

立法會
Legislative Council

LC Paper No. CB(1) 1860/01-02
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/00/2

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

**Eighth meeting on
Monday, 13 May 2002, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Albert CHAN Wai-yip (Chairman)
Hon Margaret NG
Hon CHAN Yuen-han, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Andrew WONG Wang-fat, JP
Hon Miriam LAU Kin-yee, JP
Hon IP Kwok-him, JP

Public officers attending : Planning and Lands Bureau

Mr Parrish NG
Principal Assistant Secretary (Buildings)

Ms Peggy CHAN
Assistant Secretary (Buildings)3

Land Registry

Mr Kim SALKELD
Land Registrar

Mrs Alice LEE
Registry Manager

Ms May LEE
Deputy Principal Solicitor

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 previous meeting

(LC Paper No. CB(1) 613/01-02 — Minutes of the meeting held on
19 November 2001)

The minutes of the meeting held on 19 November 2001 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 1582/01-02(01) — List of follow-up actions arising
from the discussion on
19 November 2001

LC Paper No. CB(1) 1582/01-02(02) — Administration's response to
CB(1) 1582/01-02(01)

LC Paper No. CB(1) 1702/01-02(01) — Mark-up copy of the latest draft of
Committee Stage amendments)

2. The Bills Committee deliberated (Index of proceedings attached at **Annex A**).

3. The Administration was requested to -
 - (a) consult the Hong Kong Bar Association (BA) on the proposed amendments to regulations 15 and 15A regarding stopped deeds and the propriety of their inclusion in the Regulation rather than the principal Ordinance;
 - (b) proceed to introduce Committee Stage amendments to delete section 67 of the Schedule to the Bill and make consequential amendments if a reply from BA was not forthcoming within two weeks' time so as not to delay the passage of the Bill; and
 - (c) provide an undertaking that it would follow up the issue of stopped deeds at a later stage.

III Any other business

4. There being no other business, the meeting ended at 11:52 am.

Legislative Council Secretariat
28 May 2002

**Proceedings of the meeting of the
Bills Committee on Land Registration (Amendment) Bill 2000
on Monday, 13 May 2002 at 10:45 am.
in Conference Room B of the Legislative Council Building**

| Time | Speaker | Subject(s) | Action required |
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| 000000 - 000159 | Chairman | Confirmation of minutes of meeting on 19 November 2001(LC Paper No CB(1)613/01-02 | |
| 000159 - 000340 | Miss Margaret NG | Concerned about the proposed amendments to regulations 15 and 15A. Whether the amendments were within the original scope of the Bill and whether such had altered the existing law with regard to the priority of registered instruments under section 3 of the Land Registration Ordinance(LRO) | |
| 000340 - 000551 | Administration | Proposed amendments to regulations 15 and 15A of the Land Registration Regulations (the Regulation) were consistent with the objectives of the Bill which aimed at providing certainty of law. They were made in consultation with the Law Society of Hong Kong (LS) which considered that there should be set guidelines on the operation of the system rather than relying on the Court's decision | |
| 000551 - 000624 | Miss Margaret NG | Whether the amendments were within the scope of the Regulation | |
| 000624 - 001251 | Administration | Reference made to sections 3 and 5 of LRO governing the priority of registered instruments. Amendments to regulation 15A would only apply on very rare occasions upon the occurrence of all of the following events - (a) where the Land Registrar (LR) had decided to remove the particulars of a stopped deed; | |

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| | | <p>(b) the application was made out of time;</p> <p>(c) the Court exercised its discretion to allow the application for review to be made out of time; and</p> <p>(d) the Court made a decision on whether the particulars of the stopped deed should be reinstated on the land register. The amendments would expressly provide for the priority position under different scenarios as set out in the Administration's paper under LC Paper No CB(1) No1582/01-02(02). These scenarios were not covered under existing section 3 of LRO which only dealt with the priority of registered documents</p> | |
| 001251 001339 | - Miss Margaret NG | Concerned that the amendments would be changing the existing law | |
| 001339 001433 | - Administration | Section 3(1) of LRO was prefixed by the words "Subject to this Ordinance". This meant that the section was subject to all the provisions of LRO including all the subsidiary legislation made under LRO and would be subject to any other priority given under LRO or its subsidiary legislation | |
| 001433 001435 | - Miss Margaret NG | Whether the existing law on priority of instruments under section 3 could be changed by way of amendments to the regulation which may be ultra vires | |
| 001435 001440 | - Administration | Confirmed that the proposed amendments were intra vires | |
| 001440 001525 | - Miss Margaret NG | Whether the amendments changed the existing law and to what extent | |
| 001525 001538 | - Chairman | Ditto | |

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| 001538 001721 | - Administration | The proposed amendments would not change the legal principles but would provide certainty of law. Section 3 did not deal with the position of stopped deeds for which the particulars had been removed from the land register and then subsequently reinstated | |
| 001721 001821 | - Chairman | Whether it was more appropriate to amend the principal Ordinance than the Regulation | |
| 001821 001906 | - Administration | Section 3 of LRO did not deal with specific circumstances. The proposed amendments would address the concerns raised by the Bills Committee and LS and set out unequivocally the priority position of instruments in different scenarios | |
| 001906 002115 | - Miss Margaret NG | Expressed reservations over the proposed amendments which were made at such a late stage and which might be changing the existing law through the creation of new priorities | |
| 002115 002301 | - Administration | The proposed amendments were not creating new priorities. They were only dealing with stopped deeds which were not covered under the principal Ordinance. The problem of stopped deeds had created uncertainty to titles and mechanisms need to be worked out in the handling of stopped deeds | |
| 002301 002418 | - Ms Audrey EU | Need for consultation with the Hong Kong Bar Association (BA). Whether it would be better if the amendments were to be made to the principal ordinance | |
| 002418 002500 | - Administration | It was considered more logical to amend the Regulation rather than the principal Ordinance as such would obviate the need for cross referencing and would facilitate future amendments | |

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| 002500 002515 | - Chairman | Consultation with BA | |
| 002515 002609 | - Administration | LS was consulted because it was the major user of registering services. BA was however not consulted. In the light of the comments made, the Administration would proceed to consult BA | |
| 002609 002825 | - Ms Audrey EU | Need to consult BA as the proposed amendments dealt with a change in priority of instruments which might affect substantive rights | |
| 002825 002905 | - Dr TANG Siu-tong | Circumstances under which the Court would exercise its discretion to allow the application for a review of LR's decision to remove the particulars of the stopped deeds to be made out of time. Enquired about the authority liable to pay for damages to the affected party should there be an assignment of ownership of property after the removal of stopped deed | |
| 002905 003117 | - Administration | Application for review of LR's decision to remove the particulars of the stopped deed should be within the statutory period of 60 days. It would be up to the Court to decide whether the application for review could be made out of time. Chances for a successful review made out of time were slim. Where an assignment of property had been registered after the removal of the particulars of the stopped deed, the new owner should not be subject to the stopped deed. If the Court decided on the reinstatement of the particulars of the stopped deed on the land register, the priority of instruments would need to be decided | |
| 003117 003130 | - Dr TANG Siu-tong | Remedy to the affected party should an reinstatement of the particulars of stopped deed was allowed by the Court | |

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| 003130 003218 | - Administration | Section 23A of LRO provided that LR should be liable for any loss or damage if he willfully or negligently failed to comply with his obligations under section 23 | |
| 003218 003246 | - Miss Margaret NG | Imperative that both LS and BA should be consulted. Present position on the priority of stopped deeds | |
| 003246 003325 | - Administration | Instruments only had priority upon their registration. If the instruments were not registered, they would not have priority but would remain as pending deeds | |
| 003325 003427 | - Miss Margaret NG | Enquiry on handling of stopped deeds | |
| 003427 003449 | - Administration | Particulars of stopped deeds entered into "Deeds Pending Registration" column of land register. These would be removed from the column when the requisite information was provided and the deed was subsequently registered | |
| 003449 003517 | - Miss Margaret NG | Request for clarification on priority of instruments | |
| 003517 003610 | - Administration | Date of registration of instruments governed by regulation 16 which stated that registration of an instrument when completed shall take effect from the date of first filing. If the new instrument was subject to the stopped deed, its particulars would be entered into the "Deeds Pending Registration" column | |
| 003610 003621 | - Miss Margaret NG | Removal of stopped deeds | |
| 003621 003641 | - Administration | No provision under LRO and regulations to remove stopped deeds. Some stopped deeds dated back to 1967. New instruments subject to stopped deeds could not be registered | |

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| 003641 003706 | - Miss Margaret NG | Ditto | |
| 003706 003817 | - Administration | The proposed amendments would deal with the removal of stopped deeds | |
| 003817 003838 | - Miss Margaret NG | The proposed amendments would have an impact on the priority of instruments. Need to consult BA on the proposed amendments | |
| 003838 003950 | - Administration | Ditto | |
| 003950 004032 | - Miss Margaret NG | Ditto | |
| 004032 004130 | - Chairman | Bills Committee did not object to the proposed amendments in principle but was however concerned whether these should be put into the principal Ordinance or the Regulation. Need to consult BA on whether the priority of instruments as proposed was acceptable and whether the proposed amendments should be made to the principal ordinance or to the regulations | |
| 004130 004156 | - Administration | Whether the proposed amendments should be in the principal ordinance or the regulations was a drafting issue | |
| 004156 004256 | - Miss Margaret NG | The inclusion of a new situation in the principal Ordinance or the Regulation was not just a matter of drafting but a matter of policy. Such amendments should more appropriately be reflected in the principal Ordinance | |
| 004256 004342 | - Administration | It would be unusual to take out the amendments from the Regulation and put them in the principal Ordinance | |

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| 004342 004450 | - Miss Margaret NG | Same situation had arisen with the accountability system where there were different views on how amendments should be made. Need to ensure that no inadvertent mistakes were made | |
| 004450 004730 | - Administration | Agreed that a more cautious approach should be adopted in dealing with fundamental rights and that BA should be consulted. Concerned that BA would need time to consider the proposed amendments and this might have impact on the computerization contract and other improvements made to the registration system. Since the amendments with regard to the handling of stopped deeds were a small part of the Bill and self-contained, these could be dealt with at a later stage by way of another Bill if comments from BA could not be received in time. This arrangement might not be welcome by LS who would prefer to see the Bill passed in its entirety | |
| 004730 004748 | - Chairman | Ditto | |
| 004748 004912 | - Miss Margaret NG | Expressed support for the proposed arrangement which was in fact her original position. The removal of stopped deeds was an improvement to the system but this should not be allowed to hold up the passage of the Bill | |
| 004912 005019 | - Administration | Consideration could be given to taking away provisions relating to the issue of stopped deeds and introducing them as part of a regulation under section 28 of LRO. However, as this would take a longer time, it would be best if the provisions could be sorted out at the present stage | |

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| 005019 005045 | - Chairman | The changes that would be made to the Bill if comments from BA could not be received in time | |
| 005045 005141 | - Administration | Section 67 of the Schedule to the Bill containing the new regulations 15 and 15A would be deleted. These amendments and other minor consequential amendments would be included in a subsidiary legislation to be introduced separately at a later stage | |
| 005141 005216 | - Miss Margaret NG | Regulations 15 and 15A regarding the handling of stopped deeds were a minor part of the Bill. The main aim of the Bill was to re-organize the Land Registry | |
| 005216 005244 | - Administration | A Committee Stage amendment could be introduced to delete section 67 of the Schedule to the Bill regarding the handling of stopped deeds | |
| 005244 005319 | - Chairman | Concerned about the issues raised by members and deputations regarding stopped deeds. If section 67 was repealed, some of their concerns could not be addressed | |
| 005319 005412 | - Miss Margaret NG | Problem of stopped deeds had been dealt with without affecting substantive rights | |
| 005412 005632 | - Administration | Even though section 67 of the Schedule to the Bill was removed, the issue of stopped deeds would be followed-up | |
| 005632 005811 | - Miss Margaret NG | Ditto | |
| 005811 005911 | - Chairman | The Administration should give an undertaking on how it proposed to deal with the issue of stopped deeds in future if this could not be dealt with at this point in time | |

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| 005911 005927 | - Administration | No point in holding up improvements to the registration system brought about by the Bill. A quick way of dealing with the issue of stopped deeds would be by way of introducing a subsidiary legislation under section 28 of LRO | |
| 005927 005934 | - Miss Margaret NG | If BA considered that the amendments could be introduced in the Regulation rather than the principal Ordinance, amendments could be introduced very quickly. The Bills Committee would need to be cautious in dealing with the stopped deed issue and consultation was necessary | |
| 005934 005948 | - Administration | Ditto | |
| 005948 010020 | - Chairman | Bills Committee should be advised of the outcome of consultation with BA as soon as practicable. If BA could not come back with its views within two weeks, the Administration could proceed with the deletion of section 67 of the Schedule and deal with the issue of stopped deeds at a later date | |
| 010020 010035 | - Ms Audrey EU | Need for consequential amendments | |
| 010035 010046 | - Administration | Committee Stage amendments mainly dealt with deletion of section 67 of the Schedule | |
| 010046 010117 | - Miss Margaret NG | Agreed that the Administration could proceed as proposed | |
| 010117 010252 | - Chairman | Consensus reached with the Bills Committee on the proposed arrangement. Need for an undertaking from the Administration on how the issue of stopped deeds would be dealt with | |

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| 010252 010335 | - Miss Margaret NG | If BA felt that it would need time to decide, then the Administration could request for an early indication as to whether the amendments should be set out in the Regulation or the principal Ordinance | |
| 010335 010358 | - Chairman | Legislative timetable | |
| 010358 010440 | - Administration | Expect to resume Second Reading debate in mid-June 2002 | |
| 010440 010509 | - Miss Margaret NG | If BA was able to come back with its views within two weeks, the Bills Committee might have to consider holding another meeting | |
| 010509 010516 | - Administration | If BA's views would lead to substantial changes, the Administration would prefer to delete section 67 of the Schedule to the Bill regarding stopped deeds and to proceed with the passage of the Bill within the current session in order not to delay other improvements to the registration system | |
| 010516 010630 | - Chairman | Should there be any complication with the issue of stopped deeds that would delay the passage of the Bill, the Administration could proceed to resume the Second Reading debate of the Bill by deleting section 67 of the Schedule to the Bill. However, if there was sufficient time to address the issues raised by BA, a meeting would be convened for the purpose | |
| 010630 010607 | - | End | |

Note: The audio records of the above proceedings are kept at the LegCo Library