

立法會
Legislative Council

LC Paper No. CB(1)1900/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the thirtieth meeting held on
Tuesday, 27 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 Andrew WONG Wang-fat, JP
Hon Miriam LAU Kin-ye, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-him, JP
- Members absent** : 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
- 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 meeting**
(LC Paper No. CB(1)1607/03-04 — Minutes of twenty-seventh
meeting held on 2 April 2004)

The minutes of the meeting held on 2 April 2004 were confirmed.

II. Meeting with the Administration

(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)

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 examining clause 3, members noted that the Administration intended to amend subclause (1) to specify the type of land, namely, new land, that the Land Titles Ordinance would apply during the 12-year incubation period under the daylight conversion mechanism. Members and the Assistant Legal Adviser (ALA) were however of the view that there was no need to amend clause 3(1) because the general approach agreed upon to provide for the daylight conversion mechanism was to set out the transitional arrangements for the 12-year period in a schedule to the Bill and the full implementation of the land title registration system (LTRS) in the main body of the Bill. In this regard, the Administration was invited to take the following actions:

- (i) To reconsider whether it was really necessary to amend clause 3(1) as proposed; if it was, the Administration was requested to provide justifications for the proposal; and
- (ii) To advise whether the agreed approach mentioned above would still be followed by the Administration; if not, the Administration was requested to notify the Bills Committee and give reasons for the change.

(b) On clause 4, members and ALA were concerned that clause 4(d) was too wide, giving the Land Registrar unlimited power to permit registration of any matter that affected registered land, a registered charge or a registered long term lease but not covered by clause 4(a), (b) or (c). Members also considered that clause 4(d) might impose unnecessary burden and workload on the Registrar. The Administration was

therefore invited to consider whether clause 4(d) should be amended to confine the scope of the Registrar's power. In this connection, the Administration was requested to consider a member's view that in order to ensure that clause 4 would cover all matters which were capable of registration, reference should be made to the types of instruments which were presently registrable under the deeds registration system.

- (c) On clause 5, ALA considered that the Administration should amend it to make it clear that the Land Registry mentioned therein referred to the existing Land Registry established under the Land Registration Ordinance (LRO) (Cap. 128). The Administration was requested to consider ALA's view and amend clause 5 as appropriate.
- (d) On clause 11, ALA pointed out that in consideration of the adoption of the daylight conversion mechanism, there might be a need to introduce amendments to the clause accordingly, and that reference could be made to the 1994 version of the previous Land Titles Bill. The Administration was invited to note the above views, and the following areas that might require amendment as highlighted by ALA:
 - (i) On clause 11(1), the Administration was requested to consider the need to replace the phrase "on the opening of a Title Register" by an appointed day on which the LTRS would come into full operation. The Administration was also requested to consider the need to clearly set out the Administration's policy on how to deal with problem land where conversion was concerned, such as allowing registration of the title of problem land after the problem had been resolved; and
 - (ii) Clause 11(2) might need to be amended if the Administration agreed to introduce amendments to the relating back provision under the Bill. In this connection, the Administration was requested to consider the need to amend clause 34 to clearly state whether a charging order or a *lis pendens* was to be registered on its own or through the registration of a non-consent caution.
- (e) On clause 17, members and ALA expressed concern about the unlimited power of the Land Registrar to remove an entry in the Title Register "which in his opinion has ceased to have any effect". Members noted that a similar provision was provided in clause 18(b)(ii) under which the Registrar might open a new edition of the closed Title Register omitting all entries in the closed Title Register "that in his opinion have ceased to have any effect". Members opined that such powers should be exercised on the basis of objective criteria rather than on the Registrar's personal opinion, particularly when there was no compensation for damages arising from any wrongful removal of entry. The Administration was therefore invited to set out the scope of the

Registrar's powers under clause 17 and clause 18(b)(ii), and illustrate with examples the circumstances under which such powers could be exercised. The Administration was also requested to make reference to LRO and the Land Registration Act in England.

- (f) On clause 20, members noted that subclause (5) provided that the "Registrar shall refuse to register any matter relating to an undivided share in registered land..... unless and until an application for the division of the land into undivided shares has been registered showing or specifying such rights to the use and occupation of the land". While members had no objection to the policy involved, they noted ALA's view that the above provision related to administrative arrangements only and had nothing to do with title, and that it might be more appropriate to include the provision in the Regulations. The Administration was invited to consider ALA's view, and decide whether the provision should be included in the Bill, the Regulations, or the relevant administrative directions.

Meeting arrangements

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 11 May 2004, from 8:30 am to 12:45 pm.

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
24 May 2004

Appendix

**Proceedings of the thirtieth meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 27 April 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000208	Chairman	(a) Welcoming and introductory remarks (b) Confirmation of minutes of the meeting held on 2 April 2004	
Clause-by-clause examination of the Bill			
<i>Part 1: Preliminary - Clauses 1 to 4</i>			
000209-000238	Chairman Administration	(a) Reference to the long title of the Bill (b) Reference to clause 1 (Short title and commencement) (c) Administration's explanation that clause 2 (Interpretation) would be amended to provide for the daylight conversion mechanism	
000239-001918	Chairman Mr Albert HO Assistant Legal Adviser Administration	Discussion on clause 3 (Application) - (a) Administration's explanation that clause 3(1) would be amended to specify the type of land,	

Time marker	Speaker	Subject(s)	Action Required
		<p>namely, new land, that the Land Titles Ordinance would apply during the 12-year incubation period under the daylight conversion mechanism</p> <p>(b) Members' and the Assistant Legal Adviser (ALA)'s view that there was no need to amend clause 3(1) because the general approach agreed upon to provide for the daylight conversion mechanism was to set out the transitional arrangements for the 12-year period in a schedule to the Bill and the full implementation of the land title registration system (LTRS) in the main body of the Bill</p> <p>(c) Administration's emphasis of the need to cater for land which could not be converted upon expiry of the 12-year period. Chairman's view that such land could be dealt with in other parts of the Bill</p>	<p>Administration to take the follow-up action under paragraph 3(a) of the minutes</p>
001919-003753	<p>Chairman Ms Miriam LAU Assistant Legal Adviser Administration</p>	<p>Discussion on clause 4 (Matters capable of being registered) -</p> <p>(a) Administration's explanation that clause 4(c) would be amended to clearly state that the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>“order” referred to therein was a court order</p> <p>(b) Members’ and ALA’s concern that clause 4(d) was too wide, giving the Land Registrar unlimited power to permit registration of any matter that affected registered land, a registered charge or a registered long term lease but not covered by clause 4(a), (b) or (c). Members also considered that clause 4(d) might impose unnecessary burden and workload on the Registrar</p> <p>(c) Administration’s explanation on the need for the residual power described in item (b) above to register matters that needed to be registered but were otherwise not provided for in the Bill</p> <p>(d) ALA’s and members’ view on the need to impose some general principles on the exercise of the power in item (b) above because, unlike registration under the existing deeds registration system (DRS), registration under the LTRS would have legal effect (section 2 of the Land Registration Ordinance (LRO) (Cap.</p>	<p>Administration to take the follow-up action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>128)). Hence the need to consider whether clause 4(d) should be amended to confine the scope of the Land Registrar's power</p> <p>(e) ALA's view that in order to avoid confusion and ensure smooth operation of the LTRS, the Administration should consider not only whether matters were permitted to be registered but also how they were to be registered, namely, whether they could be registered directly, or indirectly through registering a caution, etc.</p> <p>(f) Administration's explanation that how matters referred to in item (e) above would be dealt with under the LTRS were explained in detail in other clauses of the Bill</p> <p>(g) A member's view that in order to ensure that clause 4 would cover all matters which were capable of registration, reference should be made to the types of instruments which were presently registrable under the DRS</p>	<p>Administration to take the follow-up action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
003754-004244	Chairman Mr Albert HO Ms Miriam LAU Administration	Administration's explanation on why the definition of "disposition" did not include agreement, namely, that agreements would be registered as cautions under the LTRS (clause 2)	
<i>Part 2: Organization and Administration - Clauses 5 to 20</i>			
004245-005316	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>Discussion on clause 5 (Land Registry) -</p> <p>(a) ALA's view that the Administration should amend clause 5 to make it clear that the Land Registry mentioned therein referred to the existing Land Registry established under the LRO</p> <p>(b) Administration's view that there did not appear to be any real risk of ambiguity that required amendment because there was only one public office known as the Land Registry in Hong Kong and at present there was already a definition of "Land Registry" in LRO (section 2), which would continue to be in operation for quite some time after the implementation of the LTRS</p> <p>(c) Administration's explanation that clause 5</p>	Administration to take the follow-up action under paragraph 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		had been drafted along the same line of section 2 of LRO	
005317-005515	Chairman Administration	Reference to clause 6 (Functions and powers of Registrar), clause 7 (Delegation of powers), clause 8 (Immunity) and clause 9 (Seal of Land Registry)	
005516-005825	Chairman Assistant Legal Adviser Administration	Discussion on clause 10 (Title Register) - (a) ALA's view that in order to avoid any possible confusion and to facilitate registration, there should be separate registers for titles and for incumbrances (b) Administration's explanation that it was The Law Society of Hong Kong's view that the form of the Register should be kept as close to the present form as possible, and the Administration's assurance that the form would be agreed upon before implementation of the LTRS	
005826-012049	Chairman Ms Miriam LAU Mr Albert HO Assistant Legal Adviser Administration	Discussion on clause 11 (Transitional provisions in respect of Title Register, etc.) - (a) ALA's view that in consideration of the adoption of the daylight	

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		<p>conversion mechanism, there might be a need to introduce amendments to clause 11 accordingly, and that reference could be made to the 1994 version of the previous Land Titles Bill</p> <p>(b) ALA’s view on the need to replace the phrase “on the opening of a Title Register” in clause 11(1) by an appointed day on which the LTRS would come into full operation because conversion should take place upon expiry of the 12-year period and not on the opening of a Title Register. In this connection, there might also be a need to clearly set out the Administration’s policy on how to deal with problem land where conversion was concerned, such as allowing registration of the title of problem land after the problem had been resolved</p> <p>(c) Administration’s explanation that the phrase quoted in item (b) above was used because it would be able to cover properties the conversion of which might not take place at the end of the 12-year period but until an indefinite date.</p>	<p>Administration to take the follow-up action under paragraph 3(d)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>For example, land in respect of which a lis pendens had been registered and the action concerned had started but had not completed at the end of the 12-year period, or land in respect of which application for registration under the DRS had yet to be approved by then</p> <p>(d) Discussion on the need to keep a separate register each for titles and for incumbrances</p> <p>(e) Administration's confirmation that where a register had been kept and maintained under the LRO, then, on the opening of a Title Register in relation to the land to which the register related, the priority of all interests in the Title Register should by relation back be determined according to the priority already established by the LRO</p> <p>(f) ALA's view that clause 11(2) might need to be amended if the Administration agreed to introduce amendments to the relating back provision under the Bill</p> <p>(g) ALA's view that there</p>	<p>Administration to take the follow-up action under paragraph 3(d)(ii) of the minutes</p> <p>Administration to</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>might be a need to amend clause 34 to clearly state whether a charging order or a lis pendens was to be registered on its own or through the registration of a non-consent caution</p> <p>(h) Discussion on the completeness of the definition of “Title Register”</p>	<p>take the follow-up action under paragraph 3(d)(ii) of the minutes</p>
012050-012304	Chairman Administration	<p>Deferral of discussion on clause 12 (Application for first registration of land) and clause 13 (Bringing land under this Ordinance) because substantial amendments would be proposed by the Administration to these clauses to provide for the daylight conversion mechanism</p>	
012305-012850	Chairman Assistant Legal Adviser Clerk Administration	<p>Discussion on clause 14 (Effect of first registration of land on ownership) -</p> <p>(a) Administration’s explanation that clause 14(1) would be amended, namely, by deleting reference to “land registered under section 13”. Reference would instead be made to the date of first registration of any land so as to link up with the new conversion system</p> <p>(b) Administration’s confirmation that</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>amendment(s) would be made to clause 14(2) as elaborated in the “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> <p>(c) Administration’s confirmation that all Committee Stage Amendments (CSAs) not related to the daylight conversion mechanism had been prepared and commented on by ALA but the draft of the CSAs had yet to be finalized</p>	
012851-013020	Chairman Administration	Deferral of discussion on clause 15 (First registration) because substantial amendments would be proposed by the Administration to elaborate how the date of first registration would be determined according to the type of land concerned	
013021-013035	Chairman Assistant Legal Adviser Administration	Deferral of discussion on clause 16 (Manner of registration) because amendments would be proposed by the Administration to provide for the daylight conversion mechanism	

Time marker	Speaker	Subject(s)	Action Required
013036-015109	<p>Chairman Ms Miriam LAU Mr Albert HO Assistant Legal Adviser Administration</p>	<p>Discussion on clause 17 (removal of obsolete entries) -</p> <p>(a) Members' and ALA's concern about the unlimited power of the Land Registrar to remove an entry in the Title Register "which in his opinion has ceased to have any effect". Members noted that a similar provision was provided in clause 18 (New editions of Title Register). Under clause 18(b)(ii), the Registrar might open a new edition of the closed Title Register omitting all entries in the closed Title Register that "in his opinion have ceased to have any effect"</p> <p>(b) Administration's explanation that the power of the Registrar in clause 17 was necessary to avoid clustering up the Title Register, and Administration's assurance that the power would be exercised with great care</p> <p>(c) Administration's emphasis that obsolete entries would be removed from the Title Register only when the Land Registrar had been satisfied that they had been superseded by subsequent</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>instruments. Moreover, they would be retained in the historical register</p> <p>(d) Members’ agreement that the residual power of the Registrar in clause 17 was necessary for administrative purposes. However, they opined that such powers should be exercised on the basis of objective criteria rather than on the Registrar’s personal opinion, particularly when there was no compensation for damages arising from any wrongful removal of entry</p> <p>(e) Administration’s agreement to examine clauses 17 and 18 to narrow the scope of the power of the Registrar by making reference to relevant legislation, e.g. the LRO and the Land Registration Act in England. Administration’s explanation that the original Land Registration Act 1862 failed because of the lack of discretion for the Land Registrar to act</p>	<p>Administration to take the follow-up action under paragraph 3(e) of the minutes</p>
015110-015845	<p>Chairman Mr Albert HO Ms Miriam LAU Assistant Legal Adviser Administration</p>	<p>Discussion on clause 19 (Boundaries) -</p> <p>(a) Legal status of “plan”, and ALA’s view that the fact</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>that there was no guarantee of the accuracy of the boundaries would diminish the certainty of title</p> <p>(b) Administration’s explanation that clause 19 only sought to state the status of “plan” under the land title record, and Administration’s assurance that application for the updating of the plan could be made according to clause 92</p>	
015846-020632	<p>Chairman Ms Miriam LAU Assistant Legal Adviser Administration</p>	<p>Discussion on clause 20 (Combinations and divisions) -</p> <p>(a) ALA’s concern about clause 20(5) which provides that the “Registrar shall refuse to register any matter relating to an undivided share in registered land...unless and until an application for the division of the land into undivided shares has been registered showing or specifying such rights to the use and occupation of the land....”</p> <p>(b) Administration’s explanation that the purpose of clause 20(5) was to avoid confusion, and that there was a need to discourage developers from amending the schedule of</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>division too lightly or frequently</p> <p>(c) Administration's explanation that the provision in clause 20(5) would apply to all new buildings, including new small houses in the New Territories (clause 20(6))</p> <p>(d) ALA's view that the provision in clause 20(5) related to administrative arrangements only and had nothing to do with title, and that it might be more appropriate to include the provision in the Regulations</p>	<p>Administration to take the follow-up action under paragraph 3(f) of the minutes</p>
020633-020812	Chairman	Meeting arrangements	