

立法會
Legislative Council

LC Paper No. CB(1)1219/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the twenty-fourth meeting held on
Friday, 13 February 2004, at 8:30 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
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon WONG Sing-chi
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
- 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)³
Housing, Planning and Lands Bureau

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

- I. Meeting with the Administration**
(LC Paper No. CB(1)968/03-04(01) — “Follow-up to the twenty-second meeting on 13 January 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)968/03-04(02) — Paper provided by the Administration on “Position Report on Main Issues”)

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

Follow-up actions to be taken by the Administration

- Admin 2. At the request of the Bills Committee, the Administration agreed to take the following actions -
- (a) In discussing the paper on “Position Report on Main Issues” (LC Paper No. CB(1)968/03-04(02)), members noted that during the 12-year incubation period, all existing or newly created unwritten equities affecting unregistered land could be protected by registration of a warning notice known as “caveat” under the Land Registration Ordinance (Cap. 128), and that the caveat would automatically take effect as non-consent caution under the new land title registration system (LTRS). Referring to clause 70(10) of the Bill where it was provided that the Land Registrar (LR) might refuse to register a caution which he considered unnecessary, members suggested the Administration to consider the need to provide LR with the power to refuse to register a caveat which he considered unnecessary. The Administration was also invited to consider whether it was appropriate to allow all caveats to automatically take effect as non-consent cautions. An alternative proposed by members was that a caveat would be regarded as an application for non-consent caution under the new LTRS.
 - (b) In discussing the paper on “Position Report on Main Issues” (LC Paper No. CB(1)968/03-04(02)), members noted that cautions against conversion would lapse after 12 months unless the cautioner had commenced court proceedings to establish his claim, and that the registration of these cautions could be extended by the court at its discretion upon application before the end of the 12-month validity period. Members were concerned that in the absence of a limit on the extension period, registration of cautions against conversion might be extended endlessly and the court might be overloaded with such applications. To address the above concern, the Administration was invited to consider the need to impose a limit on the extension period.
 - (c) At the Bills Committee meeting on 13 January 2004, the Administration was invited to consider introducing a review mechanism for the implementation of the daylight conversion system during the 12-year incubation period. At this meeting, the Administration was invited to consider introducing a review mechanism for the length of the incubation period, so that the period could be extended or shortened when necessary.
 - (d) Members noted that as proposed by the Administration, properties under new leases granted by the Government through auction or tender after

commencement of the Bill would come directly under the LTRS. In this connection, the Administration was invited to advise the Bills Committee of the types of land which would be defined as “new land”, and to provide examples of what would and would not be regarded as such.

- (e) Members noted that the Administration intended to modify the rectification provisions under the Bill to provide for rectification in favour of an innocent former owner if the change of ownership was procured by a forgery. In this regard, the Administration was invited to take the following actions:
- (i) To clearly define the term “forgery” in the Bill.
 - (ii) According to the Administration’s response given at the meeting, it was revealed from recent case law that the court in the United Kingdom had almost without exception granted rectification in respect of the cases where the change of ownership was procured by a forgery. The Administration was requested to provide the relevant case law for the Bills Committee’s reference.
 - (iii) Given the Administration’s current proposal on rectification, the purchaser’s solicitor might need to check all relevant title documents in previous transactions to ensure that no forgery had been committed. The proposal might have implications on the liability of solicitors. Since the vendor did not have any obligation under the Bill to provide such documents for inspection, the relevant provisions in the Bill might need to be amended. The Administration was requested to examine, in consultation with the Law Society, the implications of the proposal on the liability of solicitors and how the Bill should be amended to cater for the proposal.
 - (iv) When preparing the Committee Stage Amendments to effect the Administration’s current proposal on rectification, the Administration was requested to take account of the Hong Kong Bar Association’s views on security of title made in its submission dated 23 April 2003 (LC Paper No. CB(1)1517/02-03(07)).

Meeting arrangements

3. The Chairman pointed out that the last Council meeting for the current session would be held on 7 July 2004. If the second reading debate on the Bill was to be resumed on that day, the Bills Committee would have to submit its report to the House Committee on 18 June 2004. Given the tight schedule, members agreed that the Administration should liaise with the Assistant Legal Adviser on the best approach for amending the Bill to reflect the daylight conversion system, and provide a progress report on the discussion for the Bills Committee’s consideration at the next meeting to be held on Tuesday, 24 February 2004, at 10:45 am.

Admin

4. Members also agreed that the Administration should provide, for the Bills Committee's consideration at its meeting on 9 March 2004, a paper on the outcome of its consultation with the major stakeholders on the revised proposal for the conversion mechanism. The Bills Committee would decide on the way forward in the light of the outcome of the consultation. The Administration was also requested to find out how the proposed change would affect the stakeholders' original positions.

5. Members noted the proposed meeting schedule for the period from March to June 2004. The Chairman invited the Administration to give views on the proposed meeting schedule, in particular on the need for extending any of the two-hour meetings set out in the schedule to four hours.

(Post-meeting note: The proposed meeting schedule was issued to the Administration on 13 February 2004 for comments.)

II. Any other business

6. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
5 March 2004

Appendix

**Proceedings of the twenty-fourth meeting of the
Bills Committee on Land Titles Bill
on Friday, 13 February 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000102	Chairman	Welcoming and introductory remarks	
000103-001633	Chairman Administration	<p>(a) Briefing by the Administration on paragraphs 1 to 9 and Annex A of the paper on “Position Report on Main Issues” (LC Paper No. CB(1)968/03-04(02))</p> <p>(b) Chairman’s view that one approach in conducting the consultation with the major stakeholders on the revised proposal for the conversion mechanism (the Revised Proposal) was to find out how the proposed change would affect their original positions</p>	Administration to take the follow-up action under paragraph 4 of the minutes
001634-002032	Chairman Ms Miriam LAU Administration	(a) Administration’s confirmation that it was its intention to amend the Land Registration Ordinance (LRO) (Cap. 128) to provide a means for the holders of existing unwritten equities to register their interests by registering a warning	

Time marker	Speaker	Subject(s)	Action Required
		<p>notice called a caveat under the LRO</p> <p>(b) Members' suggestion for the Administration to consider the need to provide the Land Registrar (LR) with the power to refuse to register a caveat which he considered unnecessary, which was similar to the provision in clause 70(10) under which LR might refuse to register a caution which he considered unnecessary</p> <p>(c) Appropriateness of allowing all caveats to take effect as non-consent cautions upon conversion to the new land title registration system (LTRS), and members' proposal that a caveat be regarded as an application for non-consent caution under the new LTRS</p>	<p>Administration to take the follow-up action under paragraph 2(a) of the minutes</p> <p>Administration to take the follow-up action under paragraph 2(a) of the minutes</p>
002033-002349	Chairman Mr Albert HO Administration	<p>(a) Differences between the daylight conversion system proposed by the Law Society of Hong Kong and the Revised Proposal</p> <p>(b) Administration's confirmation that owners could apply to the court at any time for an order to remove caveats and cautions, and that</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>registration of a caveat or caution against conversion without reasonable cause would attract liability for damages</p>	
002350-003959	<p>Chairman Mr Andrew WONG Dr TANG Siu-tong Administration</p>	<p>(a) Some members' view that the incubation period should be sufficiently long to prepare for the conversion to the LTRS given the great change it would bring to the handling of titles, particularly the complex titles such as those relating to "tso" and "tong" properties in the New Territories</p> <p>(b) Need to consider introducing a review mechanism for the length of the incubation period, so that the period could be extended or shortened when necessary</p> <p>(c) Administration's clarification that a holder of existing unwritten equities could register his interests by either registering a caution against conversion or registering a caveat. Only in the former case would he be required to commence court proceedings within 12 months to establish his claim</p>	<p>Administration to take the follow-up action under paragraph 2(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(d) Administration's confirmation that although cautions against conversion would lapse after 12 months unless the cautioner had commenced court proceedings to establish his claim, the registration of these cautions could be extended by the court at its discretion upon application before the end of the 12-month validity period (paragraph 11 of Annex A to LC Paper No. CB(1)968/03-04(02))</p> <p>(e) Members' concern that in the absence of a limit on the extension period, registration of cautions against conversion might be extended endlessly, and the court might be overloaded with such applications, especially where titles relating to "tso" and "tong" properties were concerned, members' view that there was a need to impose a limit on the extension period</p>	<p>Administration to take the follow-up action under paragraph 2(b) of the minutes</p>
004000-004502	Chairman Mr Albert HO Mr Andrew WONG Administration	(a) Discussion on the need to separately deal with cautions and caveats in respect of titles relating to "tso" and "tong" properties in recognition of their complex and controversial nature	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Discussion on how “tso” and “tong” properties could be better regulated by legislative or administrative measures, and some members’ view that the issue was outside the scope of the Bill</p>	
004503-005820	<p>Chairman Mr Andrew WONG Dr TANG Siu-tong Administration</p>	<p>(a) Need for a clear definition of “new land” in the Bill because of the proposal to put properties under new leases granted by the Government through auction or tender after commencement of the Bill directly under the LTRS (Annex B to LC Paper No. CB(1)968/03-04(02))</p> <p>(b) Administration’s confirmation that a re-grant would not be considered as a new grant because it would contain clauses subjecting the grantee to claims of previous rights</p> <p>(c) Administration’s confirmation that rural land used for housing development through a change of land use would not be considered as new land</p> <p>(d) Administration’s confirmation that land resumed according to the Lands Resumption</p>	<p>Administration to take the follow-up action under paragraph 2(d) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>Ordinance (Cap. 124) and later granted through auction or tender would be considered as new land</p> <p>(e) Members' view on the need to draw the attention of Heung Yee Kuk New Territories to the definition of "new land" and the proposal in item (a) above, and the Administration's confirmation that the relevant details had already been passed to all major stakeholders</p> <p>(f) Discussion on the need for the Bill to sort out titles relating to "tso" and "tong" properties, and the Administration's assurance that overseas experience had shown that title registration system would not override customary interests in land such as "tso" and "tong" properties</p> <p>(g) Administration's explanation that despite running a dual system, the objective of the United Kingdom and Australian title registration systems was to ultimately bring all unregistered land onto one single title register to enhance certainty of title</p>	

Time marker	Speaker	Subject(s)	Action Required
		(h) Administration's view that registration of cautions would help enhance certainty of title because cautioners would be required to take prompt action to bring a conclusion of the dispute on title or interest	
005821-010007	Chairman Administration	Briefing by the Administration on paragraphs 10 to 13 and Annex B of the paper on "Position Report on Main Issues" (LC Paper No. CB(1)968/03-04(02))	
010008-012814	Chairman Dr TANG Siu-tong Mr Albert HO Assistant Legal Adviser 6 Administration	<p>(a) Rationale for the proposal to modify the rectification provisions under the Bill to provide for rectification in favour of an innocent former owner if the change of ownership was procured by a forgery</p> <p>(b) In connection with the proposal in item (a) above, members' view that there was a need to clearly define the term "forgery" in the Bill</p> <p>(c) Administration's explanation that the proposal in item (a) above could help address concerns about the rectification provisions in the Bill because it would not only provide greater</p>	Administration to take the follow-up action under paragraph 2(e)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>title protection to the owner but also provide the innocent purchaser with indemnity up to \$30 million without having to take actions to claim compensation himself</p> <p>(d) Rationale for and constitutionality of capping the indemnity in fraud cases at \$30 million</p> <p>(e) Assistant Legal Adviser (ALA)'s view that the proposal in item (a) above might have implications on the nature of the registration system to be established by the Bill which was to enhance certainty of title, and the Administration's response that it was revealed from recent case law that the court in the United Kingdom had almost without exception granted rectification in respect of the cases where the change of ownership was procured by a forgery</p> <p>(f) ALA's view that given the proposal in item (a) above, the purchaser's solicitor might need to check all relevant title documents in previous transactions to ensure that no forgery had been committed. The</p>	<p>Administration to take the follow-up action under paragraph 2(e)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 2(e)(iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>proposal might have implications on the liability of solicitors. Since the vendor did not have any obligation under the Bill to provide such documents for inspection, there might be a need to amend the Bill to cater for the proposal</p> <p>(g) Reference to the Hong Kong Bar Association's views on security of title made in its submission dated 23 April 2003 (LC Paper No. CB(1)1517/02-03(07))</p>	<p>Administration to take the follow-up action under paragraph 2(e)(iv) of the minutes</p>
012815-015714	<p>Chairman Ms Miriam LAU Assistant Legal Adviser 6 Clerk Administration</p>	<p>(a) Discussion on the schedule of the Administration's consultation with the major stakeholders on the Revised Proposal, and whether the Bills Committee had to conduct its own round of consultation</p> <p>(b) Discussion on the meeting arrangements of the Bills Committee, and whether and how it could complete detailed scrutiny of the Bill within the current session</p> <p>(c) Discussion on the best approach for amending the Bill to reflect the daylight conversion system, and whether ALA's suggestion of adding to the Bill a</p>	<p>Administration to take the follow-up action under paragraph 4 of the minutes</p> <p>Administration to take the follow-up action under paragraph 3 of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		schedule setting out the transitional arrangements for the 12-year period was feasible (d) Proposed meeting schedule for the period from March to June 2004, and arrangements for the next two meetings	

Council Business Division 1
Legislative Council Secretariat
5 March 2004