

立法會
Legislative Council

LC Paper No. CB(1) 2147/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/00/2

**Bills Committee on
Land Registration (Amendment) Bill 2000**

**Fourth meeting on
Wednesday, 28 March 2001, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Albert CHAN Wai-yip (Chairman)
Hon Margaret NG
Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP
Hon Mrs Miriam LAU Kin-yee, JP
Dr Hon TANG Siu-tong, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Abraham SHEK Lai-him, JP
Hon LAU Ping-cheung

Public officers attending : Planning and Lands Bureau

Mr G F WOODHEAD
Principal Assistant Secretary (Buildings)

Land Registry

Mr A G COOPER
Land Registrar

Mrs Alice LEE
Registry Manager

Ms May LEE
Deputy Principal Solicitor

Mrs Jenny WONG
Change Manager

Department of Justice

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Ms Rayne CHAI
Government Counsel

Invitation by attending : The Law Society of Hong Kong

Mr Henry YIP
Representative

Mr Terry YEUNG
Representative

Clerk in attendance : Miss Becky YU
Chief Assistant Secretary (1)1

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mrs Mary TANG
Senior Assistant Secretary (1)2

I Confirmation of minutes of meeting
(LC Paper No. CB(1) 903/00-01)

The minutes of the meeting held on 13 February 2001 were confirmed.

II Meeting with the Law Society of Hong Kong
(LC Paper No. CB(1) 733/00-01(03) -- Submission from the Law Society of Hong Kong)

2. Mr Terry YEUNG presented the views of the Property Committee (the Committee) of the Law Society of Hong Kong (LS) on the Bill.

Copy “stopped deeds”

3. Mr YEUNG noted that under the present practice, the Land Registry would return stopped deeds to the solicitors concerned for correction or clarification without keeping copies of these deeds because they were not public documents and registration formalities had not been completed. As the affected parties would have no means to ascertain the contents of such deeds and the extent that their properties were affected, they were not in a position to apply for the removal of the stopped deeds. The affected parties might also have difficulties in obtaining copies of the stopped deeds which were lodged long ago or which had been submitted by a private party. The Committee was of the view that the Land Registry ought to be under a statutory duty to make a copy of each and every document which was withheld from registration so that the public could have access to it. The Committee also requested that the definition of public document be revised to include any document that was submitted to the Land Registry for registration.

Rectification of errors in land registration

4. The Committee considered that the Land Registry had adopted a double standard in the rectification of errors in the entries of the Land Register. While the Land Registry would refuse to vacate any entry that was maliciously or mistakenly registered made by solicitors and require all parties to the document to sign in order to rectify such an error, it would only require a memo for errors made by the Land Registry or other Government departments. The Committee suggested that an independent authority be set up to adjudicate whether a deed was maliciously or mistakenly registered.

Naming of lots

5. The Committee noted that there had been contentions in the past between the Land Registry and conveyancing solicitors on the naming of lots. Since some lots were renamed by the Land Registry, deeds prepared using the former lot names were not accepted by the Land Registry and were stopped. The Committee considered that there was a need for the Land Registry to consult and notify the parties concerned in renaming the lots to facilitate the registration process.

Removal of stopped deeds

Regulation 15(7)(a) - Persons affected

6. The proposed regulation 15(7)(a) of the Land Registration Regulations (the Regulation) provided that where the Land Registrar proposed to exercise his power of removal of stopped deeds, the person who delivered the instrument should be given an opportunity of making written submissions. The Committee considered that apart from the person who delivered the instrument, the owner and the mortgagee as well as all persons having an interest in the affected property should also be notified. The proposed arrangement would serve to provide assurance that the affected parties would

be notified of any removal or otherwise of the instruments lodged with the Land Registrar.

Regulation 15A(1) and 15A(6) - Application to Court

7. The word “Court” was defined in Regulation 15A(6) as limiting to District Court and Court of First Instance. The Committee was uncertain whether this definition was intentional in the sense that an applicant should not be given the right to appeal against a decision of the District Court or the Court of First Instance. If that was the case, the Bill must contain clear provisions in order to exclude the jurisdiction of the Court of Appeal and/or the Court of Final Appeal over an appeal against a decision of the “Court” under regulation 15A(6). If the legislative intent was not to limit such right of appeal, the Committee proposed that the word “Court” should not be defined. Otherwise, an order made by the Court of Appeal or the Court of Final Appeal could not be treated as an order under Regulation 15A(3).

8. The Committee also wished to draw members’ attention that the word “Court” as appeared in sections 19 and 20 of the Land Registration Ordinance (Cap. 128) (LRO) was not defined. Therefore, if a definition was desired under the Regulation, the Committee proposed that the definition in Order 1, Rule 4 of the Rules of the High Court ought to be adopted for the sake of consistency.

Regulation 15A(5) - Priority of documents

9. The Committee considered that regulation 15A(5) was unclear about the priority of documents. While section 5 of LRO provided that instruments registered within one month after the time of execution would be entitled to priority, regulation 15A(5)(b) provided that an application made under regulation 15A(1) “shall not affect a disposition of any estate or interest in land registered under the Ordinance at any time before the originating summons or petition concerned is registered under the Ordinance.” It was unclear as to whether the word “disposition” referred to an instrument, an act or an agreement to such a disposition and how priority of documents would be affected by the proposed provisions under the regulation. The Committee considered it necessary to rectify the inconsistency in according priority of documents under section 5 of LRO and regulation 15A(5)(b).

Regulation 15A - Mode of application to Court

10. The Committee noted that there were differences in the mode of application to Court as provided in section 20 of LRO and regulation 15A. While the former provided that an application to vacate a lis pendens might be made in a summary way by petition or motion in court or by summons in chambers, the latter provided that a person aggrieved by a decision could have the decision reviewed by making an application by originating summons or petition to the Court. The Committee failed to appreciate why there should be different mode of application to Court.

11. Mr Henry YIP added that the Committee was concerned that title deeds returned after registration could be lost in the post and suggested that solicitors be notified to collect the deeds within a period of 30 days. In the event that solicitors failed to collect the deeds, the Land Registry could then arrange to send them by post.

12. Miss Margaret NG requested and the representatives of LS agreed to provide a written submission on the views put forward. The Land Registrar (LR) said that some of the concerns raised by the Committee had in fact been addressed by the Land Registry and he would provide a response upon receipt of the written submission.

(Post-meeting note: The written submission from LS was circulated to members under LC Paper No. CB(1) 1026/00-01(02).)

III Meeting with the Administration

Follow-up to meeting on 20 February 2001

(LC Paper No. CB(1) 733/00-01(04) -- List of follow-up actions arising from the discussion on 20 February 2001
 LC Paper No. CB(1) 733/00-01(05) -- Administration's response to CB(1) 733/00-01(04))

13. Referring to item 8 of LC Paper No. CB(1) 733/00-01(04), Ms Audrey EU asked if the Administration had discussed with LS on the types of registrable certified copy documents which were acceptable to the Land Registry. The Deputy Principal Solicitor (DPS) said that the current list of registrable certified copy documents of the Land Registry was drawn up based on an earlier list agreed with LS in 1991. Ms EU considered it better for the Land Registry to further consult LS on the list as well as other issues being raised regarding the removal of stopped deeds.

14. On certification of copy documents, DPS said that there was no prescribed manner of certification by the issuing authorities. The Senior Assistant Law Draftsman (SALD) added that consideration would be given to providing in the Bill the manner of certification such as "certified to be a true copy" or words to the similar effect or the use of an official seal.

Follow-up to meeting on 6 March 2001

(LC Paper No. CB(1) 904/00-01(01) -- List of follow-up actions arising from the discussion on 6 March 2001
 LC Paper No. CB(1) 904/00-01(02) -- Administration's response to CB(1) 904/00-01(01)
 LC Paper No. CB(1) 904/00-01(03) -- Booklet entitled "Understanding the Computerized Land Register" provided by the Administration)

15. Referring to item 3 of LC Paper No. CB(1)904/00-01(02), the Chairman asked if it was possible to separate stopped deeds into different categories so that deeds

withheld for unjustifiable reasons could be expeditiously removed in order not to affect future transactions. DPS said that there were technical difficulties in differentiating title deeds. Having considered the matter, the Administration agreed to reduce the period for removal of stopped deeds from 12 months to 6 months.

16. On the Administration's reply at item 4 of LC Paper No. CB(1)904/00-01(02) that legal actions instituted against the person concerned who had defaulted in repayment of loans under the loan funds by the Agriculture, Fisheries and Conservation Department amounted to remedying of civil wrongs which fell within the exemption "remedying of unlawful or seriously improper conduct" in section 58(1)(d) of Personal Data (Privacy) Ordinance, Ms Audrey EU was concerned that similar exemptions for search would apply for debts owed to private parties, and that a creditor might apply to LR for a land search in the name of the debtor for the purpose of recovery of debt in remedying a civil wrong. LR said that the Land Registry would not approve land searches for such purposes. SALD added that debt collectors had no right of access to data even if the situation fell within the exempted condition.

17. On charges for land search, the Registry Manager advised that the charge for a simple search was \$15 while the charge for a detailed background search was \$30. At present, application for search could not be made through the Internet but this would be made available upon the implementation of the Central Registration System which would make searches simpler and more user-friendly. The Panel on Planning, Lands and Works would be briefed on the details of implementation and the timetable in due course.

18. Noting that this was the last Bills Committee meeting attended by LR before his retirement, the Chairman thanked LR for his co-operation in the past and wished him all the best on his retirement. Miss Margaret NG wished to record her personal appreciation for LR's assistance in the Bill and many other matters.

19. Members agreed to continue discussion at the next meeting scheduled for 20 April 2001 at 8:30 am.

(Post-meeting note: The next meeting was subsequently postponed to 4 May 2001.)

20. There being no other business, the meeting ended at 9:20 am