

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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Bills Committee on Land Registration (Amendment) Bill 2000

**Minutes of meeting held on
Tuesday, 13 February 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
Dr Hon TANG Siu-tong, 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
Hon Mrs Miriam LAU Kin-yea, JP
Hon Abraham SHEK Lai-him, 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

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

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 Election of Chairman

Miss Margaret NG, the member who had the highest precedence in the Council amongst those who joined the Bills Committee, presided at the election of Chairman and invited nominations for the chairmanship of the Bills Committee. Mr Albert CHAN was nominated by Miss NG and the nomination was seconded by Ms Audrey EU. Mr Albert CHAN accepted the nomination. There being no other nomination, Miss NG declared that Mr Albert CHAN was elected Chairman of the Bills Committee.

2. Mr Albert CHAN took over the chair.

II Meeting with the Administration

(Legislative Council Brief (Ref: PLB(B) 30/30/10(00) Pt.5), LC Paper Nos. LS 50/00-01 and CB(1) 556/00-01)

3. At the invitation of the Chairman, the Land Registrar (LR) briefly explained the provisions of the Land Registration (Amendment) Bill 2000 (the Bill), highlighting the salient points in the Legislative Council (LegCo) Brief. He said that the Land Registry sought to further improve services at no cost to its customers. These

improvements were set out in the publication entitled “Strategic Change & IT Renewal- For the Benefit of our Customers” which was tabled at the meeting. The Bill would bring about simpler registration procedures, shorter conveyancing times, better search services, but no increased charges. It would be a win-win-win situation for the customers (the conveyancing public), the clients (the conveyancing solicitors) and the Land Registry (the statutory operator). He invited members’ support for the Bill.

(Post-meeting note: The publication entitled “Strategic Change & IT Renewal. For the Benefit of our Customers” was circulated to members vide LC Paper No. CB(1) 588/00-01.)

Effect of the Central Registration System on the operation of conveyancing firms in the New Territories

4. Miss Margaret NG said that she had received enquiries from conveyancing solicitors based in the New Territories (NT) who were concerned about the extent to which their operation would be affected by the setting up of the Central Registration System (CRS) and the subsequent de-establishment of the District Land Registries (DLRs). She also enquired about the extra work involved and the changes in the working procedures resulting from the centralization of registration services. In response, LR made the following points-

- (a) DLRs would become District Search Offices of the Land Registry;
- (b) Only 12 out of the 680 conveyancing firms in Hong Kong were situated in NT or had offices in NT. Of these 12, six were in Tsuen Wan or Kwai Chung and were therefore connected to the urban mass transportation network. This meant that 98% of the conveyancing firms were based in the urban area. The conveyancing firms were consulted and they had indicated support for the centralization of registration services;
- (c) There would not be extra work for the conveyancing solicitors. In fact, there would be less work because 98% of the law firms would not have to dispatch their clerks to various offices as they would be able to lodge their documents for registration at the central registration office at the Headquarters in the Queensway Government Offices. As far as land searches were concerned, the law firms could do so on-line through their own offices; and
- (d) Upon the setting up of CRS, the conveyancing documents, deeds and covering memorials would have to be sent to the central registration office in Queensway instead of to respective DLRs. This would be more convenient to the majority of conveyancing firms.

5. Miss Margaret NG remained concerned that conveyancing firms in NT would be inconvenienced as a result of the centralization of registration services, and that the Bill would not be able to win support from such firms. The Chairman said that CRS would provide convenience to most firms, including those in NT, since they would no longer require to dispatch their clerks to different DLRs and could be able to submit their documents for registration at the central registration office in Queensway. Miss NG said that she recalled that when the Legal Services Legislation (Miscellaneous Amendments) Bill 1996 was scrutinized by LegCo, the Democratic Party had pointed out that law firms could achieve much savings on overheads and charge lower fees if they relocated their offices to NT. Some of the conveyancing firms had branched out to NT in an attempt to cut costs and get closer to their clients. The present Bill would appear to place these firms in a disadvantaged position. LR said that the majority of the conveyancing firms would benefit from centralization of services. The firms in NT would not be disadvantaged as they could submit their documents using courier services. He did not believe that CRS would pose a major problem to the firms in NT, at least not to the extent that fees and charges would be affected. If such was a problem, the reverse would also be true for the 98% of the firms located in the urban area. In response to Miss NG, LR agreed to provide a letter to explain how conveyancing solicitors based in NT would be affected by the Land Registry's proposals to centralize registration at the Headquarters in Queensway Government Offices.

Admin.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1) 610/00-01(02).)

Impact of the proposed land title registration system on the Land Registration Ordinance (LRO)

6. Miss Margaret NG enquired whether the Bill had any relation to the Land Titles Bill (LTB) and when LTB would be introduced to LegCo. LR said that there was no link between the two Bills. The timing for the introduction of LTB was being examined by the Policy Bureau. Sharing the same concern, Ms Audrey EU asked whether changes would have to be made to LRO if and when LTB was passed. LR said that the effect of LTB on LRO would depend on the final form of LTB. If the title registration system was introduced, it would replace the deed registration system and LRO would be repealed. Whether concurrent systems would be used would be a matter to be considered. Noting that LRO would be repealed upon the passage of LTB, Ms EU expressed concern about whether the proposed investment in the Information Technology (IT) system could be used for the purposes of the title registration system as otherwise it would not be a good investment. LR said that as the Land Registry was operating under a trading fund, it had to be very careful about its financial resources. The Land Registry would make it clear in the tender for the Integrated Registration Information System (IRIS) that a switch from the deed registration system to the title registration system was anticipated. This would have implications for a further phase of IT development and these two phases must be able to dovetail.

Colour Imaging System

7. Ms Audrey EU said that she would prefer to see samples of the colour imaged plans. LR said that the Land Registry was negotiating with the firms involved in the colour imaging of plans and was assessing whether they would be able to meet the technical requirements as set out in the tender. Once the plans were available, they could be shown to interested parties.

Land searches

8. Noting that conveyancing firms had package deals with the Land Registry on on-line searches, Ms Audrey EU enquired if these were available to the ordinary public. She was also concerned whether estate agencies and companies involved in the financial assessment of properties which required frequent land searches would have any comments on the Bill. LR said that one of the features of the IT system to be introduced under IRIS Phase I would be on-line searches. At present, searches of land registers could be done remotely on computers and 70% to 80% of the searches were done in this way by estate agencies and banks which had accounts with the Land Registry. The Land Registry was working with the Rating and Valuation Department on the extent of integration of the database to facilitate estate agents in the retrieval of statutory information to be provided to purchasers.

Memorial Day Book

9. Mr IP Kwok-him enquired about the rationale for deleting the names of parties from the Memorial Day Book. LR advised that the deletion of names from the Memorial Day Book was to avoid the setting up of a names index by the users, which was in breach of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). The Registry Manager (RM) added that the Memorial Day Book was a record mainly for research and statistical purposes. It set out all the instruments lodged for registration the day before and was a useful guide for property analysts. It provided particulars of the memorials which included the date and nature of the instruments, the parties to the instruments, the names of the conveyancing firm, the date of transaction etc. The proposed deletion of the names would not affect the property analysts as this was not relevant to their research. Mr IP was not convinced that the proposed deletion could protect privacy since the actual land register would still contain the names of the parties. RM explained that at present, the cost of search of land register was \$15 per entry while the cost of bulk search of the Memorial Day Book was \$260 per day for all entries within a district. The higher cost of search of land register would serve as a disincentive for the setting up of a names index

10. Referring to the amendments to Regulations 6 and 12 of the Land Registration Regulations, Ms Audrey EU sought clarification on whether the names of the parties and relevant persons would be deleted from Memorial Day Book but not the memorials. RM said that while particulars, including the names of parties, were to be provided in the memorials as well as the land register, the names of parties would not be entered in the Memorial Day Book to avoid the setting up of a names index.

Name search by Government departments

11. Ms EU enquired whether Government departments would have the power to conduct a search on properties owned by an individual and if so, whether this would intrude into the privacy of the individual. RM confirmed in response that Government departments were able to conduct a search by name if there was a need to do so. Meanwhile, private parties could only conduct a search of their own properties. LR said that the power of search given to Government departments was to enable them to discharge their law enforcement duties. Such power of search, if given to private parties, would be undesirable and would contravene PDPO. Responding to Ms EU's concern that the power given to Government departments might give rise to mischief, LR stated that this had never occurred. The Senior Assistant Law Draftsman (SALD) said that as the law draftsman for PDPO, he was aware that the Ordinance provided exemptions from privacy provisions to certain departments such as the Police, the Independent Commission Against Corruption and the Securities and Futures Commission etc.

12. Miss Margaret NG was concerned that the privacy of an individual could be freely intruded into by Government officials on the assumption that this was part of their duty to do so. In this connection, she enquired about the legal provisions governing the authority to conduct the search, the circumstances under which the search could be conducted, the procedures which the departments had to go through in order to have access to the data and the need for notification of the person concerned. SALD said that anyone who felt that the Administration or any person was breaching PDPO could make a complaint to the Privacy Commissioner for Personal Data who would issue notices requesting the defaulting party to comply with the Ordinance. There was no difference between the Administration and any person in this respect. LR added that the departments did not have free access to the data and that they would need to apply to the Land Registry. As to whether the person concerned would be informed, SALD said that under PDPO, the person concerned might or might not need to be informed.

13. Regarding the circumstances under which applications for search could be made and if any of these applications had ever been refused, LR said that an application had to be signed by a responsible officer at directorate grade level of the department and the reasons for the search had to be stated as otherwise the application would not be approved. RM added that only certain departments could apply for the search and this would have to be in relation to their enforcement work. Members noted that apart from the enforcement agencies, the Inland Revenue Department and the Buildings Department had both submitted a lot of requests for searches. The latter were in connection with the ownership of illegal rooftop structures and unauthorized building works. In response to the Chairman, the Administration undertook to provide the list of Government departments which were permitted to conduct searches by name, the number and breakdown of such searches as well as the criteria adopted by the Land Registrar in approving these searches. RM said that while the list of Government departments could be given, she had to check whether a breakdown figure was available.

(*Post-meeting note:* The Administration's response was circulated to members vide LC Paper No. CB(1) 610/00-01(02).)

14. Mr LAU Ping-cheung was more concerned about whether there was any appeal mechanism for Government departments whose applications for searches were turned down by the Land Registry. He said that there might be cases where the departments and the Land Registry could not resolve on the issue. LR said that such a case was hypothetical as it had never happened. He did not envisage that such a case would arise or that it could not be resolved satisfactorily. SALD said that the matter should be sort out between the Bureaux concerned. If there was no breach in the provisions of PDPO in the exchange of information, there should not be any problem.

Fees and charges for land searches

15. Ms EU enquired about the provisions which governed the fees and charges for land searches and whether the costs of searches would be reduced when the IT system was in place. LR provided the following information-

- (a) The Schedule to the Land Registration Fees Regulations provided all the fees including search fees, which were set out in item 11. The Land Registry did not distinguish between on-line and manual searches;
- (b) The cost for a simple search was \$15 and the cost for a detailed background search was \$30. The system for providing on-line searches had been in operation for four to five years and had been working well. He would be pleased to arrange a visit to the Land Registry so that members would be able to see for themselves the search service and the IT arrangements; and
- (c) The Land Registry had not increased its charges since June 1996. For the past five years, it had absorbed increases and had kept the prices down. As pointed out earlier, there would not be increases in statutory charges as a result of the proposed improvements in the Bill. Upon the implementation of CRS, the Land Registry would examine whether the charges could be reduced but no commitment could be made at this stage.

16. Ms EU said that the Government was able to reduce its charges lately due to the economization of its costs. She suggested that with the implementation of the IT system, consideration should be given to reducing the charges for on-line searches as their costs were cheaper than manual searches. The provision of a lower charge for on-line searches would give an incentive for searches to be conducted on-line. LR said that the charge for on-line searches was already low and was comparatively lower than most land registries in other countries. He agreed that a review of the charges would be conducted after an assessment was made on the staff costs upon implementation of the IT system.

Stopped deeds

17. Since “stopped” deeds withheld from registration due to errors or other issues would not be available for search, Dr TANG Siu-tong was concerned that there would be a possibility that unscrupulous solicitors would make use of this loophole to hinder or delay the conveyancing process, thereby affecting the interest of the property owners. The Deputy Principal Solicitor of the Land Registry (DPS/LR) said that in the case where deeds were withheld from registration, the documents could be retrieved at any time by the registrants. These stopped deeds would be entered on the “Deeds Pending Registration” portion of the computer land register. When a search was made on the property concerned, the searcher would be able to know from the computer that registration had been withheld and therefore could make further enquiries in this respect. Dr TANG pointed out that there could be situations where solicitors submitted and subsequently withdrew their documents, thereby creating a stopped deed situation and the public would not be able to know the contents of the documents submitted. DPS/LR said that since the documents had not been registered, they would not be regarded as public documents and could not be made available to the public. However, searchers could approach the owners direct for information. She added that under the new system, power would be given to LR to remove the entries of these stopped deeds and the instruments temporarily withdrawn by the lodging parties from the land register after one year from the date of delivery. Dr TANG further enquired about the effect of stopped deeds on subsequent registration by other purchasers. He was also concerned about the submission of false deeds and other instruments which might hinder the conveyancing of the property. DPS/LR said that all deeds and instruments submitted to the Land Registry would be entered into the “Deeds Pending Registration” portion of the computer land register and these would be placed on the receiving queue which operated on a first-come-first-served basis. Where two deeds in respect of the same property were submitted for registration, the Land Registry would request the parties involved to sort out the problem before registration was to be effected. The staff of the Land Registry did not have the judicial capacity to adjudicate on the authenticity of the deeds.

18. On the power which was given to LR to remove the entries of stopped deeds and instruments temporarily withdrawn by the lodging parties from the land register after one year from the date of delivery, SALD said that this was provided under the proposed Regulation 15(6), (7) and (8) of the Land Registration Regulations. LR added that the proposed amendments would provide efficiency both to the Land Registry and the conveyancing public and would protect public interest as well.

19. Members noted that the lodging party and other affected persons would be notified of the proposed removal of a entry and be given a period of not less than 28 days to make written submissions to LR for a decision on the matter. Miss Margaret NG was concerned that LR might not be able to notify the affected parties about the removal of their stopped deeds. DPS/LR said in response that under the Bill, LR had to give notice to the affected parties and a notice would be posted on the notice board of the Land Registry. LR would also ensure that the entry was not the subject of a court action in respect of the registration of the document. The affected parties would be given an opportunity to make written submissions on the

proposed removal within 28 days. The parties to be notified would include the parties who delivered the instruments, the parties to the document and parties whom LR considered that they would be affected by the proposed removal. Upon receipt of the submissions, LR would make a decision on the matter. Notice of the decision would be made and any aggrieved party could apply to the appropriate court against LR's decision. If no court action was taken upon the expiry of 60 days from the notification of the decision, LR could exercise his power of removal by posting a notice on the notice board of the Land Registry. A lot of safeguards were in place before LR exercised his power of removal. In the event that the notice was unable to reach the affected parties, LR would take this into consideration when making the decision. The decision would have to be made with great care as it was subject to review by courts. As regards the consequence of removal on those who did not receive the notice of removal, DPS/LR said that since the registration of their documents had been withheld and had not been completed, the removal of the entries of stopped deeds would mean that they would lose the chance to get the priority. It was hoped that parties who wished to register their documents should take active action to complete their registration and those who were notified about the proposed removal would respond and exercise their rights.

20. On Miss Margaret NG's enquiry on whether the 28 days could be further extended, DPS/LR said that the 28 days' notice would be the minimum. LR supplemented that in accordance with the proposed Regulation 15(8), a person would be deemed to be notified if a notice in writing was given to him for not less than 28 days. Where there was a request for further extension, this could be considered depending on the case. As the provision for the extension was not clearly stated, Miss NG said that there might be a need to review the proposed Regulation 15(8) later in detail to see if this was needed. SALD said that it would be for LR to decide whether an extension should be granted as there were no provisions requiring him to proceed to the next step immediately after the 28 days. Therefore, even without the amendment, LR could exercise his discretion of extending the notice period.

21. Ms Audrey EU said that a different form of treatment should be used to deal with the stopped deeds which had been accumulated over the years, as she was concerned that some of the affected parties might not be aware of the introduction of the Bill and could not be reached. LR said that one of the reasons for empowering LR to remove the entries of stopped deeds was that there were many stopped deeds accumulated, one of which was made some 30 years ago. The number of stopped deeds fluctuated from 4% to 10% of the total number of registrations. Presently, there were about 2,000 stopped deeds stopped for more than one year and it was hoped that the number would be considerably reduced after the implementation of the Bill. There were also regular discussions with the Law Society of Hong Kong (LS) on how to curtail the number of stopped deeds. A number of stopped deeds which were related to a conveyancing solicitor who had gone out of practice had been resolved with the assistance of LS.

Certified copy documents

22. Referring to item 4(ii) of Annex C to the LegCo Brief, Mr IP Kwok-him said that he shared the concerns of the consultees about the need for owners to be notified before the registration of copy documents against their properties to prevent registration of fraudulent copy instruments. He said that he knew of incident where a property was sold using copy instruments without the owner's knowledge. DPS said that the Land Registry only accepted a limited category of certified copy instruments which had to be certified in a specific manner to its satisfaction. These instruments would have to be certified by either a solicitor or the issuing authority when the originals were not recoverable. The Land Registry would issue a Land Registry Circular Memorandum from time to time notifying legal practitioners and interested parties the types of registrable certified copy document and the manner of certification. The certification process should be a sufficient measure to prevent registration of fraudulent copy instruments.

Identification of signing parties in the instruments

23. Referring to paragraph 10(d) of the LegCo Brief, Ms Audrey EU enquired whether the identity card number or the number of the valid travel document provided by the individual signing the instruments delivered for registration was for reference only and would not be divulged to the public. LR said that the request for the provision of such information was an existing practice and the Bill was merely formalizing it. He assured members that the data would not be made available to the public.

Errors in land registration

24. On Dr TANG Siu-tong's enquiry on whether the Land Registry would bear the consequence of errors in the transfer of data to CRS, LR said that the responsibility of entering errors in the land registration system would depend on the error made and as such there was no general way to deal with them.

Performance pledge

25. On Mr IP Kwok-him's enquiry about the performance pledge for CRS, LR affirmed that the Land Registry had its own performance measures. These were published and reviewed every year and were discussed with the two customer groups, one being practicing solicitors, banks and accountants and the other being officials. It was expected that the processing time would be substantially reduced after the first phase of CRS was completed.

Scrutiny of the Bill

26. Miss Margaret NG sought the Chairman's view on how the Bills Committee should proceed to scrutinize the Bill which was largely technical in nature. Referring to Annex C to the LegCo Brief, she pointed out that some of the issues raised by consultees had remained unresolved. The Chairman said that he would prefer to

address the general concerns raised by members first, after which the Bills Committee would go into details and study the concerns raised by consultees as set out in Annex C to the LegCo Brief. He suggested that deputations be invited to give their views on the Bill.

(Post-meeting note: Invitation letters were issued to the Law Society of Hong Kong, Hong Kong Institute of Surveyors, Hong Kong Society of Accountants, Heung Yee Yuk, Hong Kong Association of Banks, Hong Kong Real Estate Agencies General Association, Properties Agencies Association Ltd, Society of Hong Kong Real Estate Agents Ltd, Hong Kong Chamber of Professional Property Consultants Ltd and New Territories Estate Agency Association Ltd on 13 and 20 February 2001.)

Date of next meeting

27. Members agreed to meet again on Tuesday, 20 February 2001, at 8:30 am. There being no other business, the meeting ended at 10:10 am.

Legislative Council Secretariat

26 March 2001