

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1607/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of the twenty-seventh meeting held on  
Friday, 2 April 2004, at 8:30 am  
in the Chamber 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 IP Kwok-him, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Andrew WONG Wang-fat, JP  
Hon Abraham SHEK Lai-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

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Action

- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)1397/03-04 — Minutes of twenty-sixth meeting  
held on 9 March 2004)

The minutes of the meeting held on 9 March 2004 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(1)1425/03-04(01) — “Follow-up to the twenty-sixth meeting on 9 March 2004” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1425/03-04(02) — Paper provided by the Administration on “Outstanding responses to matters raised by the Bills Committee”)

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) In discussing item 8 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members noted the Administration’s view that the provisions in the Trading Fund Ordinance (Cap. 430) and the amendments to be introduced to the resolution passed by the Legislative Council in 1993 on the establishment of the Land Registry Trading Fund (LRTF) would suffice to effect the Administration’s proposed arrangement that the Indemnity Fund would be indemnified by payment out of the LRTF in case of mistake or omission of Land Registry staff. Given that the original resolution did not cover the land title registration system (LTRS) and that the proposed amendments to the resolution were not yet available, the Assistant Legal Adviser (ALA) had to reserve opinion on the Administration’s view. However, ALA suggested that it would be more straightforward if the Administration’s proposed arrangement could be set out in the Bill. The Administration was requested to consider ALA’s suggestion.

(b) In discussing item 12 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members noted the Administration’s advice that under the current case law on registration there was an English House of Lord’s decision in Shaw v Neale (1856) 6 H.L. Case 581 (English Report Vol.10 at p.1422) to the effect that if a second encumbrance was registered within the 5 years’ validity of the first encumbrance, then the first encumbrance was protected as against the second encumbrance even though there was no

re-registration of the first encumbrance after the expiry of the 5 years' period (Paper on "Response to Drafting Issues" (LC Paper No. CB(1)2501/02-03(03)) issued on 29 September 2003). For the avoidance of doubt, the Administration proposed to make appropriate amendments to clause 34 to state clearly this point. The Administration was requested to consider the following points raised by members or ALA:

- (i) It seemed that the proposed amendments to clause 34 would not serve any meaningful purpose. Instead, the Administration was requested to amend clause 34 to the effect that re-registration of a charging order should have a priority relating back to its first registration.
  - (ii) If the owner of a property against which a charging order had been issued sold the property concerned to a purchaser for value, or gave it away as a gift, what was the impact of the transaction or transfer of title on the priority of the charging order?
- (c) In discussing item 19 of the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB(1)1425/03-04(02)), members noted the Administration's proposal that the vendor would be required to provide the purchaser with only a copy of any instrument referred to in any current entries in the Title Register. Given the Administration's proposal to amend clause 81 to provide for the rectification of Title Register in favour of an innocent former owner where title had been changed as a result of forgery, ALA pointed out the need for retaining the original copy of the instruments for inspection to enable forgery to be detected. The Administration was requested to consider this point and discuss with The Law Society of Hong Kong on the documents to be retained under the LTRS.
- (d) In discussing item 20 of the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB(1)1425/03-04(02)), members noted that the Land Registry was studying the technical and administrative requirements for the search of properties by owners' names to be conducted by the public and solicitors, and that whether this was to be done would very much hinge on the outcome of the study. Members were of the view that the Administration should decide on the policy first before studying the technical and administrative requirements for and the cost implications of the proposed search. Members also expressed the following views:
- (i) It was only fair to allow the public and solicitors to search properties by owners' names given that some Government departments were allowed to do so;
  - (ii) There was a need to examine whether the proposed search was allowed in overseas jurisdictions, such as the United Kingdom and

Australia;

- (iii) Technical viability should not be used as an excuse for not allowing the proposed search, and cost considerations might be addressed by charging fees for the service;
- (iv) Irrespective of whether the proposed search would be implemented, it was essential to ensure that the search functions that were allowed under the existing system, such as search of properties by addresses, would be maintained under the LTRS;
- (v) The relevant implementation details of the proposed search should be worked out carefully to avoid causing nuisances to namesakes of persons whose properties were searched. In this regard, consideration might be given to the disclosure of the first few digits of the identity card number of the person concerned to facilitate the proposed search;
- (vi) The proposed search should be allowed for legitimate purposes only, such as for the enforcement of court orders on debt payment, etc; and
- (vii) There was a need to ensure that the proposed search would be done in compliance with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486) to strike a balance between the need to protect the owners' privacy and the public's right to obtain information.

The Administration was requested to take members' views into account and provide a paper setting out the Administration's policy and the practices adopted in other jurisdictions. If the proposed search was allowed, the Administration was requested to state in the paper the implementation details and the estimated costs; if the proposed search was not allowed, the Administration was requested to explain in the paper the policy objections.

#### Meeting arrangements

4. Owing to time constraints, the Bills Committee was unable to complete examination of all items of the paper for the meeting. The Chairman proposed and members agreed that an additional meeting be scheduled for 13 April 2004 at 10:45 am to examine the remaining items.

*(Post-meeting note: The notice of the additional meeting was issued to members vide LC Paper No. CB(1)1452/03-04 on 2 April 2004 and issued to the Administration on the same day.)*

**III. Any other business**

5. There being no other business, the meeting ended at 10:00 am.

Council Business Division 1  
Legislative Council Secretariat  
26 April 2004

## Appendix

**Proceedings of the twenty-seventh meeting of the  
Bills Committee on Land Titles Bill  
on Friday, 2 April 2004, at 8:30 am  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000041	Chairman	(a) Confirmation of minutes of the meeting held on 9 March 2004  (b) Welcoming and introductory remarks	
000042-000119	Administration	Brief introduction by the Administration of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02))	
000120-000245	Chairman Ms Miriam LAU Administration	(a) Deferral of discussion on item 1 of LC Paper No. CB(1)1425/03-04(02)  (b) Reference to items 2 and 3 of LC Paper No. CB(1)1425/03-04(02)  (c) Administration’s confirmation that the practice directions or guidelines on the operation of the new land title registration system (LTRS) to relevant practitioners would be ready before implementation of the LTRS (item 4 of LC Paper	



Time marker	Speaker	Subject(s)	Action Required
		No. CB(1)1425/03-04(02))	
000246-000319	Chairman	Reference to items 5 and 6 of LC Paper No. CB(1)1425/03-04(02)	
000320-000452	Chairman Administration	Briefing by the Administration on item 7 of LC Paper No. CB(1)1425/03-04(02)	
000453-002037	Chairman Ms Audrey EU Ms Miriam LAU Mr Albert HO Assistant Legal Adviser Administration	Discussion on item 7 of LC Paper No. CB(1)1425/03-04(02) -  (a) Assistant Legal Adviser (ALA)'s view that allowing registration of equitable interests in land under the LTRS was the Administration's policy decision that would affect the certainty of title which the LTRS aimed to achieve, and that was a major distinction from the English system because the registration of such was not allowed under the title registration system in England  (b) Administration's confirmation that the equitable interests in land held under the agreements for Government leases in respect of which certificates of compliance (CC) had not been issued, though registered under the LTRS, were still subject to	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>the rights under the Government lease under which the land was held (clause 24(1)(f)). The registration of the relevant equitable interests under the LTRS did not mean that the Government could not re-enter the land concerned</p> <p>(c) Members' concern that due to compliance problems that could not be solved, some lessees might never secure the CC and hence their interests would forever be equitable only</p> <p>(d) Administration's assurance that transaction of the properties held as equitable interests in land could take place but it would be stated in the relevant Title Register that the properties had not secured the CC and hence the purchasers could only hold them as equitable interests</p> <p>(e) A member's query of the need to highlight whether the interest in land was a legal estate or an equitable interest, and the Administration's confirmation of the need to do so due to precedent cases where the purchaser had rescinded the relevant sale and purchase</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		agreement because of the failure on the part of the vendor to state that the property was held as an equitable interest	
002038-002500	Chairman Administration	Briefing by the Administration on items 8, 9 and 15 of LC Paper No. CB(1)1425/03-04(02)	
002501-003253	Chairman Ms Audrey EU Assistant Legal Adviser Administration	<p>Discussion on item 8 of LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) ALA's view that since the Trading Fund Ordinance (Cap. 430) contained general provisions only, it alone might not suffice to effect the Administration's proposed arrangement that the Indemnity Fund would be indemnified by payment out of the Land Registry Trading Fund (LRTF) in case of mistake or omission of Land Registry staff</p> <p>(b) Administration's view that by clearly stating when the Land Registrar (LR) had the liability to pay indemnity, once such liability was established, the LRTF would become liable under the terms of Cap. 430 to reimburse the IF</p> <p>(c) ALA's concern that the resolution passed by the</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>Legislative Council in 1993 on the establishment of the LRTF did not cover the LTRS, and the Administration's confirmation that amendment(s) would be introduced to the resolution before implementation of the LTRS</p> <p>(d) ALA's suggestion that it would be more straightforward if the proposed arrangement in item (a) above could be set out in the Bill</p>	<p>Administration to take the follow-up action under paragraph 3(a) of the minutes</p>
003254-003618	<p>Chairman Assistant Legal Adviser Administration</p>	<p>(a) Reference to item 10 of LC Paper No. CB(1)1425/03-04(02)</p> <p>(b) Deferral of discussion on item 11 of LC Paper No. CB(1)1425/03-04(02)</p>	
003619-003850	<p>Chairman Administration</p>	<p>Briefing by the Administration on the proposed amendments in relation to item 12 of LC Paper No. CB(1)1425/03-04(02), namely, the proposed amendments to clause 34 to state clearly the point that, if a second encumbrance was registered within the 5 years' validity of the first encumbrance, then the first encumbrance was protected as against the second encumbrance even though there was no re-registration of the first</p>	

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		encumbrance after the expiry of the 5 years' period (LC Paper No. CB(1)2501/02-03(03))	
003851-004731	Chairman Ms Miriam LAU Ms Audrey EU Assistant Legal Adviser Administration	Discussion on item 12 of LC Paper No. CB(1)1425/03-04(02) -  (a) Members and ALA's doubt about the impact of the transaction or transfer of title on the priority of the charging order if the owner of a property against which a charging order had been issued sold the property concerned to a purchaser for value, or gave it away as a gift  (b) ALA's view that it seemed that the proposed amendments to clause 34 elaborated above would not serve any meaningful purpose. Instead, clause 34 should be amended to the effect that re-registration of a charging order should have a priority relating back to its first registration	Administration to take the follow-up action under paragraph 3(b)(ii) of the minutes  Administration to take the follow-up action under paragraph 3(b)(i) of the minutes
004732-004831	Chairman	Reference to item 13 of LC Paper No. CB(1)1425/03-04(02)	
004832-005000	Chairman Assistant Legal Adviser Administration	(a) Briefing by the Administration on item 14 of LC Paper No. CB(1)1425/03-04(02)	

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		(b) Deferral of discussion on item 14	
005001-005020	Chairman	(a) Reference to item 16 of LC Paper No. CB(1)1425/03-04(02)  (b) Deferral of discussion of item 17 of LC Paper No. CB(1)1425/03-04(02)	
005021-005140	Chairman Administration	Briefing by the Administration on items 18 and 20 to 25 of LC Paper No. CB(1)1425/03-04(02)	
005141-005212	Administration	Briefing by the Administration on the proposed amendments in relation to item 19 of LC Paper No. CB(1)1425/03-04(02), namely, that the vendor would be required to provide the purchaser with only a copy of any instrument referred to in any current entries in the Title Register	
005213-005851	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	Discussion on item 19 of LC Paper No. CB(1)1425/03-04(02) -  (a) ALA's emphasis of the need for retaining the original copy of the instruments for inspection to enable forgery to be detected given the Administration's proposal to amend clause 81 to provide for the rectification of Title Register in favour	

Time marker	Speaker	Subject(s)	Action Required
		<p>of an innocent former owner where title had been changed as a result of forgery</p> <p>(b) A member's view that the retention of the original copy of the instruments was not conducive to the LTRS achieving its purpose of saving manpower and resources involved in conveyancing</p> <p>(c) Need to consider ALA's point and discuss with The Law Society of Hong Kong (Law Soc) on the documents to be retained under the LTRS</p>	<p>Administration to take the follow-up action under paragraph 3(c) of the minutes</p>
005852-012417	<p>Chairman Ms Audrey EU Ms Miriam LAU Mr Albert HO Mr IP Kwok-him Administration</p>	<p>Discussion on item 20 of LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) Members' view that the Administration should decide on the policy first before studying the technical and administrative requirements for and the cost implications of the proposed search of properties by owners' names to be conducted by the public and solicitors (the proposed search)</p> <p>(b) LR's emphasis of the need to ensure technical viability</p>	<p>Administration to take the follow-up action under paragraph 3(d) of the minutes</p>

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		<p>and in particular, compliance with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486), before recommending to the Housing, Planning and Lands Bureau on whether the proposed search should be allowed</p> <p>(c) Principal Assistant Secretary for Housing, Planning and Lands' elaboration of the need to, apart from ensuring compliance with Cap. 486, examine with care public interests, cost implications, other possible implications, implementation details, the need for the proposed search, etc before making the relevant policy decision</p> <p>(d) Some members' view that it was only fair to allow the public and solicitors to search properties by owners' names given that some Government departments were allowed to do so</p> <p>(e) Some members' view that there was a need to examine whether the proposed search was allowed in overseas jurisdictions, such as the United Kingdom and</p>	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>Australia</p> <p>(f) Some members' view that technical viability should not be used as an excuse for not allowing the proposed search, and cost considerations might be addressed by charging fees for the service</p> <p>(g) Some members' view that irrespective of whether the proposed search would be implemented, it was essential to ensure that the search functions that were allowed under the existing system, such as search of properties by addresses, would be maintained under the LTRS. The Administration's confirmation that the existing search functions would be maintained</p> <p>(h) Some members' view that the relevant implementation details of the proposed search should be worked out carefully to avoid causing nuisances to namesakes of persons whose properties were searched. In this regard, consideration might be given to the disclosure of the first few digits of the identity card number of the person concerned to</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>facilitate the proposed search</p> <p>(i) Some members' view that the proposed search should be allowed for legitimate purposes only, such as for the enforcement of court orders on debt payment, etc.</p> <p>(j) Some members' view that there was a need to ensure that the proposed search would be done in compliance with the requirements under Cap. 486 to strike a balance between the need to protect the owners' privacy and the public's right to obtain information</p>	
012418-012600	Chairman	Meeting arrangements	