

立法會
Legislative Council

LC Paper No. CB(1)1397/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the twenty-sixth meeting held on
Tuesday, 9 March 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 Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Andrew WONG Wang-fat, JP
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-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)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. Confirmation of minutes of meetings

- | | |
|-------------------------------|---|
| (LC Paper No. CB(1)1198/03-04 | — Minutes of twenty-third meeting held on 30 January 2004 |
| LC Paper No. CB(1)1219/03-04 | — Minutes of twenty-fourth meeting held on 13 February 2004 |
| LC Paper No. CB(1)1228/03-04 | — Minutes of twenty-fifth meeting held on 24 February 2004) |

The minutes of the three meetings held on 30 January, 13 February and

24 February 2004 respectively were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)1230/03-04(01) — “Follow-up to the twenty-third meeting on 30 January 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1230/03-04(02) — “Follow-up to the twenty-fourth meeting on 13 February 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1230/03-04(03) — “Follow-up to the twenty-fifth meeting on 24 February 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1230/03-04(04) — Paper provided by the Administration on “Report on consultation on revisions to conversion mechanism and rectification provisions”
- 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)968/03-04(02) — Paper provided by the Administration on “Position Report on Main Issues”
- LC Paper No. CB(1)730/03-04(05) — Administration’s preliminary response to Law Society’s proposal for “Daylight Conversion”
- LC Paper No. CB(1)615/03-04(01) — Submission dated 16 December 2003 from The Law Society of Hong Kong)

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) Having noted the various submissions annexed to the paper on “Report on Consultation on Revisions to Conversion Mechanism and Rectification Provisions” (LC Paper No. CB(1)1230/03-04(04)), members invited the Administration to copy to the Bills Committee its written responses to the parties concerned.
 - (b) Referring to the submission dated 2 March 2004 from Heung Yee Kuk New Territories (HYK) (annexed to the paper on “Report on Consultation on Revisions to Conversion Mechanism and Rectification Provisions” (LC Paper No. CB(1)1230/03-04(04)), a member highlighted the view of HYK that “a flexible mechanism should be provided for the Daylight Conversion mechanism, i.e. the law should allow title owners to apply to the court to decide their interests if they have lost their interests to properties without notice of the title registration conversion mechanism due to certain special circumstances or reasons within the 12-year period so that their opportunities to decide their interests would not be taken away”. The member pointed out that one of the special circumstances might be the owner’s absence from Hong Kong during the 12-year incubation period. In this regard, the Administration agreed to address HYK’s concerns by providing it with a paper setting out the extent of protection for owners in respect of interests in land that would be enforceable in personam and in rem under the Daylight Conversion mechanism.
 - (c) Given that the Bills Committee would commence clause-by-clause examination of the Bill at its meeting on 13 April 2004, the Administration was invited to provide a written response to the outstanding policy issues raised at previous meetings for the Bills Committee’s consideration at its next meeting on 2 April 2004. The Administration was invited to refer to the “Summary of follow-up actions by the Administration” attached to the letter dated 3 March 2004 from the Clerk to Bills Committee.

Way forward

4. Land Registrar (LR) advised that since the major stakeholders had no objection in principle to the general scheme of daylight conversion, the Administration would proceed to prepare draft Committee Stage Amendments (CSAs) to give effect to the scheme. He also confirmed that the completed version of the Bill with all the draft

CSAs would be available by mid-May 2004.

5. Given the significant implications of the Bill, members stressed the need to examine it in detail. While members agreed that they would make their best endeavours to continue to examine the Bill, they considered that it should not be rushed through. In this connection, some members expressed reservation about the practicability of completing scrutiny of the Bill within the current legislative session, having regard to the fact that all the draft CSAs would only be available by mid-May 2004 and that the Bills Committee and the major stakeholders needed time to study the draft CSAs. LR pointed out that the Administration would submit the draft CSAs to the Bills Committee in batches starting from April 2004. It would also forward the draft CSAs to the Hong Kong Bar Association and Law Society of Hong Kong for comments once available.

6. Given that the Bills Committee was going to commence clause-by-clause examination of the Bill at its meeting on 13 April 2004, the Chairman invited the Administration to provide a written response to the outstanding policy issues raised at previous meetings for the Bills Committee's consideration at its next meeting on 23 March 2004. LR advised that the written response would only be available at the end of March 2004. Members therefore agreed that the next meeting be rescheduled to be held on Friday, 2 April 2004, from 8:30 am to 10:00 am.

(Post-meeting note: The revised meeting schedule was issued to the Administration on 9 March 2004 and to members vide LC Paper No. CB(1)1253/03-04 on 10 March 2004.)

III. Any other business

7. There being no other business, the meeting ended at 11:50 am.

Council Business Division 1
Legislative Council Secretariat
26 March 2004

Appendix

**Proceedings of the twenty-sixth meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 9 March 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000023	Chairman	Confirmation of minutes of the three meetings held on 30 January, 13 February and 24 February 2004 respectively	
000024-000137	Chairman	Welcoming and introductory remarks	
000138-001235	Chairman Administration	(a) Briefing by the Administration on the paper on "Report on consultation on revisions to conversion mechanism and rectification provisions" (LC Paper No. CB(1)1230/03-04(04)) (b) Administration's position that it would proceed to prepare draft Committee Stage Amendments (CSAs)	
001236-002302	Chairman Ms Miriam LAU Mr Albert CHAN Dr TANG Siu-tong Mr Albert HO Chun-yan Mr TAM Yiu-chung Administration	Discussion on the way forward - (a) Members' emphasis of the need to scrutinize the Bill in detail (b) Some members' reservation about the practicability of completing scrutiny of the Bill within	

Time marker	Speaker	Subject(s)	Action Required
		<p>the current legislative session</p> <p>(c) Administration's confirmation that the draft CSAs would be provided for the Bills Committee's consideration in batches starting from April 2004</p> <p>(d) Members' emphasis that while they would make their best endeavours to continue to examine the Bill, it should not be rushed through</p>	
002303-002611	Chairman	<p>Chairman's report on her meeting with the Working Party on Land Titles Bill of the Law Society of Hong Kong (Law Soc) -</p> <p>(a) Law Soc supported the new land title registration system (LTRS) in principle because it could save manpower and resources involved in conveyancing;</p> <p>(b) Law Soc considered that its discussion with the Administration on the Bill was effective and in good progress; and</p> <p>(c) Law Soc supported in general the Administration's revised proposal for the conversion mechanism</p>	

Time marker	Speaker	Subject(s)	Action Required
002612-003100	Chairman Ms Miriam LAU Assistant Legal Adviser	<p>(a) Assistant Legal Adviser's view that because of the proposed changes to the court's power of rectification of registered title in the case of forgery and other provisions of the Bill, the LTRS would be a mixed system unique in the world and would not provide as much certainty of title as it originally intended to</p> <p>(b) Differences between the LTRS to be effected by the Bill and title registration systems in other jurisdictions</p>	
003101-004555	Chairman Ms Miriam LAU Administration	<p>(a) Chairman's reference to the Consumer Council's submission, and the Administration's confirmation that at the date of conversion, a person who could make a claim arising from an unwritten equity would not be debarred from registering a non-consent caution in the title register, irrespective of whether the cause arose before or after the conversion date. The key point was that a purchaser for value would not be affected by such a claim unless a caveat or non-consent caution had</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>been registered before his purchase</p> <p>(b) Social benefits versus social costs of the arrangement in item (a) above, and the Administration's assurance that notwithstanding the arrangement, holders of unwritten equities could always enforce their interests in personam</p> <p>(c) Administration's perception of the possible steps that could be taken to protect one's unwritten equities, and assurance that implications of the LTRS on unwritten equities could be minimized by the introduction of the 12-year incubation period, the long lead time between enactment of the Bill and actual implementation of the LTRS, and wide publicity of the LTRS</p> <p>(d) Discussion on solicitor's role in drawing his clients' attention to the implications of the LTRS, in particular those on unwritten equities, and a member's emphasis of the need to consult Law Soc in this regard</p> <p>(e) Chairman's view that the</p>	<p>Administration to take the follow-up</p>

Time marker	Speaker	Subject(s)	Action Required
		concerns expressed by the major stakeholders in their submissions should be properly addressed	action under paragraph 3(a) of the minutes
004556-004920	Chairman Dr TANG Siu-tong Administration	<p>(a) A members' call to address the view of Heung Yee Kuk New Territories that "a flexible mechanism should be provided for the Daylight Conversion mechanism, i.e. the law should allow title owners to apply to the court to decide their interests if they have lost their interests to properties without notice of the title registration conversion mechanism due to certain special circumstances"</p> <p>(b) Administration's explanation of the circumstances under which registered titles could be rectified, and the extent of protection for owners in respect of interests in land that would be enforceable in personam and in rem under the Daylight Conversion mechanism</p>	Administration to take the follow-up action under paragraph 3(b) of the minutes
004921-010250	Chairman Clerk Administration	(a) Administration's confirmation that its written response to the outstanding policy issues raised at previous meetings would be available at the end of March 2004	Administration to take the follow-up action under paragraph 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(b) Rescheduling of the next meeting	

Council Business Division 1
Legislative Council Secretariat
26 March 2004