

立法會
Legislative Council

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

**Meeting on
Tuesday, 6 March 2001, at 2:30 pm
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 Audrey EU Yuet-mee, SC, JP

Member attending : Hon James TO Kun-sun

Members absent : Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-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

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

Attendance by invitation : Heung Yee Kuk New Territories

Mr POON Chin-hung
Co-opted Councillor

Mr KAN Chung-nin
Co-opted Councillor

Hong Kong Real Estate Agencies General Association

Mr K H CHAN
Government Policy Research Department
Vice-Chairman

Mr C W CHENG
Government Policy Research Department
Department Manager

Property Agencies Association Ltd

Mr KWOK Tak-leung
Vice-chairman

Mr LAU Heung-wing
Government Policy Research Officer

Mr Joseph LAU
Academic Officer

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 deputations

The Chairman welcomed the deputations and invited them to give their views on the Bill.

Heung Yee Kuk New Territories (HYK)
(LC Paper No CB(1) 733/00-01(01))

2. Mr KAN Chung-nin stated at the outset that HYK supported the Bill which sought to increase the efficiency and to improve the services of the Land Registry. He made the following comments with regard to the proposed amendments as set out in the Legislative Council Brief-

- (a) *Removal of entry of instruments withheld or temporarily withdrawn from registration*

While supportive of the proposed mechanism for removal of stopped deeds and the provision of a time limit for objection, HYK was concerned that the proposed period of one year for stopped deeds to be pending before removal was too long and would give an opportunity for procrastination which would cause unnecessary delay in conveyancing of the properties concerned. HYK considered that the proposed period should be shortened from one year to six months;

- (b) *Certified copy instruments*

Regarding the proposal to amend the Land Registration Regulations to provide for the registration of certain types of copy documents which were certified in a manner satisfactory to the Land Registrar, HYK was concerned that the public might not be aware of the manner of certification. To this end, the Bill should expressly state the kind of certified documents that was registrable and the manner of certification that was satisfactory to the Land Registrar.

Mr KAN also pointed out that some of the villagers living abroad were concerned about the acceptance of certified copies of instruments, in particular, power of attorney as they had to rely on these documents in the conveyance of properties. While agreeing that the original documents might not be recoverable in some cases and there was an administrative need to accept certified copies, Mr KAN requested the Administration to consider HYK's proposal of informing the property owners before registration of certified documents to prevent registration of fraudulent copy instruments; and

(c) *Memorial Day Book*

While appreciating the need to protect privacy of individuals, HYK was of the view that the deletion of names of parties from the Memorial Day Book might deprive the affected parties of the access to information. The deletion would also pose operational difficulties to conveyancing solicitors.

3. Mr POON Chin-hung added that HYK would request that copies of the instruments which had been withdrawn by solicitors be kept by the Land Registry. This would facilitate reference by affected parties and protect their interest. He pointed out that the Land Registry should consider setting up a simple adjudicating system to assess whether an instrument was registrable. To protect the interest of owners, he further requested that owners and affected parties be notified about the registration of instruments against their properties.

Hong Kong Real Estate Agencies General Association

4. Mr C W CHENG said that the Hong Kong Real Estate Agencies General Association (HKREAGA) was in support of the Bill.

Properties Agencies Association

(LC Paper No CB(1)733/00-01(02))

5. Mr KWOK Tak-leung said that the Properties Agencies Association (PAA), which represented some of the small to medium size estate agencies in Hong Kong, was in support of the Bill. He briefly stated the position of PAA as follows-

(a) *Chinese property addresses and Chinese names of parties on memorial forms*

PAA requested that the Chinese property addresses and the Chinese names of parties should be included in the memorial form to facilitate land search. There was also a need to standardize the Chinese property addresses in Hong Kong;

(b) *Bilingual computer land register*

There should be a bilingual computer land register, and documents in English should be translated;

(c) *Internet search*

PAA was basically in support of the proposed extension of search to 16 hours per day and seven days a week, but would appreciate a further extension to 24 hours a day. It was also concerned about the security of information and the means to prevent unlawful amendments. As it was part of the estate agents' statutory duty to conduct land searches, PAA would request that search fees be reduced and registration fees be standardized; and

(d) *Central Property Information System*

PAA would request the setting up of a Central Property Information System to facilitate estate agents in discharging their statutory duties in obtaining the necessary information from the Land Registry, the Rating and Valuation Department, and the Buildings Department. As property information on the land register was subject to changes, PAA was of the view the Land Registry should assume a coordinating role in setting up of the system with other departments.

6. Mr Joseph LAU added that in applying for photocopy of the floor plans, estate agents were often required to obtain the full set of property documents from the Land Registry. To reduce cost, he suggested that the Land Registry should allow for the reproduction of copies of floor plans only.

Discussion session

7. Ms Audrey EU enquired about the motive behind withholding instruments to procrastinate the registration process and whether such delays were common. Mr KAN Chung-nin/HYK said that in some cases involving contentions between owners and affected parties, the latter might take steps to procrastinate the process, particularly when there was a drop in property prices. There were other cases where the affected parties would try to delay the conveyancing process by withholding instruments in order to enhance their bargaining power. The curtailment of the period for stopped deeds would guard against the exploitation of the system. Dr TANG Siu-tong asked whether the six-month period for stopped deeds to remain pending before removal as proposed by HYK was sufficient. Mr KAN/HYK said that six months would be more than enough as most registrations were quite straightforward. The deeds should not be withheld for a longer time than it was necessary. Besides, the proposed mechanism of allowing objection within 28 days had already provided for the protection of interest of affected parties.

8. The Chairman sought clarification on the rationale behind HYK's request for owners to be notified and provided with copies of the instruments that had been withdrawn by solicitors. He also enquired about the financial implications of the proposed notification and the responsibility for payment of the cost. Mr POON Chin-hung/HYK said that as property owners have the right to know the kind of instruments that had been lodged for registration, regardless of whether these had been subsequently withdrawn, there should be a system of notification so that owners could be able to make reference to the instruments lodged. This would protect owners' interest and prevent fraudulent practices resulting in the transfer of title without their knowledge. As for the additional cost incurred, Mr POON/HYK said that this should be borne by the parties lodging the instruments.

9. Mr KAN Chung-nin/HYK also agreed with Ms Audrey EU that it would be more time and cost efficient if lawyers were allowed to use their own computer printout memorial forms. Mr POON Chin-hung/HYK added that it would be more convenient if the memorial forms could be digitalized.

II Meeting with the Administration

10. Before commencing discussion, the Land Registrar (LR) thanked the deputations for their support of the Bill. He also took the opportunity to respond to the views expressed by the deputations despite that some of the points raised did not fall within the remit of the Bill.

11. On *removal of entry of instruments withheld or temporarily withdrawn from registration*, LR said that the alleged procrastination of the registration process by withholding documents referred to by the representatives of HYK was uncommon. The Land Registry was more concerned about the deeds being stopped due to the unavailability of affected parties. The proposed one-year period aimed to allow sufficient time for the lodging solicitors to deal with outstanding issues stated in the stopped deed note. As a removed deed would not get any priority under the Land Registration Ordinance (Cap. 128) (LRO), the Administration would prefer to adopt a prudent approach at first and allow one year, as originally proposed, to the applicants before considering the removal. He undertook to review the situation if severe difficulties were encountered. The Deputy Principal Solicitor (DPS) added that the proposed removal was meant to remove those stopped deeds which had been left unregistered at the "Deeds Pending Registration" column for a long time. Such a removal would not help those owners who would require immediate removal of "Deeds Pending Registration" entry. Where an owner felt that the conveyancing of his property was hindered by the documents lodged, he could take steps or court action to remove the entry from the "Deeds Pending Registration" column.

12. Noting that LS and other members of the legal profession, who were regular customers for registration services, were in support of reducing the period for stopped deeds to be pending before removal from 12 to six months, Ms Audrey EU said that

she failed to understand why the Land Registry, as a service provider, should insist in maintaining the 12-month period. Sharing the same concern, Dr TANG Siu-tong urged the Administration to give further thoughts to members' and HYK's request to reduce the period to six months. He cautioned that he would move a Committee Stage amendment to that effect if the Administration insisted on its stance. DPS said that the Land Registry considered that the period of 12 months was a reasonable time frame and she hoped that members would accept this proposal.

13. Mr KAN Chung-nin/HYK enquired through the Chair the rationale for requiring owners to seek redress from courts regarding the removal of stopped deeds which might have been lodged with malice. Sharing the same concern, the Chairman suggested that the Land Registry should consider differentiating between stopped deeds which were genuinely delayed and those which were withheld due to unjustified reasons so that a time limit could be imposed for the removal of the latter. LR said that he was not aware of frivolous entries in the land register. He said that the Land Registry's role was to register documents affecting land and was not a judicial authority. In effecting registration, it was under the assumption that solicitors engaged in the registration had honorably fulfilled their obligations.

14. The Chairman invited representatives of HYK to cite incidents where the interest of property owners was adversely affected as a result of deeds withheld on malice. Mr POON Chin-hung/HYK said that while he might not be able to cite a specific case of malice, he was of the view that the existing practice was unfair to owners. He quoted a case where a person had set claims for a property through a will written in Chinese and had instructed his solicitor to submit the will for registration at the Land Registry. Under the circumstances, the will lodged by the solicitor would affect the ownership of the property. However, the affected parties might not know the extent to which their interest would be affected since under the existing arrangements, they might not have any knowledge of the instruments which were lodged for registration nor the parties who had lodged the instruments. Furthermore, they would not be able to get a copy of the instruments from the Land Registry or the concerned solicitor if the latter received instructions not to make such copy available.

15. On *registration of certified copy instruments*, LR said that the Bill merely sought to regularize the status quo. DPS added that conveyancing solicitors were well aware of the types of certified copy documents that were registrable. Most of these documents had to be certified by Government departments while a few of these had to be certified by the solicitors. The Bill proposed to amend the Land Registration Regulations to provide for the registration of certain types of copy documents which were certified in a manner satisfactory to LR. The Land Registry would issue a Circular Memorandum from time to time notifying legal practitioners and interested bodies of the types of certified copy documents acceptable for registration and the manner of certification. The Administration would also propose a Committee Stage amendment to provide LR with the power to declare in a Schedule to the Land Registration Regulations the types of certified copy documents acceptable to the Land Registry. Ms Audrey EU remarked that the Administration might need to seek the views of LS on the proposed amendment.

16. On *provision of copies of instruments withheld from registration*, LR said that the Land Registry had 150 million pages of documents. It had recently converted the paper documents into digital images. If the Land Registry were to provide copies of all the documents lodged, there would be huge cost and resource implications. DPS added that as stopped deeds had not been registered, these could not be treated as public documents and thus could not be made available for public reference. Furthermore, as the registration of stopped deeds had not been completed, these were subject to amendments and withdrawal. Therefore, it would not be prudent for the Land Registry to supply copies of stopped deeds pending registration to the interested parties. Those who wished to make reference to the stopped deeds should approach the solicitors concerned. The Law Society of Hong Kong (LS) would be requested to cooperate in this respect.

17. On *the need to inform property owners*, DPS said that the Land Registry's role was to register documents which affected land and some of these documents might not be in the interest of property owners. Given the large volume of documents intake, it would be very time consuming if the Land Registry were to inform the property owners each time a document was lodged for registration against their properties. The registration process would be unnecessarily prolonged and there would be cost implications in the proposed arrangement.

18. The Chairman enquired about the reasons for not notifying the owners about the lodging of instruments against their properties. DPS reiterated that the Land Registry's roles were to register instruments affecting land and to accord priority to the documents. LR added that the responsibility of informing the property owners was with the parties who lodged the documents. Since documents were usually lodged by solicitors or the courts, it would be their responsibilities to inform the owners. The Chairman remarked that as solicitors were not obliged to inform the owners about the registration, further thoughts should be given to the issue. The Senior Assistant Law Draftsman said that LS might consider giving directions to its members to notify owners about the registration. Ms Audrey EU however pointed out that apart from solicitors, private parties could also lodge instruments against properties.

19. Noting that the Land Registry had refused to inform owners of the documents lodged, Dr TANG Siu-tong expressed concerned that property transactions could take place through fraudulent practices without the owners' knowledge, and that owners could not be able to reclaim their properties under the title system once the properties were transacted. Through the Chair, Mr POON Chin-hung/HKY said that the notification of owners would help prevent the occurrence of fraudulent practices. LR said in response that the issue would be discussed when the Land Titles Bill was introduced.

20. On *establishment of a summary procedure*, DPS said that LR had the power and the authority to discharge his duties under LRO, including the decision on whether an instrument was registrable under LRO. If any party was not satisfied with the decision of LR on matters relating to land registration, the party could seek redress

from the courts. Therefore, the Land Registry did not consider that a summary procedure needed to be established to adjudicate on land registration issues.

21. On *deletion of names in the Memorial Day Book*, LR said that the amendments to delete names in the Memorial Day Book was necessary as the provision of names was in breach of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). The Registry Manager (RM) explained that property transactions recorded the day before would be entered into the Memorial Day Book and put under the “Deeds Pending Registration” column in the computer. Those who wished to make reference to these transactions would be able to do so on-line through the computer. Presently, the major users of the Memorial Day Book were market analysts, estate agencies and banks. To prevent the setting up of a names index by the users of the Memorial Day Book, the Land Registry proposed that the names of the parties and relevant persons should not be entered into the Book. The proposal would unlikely affect the customers as the full particulars, including the names of parties, would continue to be recorded in the land register.

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22. Through the Chair, Mr KAN Chung-nin/HYK sought clarification on whether the entries in the Memorial Day Book and the “Deeds Pending Registration” column were made simultaneously so that searchers would be able to make a cross-reference. RM affirmed that the entries were made simultaneously through the computer. Responding to the Chairman, RM further advised that the information available under the “Deeds Pending Registration” column would include the types of instruments lodged, the dates of lodging the instruments, the names of the conveyancing solicitors, and the names of parties to the transactions. She agreed to provide for members’ reference a copy of the entry to the “Deeds Pending Registration” column of the land register.

23. On *memorial forms*, LR said that the bar-coded memorial was a system administrator which would keep track of the instruments lodged. As each memorial form would have an unique bar code to secure the priority of the instruments lodged, it would not be desirable to allow lawyers to use their own computer printout memorial forms. As regards the proposal to digitalize the memorial forms, LR considered this not practicable as there was no fully operational digitalized conveyancing system. The trial digitalized conveyancing system operating in Canada was based on a title system which was much simpler than the deed system. Moreover, a digitalized system would require a great deal of information technology (IT) amongst conveyancing solicitors.

24. On *Central Property Information System*, LR concurred with the deputations that there was a need for a one-stop shop providing all the property information to facilitate estate agents in discharging their statutory duties under the Estate Agents Ordinance (Cap. 511). The Administration was examining the feasibility of consolidating the database of the Buildings Department, the Rating and Valuation Department and the Land Registry in the setting up of the Central Property Information System.

25. On *Internet search*, LR said that the proposed extended search time to 16 hours a day and seven days a week was the standard that would apply once the new computer system was operational. The system had been put up for tender a few weeks ago and would be expected to become operational by end 2002. Consideration would be given to further extending the search time if it was found to be insufficient. As for the security of information on the Internet, LR assured members that apart from IT, data security also formed an important part of the tender document for the new computer system for the Land Registry.

26. On *bilingual land register*, LR said that the cost and IT implications of having a completely bilingual land register would be huge. As a start, the Bill had included proposals to record the Chinese names and addresses of properties. The Administration would prefer not to go into details of providing a completely bilingual system until there was a decision on whether a deed system or a title system should be adopted. A title system would be much simpler in terms of registration and conveyancing and would be suitable for on-line conveyancing. RM added that the Land Registry would try to include the Chinese names and addresses of properties if these were known. It would also provide a reference in Chinese on the types of documents which had been registered. As regards the standardization of Chinese property addresses, RM said that although the names of streets and house numbers could be standardized, the naming of the units and the floors would vary.

27. Since Chinese names and addresses of properties were very useful information which should be entered in the memorials, Ms Audrey EU pointed out that the requirement that these should be provided "if known" might not be sufficient. She suggested that the phrase "if known" should be replaced by "if applicable". She also queried the rationale for not being able to provide a fully bilingual computer land register if Chinese particulars were provided. RM said that where the Chinese names and addresses of properties were available, they would be entered in the register upon registration. The new computer system would allow for the registration of Chinese particulars.

28. While agreeing that the provision of bilingual versions of existing property addresses could proceed in phases at a later stage, the Chairman said that the Administration should consider imposing a cut-off date for compulsory registration of bilingual addresses of new buildings. Ms Audrey EU was of the view that the requirement for bilingual registration should also apply to the conveyancing of existing buildings. The Chairman however pointed out that there might be practical difficulties in adding the Chinese addresses as the existing deeds were written in English only. RM agreed with the Chairman that there might be difficulties in providing the Chinese addresses for existing buildings, for example, the numbering of floors in the Chinese language would be different from that in the English language. Nevertheless, she would liaise with LS and the departments concerned regarding the provision of Chinese names and addresses for properties. LR said that the intention of the Bill was merely to regularize the status quo. The current discussion on the provision of a bilingual land register was beyond the scope of the Bill. Besides, the bilingual land register system would likely become redundant with the introduction of

the title system where most of the forms would be changed to meet on-line conveyancing procedures.

29. Mr KWOK Tak-leung/PAA remained of the view that there was a need for standardization of Chinese property addresses. The Chairman asked if the Land Registry would consider providing reference materials to facilitate the provision of Chinese property addresses. RM said that street index provided by the Land Registry had already included bilingual versions of street names and numbers. However, there were variations in the naming of floors and units. The Land Registry would try to update its records in the land register whenever Chinese property addresses were made available through the registration process. Mr K H CHAN/HKREAGA suggested that the Administration might seek the help of owners' corporations in standardizing the naming of floors and units. LR said that the involvement of owners' corporations was dealt with by other legislation and was outside the scope of the Bill. He accepted that there were problems in the arrangement and undertook to sort them out separately. The Chairman said that the arrangement would be further discussed when the Bill was examined.

30. On *title system*, LR said that the Administration would examine the feasibility of converting the current deed system to a title system. The draft Land Titles Bill was under preparation and the responses received from the consultation exercise were being considered.

31. While acknowledging the difficulties which the Land Registry was facing during a transition between the existing deed system and the future title system, Mr POON/HYK remarked that the land registration system would need to be overhauled when the title system was introduced. The Chairman said the system would be examined when the Land Titles Bill was introduced to the Legislative Council.

32. On *photocopying of floor plans*, LR confirmed that the Land Registry allowed for the photocopying of floor plans rather than the full set of property documents.

33. On *fees and charges*, LR said that the statutory fees of the Land Registry had not been revised since June 1996 and the Registry had been absorbing the increase in costs. There would not be much room for reduction in fees.

34. Referring to the Administration's reply at Annex 2 to LC Paper No CB(1) 753/00-01(01) regarding the exemption under PDPO in respect of name searches conducted by the Agriculture, Fisheries and Conservation Department (AFCD), Ms Audrey EU queried why the non-payment of loans to AFCD should be regarded as the prevention, preclusion or the remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons as set out under section 58(1)(d) of PDPO. LR said that this was under the advice of the Department of Justice. Responding further to Ms EU on whether similar exemptions for search could be applied to debts owed to private parties, LR said that provisions

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relating to the recovery of debts owed to private parties were dealt with in a different manner than those owed to the Government. He stated that the recovery of civil debts could be regarded as remedying a civil wrong and would come within the exemption under section 58(1)(d) of PDPO. SALD added that the recovery of civil debts due to the Government would serve public interest. The Chairman requested the Administration to seek legal advice on the matter.

35. Members agreed to continue discussion with the Administration at the next meeting scheduled for Wednesday, 28 March 2001, at 8:30 am.

III Any other business

36. There being no other business, the meeting ended at 4:30 pm.

Legislative Council Secretariat
18 April 2001