

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1228/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of the twenty-fifth meeting held on  
Tuesday, 24 February 2004, at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Andrew WONG Wang-fat, JP  
Hon Miriam LAU Kin-yee, 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** : Hon Albert HO Chun-yan (Deputy Chairman)  
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)<sup>3</sup>
- 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

**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

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Action

- I. Meeting with the Administration**
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| (LC Paper No. CB(1)1057/03-04(01) | — Paper provided by the Administration on “Position Paper on Committee Stage Amendments” |
| LC Paper No. CB(1)1057/03-04(02)  | — Proposed meeting schedule from April to June 2004                                      |
| LC Paper No. CB(1)1057/03-04(03)  | — Paper provided by the Administration on “Responses                                     |

to Miscellaneous 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 “Responses to Miscellaneous Issues” (LC Paper No. CB(1)1057/03-04(03)), members noted that if the daylight conversion mechanism and the proposed changes to the court’s power of rectification of registered title in the case of forgery were adopted, the Administration considered that compulsory retention of certain title documents for future reference for an appropriate period of time would be necessary. The Administration also proposed to impose a limitation period of 12 years for the rectification of Title Register. In this regard, the Administration was invited to take the following actions:
    - (i) To ensure that there would be clear provisions for the compulsory retention of documents and, in particular, which party (owners, solicitors or mortgagee banks) should be responsible for keeping the documents. Some members considered that solicitors should not be required to keep the documents. The Administration was requested to consult the Law Society of Hong Kong (Law Soc) and report the outcome to the Bills Committee in due course;
    - (ii) The proposed changes to the court’s power of rectification of registered title in the case of forgery would have great impact on the claim of negligence against solicitors and in turn on the Professional Indemnity Scheme of Law Soc. The Administration was requested to clarify the duty of a solicitor in this regard and, in particular, whether a solicitor would be under a duty to check all the documents to ensure that no forgery had been committed. The Administration was also requested to consult Law Soc on this issue; and
    - (iii) To provide for a situation where an owner might be out of Hong Kong or was a minor during the 12-year period, the Administration was requested to consider whether the period should only be counted from the date when the owner became aware of the forgery in question and whether extension of the period should be allowed under certain special circumstances.
  - (b) In discussing the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)1057/03-04(03)), members noted the sample Title Register showing transmission of interest upon the successive death of more than one joint owners. In this regard, the Administration was

invited to take the following actions:

- (i) To consider how the following concerns of members could be addressed:
    - Under the existing practice, transmission on death of a joint tenant would take effect by operation of law on the date of death of the deceased joint tenant. Under the new land title registration system, the Administration proposed to revise the condition precedent to transmission on death of a joint tenant in clause 62(2)(b) to the effect that it was necessary to satisfy the Land Registrar either that the estate duty had been paid or its payment had been fully secured to the satisfaction of the Commissioner of Estate Duty. It was not clear which date (e.g. the date of death of the deceased joint tenant or the date of alteration of title registration) should be regarded as the date on which the ownership was transmitted to the surviving joint tenant(s). The legal status of the ownership between the two dates was also unclear; and
    - There appeared to be an anomaly: If transmission would take effect on the date of death of the deceased joint tenant, it might contradict clause 21 which provided that “a transfer or transmission shall, when registered, vest [the land] in the person becoming the owner of the land”; if transmission would take effect on the date of alteration of title registration, it might be contrary to the Common Law rule that transmission on death of a joint tenant would take effect on the date of death of the deceased joint tenant.
  - (ii) Members considered the formulation, “the Registrar shall not comply with subsection (1)...” in clause 62(2), rather odd as it seemed to ask the Land Registrar not to comply with certain part of the Bill. The Administration was requested to consider replacing the term “comply with” with a more appropriate term.
- (c) In discussing the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)1057/03-04(03)), members noted that the Administration might adopt section 41(1) of the New South Wales Real Property Act 1900 as the model to make amendments to clause 29(1) of the Bill in order to remove some interpretation problem due to the word “create”. In relation to implied covenants, the Administration was requested to consider the Assistant Legal Adviser (ALA)’s view that clause 43 on covenants for title should also be amended.
- (d) Clause 61(3) provided that the words “a minor” should be added after a minor’s name if the minor was registered in the Title Register as the owner of registered land. Responding to members’ view raised at the meeting on 19 December 2003 that a mechanism should be put in place

for the removal of the words “a minor” when the minor concerned attained the age of majority, the Administration considered that clause 80 would enable the Land Registrar to remove the annotation on presentation of evidence that the owner had attained the age of majority (paragraph 19 of the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)1057/03-04(03)). Members shared ALA’s view that clause 80 as presently drafted did not provide the Registrar the power to remove the annotation. The Administration was requested to amend clause 80 as appropriate.

### Work plan

3. Members noted that starting from April 2004, the Administration would provide draft Committee Stage Amendments (CSAs) for the Bills Committee’s consideration and by mid-May 2004, a complete version of the Bill with all the draft CSAs would be available. Given the significant implications of the Bill, members stressed the need to examine the draft CSAs in detail. To allow sufficient time for examining the draft CSAs, members urged the Administration to provide the draft to the Bills Committee as early as practicable. The Chairman also requested the Administration to keep in constant touch with ALA to seek his views on the technical and drafting aspects of the draft CSAs before submitting the draft to the Bills Committee.

Admin

Admin

4. Members also noted that the Administration planned to forward the complete version of the Bill with all the draft CSAs to Law Soc and Hong Kong Bar Association (the Bar) for comments in mid-May 2004. Some members were concerned that if Law Soc and/or the Bar then raised any comments which required substantial amendments to the Bill, there might not be sufficient time to complete scrutiny of the Bill within the current legislative session. They therefore invited the Administration to consider involving Law Soc and the Bar when drafting the CSAs, such as by forming a working group comprising the three parties concerned.

Admin

### Meeting arrangements

5. At the Chairman’s invitation, the Clerk briefed members on the proposed meeting schedule from April to June 2004 (LC Paper No. CB(1)1057/03-04(02)). After discussion, members agreed that:

- (a) for April 2004, two two-hour meetings (10:45 am to 12:45 pm) would be scheduled and additional meetings would be held when necessary; and
- (b) for May and June 2004, the meetings would be extended to four hours, i.e. 8:30 am to 12:30 pm.

*(Post-meeting note: The endorsed meeting schedule was issued to the*

Administration on 24 February 2004 and to members vide LC Paper No. CB(1)1110/03-04 on 25 February 2004.)

Admin

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 9 March 2004, at 10:45 am to discuss the paper to be provided by the Administration 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. She requested the Administration to provide the paper well in advance of the meeting.

**II. Any other business**

7. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 1  
Legislative Council Secretariat  
8 March 2004



## Appendix

**Proceedings of the twenty-fifth meeting of the  
Bills Committee on Land Titles Bill  
on Tuesday, 24 February 2004, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000135	Chairman	Welcoming and introductory remarks	
000136-000525	Chairman Administration	Briefing by the Administration on the paper on "Position Paper on Committee Stage Amendments" (LC Paper No. CB(1)1057/03-04(01))	
000526-002740	Chairman Ms Miriam LAU Ms Audrey EU Mr IP Kwok-him Assistant Legal Adviser Administration	<p>(a) Members' emphasis of the need to examine the draft Committee Stage Amendments (CSAs) in detail and that the draft should be provided for the Bills Committee's consideration as early as practicable</p> <p>(b) Some members' suggestion for the Administration to involve the Law Society of Hong Kong (Law Soc) and Hong Kong Bar Association (the Bar) when drafting the CSAs</p> <p>(c) Administration's confirmation that drafting of the CSAs would be conducted in consultation with Law Soc and the Bar,</p>	<p>Administration to take the follow-up action under paragraph 3 of the minutes</p> <p>Administration to take the follow-up action under paragraph 4 of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>and that it was the Administration's intention to form for the purpose a joint group comprising representatives from the above two professional bodies and the Administration</p> <p>(d) Administration's clarification that the draft CSAs could be provided for the Bills Committee's consideration in batches starting from April 2004, and the Chairman's emphasis of the need to factor in the work schedule time to revisit any policy issues that might arise from the scrutiny of the draft CSAs</p> <p>(e) Administration's assurance that after enactment of the Bill, a lot of work, such as the drafting of guidelines and regulations, education of the legal profession and the public, etc., would need to be completed before the implementation of the new land title registration system</p> <p>(f) Administration's and Assistant Legal Adviser (ALA)'s explanation of the rationale for proposing to cover in the new Schedule 3 to be added to</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the Bill all detailed provisions governing the law and procedure relating to all transactions and registration of caveats and cautions against conversion for land remaining under the deeds registration system during the 12-year interim period</p> <p>(g) Administration's clarification that the new Schedule 3 in item (f) above would remain in effect as long as there were still interests in land registered under the Land Registration Ordinance (Cap. 128)</p>	
002741-003847	<p>Chairman Ms Miriam LAU Ms Audrey EU Mr IP Kwok-him Clerk</p>	<p>(a) Briefing by the Clerk on the proposed meeting schedule from April to June 2004 (LC Paper No. CB(1)1057/03-04(02))</p> <p>(b) Discussion on the proposed meeting schedule in item (a) above</p>	
003848-004524	<p>Chairman Administration</p>	<p>(a) Briefing by the Administration on paragraphs 1 to 5 of the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)1057/03-04(03))</p> <p>(b) Chairman's enquiry about the duty of a solicitor in</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>checking the supporting instruments required to be retained by the parties concerned for a period of time, and the difference in conveyancing practices so arising</p> <p>(c) Administration's confirmation that the requirement for retention of supporting instruments was only proposed to enable examination of the original documents should the need arose, e.g. when there was a need to determine whether the documents and/or signatures were authentic or forged</p>	
004525-010348	Chairman Administration	<p>(a) Briefing by the Administration on paragraphs 6 to 16 and the Annex of the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)1057/03-04(03))</p> <p>(b) Administration's proposal that section 41(1) of the New South Wales Real Property Act 1900 might be adopted as the model to make amendments to clause 29(1) in order to remove some interpretation problem due to the word "create". In relation to implied covenants, ALA's</p>	Administration to take the follow-up action under paragraph 2(c) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		view that clause 43 on covenants for title should also be amended (paragraph 16 of LC Paper No. CB(1)1057/03-04(03))	
010349-011000	Chairman Administration	Briefing by the Administration on paragraphs 17 to 26 of the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)1057/03-04(03))	
011001-011103	Chairman Assistant Legal Adviser	ALA’s view that clause 80 as presently drafted did not, as claimed by the Administration, provide the Land Registrar (LR) the power to remove the words “a minor” from the Title Register when the minor concerned attained the age of majority	Administration to take the follow-up action under paragraph 2(d) of the minutes
011104-012230	Chairman Ms Miriam LAU Administration	(a) Members’ view that there should be clear provisions for the compulsory retention of documents and, in particular, which party (owners, solicitors or mortgagee banks) should be responsible for keeping the documents; some members’ view that solicitors should not be required to keep the documents  (b) Administration’s assurance that the number of documents to be retained would be kept to a	Administration to take the follow-up action under paragraph 2(a)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>minimum, and that Law Soc's views would be sought to ensure that the requirement was manageable</p> <p>(c) Members' view that in order to provide for a situation where an owner might be out of Hong Kong or was a minor during the 12-year period for the rectification of Title Register, there was a need to consider whether the period should only be counted from the date when the owner became aware of the forgery in question, and whether extension of the period should be allowed under certain special circumstances</p> <p>(d) On the Administration's proposal to revise the condition precedent to transmission on death of a joint tenant in clause 62(2)(b) to the effect that it was necessary to satisfy LR either that the estate duty had been paid or its payment had been fully secured to the satisfaction of the Commissioner of Estate Duty, members were concerned that it was not clear which date (e.g. the</p>	<p>Administration to take the follow-up action under paragraph 2(a)(iii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 2(b)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>date of death of the deceased joint tenant or the date of alteration of title registration) should be regarded as the date on which the ownership was transmitted to the surviving joint tenant(s)</p> <p>(e) Members' concern that if transmission would take effect on the date of death of the deceased joint tenant, it might contradict clause 21</p> <p>(f) Members' concern that if transmission would take effect on the date of alteration of title registration, it might be contrary to the Common Law rule that by operation of law, transmission on death of a joint tenant would take effect on the date of death of the deceased joint tenant</p>	<p>Administration to take the follow-up action under paragraph 2(b)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 2(b)(i) of the minutes</p>
012231-012643	Chairman	(a) Chairman's view that the proposed changes to the court's power of rectification of registered title in the case of forgery would have great impact on the claim of negligence against solicitors and in turn on the Professional Indemnity Scheme of Law Soc, and that Law Soc should be consulted on	Administration to take the follow-up action under paragraph 2(a)(ii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>whether a solicitor would be under a duty to check all the documents to ensure that no forgery had been committed</p> <p>(b) Chairman’s view that the formulation, “the Registrar shall not comply with subsection (1)...” in clause 62(2), was rather odd as it seemed to ask LR not to comply with certain part of the Bill</p> <p>(c) Arrangements for the next meeting</p>	<p>Administration to take the follow-up action under paragraph 2(b)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 6 of the minutes</p>
012644-012905	Chairman Administration	Briefing by the Administration on the progress of its consultation with the major stakeholders on the revised proposal for the conversion mechanism	
012906-012915	Chairman	Reminder of the Administration to state in papers provided by them the party who prepared the paper and the relevant date	