

立法會  
*Legislative Council*

LC Paper No. CB(1)1752/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of the twenty-eighth meeting held on  
Tuesday, 13 April 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-ye, JP  
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 TAM Yiu-chung, GBS, JP  
Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Albert CHAN Wai-yip  
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)<sup>3</sup>
- Ms Monica LO  
Senior Solicitor/Title Registration  
Land Registry

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

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

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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 item 28 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 a person who committed an offence under clause 96(1) or (2) was liable on conviction on indictment to penalty, while a person who committed an offence under clause 96(3), (4), (5) or (6) was liable on conviction to penalty. The Administration was invited to take the following actions:
    - (i) On clause 96(1), members concurred with the Administration that the fraudulent offences referred to in the subclause should be given serious penalties so as to preserve the integrity of the new land title registration system (LTRS) and the accuracy of the Title Register. The Administration was requested to delete clause 96(1)(g) which was related to the issue of a certificate of good title.
    - (ii) Given the wide scope of clause 96(2) and the fact that some of the offences referred to in the subclause were not so serious, the Administration was requested to consider whether it was justified to provide that the offences under the subclause should be triable only on indictment. A member suggested that the words “on indictment” in clause 96(2) be deleted.
    - (iii) The Administration was requested to confirm whether it was the case that the offences under clause 96(3), (4), (5) and (6) should be triable either summarily or on indictment.
  - (b) On item 35 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members invited the Administration to take the following actions:
    - (i) To provide information on how often the Land Registrar in England had exercised his power in making a restriction and how the costs so incurred were dealt with.
    - (ii) To provide the general practice guide issued by the Land Registry in England which set out the circumstances under which a restriction should be applied from the Land Registry and those under which an inhibition should be applied from the court, as well as the procedures involved. To also provide the relevant information in respect of the new LTRS proposed under the Bill.
    - (iii) To illustrate how the proposed provisions in the Bill relating to imposition of restrictions were going to work in practice. To also

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- make reference to the situation in England.
- (iv) To consider how the scope of the inquiries to be conducted by the Land Registrar under clause 77(1) could be restricted to avoid the inquiries from being turned into a quasi-judicial process. A member suggested that the Registrar's power to make inquiries should be restricted by limiting its scope to the examination of documents and facts only.
- (c) On item 36 of the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB(1)1425/03-04(02)), a member referred to clause 77(1)(b)(ii), and enquired about the steps that the Land Registrar would take to ensure that the affected owner had the opportunity to present his objection before a restriction was registered, particularly in the event that the affected owner was away from Hong Kong. In response, the Administration referred members to clause 94(2) for the meaning of "opportunity of being heard", and assured members that the Registrar would not make a restriction until he was satisfied that the affected owner was given the opportunity of being heard. Members then requested the Administration to examine whether clauses 77(1)(b)(ii) and 94(2) adequately correlated to each other to bring about the above intended legal effect and if not, to amend clause 77(1) as appropriate.
- (d) On item 40 of the paper on "Outstanding Responses to Matters Raised by the Bills Committee" (LC Paper No. CB(1)1425/03-04(02)), members invited the Administration to take the following actions:
- (i) To confirm whether some common instruments like the general power of attorney which might be revoked, the power of attorney which was expressed to be irrevocable, deed of severance and nomination were covered by clause 4(a), (b), (c) or (d) and if not, whether it was necessary to amend clause 4 to cover them.
  - (ii) To explain how each of the instruments mentioned in item (a) above was to be registered under the LTRS and whether they would be registered as consent cautions, non-consent cautions, restrictions or other items under the Bill. On the general power of attorney which might be revoked, the Assistant Legal Adviser (ALA) opined that it was not registrable under the Bill unless a new category of notice was created. On the power of attorney which was expressed to be irrevocable and given to secure a proprietary interest of the donee, a member suggested that it be registered in the same way as a mortgage. The member also suggested that reference be made to the practice in England.
  - (iii) On clause 4(d), to compare the merits and demerits of the existing negative way of drafting (i.e. "No matter shall be capable of being

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registered unless ....”) with those of the positive way, and consider how the drafting could be improved. To make reference to the relevant provision(s) in respect of the existing deeds registration system (DRS).

- (iv) To ensure that the practice guides and explanatory notes to be issued by the Administration on the registration of matters under the Bill and the use of cautions, restrictions and inhibitions should be ready before the implementation of the LTRS, and that such guides and notes would be regularly updated and made available to the legal practitioners and the public on the Internet.
  
- (e) On item 50 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)), members considered that the term “forgery” should be clearly defined to set out the types of forgery cases in respect of which the court might order rectification of the title of a property in favour of an innocent former owner. Members invited the Administration to provide a paper covering the following aspects:
  - (i) To set out the policy decisions on the types of forgery cases in respect of which the court might order rectification of the title of a property in favour of an innocent former owner and provide justifications for such policy decisions. In making the policy decisions, the Administration was requested to strike a balance between the need to protect the interests of the innocent former owners of properties and the need to ensure the security and certainty of title.
  - (ii) In connection with item (i) above, the Administration was requested to advise whether the scope of forgery under the Bill would cover a case where the change of ownership of a property of a company was procured by a Board member of the company through forging the minutes of a Board meeting or without proper authorization of the company.
  - (iii) To provide the definitions of the term “forgery” adopted in title registration systems in other jurisdictions.
  - (iv) To provide the relevant case laws (including the *Argyle Case (1985)* and the *Hayes Case (1994)* mentioned in LC Paper No. CB(1)1425/03-04(02)). In *Hayes Case (1994)*, the Deputy Judge stated that “the power to order rectification is, of course, a discretionary one but, where a co-owner has forged a transfer, there is (subject to section 82(3)) usually an overwhelming case for rectification as against the transferee and their mortgagees”. To elaborate on the type of case which was regarded as “an overwhelming case for rectification”.

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- (f) On Annex C to the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB (1)1425/03-04(02)), members noted the concern expressed by ALA that the protection of priority under the LTRS was different from that under the DRS, especially where non-consent cautions were concerned. Members expressed their view that provisions regarding priority should be clear, and that parties whose priorities would be affected by the changes in protection of priority to be effected by the Bill should be made aware of such. At members’ request, ALA agreed to prepare a table setting out the perceived differences between the DRS and LTRS on this issue, and the unfairness that might be caused to the owner or purchaser of a property under the LTRS. In this connection, the Administration was invited to provide more illustrative examples to explain how priority was protected in different cases. The Administration was requested to refer to ALA’s table and account for the differences highlighted therein. The Administration was also requested to seek the views of The Law Society of Hong Kong on any proposed changes from the existing practice.

Follow-up action to be taken by the Assistant Legal Adviser

3. At members’ request, Assistant Legal Adviser 6 (ALA6) agreed to prepare a comparison table mentioned in paragraph 2(f) above.

*(Post-meeting note: The comparison table prepared by ALA6 (LC Paper No. LS67/03-04) was issued to members vide LC Paper No. CB(1)1544/03-04 on 16 April 2004.)*

Meeting arrangements

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 20 April 2004, at 8:30 am. Members agreed that before commencing clause-by-clause examination of the Bill at the next meeting as originally planned, the Bills Committee would continue to discuss the issue of priority if the comparison table to be prepared by ALA6 was ready for consideration at the meeting.

**II. Any other business**

5. There being no other business, the meeting ended at 1:00 pm.

Action

Council Business Division 1  
Legislative Council Secretariat  
10 May 2004

## Appendix

**Proceedings of the twenty-eighth meeting of the  
Bills Committee on Land Titles Bill  
on Tuesday, 13 April 2004, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000001-000230	Chairman	(a) Welcoming and introductory remarks  (b) Reference to items 21 to 26 of the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02))	
000231-000509	Chairman Assistant Legal Adviser Administration	(a) Briefing by the Administration on its proposed amendments to clause 43 (item 27 of LC Paper No. CB(1)1425/03-04(02)) to clearly spell out how implied covenants in an assignment or a legal charge would be dealt with under the new land title registration system (LTRS) without prejudice to the operation of section 35 (Implied covenants) of the Conveyancing and Property Ordinance (Cap. 219). Under the proposed arrangement, the applicant for registration of title would be required to state in his application whether	



Time marker	Speaker	Subject(s)	Action Required
		<p>any implied covenants were involved. Such stated implied covenants would come into effect upon registration of the relevant title</p> <p>(b) Assistant Legal Adviser (ALA)'s comment that he had just received the Administration's draft proposed Committee Stage Amendments to clause 43 and would study them in detail</p>	
000510-001800	<p>Chairman Mr Albert HO Ms Miriam LAU Administration</p>	<p>Discussion on item 28 of LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) Administration's confirmation that clause 96 was targeted at both Land Registry staff and solicitors</p> <p>(b) Administration's confirmation that clause 96(1)(g) would be deleted because it was related to the issue of a certificate of good title</p> <p>(c) Administration's confirmation that a person who committed an offence under clause 96 (1) or (2) was liable on conviction on indictment to penalty, while a person who committed an offence under clause 96(3), (4), (5)</p>	<p>Administration to take the follow-up action under paragraph 2(a)(i) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>or (6) was liable on conviction to penalty</p> <p>(d) Members' concurrence with the Administration that the fraudulent offences referred to in clause 96(1) should be given serious penalties so as to preserve the integrity of the LTRS and the accuracy of the Title Register</p> <p>(e) Members' query of whether it was justified to provide that the offences under clause 96(2) should be triable only on indictment given the wide scope of the subclause and the fact that some of the offences referred to therein were not so serious, and a member's suggestion that the words "on indictment" in clause 96(2) be deleted</p> <p>(f) Members' request for the Administration to confirm whether the offences under clause 96(3), (4), (5) and (6) should be triable either summarily or on indictment, having regard to the seriousness of the offence and intention of the offender</p>	<p>Administration to take the follow-up action under paragraph 2(a)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 2(a)(iii) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
001801-002001	Chairman	(a) Deferral of discussion on item 29 of LC Paper No. CB(1)1425/03-04(02)  (b) Reference to items 30 to 33 of LC Paper No. CB(1)1425/03-04(02)	
002002-002338	Chairman Administration	Briefing by the Administration on items 34 and 35 of LC Paper No. CB(1)1425/03-04(02)	
002339-003342	Chairman Ms Audrey EU Mr Albert HO Assistant Legal Adviser Administration	Discussion on item 35 of LC Paper No. CB(1)1425/03-04(02) -  (a) A member's question on how often the Land Registrar in England had exercised his power in making a restriction and how the costs so incurred were dealt with  (b) Members' concern about the circumstances under which a restriction should be applied from the Land Registry and those under which an inhibition should be applied from the court, as well as the procedures involved  (c) Member's comment that the Administration should illustrate how the proposed provisions in the Bill relating to imposition of restrictions were going to work in practice by making	Administration to take the follow-up action under paragraph 2(b)(i) of the minutes  Administration to take the follow-up action under paragraph 2(b)(ii) of the minutes  Administration to take the follow-up action under paragraph 2(b)(iii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>reference to the situation in England</p> <p>(d) A member's view that the scope of the inquiries to be conducted by the Land Registrar (LR) under clause 77(1) should be restricted to avoid the inquiries from being turned into a quasi-judicial process and his suggestion that the LR's power to make inquiries should be restricted by limiting its scope to the examination of documents and facts only. Administration's confirmation of its intention to so limit the scope of LR's inquiries to ensure that the mechanism of making restrictions would be straight-forward and efficient</p>	<p>Administration to take the follow-up action under paragraph 2(b)(iv) of the minutes</p>
003343-003614	Chairman Administration	Briefing by the Administration on item 36 of LC Paper No. CB(1)1425/03-04(02)	
003615-004305	Chairman Mr Albert HO Ms Miriam LAU Administration	<p>Discussion on item 36 of LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) Administration's confirmation that for removal and variation of a restriction, the person affected by the restriction could apply either to the court or to the LR, and if</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>he was not satisfied with the decision of the LR, he could then go to the court (clause 79)</p> <p>(b) Administration’s confirmation that there would not be substituted service in Land Registry proceedings</p> <p>(c) A member’s enquiry about the steps that the LR would take to ensure that the affected owner had the opportunity to present his objection before a restriction was registered, particularly in the event that the affected owner was away from Hong Kong (clause 77(1)(b)(ii))</p> <p>(d) Administration’s referral of members to clause 94(2) for the meaning of “opportunity of being heard”, and assurance that the LR would not make a restriction until he was satisfied that the affected owner was given the opportunity of being heard</p> <p>(e) Members’ view that clauses 77(1)(b)(ii) and 94(2) might not adequately correlate to each other to bring about the intended legal effect in item (d) above and that there might</p>	<p>Administration to take the follow-up action under paragraph 2(c) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		be a need to amend clause 77(1) as appropriate	
004306-004506	Chairman	Reference to items 37 and 38 of LC Paper No. CB(1)1425/03-04(02)	
004507-004526	Chairman Administration	Briefing by the Administration on item 39 of LC Paper No. CB(1)1425/03-04(02)	
004527-004615	Chairman Assistant Legal Adviser Administration	Briefing by the Administration and ALA on item 40 of LC Paper No. CB(1)1425/03-04(02)	
004616-012743	Chairman Mr Albert HO Ms Miriam LAU Ms Audrey EU Assistant Legal Adviser Administration	<p>Discussion on item 40 of LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) Members' concern about whether some common instruments like the general power of attorney which might be revoked, the power of attorney which was expressed to be irrevocable, deed of severance and nomination were covered by clause 4(a), (b), (c) or (d) and if not, whether it was necessary to amend clause 4 to cover them</p> <p>(b) Members' concern about how each of the instruments mentioned in item (a) above was to be registered under the LTRS and whether they would be registered as consent</p>	<p>Administration to take the follow-up action under paragraph 2(d)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 2(d)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>cautions, non-consent cautions, restrictions or other items under the Bill. On the general power of attorney which might be revoked, ALA opined that it was not registrable under the Bill unless a new category of notice was created. On the power of attorney which was expressed to be irrevocable and given to secure a proprietary interest of the donee, a member suggested that it be registered in the same way as a mortgage. The member also suggested that reference be made to the practice in England.</p> <p>(c) A member’s concern about the negative way of drafting (i.e., “No matter shall be capable of being registered unless ...”) of clause 4(d) and preference for positive way of drafting; the member’s view that reference should be made to the relevant provision(s) in respect of the existing deeds registration system (DRS)</p> <p>(d) Administration’s confirmation that practice guides and explanatory notes would be issued on the registration of matters under the Bill and the use</p>	<p>Administration to take the follow-up action under paragraph 2(d)(iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>of cautions, restrictions and inhibitions</p> <p>(e) Members' view that the guides and notes mentioned in item (d) above should be ready before the implementation of the LTRS, and that such guides and notes should be regularly updated and made available to the legal practitioners and the public on the Internet.</p>	<p>Administration to take the follow-up action under paragraph 2(d)(iv) of the minutes</p>
012744-012909	<p>Chairman Assistant Legal Adviser Administration</p>	<p>Deferral of discussion on items 41 to 49 of LC Paper No. CB(1)1425/03-04(02)</p>	
012910-013014	<p>Chairman Administration</p>	<p>Briefing by the Administration on item 50 of LC Paper No. CB(1)1425/03-04(02)</p>	
013015-013037	<p>Chairman Administration</p>	<p>Reference to items 51 and 52 of LC Paper No. CB(1)1425/03-04(02)</p>	
013038-014439	<p>Chairman Mr Albert HO Ms Miriam LAU Assistant Legal Adviser Administration</p>	<p>Discussion on item 50 of LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) A member's question on whether the scope of forgery under the Bill would cover a case where the change of ownership of a property of a company was procured by a Board member of the company through forging the minutes of a Board meeting</p>	<p>Administration to take the follow-up action under paragraphs 2(e)(ii), (iii) and (iv) of the minutes</p>



Time marker	Speaker	Subject(s)	Action Required
		<p>or without proper authorization of the company, and request for the Administration to provide case laws in other jurisdictions in this regard</p> <p>(b) A member's concern that if the case in item (a) constituted a type of forgery case in respect of which the court might order rectification of the title of a property in favour of an innocent former owner, it would affect the certainty and security of title provided under the LTRS</p> <p>(c) Chairman's view that the scope of forgery under the Bill should not be so wide as to adversely affect the security and certainty of title or unduly implicate on the liability of solicitors. Hence the need for a clear definition of the term "forgery" to set out the policy decisions on the types of forgery cases in respect of which the court might order rectification of the title of a property in favour of an innocent former owner</p> <p>(d) Administration's confirmation that its policy intention was to ensure cases that warranted</p>	<p>Administration to take the follow-up action under paragraph 2(e)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		rectification of title under the DRS would remain so under the LTRS	
014440-014611	Chairman Ms Miriam LAU Assistant Legal Adviser	Reference to items 53 and 54 of LC Paper No. CB(1)1425/03-04(02)	
014612-014726	Chairman Ms Miriam LAU	Reference to item 55 and Annex A of LC Paper No. CB(1)1425/03-04(02)	
014727-015149	Chairman Administration	Briefing by the Administration on Annexes B and C to LC Paper No. CB(1)1425/03-04(02)	
015150-020755	Chairman Ms Miriam LAU Mr Albert HO Ms Audrey EU Assistant Legal Adviser Administration	<p>Discussion on Annex C to LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) ALA's concern that the protection of priority under the LTRS was different from that under the DRS, especially where non-consent cautions were concerned</p> <p>(b) Administration's confirmation that clauses 71(1)(b) and 33(1) dealt with consent cautions only, and its undertaking to provide more illustrative examples to explain how priority was protected in different cases</p> <p>(c) Members' request of ALA to prepare a table setting out the perceived</p>	<p>Administration to take the follow-up action under paragraph 2(f) of the minutes</p> <p>ALA to take the follow-up action under paragraph 3</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>differences between the DRS and LTRS in relation to protection of priority, and the unfairness that might be caused to the owner or purchaser of a property under the LTRS</p> <p>(d) Members' view that provisions regarding priority should be clear, and that parties whose priorities would be affected by the changes in protection of priority to be effected by the Bill should be made aware of such, so that they could have the opportunity to present their views. The views of the Law Society of Hong Kong on any proposed changes from the existing practice should also be sought (item 14 of LC Paper No. CB(1)1425/03-04(02))</p>	<p>of the minutes</p> <p>Administration to take the follow-up action under paragraph 2(f) of the minutes</p>
020756-021416	<p>Chairman Ms Miriam LAU Mr Albert HO Administration</p>	<p>Discussion on Annex B to LC Paper No. CB(1)1425/03-04(02) -</p> <p>(a) A member's concern that the proposed removal of the one month relating back provision under the DRS might result in operational difficulties and possible confusion because the persons concerned might rush through all the procedures and documents</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		involved in a property transaction in order to effect early registration  (b) Administration's confirmation that it was the solicitor who should be responsible for registering the transaction as he was the one to sign and deliver the relevant memorial for the purpose of registration	
021417-021450	Chairman	Meeting arrangements	

Council Business Division 1  
Legislative Council Secretariat  
10 May 2004