

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1875/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of the twenty-ninth meeting held on  
Tuesday, 20 April 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 Miriam LAU Kin-yee, 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 IP Kwok-him, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Andrew WONG Wang-fat, JP  
Hon WONG Sing-chi  
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)<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**  
(LC Paper No. LS67/03-04

— Table prepared by Assistant Legal Adviser on “Comparison of Provisions Governing Priorities under the existing registration of documents system of the Land Registration Ordinance (Cap. 128) and under the proposed title registration system of the Land Titles Bill”

LC Paper No. CB(3)210/02-03

— The Bill

LC Paper No. CB(1)1544/03-04(01) — “Summary of the proposed amendments mentioned in the papers provided by the Administration from April 2003 to early April 2004 (Position as at 14 April 2004)” prepared by the Legislative Council Secretariat)

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 action -

On the table prepared by the Assistant Legal Adviser (ALA) on “Comparison of Provisions Governing Priorities under the existing registration of documents system of the Land Registration Ordinance (Cap. 128) and under the proposed title registration system of the Land Titles Bill (LC Paper No. LS67/03-04)”, the Administration was invited to provide a written response to the table, covering the following points:

- (a) The Administration was requested to examine whether the relating back provision in the Bill would change the law and could have unintended legal effects as highlighted in the table prepared by ALA -
  - (i) If yes, the Administration was requested to explain how the Administration would rectify the situation. In this connection, the Administration was requested to consider the two solutions suggested by ALA, i.e. to remove the relating back provision, and to strengthen the protection of priority by notice by including provisions similar to Part IV of the Land Registration Act 2002 in England; and
  - (ii) If not, the Administration was requested to set out the legal points in support of the Administration’s view.
  - (iii) The Administration was requested to compare the legal effect of the relating back provision in the Bill with that of the doctrine of notice under the existing deeds registration system in different scenarios, particularly for rented properties where the priority issue would have an impact on who had a claim to the rental concerned.
- (b) In connection with item (a) above, the Administration was requested to seek the views of the Association of Banks and the Law Society of Hong Kong on the issue.

- (c) Clause 71(1)(b) provided that no subsequent interest could obtain priority without the cautioner's express consent. In ALA's view, this requirement would be a restriction on an owner's power of disposition of his own land. For example, where a consent caution had been registered by a mortgagee bank, a subsequent purchaser would need the bank's consent before he could register a caution of the agreement of sale and purchase. Members were concerned that as revealed from past experience, it might be difficult and would involve costs to seek such consent from the mortgagee bank. If the relating back provision was to be retained, the Administration was requested to consider ALA's suggestion that clause 71(1)(b) be amended to the effect that express consent was required to be sought from the person holding the relevant interests in land which were the subject matter of the consent caution, and not from the cautioner.

### Meeting arrangements

3. Owing to time constraints, the Chairman proposed and members agreed that the Bills Committee should start examination of the Bill clause-by-clause and the relevant draft Committee Stage Amendments (CSAs), if any, at the next meeting to be held on Tuesday, 27 April 2004, at 10:45 am, instead of at this meeting as originally planned. In anticipation that there would be CSAs to each part of the Bill, members also agreed that the Bills Committee would examine the Bill from Part 1, instead of adopting the previous proposal of first examining those parts of the Bill which were to be retained without substantial amendments.

## **II. Any other business**

4. There being no other business, the meeting ended at 10:25 am.

Council Business Division 1  
Legislative Council Secretariat  
19 May 2004

## Appendix

**Proceedings of the twenty-ninth meeting of the  
Bills Committee on Land Titles Bill  
on Tuesday, 20 April 2004, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000438	Chairman	Welcoming and introductory remarks	
000439-001142	Chairman Assistant Legal Adviser Administration	Briefing by the Assistant Legal Adviser (ALA) on item 1 of the table on “Comparison of Provisions Governing Priorities under the existing registration of documents system of the Land Registration Ordinance (Cap. 128) and under the proposed title registration system of the Land Titles Bill” (LC Paper No. LS67/03-04) (clauses 25, 33(7)(a) and 33(7)(c))	
001143-001750	Chairman Assistant Legal Adviser	Explanation by ALA that his major concern about the relating back provision in the Bill (the relating back provision) was that it would change the law and could have unintended legal effects as highlighted in LC Paper No. LS67/03-04	
001751-002348	Chairman Assistant Legal Adviser Administration	(a) Administration’s explanation that the relating back provision had been introduced to address concerns raised by different parties when the original	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>draft of the Bill was introduced in 1994, namely, that there were difficulties in the operation of a system of priority searches because of its effect of freezing the Land Register (Annexes B and C to the paper on “Outstanding Responses to Matters Raised by the Bills Committee” (LC Paper No. CB(1)1425/03-04(02)))</p> <p>(b) Discussion on whether clause 25 alone could protect priority through the operation of the doctrine of notice, and the Administration’s explanation that The Law Society of Hong Kong (Law Soc) considered the introduction of the relating back provision important notwithstanding clause 25</p>	
002349-003111	Chairman Assistant Legal Adviser	Briefing by ALA on item 2 of LC Paper No. LS67/03-04	
003112-003539	Chairman Ms Miriam LAU Assistant Legal Adviser	ALA’s explanation of why the relating back provision would change the law and could have the legal effect that once a consent caution had been registered, any subsequent charging order would be ineffective	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
003540-003902	Chairman Mr Albert HO Assistant Legal Adviser	Comment on the operational difficulties and possible confusion that would be created by the proposed removal of the one month relating back provision under the existing deeds registration system (DRS), and by the proposal under the Bill that the priority of matters would be determined according to the order in which the applications which led to their registration were presented to the Land Registrar	
003903-005344	Chairman Ms Audrey EU Ms Miriam LAU Mr Albert HO Assistant Legal Adviser	<p>(a) A member's comment that the relating back provision might be necessary because the relevant concept had already been in operation under the DRS, and that the cause of the unintended effects might be the restriction that no subsequent interest could obtain priority without the cautioner's express consent (clause 71(1)(b))</p> <p>(b) Another member's view that as a result of the restriction in item (a) above, in the event that a consent caution had been registered by a mortgagee bank, a subsequent purchaser would need the bank's consent before he could register a caution of the agreement of sale and purchase (ASP).</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>However, as revealed from past experience, it might be difficult and would involve costs to seek such consent from the mortgagee bank</p> <p>(c) ALA’s suggestion that there might be a need to modify the restriction in item (a) above by amending clause 71(1)(b) to the effect that express consent was required to be sought from the person holding the relevant interests in land which were the subject matter of the consent caution, and not from the cautioner</p> <p>(d) ALA’s explanation that the operation of relating back under the DRS and under the Bill were different given that under the present law, where an owner had entered into an ASP and a charging order was registered prior to the execution of the assignment of the land, the charging order would attach to the proceeds of sale. Under the provisions of the Bill, however, the transfer would relate back to the date of the registration of the consent caution and the charging order would affect neither the land nor the</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>
		<p>proceeds of sale</p> <p>(e) ALA's view that determining priority according to the date of presentation of application would be sufficient, and the relating back provision might not be absolutely necessary to preserve the priority of an interest registered by a consent caution if the doctrine of notice still applied; ALA's concern that the relating back provision might also lead to greater need to register matters which might otherwise not be necessary</p>	<p>Administration to take the follow-up action under paragraph 2(a)(i) of the minutes</p>
<p>005345-011728</p>	<p>Chairman Ms Miriam LAU Assistant Legal Adviser Administration</p>	<p>(a) Administration's view that the relating back provision would not change the law and give rise to the unintended effects as highlighted in LC Paper No. LS67/03-04. In fact, the relating back provision had been developed in consultation with Law Soc and the Association of Banks to ensure protection for the security of mortgage.</p> <p>Notwithstanding, the Administration would seek the views of the two bodies on the priority issue</p> <p>(b) Chairman's view on the need to set out the legal</p>	<p>Administration to take the follow-up action under paragraph 2(b) of the minutes</p> <p>Administration to take the follow-up</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>points in support of the Administration's view in item (a) above</p> <p>(c) Administration's agreement with ALA on the need to amend clause 71(1)(b) as proposed by him</p> <p>(d) Administration's view that reliance on the operation of the doctrine of notice under clause 25 might not be desirable because the Administration's policy intent was to abolish the doctrine of notice under the Bill; hence the need for the relating back provision</p> <p>(e) A member's view that it might not be desirable to remove the relating back provision because the relevant concept had already been in operation under the DRS and its removal might give rise to problems. However, there is a need for the Administration to examine whether the relating back provision would change the law to the extent that once a consent caution had been registered, any subsequent charging order would be ineffective</p> <p>(f) Chairman's and ALA's</p>	<p>action under paragraph 2(a)(ii) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>view that the unintended effects of the relating back provision might go beyond the examples quoted in LC Paper No. LS67/03-04, and that the Administration should adjust the relevant principles of law which, according to ALA, would give rise to the unintended effects and not merely reacting to the examples</p>	
011729-013716	<p>Chairman Ms Audrey EU Assistant Legal Adviser Administration</p>	<p>(a) A member's view that the relating back provision was required even though the doctrine of notice still applied because there would nonetheless be the need to determine priority</p> <p>(b) ALA's view that strengthening the protection of priority by notice by including provisions similar to Part IV of the Land Registration Act 2002 in England might rectify the unintended effects</p> <p>(c) ALA's explanation of the difference between clause 25 and Part IV of the Land Registration Act 2002 in England, namely, that the former failed to clearly state the effect of notice of entry in the Title Register, while the latter specified that such notice would</p>	<p>Administration to take the follow-up action under paragraph 2(a)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>have the effect of protecting priority according to the date of registration</p> <p>(d) Administration's clarification that since priority would be determined by the date of registration, the solution suggested by ALA in item (b) above might not reduce the need for registration</p>	
013717-014515	<p>Chairman Mr Albert HO Assistant Legal Adviser Administration</p>	<p>The need to compare the legal effect of the relating back provision in the Bill with that of the doctrine of notice under the DRS in different scenarios, particularly for rented properties where the priority issue would have an impact on who had a claim to the rental concerned</p>	<p>Administration to take the follow-up action under paragraph 2(a)(iii) of the minutes</p>
014516-015057	<p>Chairman Ms Miriam LAU Administration</p>	<p>(a) Discussion on how to proceed with the clause-by-clause examination of the Bill</p> <p>(b) Reference to "Summary of the proposed amendments mentioned in the papers provided by the Administration from April 2003 to early April 2004 (Position as at 14 April 2004)" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)1544/03-04(01))</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(c) Progress of the preparation of Committee Stage Amendments (d) Meeting arrangements	

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