

立法會
Legislative Council

LC Paper No. CB(1) 2215/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/00/2

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

**Sixth meeting on
Monday, 21 May 2001, at 8:30 am
in the Chamber 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)

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 Meeting with the Administration

(LC Paper No. CB(1) 1259/00-01(02) -- List of follow-up actions arising from the discussion on 4 May 2001

LC Paper No. CB(1) 1259/00-01(03) -- Administration's response to CB(1) 1259/00-01(02))

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

(LC Paper No. CB(1) 1259/00-01(01) -- Further submission from the Law Society of Hong Kong dated 15 May 2001

LC Paper No. CB(1) 1270/00-01(01) -- Administration's response to CB(1) 1259/00-01(01))

Mrs Miriam LAU remained concerned that in the absence of copies of stopped deeds, it would be difficult for the aggrieved owners to trace the lodging parties. While most instruments were lodged by solicitors, they were bound by the duty of confidentiality and could not supply copies of the instruments without their clients' permission. It was also unrealistic to expect Government departments to provide

copies of the instruments. Besides, the Administration's assurance that instruments lodged by Government departments were usually in order could not address the concern about the problem of access to stopped deeds. She reiterated that the unavailability of information would create problems in conveyancing, since solicitors would not be in a position to know if stopped deeds appearing in the "deeds pending registration" column would have any impact on the titles of properties and their transactions. Therefore, it would be useful to require the lodging party to deposit a copy of the stopped deed with the Land Registry. The Acting Land Registrar (Ag LR) said that it had not been the practice to keep copies of stopped deeds since the majority of stopped deeds were returned quickly and duly amended. Moreover, since stopped deeds had not completed registration, they were not public documents and could not be made available for public reference. She added that the nature of stopped deeds would be set out in the "deeds pending registration" column of the Land Register. She nevertheless agreed to discuss the issue with LS at their next meeting in June 2001 with a view to resolving the difficulties in gaining access to the stopped deeds.

2. The Deputy Principal Solicitor of the Land Registry (DPS) pointed out the primary responsibility for the provision of copies of documents rested with the lodging parties who prepared the documents. Justice would not be served if the parties concerned refused to provide the aggrieved owners with a copy of the stopped deeds. Under such circumstances, the owners could choose to institute legal proceedings to remove the stopped deeds.

3. Miss Margaret NG remarked that if it was a matter of principle that solicitors should not provide copies of stopped deeds, arrangements should be made by LS to resolve the problem internally so that solicitors could gain access to stopped deeds among themselves. However, if it was merely a problem of increased workload, consideration should be given to increasing resources in this respect. DPS said that the Land Registration Ordinance (Cap. 128) (LRO) had provided for the registration of instruments affecting land. It had not provided for the provision of copies of stopped deeds which had not been registered. As the issue of provision of copies of stopped deeds fell outside the remit of the Bill, the Administration considered that concerns in this respect should be discussed separately between the Land Registry and LS. Ag LR added that there would be additional resource and cost implications if the Land Registry was required to keep copies of all stopped deeds. At present, about 5% of the deeds submitted for registration were withheld for various reasons. The Land Registry was working with LS on the means to further reduce the number of stopped deeds.

4. Miss NG asked whether it was acceptable for the Administration to provide the public with copies of stopped deeds if these were not considered as public documents. Ag LR reaffirmed that as stopped deeds were not registered, they should not be regarded as public documents and should not be made available for public reference. As regards the stance of LS in this respect, DPS noted that in its earlier submission dated 12 April 2001, LS had requested that the Land Registry be given an express power to make copy of each and every document withheld from registration

and to make available such document for inspection before completion of registration. She however pointed out that at present, the Land Registry did not have the power to make available copies of stopped deeds withheld from registration for public reference. The Chairman held the view that consideration could be given to making available copies of stopped deeds to the owners concerned and not the general public.

5. Mrs Miriam LAU said that the Administration should consider requiring lodging parties whose deeds were withheld from registration to deposit a copy of the deeds at the Land Registry. This could resolve the problem of unavailability of information on deeds which had been withheld. She also questioned the rationale for placing stopped deeds in the “deeds pending registration” column. She opined that if stopped deeds were not regarded as public documents, they should not appear in the “deeds pending registration” column. Ag LR explained that the inclusion of stopped deeds in the “deeds pending registration” column was meant to facilitate land search so that interested parties would be able to know the types of instruments submitted for registration.

6. The Chairman remarked that the Administration might consider the following three ways to address the concerns raised by members -

- (a) the lodging party be required to notify the owner concerned that a deed submitted for registration had been withheld;
- (b) the Land Registry be given an express power to provide the owners and affected parties with a copy of stopped deeds; and
- (c) deeds withheld from registration should not appear in the “deeds pending registration” column.

7. Miss Margaret NG expressed concern that solicitors would object to the proposal of requesting the lodging parties to provide copies of stopped deeds. Mrs Miriam LAU said that there would unlikely be any objection on the part of solicitors because deeds withheld from registration would ultimately be registered in the Land Register and treated as public documents. Solicitors could not be able to provide copies of stopped deeds because they had difficulties in locating the whereabouts of the lodging parties and obtaining consent from them. Miss NG opined that if that was the case, she failed to see why the Land Registry should refuse to make available copies of stopped deeds to the owners concerned. She said that to get round the problem, the Land Registry could consider keeping the stopped deeds for reference instead of returning them to the lodging parties. Ag LR said that stopped deeds could not be retained by the Land Registry since they had to be returned to the parties concerned for rectification.

8. Ms Audrey EU held the view that the affected or the prospective owners should have the right to know the nature and the contents of the deeds which were withheld from registration, as these might impact on the titles of the properties. The

Principal Assistant Secretary for Planning and Lands said that it would be difficult to define who should have the right of access to information contained in stopped deeds because anyone could claim himself to be a potential purchaser having an interest in the land. He said that the majority of deeds were registered without problems and there were only 5% of the deeds which were withheld from registration. As most of the stopped deeds were withheld for minor mistakes which could be easily rectified, it would not be cost effective to introduce a complicated mechanism for some exceptional and hypothetical cases. A better alternative was to improve the existing arrangement by introducing a mechanism on the removal of stopped deeds. The Administration would consider improving the mechanism further in consultation with LS. It would also consider the proposal of requesting lodging parties to provide documentation on the stopped deeds to the owners direct or through the Land Registry.

9. Miss Margaret NG agreed with the Administration that the issue of provision of copies of stopped deeds fell outside the ambit of the Bill, and that improvement to the existing arrangement could be followed up at a later stage. She sought members' views on whether the Bill should be passed at this stage or at a later stage after the issues relating to the provision of copies of stopped deeds were resolved. As the Bills Committee had been able to resolve a number of issues except for the provision of copies of stopped deeds, Ms Audrey EU hoped that the passage of the Bill would not be delayed. She suggested that the Administration should consider amending regulation 15(3) of the Land Registration Regulations to require the lodging parties to inform and provide a copy of the stopped deeds to the owners concerned. Miss NG echoed that only owners and not any other persons should be provided with copies of stopped deeds, otherwise there would be huge resource implications on the part of the Land Registry. She also agreed with the Chairman on the need for the Administration to liaise with LS with a view to working out an acceptable solution.

10. Since liaison with LS would take time which might delay the passage of the Bill, SALD suggested to introduce a provision in LRO to empower the Land Registrar to specify to whom copies of stopped deeds should be provided by notice in the Gazette. Miss NG opined that unlike the views being put forward which were categorical on how copies of stopped deeds should be provided for public reference, the Administration's proposal was a half-way arrangement which would complicate the problem rather than resolving it. A better alternative would be for the Land Registry to further discuss the matter with LS. Should both sides agree that the Bill be amended, the Administration would then propose Committee Stage amendments (CSAs) for members' consideration. However, if an agreement could not be reached, members might have to decide whether they should withdraw support for the Bill. Miss NG said that she personally did not see the need for such drastic action which would halt the progress of the Bill. The Chairman echoed that issues relating to the provision of copies of stopped deeds should not impede the progress of the Bill. He urged the Administration to work out with LS the best possible way through which problems arising from stopped deeds could be handled and revert to the Bills Committee any subsequent CSAs.

Clause by clause examination of the Bill
(LC Paper No. CB(1) 1259/00-01(04) --

8th draft of Committee Stage amendments
provided by the Administration

LC Paper No. CB(1) 1259/00-01(05) --

Marked-up copy incorporating the 8th
draft of Committee Stage amendments)

11. Members continued to examine the Bill clause by clause.

Section 67 of Schedule

12. DPS said that advice from the Judiciary had been sought on whether an application against a decision of the Land Registry to withhold registration could be submitted by way of summons in chambers in addition to originating summons and petitions. According to the Judiciary, application by way of summons for commencing action was not in line with the normal practice. It shared the Administration's view that an application to court for review of the Land Registry's decision was similar to that of a judicial review of an administrative decision. As such, these applications should be heard in open court rather than in chambers. The Judiciary also considered that a reduction of litigation costs would be beneficial to all concerned. It had come to a compromise whereby the proposed regulation 15A(6)(b) should be amended to state that the proceedings might also be before the Registrar of the High Court in open court. As solicitors had a right of audience before the Registrar in open court, the proposal would lead to reduction in legal costs. The openness of the hearing would also be achieved. To avoid extra costs for any intermediate appeals, the Judiciary suggested that all appeals should lie to the Court of Appeal. The Administration would introduce CSAs to regulation 15A.

13. ALA1 added that section 20 of LRO would allow for an application to vacate a *lis pendens* by way of summons in chambers because the application itself involved court proceedings and was different from an application for a review of decision.

Section 89 of Schedule

14. ALA1 advised that section 89 of the Schedule was repealed consequent upon the enactment of the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565) on 7 May 2001 which repealed the Hong Kong Industrial Estates Corporation Ordinance (Cap. 209).

Section 106 and 107 of Schedule

15. ALA1 drew members' attention to the CSAs to repeal references to District Land Registries in the Caritas-Hong Kong Incorporation Ordinance (Cap. 1092) and the Kadoorie Farm and Botanic Garden Corporation Ordinance (Cap. 1156). SALD affirmed in response to the Chairman that these two ordinances had reference to District Land Registries and therefore required technical amendments.

16. ALA1 then briefed members on the marked-up copy of the 6th and 8th draft of CSAs at LC Paper Nos. CB(1) 1126/00-01(02) and 1259/00-01(05).

Admin. 17. On regulation 9, Ms Audrey EU suggested and SALD agreed to move the words “in any other case” from regulation 9(1)(b)(i)(B) to (A).

18. On regulation 15A(5), ALA1 noted that LS had requested for insertion of the phrase “or any contracts therefor” immediately after the word “disposition” since according to the Conveyancing and Property Ordinance (Cap. 219), a contract was different from a disposition. She added that under the existing land related legislation, disposition generally related to assignments and grants. SALD advised as contracts were one kind of disposition, it was not necessary to amend regulation 15A(5) as proposed by LS. Miss Margaret NG asked if the Administration would consider inserting the phrase “including a contract for sale” after “disposition”. SALD cautioned that this would have the implication that a disposition did not include a contract for sale. He added that while he considered the proposed amendment not necessary, he would work out a consequential amendment which would not have a knock-on effect on other legislation if members considered otherwise. Miss NG said that she would prefer to leave the matter for ALA1 and SALD to decide.

Admin.

19. Referring to the Third Schedule to the Land Registration Regulations, ALA1 advised that the Administration had duly amended column 2 by making reference to the person in charge rather than the department.

20. ALA1 noted that the Administration had not included mortgagee as one of the categories of persons to whom notice of removal of stopped deeds be given, as suggested by LS. The Administration’s explanation was that the proposed inclusion of “mortgagee” would necessitate the inclusion of “chargee” since section 44 of the Conveyancing and Property Ordinance (Cap. 219) provided that the mortgage of a legal estate might be effected only by a legal charge. The category of “chargee” had very wide coverage and would include, among others, chargees who were mortgagees of the legal estate and chargees of charging orders issued by the court. Whether or not notice of the proposed removal should be given to all of these chargees would depend on the circumstances of individual cases. Miss Margaret NG said that she had no objection to the Administration’s decision.

21. As members raised no further questions on the draft CSAs, Miss NG suggested and the Chairman agreed that any further CSAs or proposals by the Administration should be circulated to members who would then decide on the need for holding another meeting. Ag LR advised that while liaison with LS might take a longer time, the Administration would revert back to the Bills Committee as soon as a decision was reached. The Chairman informed the Administration of the intended legislative timetable for the resumption of Second Reading debate on the Bill.

(Post-meeting note: In its letter dated 14 June 2001, the Administration advised that LS did not agree to the Bills Committee's proposal of requiring lodging parties to provide copies of stopped deeds to owners and interested parties. As more time was required to develop details of any alternative scheme, the Administration had decided not to resume Second Reading debate on the Bill in July before the summer recess of the Legislative Council. A copy of the Administration's letter was circulated to members under LC Paper No. CB(1) 1615/00-01).

II Any other business

22. There being no other business, the meeting ended at 10:05 am.

Legislative Council Secretariat
6 November 2001