

立法會
Legislative Council

LC Paper No. CB(1) 2175/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/00/2

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

**Fifth meeting on
Friday, 4 May 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 Mrs Miriam LAU Kin-ye, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP

Public officers attending : Planning and Lands Bureau

Mr G F WOODHEAD
Principal Assistant Secretary (Buildings)

Ms Peggy CHAN
Assistant Secretary (Buildings)³

Land Registry

Mrs Alice LEE
Acting Land Registrar

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

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 meetings

(LC Paper No. CB(1) 924/00-01 -- Minutes of the meeting held on
20 February 2001

LC Paper No. CB(1) 1031/00-01 -- Minutes of the meeting held on
6 March 2001)

The minutes of the meetings on 20 February and 6 March 2001 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 1109/00-01(02) -- List of follow-up actions arising
from the discussion on
28 March 2001

LC Paper No. CB(1) 1109/00-01(03) -- Administration's response to
CB(1) 1109/00-01(02))

Administration's response to concerns raised by the Law Society of Hong Kong

(LC Paper No. CB(1) 1026/00-01(01) -- Copied letter dated 28 March 2001 from the
Land Registrar to the Law Society of Hong
Kong

LC Paper No. CB(1) 1026/00-01(02) -- Submission from the Law Society of Hong Kong dated 12 April 2001)

LC Paper No. CB(1) 1109/00-01(01) -- Administration's response to CB(1) 1026/00-01(02)

2. Referring to Annex A to LC Paper No. CB(1)1026/00-01(01) which set out the proposed list of certified copy documents acceptable for registration, Ms Audrey EU enquired whether it was appropriate to make reference to the "person who may certify copy of instrument" when this was meant to refer to the department. The Senior Assistant Law Draftsman (SALD) said that under section 3 the Interpretation and General Clauses Ordinance (Cap. 1), the definition of "person" included any public body and any body of persons, corporate and incorporate or unincorporate. While agreeing that the word "person" would cover Government departments, the Assistant Legal Adviser 1 (ALA1) suggested that it would be more appropriate for the Administration to name the person in charge. The Deputy Principal Solicitor of the Land Registry (DPS) explained that as copy documents would be certified by staff of the department, who might not be acting on behalf of the department head, it would be more reasonable to name the department rather than the department head.

3. The Chairman asked if it was possible to include in the list both the person in charge and the person who was in a position to certify the copy documents. SALD advised that the manner of certification remained an internal administrative decision of the departments concerned. Noting that it was not common to name a department as a "person", Miss Margaret NG said that the Administration might need to give further thoughts in this respect, particularly when the relevant subsidiary legislation was still at its drafting stage. Her views were shared by Mr IP Kwok-him. SALD agreed to review the wording.

Admin.

4. As to whether the Administration would include in the proposed list of acceptable copy documents "other instruments such as letters, notices if the original was not recoverable" as requested by the Law Society of Hong Kong (LS), DPS answered in the negative as the instruments referred to were not defined documents. However, the Land Registry would, if appropriate, issue a Land Registry Circular Memorandum to cover these instruments.

5. Referring to item 3(c) of LC Paper No. CB(1)1109/00-01(01), Mrs Miriam LAU enquired about the more common types of certified copy documents which would be recommended for inclusion in the proposed list. The Acting Land Registrar (Ag LR) said that the Land Registry had gone through the different types of certified copy documents submitted in the past and had agreed to include the more common types such as the letter of determination or rescission of an agreement for sale and purchase, notice of discontinuance of court action, and notice of severance of joint tenancy. Committee Stage amendments (CSAs) would be proposed accordingly. At the request of the Chairman, the Administration undertook to provide a copy of its response at LC Paper No. CB(1)1109/00-01(01) to LS for consideration and comments. In particular, LS should be consulted on the proposed list of certified copy documents acceptable for registration.

Admin.

6. As to whether instruments such as a general will which might not be directly related to a property would be accepted for registration, Ag LR advised that this would depend on the contents and merits of the instruments. Mrs LAU said that there was a need for the Land Registry to work out with LS a clear set of guidelines on the acceptability of documents for registration.

7. Ms Audrey EU was concerned about the arguments between LS and the Land Registry over the acceptance of copy documents. Ag LR said that solicitors were well aware of the copy documents which were acceptable for registration and there should not be any arguments in this respect. As regards re-registration of documents, Ag LR pointed out that this fell outside the scope of the Bill.

8. Mr IP Kwok-him enquired about the rationale behind the split between the District Court and the Court of First Instance as set out in regulation 15A(6). SALD explained that this was meant to ensure that appeals in relation to lower-valued properties of rateable value not exceeding \$240,000 were brought before the District Court.

9. Members then proceeded to examine the Bill clause by clause.

Clause 4 - Schedule

10. ALA1 noted that sections 7 to 46 of the Schedule of the Bill proposed to repeal various references to district land offices or district land registry and substituting “Land Registry” in the Antiquities and Monuments Ordinance (Cap. 53) and its subsidiary legislation. A CSA would be introduced to include a similar amendment to the Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2000 (L.N. 368 of 2000) published after the introduction of the Bill. She said that as the definition of Land Registry had been amended to read as “Land Registry established under the Land Registration Ordinance”, the Administration might need to explain how it could retain the New Territories Land Registries to provide cross-district search services. DPS explained that the Land Registry was the name of the department for the registration of instruments affecting land. After the implementation of the Central Registration System (CRS), the Land Registry would have offices in the Queensway Government Offices and in the New Territories. The latter would be called the New Territories Search Offices of the Land Registry and would provide cross-district searches and owners’ incorporation services. There was no need for these offices to be explicitly named in the legislation. SALD added that in terms of the legislation, there would be only one Land Registry as all references to District Land Registries in Land Registration Ordinance (Cap. 128) (LRO) and the Land Registration Regulations would be repealed.

Section 62 of Schedule - Plans

11. Members expressed concern that the affected parties might not be able to refer to the original plans if these were destroyed after imaging. Ag LR explained that the instruments together with the attached plans would be returned to the lodging parties

upon completion of the registration process which included colour imaging. The Land Registry would not keep any copy of the instruments nor the plans. Consequent upon members' concerns about the slight degree of variance between the old copy plans and the imaged copies, the Administration decided that existing plans kept by the Land Registry would not be destroyed after imaging but would be stored in the Public Records Office. However, as the imaged copies of new plans would be exactly identical to the originals, there was no need for the Land Registry to retain the originals which would be returned to the lodging parties. For plans which were larger than A3 size, the imaging process would take a longer time and would be carried out by an external contractor. To facilitate processing, the lodging parties would be requested to provide the Land Registry with a duplicate copy of the plans. In this way, the entire instruments (including the original large-size plans) could be returned to the lodging parties without delay once the registration was completed. The duplicate plan would then be destroyed after colour imaging. The Change Manager of the Land Registry (CM) added that the colour-imaged copies of plans which were made available to the public would be in the exact size of the original plans.

Admin.

12. ALA1 however drew members' attention to section 70 of the Schedule regarding the new regulation 18A of the Land Registration Regulations which stated that where a record had been made by colour imaging, the Land Registrar might destroy or otherwise dispose of the copy in such manner as he thought fit. To allay members' concern about the unavailability of the original plans, Miss Margaret NG suggested that the originals should not be disposed of unless and until the Administration was completely satisfied with the quality of the colour-imaged plans. The Chairman requested and the Administration agreed to consider providing storage for the original plans after these had been recorded by the imaging method.

13. Mrs Miriam LAU asked if back-up files for plans would be made available in the event of breakdown of the computer system. CM said that one of the most important tasks of the consultants employed to oversee the information technology aspects of CRS was to conduct a Security Risk Assessment for the new Integrated Registration Information System (IRIS). The assessment, which was completed in early 2000, confirmed the need for a comprehensive programme of measures to ensure the security of the registration records. These measures included best practices such as the use of firewalls and intrusion detection system to control network traffic. The Administration had already endorsed these measures and had included them in the tender documents. The adoption of such measures would enable IRIS to meet the highest international security requirements. It would provide disaster recovery and ensure back-up facilities to be operational within a short time frame. A duplicate set of the imaged copies in the form of optical discs would be separately kept by the Land Registry. Ag LR added that disaster recovery drills would be conducted annually by the Land Registry to test out the back-up facilities.

14. Mrs Miriam LAU said that apart from providing back-up facilities, there was a need to ensure that IRIS was not corruptible and would not be susceptible to unauthorized entry/amendment. CM said that an advanced system architecture would be adopted and tenders for proposals to further improve the system would be invited.

The Chairman remarked that the respective Panels be briefed on the progress of implementation of IRIS.

Section 63 of Schedule - Size and form of instruments

Admin. 15. In response to Miss Margaret NG, SALD agreed to refine the drafting of regulation 9(1)(b)(i)(A) to make it easier to read.

16. Regarding the manner of certification of copy documents, SALD said that the proposed CSA to regulation 9(1A)(a) which stated that “the copy is certified, by the person or in the manner, if any, specified opposite thereto in column 2 of that schedule” would leave the manner of certification open so that this could be specified in the schedule at a later stage.

17. Members noted that a consequential CSA would be introduced to delete the phrase “or register card” in regulation 11.

Section 67 of Schedule - Regulation substituted

18. Members noted that LS had raised concerns about the differences in the mode of application to Court as provided in section 20 of LRO and regulation 15A. While section 20 provided that application to vacate a lis pendens might be in a summary way by petition or motion in court or by summons in chambers, regulation 15A 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. Mrs Miriam LAU queried the rationale for omitting from regulation 15A the application for a review of decision by summons in chambers, which was a simpler and more cost-effective procedure. Ms Audrey EU said that according to a ruling by a former judge that it was considered not appropriate to handle land disputes by way of summons in chambers. SALD advised that regulation 15A had already been cleared with the Judiciary. He nevertheless agreed to relay Ms EU’s concern about the mode of application to court under regulation 15A to the Judiciary and the Bar Association.

Admin.

19. Members agreed to continue discussion at the next meeting scheduled at 8:30 am on 21 May 2001.

20. There being no other business, the meeting ended at 10:30am.

Legislative Council Secretariat

9 October 2001