and Development Act, 2016 under regulation 16 mandates builders to compulsory purchase Title Insurance for their projects. Given that most states would be setting up real estate regulators shortly and this would be made applicable for the projects of builders, Insurers should endeavour to have this product available before the said Act comes under operation.

Regulation 16 of the Real Estate Regulation and Development Act , 2016 is reproduced herein below for ready reference:

Regulation 16.

(1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —

(i) title of the land and building as a part of the real estate project; and

(ii) construction of the real estate project. Obligations of promoter in case of transfer of a real estate project to a third party. Obligations of promoter regarding insurance of real estate project.

(2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

(3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.

(4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

In view of the above, builders/promotors must purchase title insurance as provided under regulation 16 of the Act and upon completion of the project, transfer the benefits accruing to them under the title insurance policy in favour of the property owners or association of property owners (as the case may be).

Keeping in view the nature of the product which is new in India, the working group feels privileged to make the following recommendation for smooth implementation of title insurance in India:

Policy Cover:

The recommended cover of “Title Insurance” in India may cover any risk event that has taken place prior to the risk inception date of the insurance contract. This would mean that the events that have taken place prior to the date on which the builder/promoter subscribes to the policy shall only be the events to trigger claims under the policy and the policy shall not necessarily cover the actions of the builder/promoter during the subsistence of the policy period.

The proposed product being new in India, the Insurers are expected to be highly reliant on the experience of the re-insurers in underwriting such risks as well as the covers obtained by them from the secondary market. The working group realises that internationally title insurance is a past event policy and it covers any event that has happened prior to the inception of the contact and the claim trigger is on the basis of information received during the subsistence of the policy.

Keeping in view the complications prevalent in India for determination of conclusivity of title to a property for the purpose of title insurance, it may be an appropriate model, initially to suggest that the title insurance cover should include (on an optional basis) an “Inherent Defect Liability” (internationally known as Decennial Liability Cover) to cover the inherent defects in the property caused during the course of construction for a minimum period of time, consequence to the date of transfer of possession of the property to the property owner, which would safeguard the interest of the property owner. Besides, the product may also include a home insurance to safeguard the property owners from the structure and content risk of the property they have acquired.

Cover period:

Cover period for this policy should be 7 years initially with an option for the builder/promotor to extend the cover period in the event that the construction is not over during the initial policy period. However, the option to extend the cover may be left with the Insurers subject to their underwriting principles and necessary re-insurance support from the International market.

The Real Estate Regulation and Development Act, 2016 prescribes and puts the onus on the builders/promotors for timely completion of the projects. It is contemplated that the project initiated after the implementation of the Act would get over within a period of 7 years, however in extraneous circumstance if any project gets extended, over and above the fact that the builder would be answerable to the regulator and to the property owners owners for the delay in the completion of the project, there may be a provision inserted after taking re-insurers into confidence, for extension of the policy till the time of completion of the project. However that extension should not take into consideration any extra period of coverage rather the risk inception date would continue to be the risk inception date and the events prior to such date should only be covered under the policy.

Sum Insured:

Under the prevailing laws of the country, the title to the land includes title of structures appurtenant to the land. Under such circumstances, the cover extended under the policy would include the cost of the land (at which it has been registered) and the proposed cost of the structure.

As contemplated under Real Estate Regulation and Development Act, 2016 the policy is supposed to incept before or after the acquisition of land by the builder and before the builder moves to the regulatory authority seeking necessary approval, it is assumed that cost of land acquired and the cost of construction would be known to the builder which will be disclosed to the regulator at the time of seeking project approval and it should become the sum insured for the policy. Besides, the Act recommends that this policy shall be in conjugation to an appropriate Contractor's All Risk Policy (if the builder/promoter transfers the construction to any third party). As one of the fundamental requirements of CAR policies is that the project cost has to be declared by the contractor on the basis of which the insurer can derive the project cost including the land cost to evaluate the "Sum Insured" of the policy. However when the builder transfers the assets to the property owners, the cost of acquisition for the property owners would be different from the builder. Keeping the same in view, at the time of contemplated assignment from the builder to property owners the builder/promotor may be required to pay an additional premium to bring the sum insured at par with the cost of acquisition for the property owner, to avoid situation of "under insurance".

Assignment:

As it is prescribed under section 17 in the Real Estate Regulation and Development Act, 2016 that at the time of transfer of possession from the builders to the property owners, the benefit of the policy should be assigned in favour of the property owner/association of property owners. However in India the projects are generally financed by the banks or financial institutions and while doing finance they create charge in the land and in the building in the form of appropriate mortgage. This being a cover in support of land and building, the banks and financial institutions may be facilitated to create necessary charge or receive benefit of this product to the extent of impairment to their underlying securities and mortgages are concerned. However as the asset, at the time of being transferred from the builder/promoter to the property owners should be free from any encumbrances, it would be the responsibility of the builder/promoter to remove all the assignments on the policy before it is transferred to the property owners as contemplated in the Act and new assignment is created in favour of the property owner as suggested before.

Claim Scenario:

The policy contemplated at this point in time, is a legal liability policy where the claim liability of the insurer gets trigger on a basis of a judgement given by the tribunal or any court of competent jurisdiction to the effect. As contemplated in the Real Estate Regulation and Development Act, 2016, all the disputes being adjudicated by the tribunal, it would become the ultimate authority to determine the damages or the losses to the builder arising out of any dispute, there the final claim liability of the insurer would trigger only upon the adjudication of the matter by the tribunal.

Section 44 of the Act prescribes that the appropriate government shall, within a period of one year from the date of enforcement of the act, establish an Appellate tribunal to be known as the 'Real Estate Appellate Tribunal' to hear appeals on matters listed under this Act. The tribunal should ensure timely and rightful closure of matters in order to avoid long drawn cases and piled on costs.

The insurer / reinsurer would at their discretion be allowed to step into the shoes of the insured and defend the claim and either settle the claim out of court at an early stage depending on the merits of the claim or defend the policy holder in court till the entire litigation is completed and the court arrives at the verdict. The Insurer may settle a claim only if that defence is unsuccessful in court, or if the Insurer determines to reach a settlement with the claimant. However, the rights of the insurer to admit any claim with respect to the legal and defence cost may be made independent of its admission or declination to the claim. Admission to the defence cost shall not prejudice the rights of the insurer to decline the claim at a later stage upon discovery of defence and/or violation to the policy condition by the insured in whatever form or manner. In case the insurer discovers any defence and/or violation to the policy condition by the insured in whatever form or manner at a stage consequent to settlement of claim and/or settlement of legal and defence cost, the insurer shall be entitled to recover the same from the insured.

In addition to the above, the working group considers it appropriate to recommend the following:

- Keeping in view the specialised nature of the risk, IRDAI may allow underwriting of such long term products by Indian insurers with minimal risk retention till the time, the Insurers attain confidence to the satisfaction of the Regulator that they are fully equipped with necessary data and adequate infrastructure to underwrite such risks independently.

- As an additional safeguard, the IRDAI may further prescribe that reinsurers underwriting title insurance cover for Indian risks should have a minimum rating of A+ (with Standard & Poor) or equivalent rating of any other international rating agency.

- As far as the pricing and reserving practices are concerned, the working group has come up with a model as detailed in the Report itself. Further, IRDAI may prescribe appropriate accounting and solvency practices keeping in view the performance of the product from time to time.

- The Act prescribes that the benefit of such cover obtained by the promoters/ builders shall be transferred to the home buyers at the time of transfer of possession of the house through appropriate assignment. In furtherance to the same and keeping in view the fact that banks and financial institutions do accept the projects as security against the finances made available to the promoter/ builder, the benefits of such cover may be made assignable to the mortgagors as long as such banks and financial institutions hold charge against such projects/ assets.

- The risk assumption decision of insurers underwriting similar products across the world are dependent upon pre-risk due diligence reports of expert professionals in the field. However, such expertise in India is neither standard nor regulated. In view of the same, it may be appropriate for the Insurance Regulator to prescribe standards of such practices along with appropriate code of conduct to govern such professionals.

- During the course of discussions, the working group observed that the digitisation of land records are at different stages for different states in the country. In view of the fact that due diligence of such records provide critical and vital inputs to underwriting of such risks, it is recommended that the central government should ensure that the requirement of digitisation of land records is implemented and advanced across all states.

- Further, the central government may provide a common and standard procedure for title registration and record retention for all states to ensure that registration of transfer and transmission of properties are done only after cross establishing appropriate ownership.

- The central government may prescribe a time frame within which the Real estate tribunals should adjudicate the title disputes filed with them, which apart from helping the contesting parties would largely help the insurers to manage their claim portfolios effectively.

- In order to minimise security risks inherent to the assets mortgaged to the banks and financial institutions, the Reserve Bank of India and the National Housing Bank may encourage the banks and financial institutions to demand for title insurance cover upon the assets mortgaged, while considering finance to any civil project.

- Securities Exchange Board of India may mandate Title Insurance for all Real Estate Investment Trusts to protect the interests of consumers.

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Appendix

A Rajasthan Title Bill

Rajasthan Title Bill 2016.pdf

B Working Group

Title insurance is a cover that protects a potential owner of a property against loss from defects in title. The policy is a retrospective one, where the insured is protected against losses arising from the events that occurred prior to the date of issuing the policy.

In order to provide this protection to the property owners, the Insurance Regulatory Development Authority of India constituted Working Group on Title Insurance, to study the scope of 'Title Insurance' in the Indian Market.

The Terms of Reference of the Group are as follows:-

- To study need and scope for Title Insurance
- To identify insurable risk and define compensation structure
- To suggest the design of the product and framework for assessment of risk, pricing, reserving and accounting with actuarial inputs
- To suggest policy wordings and mechanism for policy servicing
- To ascertain availability of reinsurance support in domestic and international market
- To assess availability and accessibility of local revenue records
- To ascertain status of digitization of land records
- To assess availability of legal expertise to support underwriting & claim management efforts of Insurer
- To examine any other aspect relevant to "Title Insurance".

In order to understand all aspects related to Title Insurance, the working group decided to take views of all the stakeholders like; Insurance Companies, Housing Finance Companies, Non-Banking Housing Finance Companies, Various State Urban Development Authorities, Law Firms, Builders and Promoters. To do so meetings were called at Mumbai, New Delhi, Kolkata and Hyderabad. All stakeholders gave their views on the implementation of Title Insurance in India.

Given under are the details of the meeting held at various places:

DATE	PLACE	INVITEES	DURATION
July 11, 2016	Mumbai	• Suresh Mathur, Sr. Joint Director, IRDAI- • Pankaj Kumar Tewari, Deputy Director, IRDAI • P Venkatramaiah, GM, National Insurance Co Ltd- Member • Lokanath Kar, Head Legal, ICICI Lombard • Amit Sharma, Manager Legal, ICICI Lombard • N Rama Swamy, AGM, GIC Re- Member • Vineet Singhal, DGM, National Housing Bank- Member	5 Hrs. 11 AM- 4 PM

		• Sarabjot Singh, HBD, Hannover Re- Member • Joseph Lonappan, MD, Marsh India Insurance Broker • Chetan Tulati, AVP, Legal, Indiabulls Housing Finance Ltd • Desai Sanke, MD Aspire Home Finance • Venkat Ramaiya, GM, National Insurance • Meera Saxena, DGM, New India Insurance • Ramaswamy, General Insurance • Vineet Singh, National Housing Finance	
August 01, 2016	New Delhi	• Suresh Mathur, Sr. Joint Director, IRDAI- • Pankaj Kumar Tewari, Deputy Director, IRDAI • P Venkatramaiah, GM, National Insurance Co Ltd- Member • Lokanath Kar, Head Legal, ICICI Lombard • Amit Sharma, Manager Legal, ICICI Lombard • N Rama Swamy, AGM, GIC Re- Member • Vineet Singhal, DGM, National Housing Bank- Member • Sarabjot Singh, HBD, Hannover Re- Member • Revilla Montairo, Marsh India Insurance Broker Pvt Ltd • Shruti Gonsalves, CEO, Sewagriheni • P R Shivastava, HUDCO • Mani Raj Sharma, HUDCO • Atul Kumar Rai, CEO & DG, CREDAI • Neera Saxena, DGM, New India Insurance • Ankur Nijhawan, Hannover • Vipin Kumar Bansal, DIG, DOLR MORD • A K Ralhan, Ex- Registrar, MD & CEO, CERSAI • S P Singh, Director Housing, HUPA • Rajeevan Nair, TATA Housing • Ragu Ram Raju, Senior Partner, Amer chand Mangal Das • Dinesh Gupta, Legal, CERSAI • Sanam Singh, Associate Partner, Orbit Law Services • Neeraj Bansal, KPMG • Ishtiaq Ali, Senior Partner, Orbit Law Services	5 Hrs. 11 AM- 4 PM
August	Hyderab	• Suresh Mathur, Sr. Joint Director, IRDAI-	5 Hrs.

11, 2016	ad	• Pankaj Kumar Tewari, Deputy Director, IRDAI • Jyoti Vaidya, IRDAI • P Venkatramaiah, GM, National Insurance Co Ltd- Member • Lokanath Kar, Head Legal, ICICI Lombard • Amit Sharma, Manager Legal, ICICI Lombard • N Rama Swamy, AGM, GIC Re- Member • Vineet Singhal, DGM, National Housing Bank- Member • Sarabjot Singh, HBD, Hannover Re- Member • Rafi Ahmed, MD, Almonds Insurance Brokers Ltd • Tapan Simlai, Almonds Insurance Brokers Ltd • Jagdish Bhat, Almonds Insurance Brokers Ltd	11 AM- 4 PM

Minutes of meetings are reproduced as under:

Minutes of the 1st meeting of the Working Group on the Title Insurance duly constituted by the IRDAI, held on July 11, 2016 at 11:00 hrs at Hotel Marine Plaza, Mumbai.

Chairman of the working group welcomed all the members of the committee as well as other invitees to the meeting. The list of members and invitees present at the meeting is mentioned in Annexure "A".

Consequent to our meeting in Hyderabad on 6th May, 2016, the committee member have met the invited stakeholders in a meeting in Mumbai on 15th July, 2016. The members of the committee felt that taking opinion, observation and comments of various stakeholders, directly or indirectly involved in the operation of the product would be critical for the purpose. Further the members of the committee felt that it may be appropriate for the committee to hold a few meetings at some central point to make it easier for critical stake holders such as state govt employees to attend the meetings of the committee conveniently and render their valuable inputs.

Chairman briefly mentioned about the purpose of the meeting which was mainly taking suggestions from invitees for preparing framework for "Title Insurance" in India. With this note the discussion started which is documented herein below.

At the very outset the introduction to Title insurance was given and difficulties in implementing it in India were discussed. Invitees from various housing finance companies stressed upon that defect in title is mainly with respect to the four corners of piece of land in question and further all Title defects come into the light within 3-4 years of its purchase. The land record maintained by the revenue authorities are difficult to access, in order to do

title search/ due diligence and as a general practice it is done by local Law Firms or individual Lawyers in India. The cost of Title search is very high (Rs 3500- Rs 4000/-) and the same is not affordable by the common man. Period of search is also important as far as risk prospective is concerned as lessor the amount of time searched, higher the risk involved. Title search/ due diligence done by the housing finance companies is generally for 30 years and for smaller loans it is for lessor period of 5 years. There is no accountability on the genuineness of the report provided by the Law firms or individual lawyers as of now. It was stressed upon that entities performing Title search are required to be regulated by the Government.

The Real Estate Act as of now makes title insurance mandatory for the builders and as per an option by the individual persons. In order to design a title insurance product, one needs to keep in mind, who are the consumers of Title insurance: Builders, Plot/ Flat owners and Housing Finance Companies. Based on category of the consumer mainly three types of products may come up:-

Builders Product
Bankers Product
Owners product

Design of the Insurance product has to be long term and as per the international standards.

Based on the above discussion the Committee asked Housing Finance Companies and National Insurance Company to provide the data on disputed housing loans in order to understand nature of title defects or disputes therein and how it can be covered under the Title insurance framework.

It was further decided that meeting date for Bangalore be postponed to August 01, 2016 from June 27, 2016 due to constraint of time to do research work and by all means the draft product wording will be submitted before August 10, 2016.

Meeting was then adjourned to June 15, 2016 to be held at Kolkata for further discussion with the Government officials of various Housing and Urban Development Authorities.

One of the Members of the Committee, who represents National Housing Bank (Regulator for Housing Finance Companies) observed that, it may be necessary for the Committee to seek the views of the Urban Development Ministry before proceeding for any structure on Title Insurance in the Country and offered to arrange a meeting of the Committee with the concerned Officials.

In view of the same, the members of the Committee felt that a meeting (amongst the future meetings) of the Committee may be held in Delhi to enable the representatives of the Government of Delhi, Punjab, Haryana, Rajasthan, Uttrakhand, Himachal Pradesh & Utter

Pradesh to participate in the meeting and render their opinion about the structure of record keeping (Revenue records) and the extent of their digitization in their respective states.

In order to work on the report it was suggested that Mr. Sarabjot Singh & Mt Joseph Lonappan will collect international practices on the subject. Mr P Venkatramaiah & Ms Neera Saxena were requested to work on the draft policy wordings. Mr N Rama Swamy was requested to bring in reinsurance practices on the subject. Mr Sarabjot Singh & Mr Vineet Singhal were requested to provide draft of various title deeds so that indemnity clauses can be studied. Mr Pankaj Kumar Tewari, DD, IRDAI will prepare the format for collecting statistics in respect of Loans/titles records available with HFCs. He will share this with Mr Vineet Singhal, DGM, NHB who will provide this data for all HFCs.

In order to meet the timelines, it was suggested that a draft outline of the report may be discussed in the Committee meeting on 1st August, 2016.

Minutes of the 2nd meeting of the Working Group on the Title Insurance held on August 01, 2016 at 11:00 hrs at India Habitat Center, New Delhi.

Chairman of the working group welcomed all the members of the committee as well as other invitees to the meeting. The list of members and invitees present at the meeting are mentioned in Annexure “A”.

At the very oUnion Territoryet members of the Working group committee adopted the minutes of meeting held on July 11, 2016.

Chairman briefly mentioned about the purpose of the meeting which was mainly taking suggestions from invitees for preparing framework for “Title Insurance” in India. With this note the discussion started which is documented herein below.

The introduction to Title insurance was given and difficulties in implementing it in India were discussed. Invitees from various housing finance companies and from Government departments stressed upon that common set documents needs to be identify which can prove the ownership or the Title to the Land and further acceptable to all states and stakeholders. Importance of due diligence of Title was also discussed briefly.

It was recommended by the invitees that minimum duration of policy should be 15 years as limitation under Civil Laws to challenge the Title of the land is 12 years, so any disputed if came up will be under 12 years. Further Title Insurance should be started as “Pilot Project” in 3-4 states where digitization of land records are completed. State of Maharashtra, Rajasthan, Karnataka, Punjab and Chandigarh were proposed for this. It was further proposed that as a start home insurance be made compulsory so that it can buildup a ground for the Title Insurance.
Meeting was then adjourned to August 31, 2016 to be held at Hyderabad IRDAI office for further discussion amongst the committee members.

Causes and Concerns came up during the meetings:

What is Title?

A land title is an official record of, who owns a piece of land. It can also include information about mortgages, pledges, caveats, encumbrances and easements. Land titles are held in the state's land titles register, managed by the Registrar of Titles using the Torrens system. Land registration is a process of official recording of rights in land through deeds or as title on properties. It means that there is an official record (land register) of rights on land or of deeds concerning changes in the legal situation of defined units of land. Land registration generally describes systems by which matters concerning ownership, possession or other rights in land can be recorded to provide evidence of title, facilitate transactions and to prevent unlawful disposal.

Transfer and transmission could be by will, inheritance or transfer, lease, Living license or Possessorie rights etc. Fundamentally title of the properties in India is vested with President of India. So who so ever buys a Piece of land, buys just a right to the land and that is the only reason we pay rent and property tax to the government.

What is Title Insurance?

Title insurance is a form of indemnity insurance predominantly found in the United States of America which insures against financial loss from defects in title to real property and from the invalidity or unenforceable of mortgage loans. Title insurance will defend against a lawsuit attacking the title, or reimburse the insured for the actual monetary loss incurred, up to the dollar amount of insurance provided by the policy.
Title insurance exists to protect possibly the most important investment a person will make – an investment in real estate. Title Insurance ensures that an owner will have an indemnity contract that will reimburse the party for their loss in the event that external factors assert claims against their property covered by the policy. Only through thorough examination of public records are title insurances issued but even then, there are times one cannot be absolutely sure that there are no title hazards.

It protects against risks inherent in the uncertainty of land titles by delineating known defects of title and providing coverage for claims or losses due to the others. This coverage insures against any decrease in property value which would result from a successful challenge to title, and attorney’s fees associated with litigating these title claims.

How Title Insurance Differs From Other Lines of Insurance

lines classes of property/casualty insurance.

Features	Title Insurance	PC Insurance
Protection	Against Past Events	Against Future Events
Scope of coverage	Specific	Broad
Actuarially Defined Rates	Evolving	Yes
Administrative / Acquisition Costs	High	Low
Loss Costs	Low	High
Policy Term	Potentially Unlimited	Finite
Premium (GAAP)	Fully Earned at Issuance	Earned Over Policy Term
Rate Regulation	Varies by State	High
Rate Activity	Varies by State	Tied to Inflation and Underwriting Business Cycles
Loss Frequency	Low to Moderate	High
Loss Severity	Low	Moderate
Distribution	Agents / Direct	Agents / Direct /Mass Market
Marketing Success	Based on Service	Based on Rates
Competition	Semi-Concentrated Market	Fragmented Market
Premium Collection	After	In advance
Financial Leverage	Low	High
Sensitivity to Real Estate Markets	High	Moderate

Who are the prospective buyers of Title Insurance?

The Real Estate Act as of now makes title insurance mandatory for the builders and optional for individual persons. So there are types of prospective consumers of Title insurance: Builders, Plot/ Flat owners and Housing Finance Companies.

Types of product

Based on category of the consumer mainly three types of products may come up:-

- Builders Product
- Bankers Product
- Owners product

In each case the interest of the purchaser of policy is covered. For example in the case of a lender, the coverage will be limited to the amount of loan out standing, the owner has, on payment of extra premium, the option of getting the policy endorsed for his full interest. If a valid claim arises, the lender will be paid the out standing loan and the owner the difference between his indemnity limit and the claim paid to lender.

In the case of a developer/promoter, the policy should devolve to the Cooperative Housing Society to whom the land and structures get transferred or to the individual owners who may have got undivided share of the land depending upon the applicable laws of the state/UT where the property is situated.

When an individual buys land or building, its relatively simple. When an apartment is purchased in an existing complex there are two tittles to be examined: one title to the land and second title of the seller to the apartment.

The policy shall be subject to a completed and signed proposal form which should, interalia contain a declaration warranting the correctness/truth of the information give and the affirmation made in the proposal.

Design of the Insurance product has to be long term and as per the international standards.

What should be period of title search & Scope of due diligence and process?

Scrutiny of title deeds of the property is the first and foremost exercise the advocate (as generally in India Advocates or Law Firms are conducting Title Search of the property) has to undertake. A clean and marketable title, free from all doubts and encumbrances vested with physical possession, is very important. The ownership of the title holder can be traced from the title deeds and revenue records.

It is the duty and responsibility of the advocate to safeguard the interest of his client.

The advocate shall thoroughly search and scrutinize the marketable title of the property and genuineness of the documents. He shall make it very clear to his client the extent of risk involved in the transaction and how to make payments to the seller. The origin of the property is very important to trace the title of the property. It is otherwise called 'Root of Title'.

Documents covering a minimum period of 30 years must be scrutinized. In the case of Adverse Possession against individuals or Conflicting Claims (other than mortgage) against individuals, documents covering a minimum period of 12 years must be checked. As regards the period of limitation against the Government, documents covering a minimum period of 30 years must be checked. As per the Section 90 of the

Indian Evidence Act 1872, a document executed 30 years before is presumed to be valid.

After ascertaining the origin of the property, it should be followed up by methodical examination of events and further transaction, if any, in an uninterrupted and sequential manner, involving the previous owners and the present owner of the property. Here, the advocate has to very carefully look into all aspects from various legal angles as to how the property was transferred from the previous owners to the present owner. Such a transfer may be by possession, inheritance, settlement, will, sale, mortgage, release, gift etc., involving such intermediate parties. For supporting such a transaction, the advocate has to carefully examine the title deeds and other supporting documents like revenue documents and other records. Also, verification of the identities of the names of the parties and their family connection, wherever they are relevant, and proceedings, if any, involving the parties before any court of law, other legal forums and authorities including revenue authorities, must be done.

The nature of various statutory clearances obtained from the relevant authorities like revenue, land reforms, income tax, etc., required for completing the transaction must be informed to the parties. In case of purchase of agricultural land, various clearances must be obtained before executing the deed of conveyance.

The 'present status' of the property is the most important point to be examined. The advocate has to find out who is the present owner, how he got the property, what title deeds and supporting documents he is holding, is it his ancestral property or self acquired property and who are his legal heirs. If the legal heirs are majors in age, the owner must ensure their presence while executing the deed of conveyance. If they are minors in age, the owner has to get the permission from the court before executing the deed of conveyance. In some cases the owner may conceal the fact of legal heirs. To

find out the truth, the advocate must ask the owner to produce either the succession certificate or the family genealogical tree issued by the revenue authority. If necessary he must see the family ration card for further clarification.

The advocate must find out in whose name the khatha stands, whether the khatedar possesses up-to-date tax paid receipt in his name and up-to-date encumbrance certificate to establish his right, title and Interest in the property. The advocate has to check the encumbrance certificate covering a relevant period, generally above 12 years up to 30 years from which it would be known what kind of charge has been created on the property and whether such an encumbrance is subsisting or not. Municipal and other revenue authorities too maintain records as to who is in possession of the property, what is the amount of tax payable on the property and up to what period tax has been paid. 'Present status' is one of the important factors, to establish the present ownership of the property.

After thoroughly scrutinizing the documents, the advocate has to check up all documents, for legality with the concerned departments just to ensure that the documents are genuine, that they originated from the departments and that they are not fakes. In addition, the advocate has to find out from the department whether there is any attestation notifications or proceedings against the present owner. In case of buildings it must be ensured that it has not been served with demolition notice.

The identity of the property must be checked on the spot. Measurements mentioned in the documents must tally with actual physical measurement of the land available on the property. It must also be ensured that there is no encroachment on the property. In case of encroachment, the measurement of the available land must be recorded and this must be mentioned in the deed of conveyance. The boundaries mentioned in the schedule surrounding the property must be checked physically.

Though paper notification is optional, it is always advisable to notify in a leading local newspaper about the buyer's intention to purchase the property. This is done to safeguard the interest of the purchaser. Even after examining the various documents, the Advocate may not be able to find out whether the property is truly free from any claim or not. A paper notification will beget response from a genuine claimant. Therefore, paper notification is the best way to avoid legal problems for the purchaser at a later date.

In case of a vacant site, the purchaser may, with the permission of the owner fence the property with barbed wire or he may construct a compound wall and put a signboard, if necessary, to intimate the ownership of the property. A mere suspicion of fraud that cannot be made out will not make the title doubtful.

Verification of title is very important. It is not merely tracing the title on the record but also examination of the genuineness of the records, identification of the property, notification in a newspaper and physical possession of the title of the property.

What are the primary risk, one contemplates as an inherent with the title of the properties that can impair any of the rights that forms a Title and/or Title as a composite right?

The policy may define in generic terms what would constitute a defect in title. Examples:

1. Defective Land Recording System
2. Sign off was not taken from one of the heirs to the property either immediate seller or before
3. An encumbrance was created on the property before purchase
4. Fraudulent documents.
5. Digitization of Land Record in the regional language

What should be adequate insurance coverage to the impairments of the rights one perceives in consequence of defect in the Title?

The policy shall have separate limits for legal costs and for Insured's loss. The later (the sum insured) could be the market value of the property (registered values are as per government valuation charts for stamp duty and are less than market value). Escalations could be offered as a rider.

The sum payable are:

1. legal costs up-to the limit
2. cost incurred in regularization or rectification of title or the sum insured in case of irretrievable loss of title.
3. In case of lenders policy the amount of loan outstanding.

The Insured shall defend the title and is bound to accept any advice given by Insurer in this regard. Insurer shall have the right to take over the defence.

Insurer is entitled to any subrogation rights. If there is fraud by developer and the claims have arisen after the policy devolved to the allottees, the Insurer may not be able to resist claims but is entitled to civil and criminal action against the developer.

C1 New Jersey Rates Manual

NJ RateManual06-15-201

C2 Texas Title Premium Rates

TEXAS TITLE INSURANCE BASIC PR