

立法會
Legislative Council

LC Paper No. CB(1) 924/00-01
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/00/2

Bills Committee on
Land Registration (Amendment) Bill 2000
Meeting on
Tuesday, 20 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
Hon Andrew WONG Wang-fat, JP
Hon Mrs Miriam LAU Kin-yee, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon CHAN Yuen-han

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

Ms Barbara MAK
Business Manager

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

The Chairman drew members' attention to the Administration's response to members' concerns raised at the last meeting on 13 February 2001, both of which were circulated vide LC Paper Nos. CB(1) 610/00-01(01) and (02) respectively. Miss Margaret NG expressed appreciation for the Administration's prompt reply.

2. Referring to attachment (b) of the Administration's response which set out the government departments which were authorized to conduct name searches of the land register, Ms Audrey EU was concerned about the large number of name searches conducted in the past six months. She enquired about the procedures which the authorized departments had to go through in the application for search and how the Land Registry could ensure compliance with the requirements as set out in attachment (b) before approving applications for search. The Land Registrar (LR) explained that the authorized departments had to complete standard search forms to be signed by officers at directorate level and to provide the reasons for search. The search form would oblige the departments to comply with the criteria of search. The Land Registry was satisfied with the existing arrangements but was prepared to review

Admin. them to ensure that there were no abuses. He added that the name search was a common feature of land registries of other Administrations. At the request of Ms EU, the Administration undertook to provide a copy of the standard form for members' reference.

Admin. 3. Miss Margaret NG remarked that a departmental breakdown on the number of name searches was necessary to facilitate monitoring by the Legislature, in particular of those departments which conducted frequent searches, and to ensure the effective implementation of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). To obviate the need to conduct lengthy manual checking, Miss NG considered that the Land Registry should work out an efficient mechanism to track down the name searches conducted by the different departments. LR advised that the major users of the system were not the law enforcement agencies nor the Inland Revenue Department as perceived but the Housing Department and the Social Welfare Department which required to conduct searches to assess the eligibility of applicants for various assistance schemes. In view of members' concerns, LR agreed to consider the setting up of a mechanism to monitor the use of name search by individual authorized departments and to report the outcome of his consideration to the Bills Committee.

4. Responding to Dr TANG Siu-tong's enquiry on the reasons for the Agriculture, Fisheries and Conservation Department (AFCD) to conduct name searches, LR advised that these were required for the recovery of debts owed to the Department which made loans under its various funds to assist the farming sector. As for the Home Affairs Department, LR said that the searches were mainly to provide information on the following-

- (a) Land under application for succession under section 12 of the New Territories Land (Exemption) Ordinance (Cap. 452);
- (b) Property list of individual owners in the New Territories for processing succession; and
- (c) Registered owners of private buildings for updating records on owners' corporations.

LR also affirmed that charges were levied from the authorized departments in respect of their applications for search.

Admin. 5. The Chairman said that it would be useful for the Administration to provide members with the types of information required and the purposes for which such information were sought by individual authorized departments. Ms Audrey EU added that the Administration should also advise the exemptions under PDPO which allowed the authorized departments to seek such information. LR agreed to provide the information as requested.

6. On colour imaging of plans, LR said that the Land Registry was in the process of assessing the technical ability of various firms before reaching a decision on the outsourcing of the colour imaging services. Referring to the colour imaged plans laid

on the table, LR assured members that the original plans would not be destroyed after they were colour imaged but would be kept by the Public Records Office. Ms Audrey EU thanked LR for showing members the colour imaged plans. In general, the colour imaged plans were acceptable except for the blue colour which need to be slightly improved as it sometimes did not reflect the actual tint of the original plans. She considered that it was high time for the Land Registry to update its system with technological advances. LR said that it was only recently that colour imaging available in the market was sufficiently accurate and reliable. While appreciating the high quality of the colour imaged plans, Mrs Miriam LAU stressed the need for quality control in the event of mass production of these plans. LR confirmed that when the Land Registry entered into a contract with the supplier of the imaging services, it would ensure that there would be quality control in respect of the standard of copies, bearing in mind that viewing of these plans would be frequently done on-line.

7. Responding to Miss Margaret NG's question on the colouring of plans, LR said that the colours to be used were set down in the Land Registration Regulations. The Chairman asked who should be liable for technical errors made in the colouring of plans, and how owners could claim damages if such errors had affected their interests in the land. LR advised that under the existing arrangements, copies of plans were coloured manually and hence they would be an exact transformation of the original plans. As regards errors, LR said that while he was held responsible for such errors under the Land Registration Ordinance (Cap. 128), it would also depend on individual circumstances as mistakes were sometimes made by surveyors and conveyancing solicitors. He added that in its 156 years of service, the Land Registry had only made one mistake in which LR was held liable.

8. Mrs Miriam LAU noted with concern that the colour codes of some of the plans had been inadvertently missed out. She quoted a case where the absence of colour codes in the plan had resulted in the inability to determine the right of way of a road. As the omission of colour codes would pose great difficulty to the parties concerned, Mrs LAU asked if the opportunity would be taken to rectify such errors when the plans were colour imaged. LR stressed that the Land Registry's role was to register documents and it would not provide a legal interpretation of the documents. The Registry Manager (RM) supplemented that back in 1980s, plans were microfilmed in black and white and hence the regulations had been suitably amended to require the insertion of colour codes to reflect the actual colour of the original plans. There were however cases where the colour codes had been inadvertently missed out. Before proceeding to colour image the plans, reference would be made to the deeds to confirm the colour codes. If the colour codes were found missing, appropriate coding would be inserted onto the plans. While acknowledging that the omission of colour codes could be rectified, Mrs LAU remarked that the fading of the colour in the original plans might be an issue which could be further looked into by the Land Registry.

Annex C to the Legislative Council Brief

9. Members agreed to go over Annex C to the Legislative Council Brief which set out the concerns raised by consultees.

Bar-coded memorial form

10. Miss Margaret NG questioned the rationale for not allowing solicitors to use their own computer printout memorial forms. LR explained that the Land Registry had all along provided memorial forms to solicitors who purchased them by bulk at a charge of \$0.15 per copy. He cautioned that solicitors might not be able to put the bar-code at the right place on their own computer printout memorial forms which would make the registration process more difficult. Miss NG opined that the problem could be resolved by issuing a circular to solicitors advising them the right position of the bar-code. LR said that this might not be effective as errors would disrupt the increased automation of the system. Besides, the matter had been raised with the Law Society of Hong Kong (LS) which agreed status quo for the existing arrangements.

11. Mrs Miriam LAU said that it would save much effort and cost if solicitors were able to use their own printout memorial forms as these might run out easily if there were a lot of conveyancing work. If the positioning of the bar-code was the problem, she asked if it would be possible to make copies of the forms. The Change Manager explained that the bar-coded memorial was an essential means to enhance the security and the efficiency of the registration system. It would also reduce a lot of clerical procedures associated with the lodging and receipt of instruments. Each memorial form had a unique one to one bar-code to secure the priority of the instruments lodged. Whenever a memorial was submitted, it would be read by the computer and scanned. The next available memorial number would be allotted and this would be shown on the receipt. As the bar-coded memorial forms were to be centrally controlled by the central registration office, these could not be reproduced by photocopying nor using computer printouts. At members' request, the Administration undertook to provide a copy of the bar-coded memorial form.

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Registration of certified copy documents

12. While acknowledging that the present practice of issuing a Land Registry Circular Memorandum from time to time notifying solicitors of the types of registrable certified copy documents would be more flexible, Miss Margaret NG said that it would provide a degree of certainty if the Bill would specify the types of certified copy documents which were registrable. RM said that the Land Registry accepted certified copies of documents such as death certificate, probate, and power of attorney. Certified copies of certain documents had to be accepted from time to time because of the unavailability of the originals. The provision of the types of certified copy documents in the law would result in inflexibility, as amendments would be required to take account of any changes. Therefore, the Land Registry would prefer a more flexible system of notification through the issue of Land Registry Circular Memorandum. Miss NG suggested that a Committee Stage amendment to the Bill be introduced to provide for the types of registrable certified copy documents accepted by the Land Registry, adding that any such others would be notified by Land Registry Circular Memorandum from time to time. She was of the view that the proposed arrangement would provide more certainty. LR agreed to consider the proposal

Admin. although he would prefer to continue with the existing arrangement which had all along been working well.

13. Noting that the Administration had declined the request of the Heung Yee Kuk (HYK) that property owners be informed before the registration of copy documents against their properties to prevent the registration of fraudulent copy instruments, Miss Margaret NG was concerned whether there were sufficient safeguards in the certification process since the Bill did not require the certification of instruments by solicitors nor the issuing authorities. The Deputy Principal Solicitor (DPS) said that the proposal on acceptance of certain copy documents only applied to those documents certified in a manner acceptable to the Land Registry. The certification methods and the types of documents would be included in the Land Registry Circular Memorandum. The certification of copy documents was an existing practice which was accepted by lawyers. This practice had been agreed with LS and lawyers were aware of the types of copy documents which were registrable. The Land Registry would only accept copy documents certified by solicitors or the issuing authorities. As regards the Chairman's request for a copy of the Land Registry Circular Memorandum, DPS said that the Land Registry had yet to work out the manner in which registrable copy documents should be included in the Memorandum after the enactment of the Bill. At present, the Land Registry only had a list of registrable copy documents which was agreed with LS and this could be provided for members' reference.

Removal of entry of instruments withheld or temporarily withdrawn from registration

14. Dr TANG Siu-tong opined that the period of stopped deeds should be shortened as the proposed period of one year might give an opportunity for some solicitors to procrastinate the conveyancing process. Mrs Miriam LAU also questioned the rationale for Administration to rule out HYK's suggestion of shortening the proposed period of stopped deeds to be pending from one year to six months subject to extension on application, which in her view would expedite the whole registration process. LR said that LS had supported the proposed period of one year as this would allow sufficient time for lodging solicitors to deal with the outstanding issues stated in the stopped deed note. Mrs LAU however pointed out that LS had suggested that the period be shortened. Although she agreed with Ms Audrey EU that stopped deeds would not impact on the registration process as other instruments could still be registered in the interim, she was concerned that these would create uncertainty on the land title. To this end, Mrs LAU supported HYK's suggestion of allowing a period of six months subject to extension on application to provide more flexibility. LR said that the Administration had considered the suggestions put forward and had decided that as a matter of judgement and balance, the proposed period of one year was more appropriate. To facilitate members' understanding of the effects of the withheld/stopped deeds on the parties concerned, Miss Margaret NG requested that the Administration should provide more information on the subject. While agreeing to consider a reduction in the period referred to in Regulation 15(6) for stopped deeds, LR said that he would need to refer to the statistics on stopped deeds, adding that the level of stopped deeds was quite high and that the Land Registry was holding regular discussions with LS on the reduction of

stopped deeds.

Deletion of names particulars in the Memorial Day Book

15. Mrs Miriam LAU queried the need for deleting the names of parties from the Memorial Day Book on grounds of protection of privacy when such were provided in the land register. She said that since legal practitioners would need to know the identities of the parties to a transaction, the names of the parties should be provided in the Memorial Day Book. RM explained that the Memorial Day Book was a record mainly for research and statistical purposes and was useful to market analysts in analyzing the trend in the property market. Legal practitioners who wanted to have information on whether a deed had been lodged on a certain property could have access to the information on-line by checking the “Deeds Pending” column of the computer register. It was not necessary for legal practitioners to refer to the Memorial Day Book. Presently, a lot of customers such as banks and estate agencies were applying for copies of the Memorial Day Book for their research. To prevent some of these companies from gathering information from the Book to compile a names index which was in breach of PDPO, the Land Registry proposed to delete the names of parties from the Memorial Day Book.

16. Members agreed to receive deputations at the next meeting to be held on Tuesday, 6 March 2001, at 2:30 p.m. They would proceed to examine the Bill clause by clause after meeting with the deputations.

II. Any other business

17. There being no other business, the meeting ended at 9:50 am.

Legislative Council Secretariat

28 March 2001