

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1198/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of the twenty-third meeting held on  
Friday, 30 January 2004, at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan (Deputy Chairman)  
Hon Andrew WONG Wang-fat, JP  
Hon Miriam LAU Kin-ye, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Albert CHAN Wai-yip  
Hon WONG Sing-chi  
Hon IP Kwok-him, JP  
Hon LAU Ping-cheung  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Mr Kim SALKELD  
Land Registrar
- Mr Parrish NG  
Principal Assistant Secretary for Housing, Planning  
and Lands (Planning and Lands)3
- Ms Monica LO  
Senior Solicitor/Title Registration  
Land Registry

Mr M K TAM  
Senior Solicitor  
Land Registry

Ms Florence WONG  
Solicitor  
Land Registry

Miss Miranda F H NG  
Senior Assistant Law Draftsman  
Department of Justice

Ms Rayne CHAI  
Government Counsel  
Department of Justice

Mr Denis LI  
Assistant Secretary (Buildings)<sup>3</sup>  
Housing, Planning and Lands Bureau

**Attendance by invitation** : The Law Society of Hong Kong

Ms Emily LAM  
Chairman of the Property Committee

Mr Peter AHERNE  
Chairman of the Working Party on Land Titles Bill

Mr Vincent LIANG  
Member of the Property Committee

Ms Christine W S CHU  
Assistant Director of Practitioners Affairs

**Clerk in attendance** : Miss Salumi CHAN  
Chief Council Secretary (1)5

**Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Sarah YUEN  
Senior Council Secretary (1)6

Action

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- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)875/03-04 — Minutes of the twenty-second meeting held on 13 January 2004)

The minutes of the meeting held on 13 January 2004 were confirmed.

- II. Meeting with The Law Society of Hong Kong and the Administration**  
(LC Paper No. CB(1)615/03-04(01) — Submission dated 16 December 2003 from The Law Society of Hong Kong
- LC Paper No. CB(1)730/03-04(05) — Administration's preliminary response to Law Society's proposal for "Daylight Conversion")

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

- Admin 3. At the request of the Bills Committee, the Administration agreed to take the following actions -
- (a) To provide information on the statutory requirement in the United Kingdom for spouses to register their unwritten interests in land, including the timing of registration. The Administration was also requested to advise whether the relevant legislation had been successful in achieving its purpose.
  - (b) Members were concerned whether there were any differences in nature and effect between the cautions registered during and after the 12-year incubation period under the daylight conversion system proposed by The Law Society of Hong Kong (Law Soc); and if there were, the differences. The Administration was requested to look into this point in consultation with Law Soc.
  - (c) To advise the Bills Committee of what the Title Register would look like during and after the 12-year incubation period under the daylight conversion system.

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 13 February 2004, at 8:30 am. She also reminded the Administration to provide before the meeting a full response to Law Soc's proposal for daylight conversion for the Bills Committee's consideration.

**III. Any other business**

5. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 1  
Legislative Council Secretariat  
3 March 2004

**Proceedings of the twenty-third meeting of the  
Bills Committee on Land Titles Bill  
on Friday, 30 January 2004, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000358	Chairman	Welcoming and introductory remarks	
000359-000605	Chairman The Law Society of Hong Kong (Law Soc)	Presentation by Mr Peter AHERNE	
000606-001029	Chairman Law Soc	<p>(a) Law Soc's confirmation that its major concern about the Bill was the conversion mechanism and if the concern could be addressed, it would support the new land title registration system (LTRS) which was superior to the current system</p> <p>(b) Law Soc's confirmation that the essence of its proposal for daylight conversion (the Proposal) was the introduction of a 12-year incubation period during which all properties would be placed on a "provisional" title register and dealt with in the same way as at present with one exception, namely, that registration of unwritten equitable interests would</p>	

Time marker	Speaker	Subject(s)	Action Required
		be permitted and if not registered, they would cease to be enforceable against the land concerned upon expiry of the 12-year period	
001030-001404	Chairman Mr Albert HO Law Soc	<p>(a) Law Soc's confirmation that requisitions in titles would be dealt with in the same way as at present during the 12-year period and the titles concerned would be registered after the 12-year period unless a caution against conversion was registered</p> <p>(b) Law Soc's confirmation that a caution against conversion would lapse one year after lodgment unless the cautioner had commenced court proceedings to assert his claim or the issues under dispute had been resolved</p>	
001405-001755	Chairman Mr LAU Ping-cheung Law Soc	Anticipated functions of the reference body that Law Soc previously proposed to be established under the Land Registrar to adjudicate on what would be allowed for first registration in cases of doubt	
001756-002540	Chairman Law Soc	(a) Explanation by Law Soc on the main features of the Proposal (paragraph 2(b) to 2(d) of the Administration's	

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		<p>preliminary response to the Proposal (LC Paper No. CB(1)730/03-04(05))</p> <p>(b) Law Soc's confirmation that upon expiry of the 12-year period, a property in respect of which a caution against conversion had been registered would remain in the deeds registration system (DRS) until the caution lapsed</p>	
002541-003209	Chairman Ms Audrey EU Law Soc	<p>(a) Members' concern about the possible situation where fraud was committed shortly before expiry of the 12-year period so that the person affected might not have sufficient time to register a caution to protect his interests</p> <p>(b) Law Soc's clarification that the court could order rectification of the Title Register on the ground of fraud committed prior to conversion</p> <p>(c) Whether Law Soc would consider adopting a dual system where new titles would be put on the Title Register while the problematic and second-hand titles would be put on a provisional register</p>	

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		(d) Law Soc's concern that a dual system as described in item (c) above might create a disincentive in relation to unregistered land, and Law Soc's indication of its willingness to examine the dual system	
003210-003714	Chairman Ms Audrey EU Law Soc	(a) Members' concern about the need for the incubation period to be as long as 12 years given the right to register a caution against conversion  (b) Law Soc's explanation that it in fact preferred midnight conversion with a short grace period during which people might register cautions and make their claims, and that the Proposal was only an alternative to midnight conversion that was not accepted by the Administration	
003715-005005	Chairman Ms Miriam LAU Law Soc Administration	(a) Background information provided by the Administration on the Australian systems from which the Proposal was adapted and lengths of their respective incubation periods (30 years for Queensland and 12 years for New South Wales)	



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		<p>(b) Members' concern about protection of unwritten interests, and Law Soc's clarification that unwritten interests could always be protected by registering cautions although existing interests not registered before the expiry of the 12-year period would not be enforceable against the land concerned</p> <p>(c) On paragraph 2(b) of LC Paper No. CB(1)730/03-04(05), Law Soc's clarification that new unwritten interests could still be created after the commencement date of the Bill although if not registered before expiry of the 12-year period they would not be enforceable against the land</p> <p>(d) Relationship between the 12-year incubation period and the limitation period and the need to match the two</p>	
005006-010020	Chairman Mr TAM Yiu-chung Law Soc Administration	(a) Members' concern that the term "provisional register" might give rise to worries about the certainty of title and the suggestion of removing the word "provisional" to address the concern	

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		<p>(b) Law Soc’s view that the Proposal would enhance certainty of title because thereunder title defects would be significantly reduced and all properties would be treated alike to obviate any labelling effect</p> <p>(c) Law Soc’s clarification that the Proposal was in fact only about adopting a two-stage approach in implementing the LTRS, and that all titles would be treated in the same way as under the existing DRS during the 12-year period despite the use of the term “provisional register”, and that the term was adopted only to facilitate discussion</p>	
010021-010841	Chairman Mr Albert HO Ms Miriam LAU Law Soc Administration	<p>(a) Discussion on whether the 12-year period could be shortened, and Law Soc’s confirmation that it preferred midnight conversion if possible and hence would not object to shortening the period</p> <p>(b) Law Soc’s confirmation that its major concern was that automatic conversion would replace the requirement under the Bill of a solicitor to guarantee title by the issue of a certificate of good title</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) Administration's explanation of the need to set the incubation period at 12 years</p> <p>(d) The Land Registrar's comment that the Land Registry found the Proposal workable but the Administration needed more time to study the Proposal before deciding whether the Proposal should be accepted</p>	
010842-012919	<p>Chairman Ms Audrey EU Assistant Legal Adviser Law Soc Administration</p>	<p>(a) Members' request for the Assistant Legal Adviser (ALA), Law Soc and the Administration to highlight the major consequential differences between adopting the conversion system under the Bill and that under the Proposal, especially where checking of titles was concerned</p> <p>(b) Members' concern about implications of the Proposal on protection of interests relating to trusts, wills, corporations, estates, etc, which seemed not enforceable against the land under the Proposal if not registered before expiry of the 12-year period and hence not traceable</p> <p>(c) Law Soc's explanation that the issues in item (a) above</p>	

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		<p>had not been examined in detail pending the Administration's acceptance of the Proposal but since all titles would be treated in the same way as at present under the Proposal, its effect on the interests mentioned in item (b) above should not be different from those under the Bill. In fact, such interests should be better protected under the Proposal by permitting registration of such as cautions</p> <p>(d) Administration's explanation that the major difference would be in the conversion process where the requirement to issue a certificate of good title would be waived. However, when a transaction for value took place, the solicitors involved would still need to check the title and trace the existence or otherwise of trusts, wills, etc to ensure the person carrying out the transaction had the authority to do so</p> <p>(e) ALA's comment that under the Proposal, the interests highlighted in item (b) above could be protected by registration or by taking</p>	

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		<p>other active measures within the 12-year period</p> <p>(f) Whether a solicitor should be relied upon to remind holders of unwritten interests to register such during the 12-year period</p>	
012920-013239	Chairman Ms Audrey EU Administration	<p>(a) Organizations to be consulted before the Administration decided whether to accept the Proposal</p> <p>(b) The Land Registrar's confirmation that acceptance of the Proposal would hinge on the outcome of the necessary consultation</p>	
013240-014011	Chairman Ms Miriam LAU Law Soc Administration	Clarification that only registration of a caution against conversion during the 12-year period would affect conversion. Other instruments could continue to be registered as at present	
014012-014135	Chairman Mr Albert HO Ms Miriam LAU Administration	Information on the statutory requirement in the United Kingdom for spouses to register their unwritten interests in land to ensure protection	Administration to take the follow-up action under paragraph 3(a) of the minutes
014136-014630	Chairman Ms Audrey EU Law Soc	(a) Members' concern about whether there were any differences in nature and effect between the cautions registered during and after	Administration to take the follow-up action under paragraph 3(b) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		the 12-year period  (b) Need to ensure that the Title Register would look the same during and after the Period despite the difference in the effect of registration	Administration to take the follow-up action under paragraph 3(c) of the minutes
014631-014702	Chairman	(a) Meeting arrangements  (b) Confirmation of minutes of the meeting held on 13 January 2004	

Council Business Division 1  
Legislative Council Secretariat  
3 March 2004