

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1600/01-02

(These minutes have been  
seen by the Administration)

Ref : CB2/BC/24/00

### **Legislative Council Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001**

#### **Minutes of the fourth meeting held on Thursday, 4 April 2002 at 10:45 am in Conference Room A of the Legislative Council Building**

**Members Present** : Hon Margaret NG (Chairman)  
Hon James TO Kun-sun  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Mr Ambrose LAU Hon-chuen, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Member Absent** : Hon Cyd HO Sau-lan

**Public Officers Attending** : Mr Michael SCOTT  
Senior Assistant Solicitor General  
  
Miss Doris LO  
Acting Senior Government Counsel  
Legal Policy Division

**Clerk in Attendance** : Mrs Percy MA  
Chief Assistant Secretary (2)3

**Staff in Attendance** : Ms Bernice WONG  
Assistant Legal Adviser 1  
  
Mr Paul WOO  
Senior Assistant Secretary (2)3

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**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(2)1506/01-02)

The minutes of the meeting held on 18 March 2002 was confirmed.

**II. Meeting with the Administration**

2. The Committee deliberated (index of proceedings attached at **Annex**).

Part VII of the Bill (Power of Court to Order Repayment of Deposit)  
(The Bill, marked-up copy of the Bill, LC Paper No. CB(2)1352/01-02(02), LS Paper No. LS69/01-02)

3. Ms Audrey EU said that she had reservations about the proposed amendment to the Conveyancing and Property Ordinance (CPO) to empower the court to order repayment of a deposit in an action for its return or where the court refused to grant specific performance of a contract, for the following reasons –

- (a) At present, at common law, the court already had the power to grant relief against forfeiture of a deposit so as to do justice under justifiable circumstances. Vendor and purchaser summons also enabled the parties to seek redress in court;
- (b) The provision of an undefined discretion of the court to order return of deposit would create uncertainty of contract and encourage more people to engage in litigation, which was undesirable from the public interest point of view;
- (c) It was arguable that a forfeiture of the deposit would create a windfall profit for the vendor and hence unduly favour the vendor. In seeking to recover the deposit, the purchaser would at the same time ask for a declaration of a lien on the property, thus preventing the vendor from selling the property;
- (d) The situations in the UK and Australia were different from that in Hong Kong, particularly with regard to the property market. It would be unwise to copy their practices in this specific area of legislation.

4. The Chairman said that she was inclined to support the proposed amendment so as to provide a statutory remedy for a purchaser who might otherwise suffer unfair loss, without causing real harm to the vendor.

5. Mr Ambrose LAU objected to the proposed amendment which, in his view, would encourage unmeritorious litigation brought by purchasers wishing to recover the deposit. He added that genuine cases which warranted the court to exercise the proposed discretion to order return of the deposit would be few. He pointed out that there were also cases where the vendor could be considered as breaking the contract e.g. failure to deliver the vacated property in time. Hence, it was necessary to balance the rights of both the vendor and the purchaser.

6. Mrs Sophie LEUNG said that in the particular situation of the local property market where transactions of property were considered as a kind of commodity trading, a large number of transactions, particularly transactions in the secondary market, fell through because of fluctuations in the property prices. In her opinion, it was necessary to safeguard contractual certainty.

7. Mr TSANG Yok-sing said that he tended to lean on the side of not supporting the proposed amendment. He was not convinced that a sufficient case had been made out by the Administration for the proposed amendment.

8. Mr James TO expressed reservations about the legislative proposal. He said that he would seek the views from other members of the Democratic Party on the issue.

9. Ms Emily LAU pointed out that the views expressed by interested parties on the proposed amendment in the consultation exercise conducted by the Administration were divided. She proposed and members agreed that the Consumer Council should be further consulted in view of the remarks made in its previous submission.

10. Ms Audrey EU suggested that the Bar Association's views should be sought on whether the proposed power of the court to order repayment of deposit should be limited to cases where there was a defect in the vendor's title, along the lines of section 55(1) of the New South Wales Conveyancing Act 1919.

11. The Administration was requested –

- (a) to advise whether proposed section 12(1A) of the CPO required separate proceedings to be conducted for action for specific performance of a contract and action for the return of a deposit;
- (b) to advise whether an action for the return of a deposit brought by a purchaser would tie up the property so that the vendor would not be able to sell the property until the court had ruled on the case;

- (c) to advise how the systems in Australia and the UK operated and whether the vendor's property would be tied up for some time;
- (d) to advise whether the well-established English and Australian precedents would be applicable to the situation in Hong Kong, given the differences between these countries and Hong Kong in property market and conveyancing practices.

Part X of the Bill (Non-Immunity Clauses)

12. The Administration was requested to provide information on the nature of the organizations specified in the 15 Ordinances.

**III. Date of next meeting**

- 13. The next meeting would be held on 18 April 2002 at 10:45 am.
- 14. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 2  
Legislative Council Secretariat  
16 April 2002

**Proceedings of the fourth meeting of the  
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001 on  
Thursday, 4 April 2002 at 10:45 am  
in Conference Room A of the Legislative Council Building**

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000001-000307	Chairman	Confirmation of minutes (LC Paper No. CB(2)1506/01-02) /  Background paper prepared by the Clerk on Part VII of the Bill (LC Paper No. CB(2)1352/01-02(02))	
000308-000643	Adm	Briefing by the Adm on Part VII of the Bill	
000644-000954	Chairman	Background paper (LC Paper No. CB(2)1352/01-02(02)) setting out progress of deliberation by Panel on Administration of Justice and Legal Services on the proposal to amend section 12 of the Conveyancing and Property Ordinance to provide the court with a statutory discretion to order repayment of a deposit to purchaser	
000955-001009	Adm	-ditto-	
001010-001155	Chairman	-ditto-	
001156-001754	Ms Audrey EU	Grounds for her objection to the proposed legislative amendment	
001755-001832	Chairman	-ditto-	
001833-002000	Mr Ambrose LAU	Grounds for his objection to the proposed legislative amendment	
002001-002005	Chairman	Invite comments on the legislative proposal	
002006-002014	Mrs Sophie LEUNG	-ditto-	
002015-002133	Mr Jasper TSANG	Grounds for his inclination not to support the proposed amendment	
002134-002137	Chairman	Invite comments on the legislative proposal	
002138-002339	Ms Emily LAU	Suggestion to invite further comments from interested parties on the legislative proposal	
002340-002343	Chairman	-ditto-	
002344-002354	Mr James TO	Comments on the legislative proposal	
002355-002914	Chairman	Grounds for her support for the legislative proposal	

002915-003103	Mr Jasper TSANG	Comments on the legislative proposal	
003104-003347	Chairman	-ditto-	
003348-003758	Ms Audrey EU	-ditto-	
003759-003850	Chairman	-ditto-	
003851-004218	Mr James TO	-ditto-	
004219-004617	Mr Ambrose LAU	Arguments against providing the court with the statutory discretion to order repayment of deposit	
004618-004624	Chairman	Comments on the legislative proposal	
004625-004800	Mr James TO	-ditto-	
004801-004837	Chairman	-ditto-	
004838-004841	Mr James TO	-ditto-	
004842-004856	Chairman	-ditto-	
004857-005016	Ms Audrey EU	-ditto-	
005017-005103	Chairman	-ditto-	
005104-005259	Mrs Sophie LEUNG	-ditto-	
005300-005303	Chairman	-ditto-	
005304-005329	Ms Emily LAU	Suggestion to invite Consumer Council to provide further views on Part VII of the Bill	
005330-005632	Chairman	Adm to provide written response to issues raised	Adm (para. 11(b))
005633-005744	Mrs Sophie LEUNG	Further consultation with Consumer Council	
005745-005817	Chairman	-ditto-	
005818-005936	Adm	Explanation on the legislative proposal in the light of some of members' comments	
005937-010134	Chairman	Overseas practices	Adm (para. 11(c) & (d))
010135-010138	Adm	-ditto-	
010139-010244	Ms Audrey EU	Action for the return of a deposit would tie up the property rendering the vendor unable to sell the property	
010245-010435	Chairman	Conditions laid down in proposed section 12(1A) of the Ordinance - Clause 19 of the Bill	
010436-010458	Ms Audrey EU	Lien on property registered by purchaser	
010459-010540	Chairman	Proposed section 12(1A) of the Ordinance	Adm (para. 11(a))

010541-010632	Mrs Sophie LEUNG	Effect of proposed amendment on vendor	
010633-010718	Chairman	-ditto-	
010719-010734	Mrs Sophie LEUNG	-ditto-	
010735-010801	Chairman	-ditto-	
010802-010822	Mrs Sophie LEUNG	-ditto-	
010823-010838	Chairman	-ditto-	
010839-010842	Mrs Sophie LEUNG	-ditto-	
010843-010852	Chairman	-ditto-	
010853-010903	Mrs Sophie LEUNG	-ditto-	
010904-010907	Chairman	-ditto-	
010908-010942	Ms Audrey EU	Section 55 of New South Wales Conveyancing Act 1919	Clerk (para.10)
010943-010946	Chairman	Clause 19	
010947-011000	Ms Audrey EU	-ditto-	
011001-011446	Chairman	Part X of the Bill / LC Paper No. LS 69/01-02	
011427-011435	Ms Audrey EU	Adm to respond to issues raised at meeting on 28 March 2002	
011436-011527	Chairman	-ditto-	
011528-011531	Adm	-ditto-	
011532-011537	Chairman	-ditto-	
011538-011610	Ms Audrey EU	-ditto-	
011611-011637	Chairman	-ditto-	
011638-011651	Clerk	-ditto-	
011652-011703	Chairman	-ditto-	
011704-011709	Ms Audrey EU	-ditto-	
011710-011751	Chairman	Part X of the Bill	
011752-012059	ALA	Part X of the Bill - Proposed amendments to the "non-immunity" clauses in 15 Ordinances	
012100-012406	Chairman	-ditto-	Adm (para. 12)
012407-012415	Adm	-ditto-	
012416-012440	Chairman	-ditto-	

012441-012501	Ms Audrey EU	-ditto-	
012502-012658	Chairman	Annex C of LC Paper No. LS 69/01-02 - Report of the Bills Committee on Adaptation of Laws (No. 16) Bill 1999	
012659-012710	Mr Jasper TSANG	-ditto-	
012711-013048	Chairman	Follow up discussion at next meeting on 18 April 2002	
013049-013053	Adm	-ditto-	
013054-013146	Chairman	-ditto-	

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

Council Business Division 2  
Legislative Council Secretariat  
16 April 2002