

立法會
Legislative Council

LC Paper No. CB(1)1988/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the thirty-first meeting held on
Tuesday, 11 May 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 Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon IP Kwok-him, JP
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
- 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)1752/03-04 — Minutes of twenty-eighth
meeting held on 13 April 2004)

The minutes of the meeting held on 13 April 2004 were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)1751/03-04(01) — “Follow-up to the twenty-seventh meeting on 2 April 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1751/03-04(02) — “Follow-up to the twenty-eighth meeting on 13 April 2004” prepared by the Legislative Council Secretariat
- 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 21, members noted that the Administration’s policy intent was that under the new land title registration system (LTRS), transmission on death of a joint tenant would, as at present, take effect by operation of law on the date of death of the deceased joint tenant, but the surviving joint tenant would only be able to deal with the land concerned upon registration of the transmission. Members were concerned that this policy intent was not reflected in clause 21, and that clause 21(1), which provided that “a transfer or transmission shall, when registered, vest in the person becoming the owner of the land”, might imply that transmission would take effect upon registration of the transmission. In this connection, the Administration was invited to take the following actions:
- (i) To clearly set out the Administration’s policy intent in clause 21(1);
- (ii) To confirm whether the land would be vested in the surviving joint tenant on the date of death of the deceased joint tenant or upon

- registration of the transmission; and
- (iii) To examine whether there would be any implications, in particular the implications on the third parties involved, should the surviving joint tenant deal with the land concerned before registration of the transmission.
- (b) On clause 24, the Assistant Legal Adviser (ALA) considered that given the Administration's agreement to apply the doctrine of notice to deal with the priority issue under the LTRS, it might not be necessary to retain subclause (1)(g). The Administration was requested to consider ALA's view.
- (c) On clause 26, the Administration was invited to take the following actions:
- (i) Given that a title certificate was only a document showing all current entries in the Title Register affecting the land concerned (subclause (1)) and was not conclusive evidence of title (subclause (4)), members queried the need for the requirement of returning the title certificate for cancellation before a transfer or transmission could be registered (subclause (5)). In this connection, members pointed out that there might be cases in which the holders of title certificates, who were not the owners of the land concerned, refused to return the certificates for cancellation upon the death of the owners. The Administration was requested to review the need for the requirement under subclause (5) and examine the legal effect of giving a title certificate to effect a gift to someone else or using it as a security for mortgage under LTRS.
 - (ii) Subclause (7) provided that a new title certificate might be issued in place of a title certificate which had been lost or destroyed. On the question of what needed to be produced to prove that a title certificate had been lost or destroyed, members noted the Administration's advice that the relevant details would be specified in the regulations. The Administration was requested to advise the Bills Committee of the Administration's proposal in due course.
- (d) On clause 28, members noted that subclause (2) provided that no solicitor, trustee or other person in a fiduciary position should be liable in damages for any loss occasioned by the inaccuracy of a document purporting to be a copy, print or extract of the Title Register or of other documents referred to in subclause (1). Some members opined that the protection afforded by the subclause should be made available to all users of the document and not only the above categories of persons. The Administration was requested to consider their view.
- (e) On clause 29, members noted that "dealing" meant disposition and

transmission but “disposition” did not include transmission. In this connection, the Administration was invited to consider the following views expressed by members:

- (i) The fact that “disposition” did not include transmission should be more clearly spelt out in the definition of “disposition” in clause 2.
 - (ii) It was doubtful whether “dealing” could cover disposition and transmission. The reasons were twofold. Firstly, the term “dealing” appeared to have a narrower meaning than “disposition”. Secondly, the term “dealing”, especially its Chinese version (“交易”, which normally denoted “transaction”), seemed to be a conscious act of the parties concerned rather than an effect of law. Transmission however was essentially effected by the operation of law.
 - (iii) In connection with item (ii) above, there was a need to review the Chinese version of the relevant terms. In so doing, the Administration was requested to ensure that the Chinese version adopted in the Bill was consistent with that adopted in existing legislation.
 - (iv) There was a need to improve the definition of “transmission” by explaining when the vesting of interest in land took place.
- (f) On clause 35, ALA expressed the view that in order to ensure consistency with the Conveyancing and Property Ordinance (Cap. 219) (CPO), the term “charge” in the clause should preferably be replaced by such terms as used in CPO. The Administration was requested to consider ALA’s view.
- (g) On clause 39, members expressed concern about under what circumstances the Land Registrar (LR) would exercise his power under the clause to remove from the Title Register the entry referring to a registered charge. A member also doubted whether it was appropriate to give LR, instead of the court, such power of removal. Members noted the Administration’s advice that the clause had been introduced at the request of The Law Society of Hong Kong (Law Soc) to deal with long outstanding mortgages which might become unfair encumbrances. While members had no objection to the policy intent, they were concerned that clause 39, as presently drafted, might appear to be a general provision that was interchangeable with clause 38, so that it could be resorted to lightly. The Administration was invited to consider amending clause 39 in such a way that it only served as a remedial provision, and the power would be exercised by LR only under special circumstances.

- (h) On clause 49, ALA was concerned that it was not clear whether easements might be granted between tenants in common of the same land. The Administration was requested to consider how ALA's concern could be addressed.
- (i) On clause 51, members noted the Administration's advice that the clause had been introduced to address the Law Soc's concern that there was a need to provide for the registration of deeds of mutual covenant (DMCs) in a single clause, having regard to the fact that DMC was a very common instrument affecting land in Hong Kong and the difficulties in separating and registering each of the rights, easements or covenants contained therein. ALA however considered that it had already been provided in the relevant provision in clause 50 (Covenants). A separate clause was not required if clause 50(3) was removed. ALA's views were as follows:
- (i) Given that LTRS was a system for registration of interests and not registration of instruments, it did not seem appropriate to provide for the registration of DMC, which was an instrument, in the Bill;
 - (ii) It was very difficult to define "DMC", and there was no comprehensive definition of this term in existing legislation; and
 - (iii) Law Soc's concern about the difficulties in registering each of the rights, easements or covenants contained in a DMC could be addressed by a Committee Stage amendment to the effect that one single registration of a covenant in the DMC against the relevant title would operate to effect the registration of all the easements, rights and covenants contained in the DMC which affected the registered land (paragraph 7 of the paper on "Registration of Deeds of Mutual Covenant" (LC Paper No. CB(1)2305/02-03(08))). To preserve the status quo, it could be further provided that the registration would not reflect on the validity and enforceability of the easements, rights and covenants.

The Administration was invited to consult Law Soc on ALA's views and report back to the Bills Committee.

- (j) On clause 57, members and ALA considered it advisable to clearly set out in the Bill how "tso" and "tong" land in the New Territories, which belonged to a special category of land in the New Territories, would be dealt with under the LTRS. The Administration was requested to consider their views and to make reference to section 15 of the New Territories Ordinance (Cap. 97). The Administration was also requested to confirm whether the dealings of this special category of land under the LTRS would be subject to the consent of the Secretary for Home Affairs.
- (k) In examining clause 57, ALA expressed his view that as the current practice of disposal of land by deeds would discontinue after the implementation of the LTRS, there was a need to make consequential

amendments to the relevant legislation that such legislation would not apply to land registered under the LTRS. The Administration undertook to take follow-up actions accordingly.

- (l) In examining clause 59, ALA expressed his view that the proposed consequential amendments to the Stamp Duty Ordinance (Cap. 117) by adding a new section 2A (Instruments affected by Land Titles Ordinance) set out in item 40 of Schedule 2 to the Bill could not achieve its purpose. The Administration undertook to consult the Stamp Duty Office and the Department of Justice, and report back to the Bills Committee.

- (m) On clause 61, the Administration was invited to take the following actions:
 - (i) On subclause (2), to explain where the burden of proof lay as to whether “the person to whom the disposition is made acted in good faith”.
 - (ii) Subclause (3) provided that the name of a minor “may” be entered in the Title Register as the owner of registered land with the addition after the minor’s name of the words “a minor”. In this regard, a member opined that in order to better protect a minor’s interests, the addition of the words “a minor” should be made a mandatory requirement. The Administration was requested to consider the member’s view and report back to the Bills Committee.
 - (iii) Members noted that clause 80 would be amended to provide LR with the power to remove, when a minor who had been registered in the Title Register as the owner of registered land attained the age of majority, the annotation “a minor” added after the minor’s name in the Title Register. In this regard, the Administration was requested to consider a member’s suggestion that the date of birth of the minor be added after the annotation. In so doing, the Administration was also requested to give due consideration to the enhanced risk of accuracy arising from the suggestion.

- (n) On clause 63, the Administration was invited to take the following actions:
 - (i) Members were concerned that the phrase “registered by transmission as the owner” in subclauses (1) and (3) was misleading and did not reflect the fact that transmission took place by operation of law first before registration of the transmission. The phrase might imply that registration was effected by way of transmission. A member suggested that the phrase be amended to read “registered as the owner by transmission”. The Administration was requested to consider the suggestion and improve the drafting of the two subclauses as well as any other clauses of the Bill where the above phrase appeared.

- (ii) Subclause (2) provided that LR might, on the presentation to him of the grant concerned by the personal representative of the deceased owner or lessee, and without requiring the personal representative to be registered, register by transmission a transfer of the land or a discharge of the charge by the personal representative. A member considered the above exemption of registration of the personal representative not conducive to the preservation of the chain of title, which might need to be traced as a result of the proposal to modify the rectification provisions under the Bill to provide for rectification in favour of an innocent former owner if the change of ownership was procured by a forgery. Some other members however considered that since the Title Register was the conclusive evidence of ownership under the LTRS and the name of the personal representative would be shown on all supporting documents of transfer, the exemption might be acceptable and necessary to keep the LTRS simple. The Administration was requested to consider whether the personal representative should be required to register in the light of the above views.

Follow-up action to be taken by the Clerk

4. In connection with paragraph 3(g) above, Mr Albert HO Chun-yan recalled that in a previous Statue Law Bill passed by the Legislative Council, the power of discharge of encumbrances was vested in the court. To facilitate the Bills Committee's examination of the clause, the Chairman directed the Clerk to provide members with information about the relevant Bill.

(Post-meeting note: The information about the Statue Law (Miscellaneous Provisions) Bill 1999 was circulated to members vide LC Paper No. CB(1)1818/03-04 on 14 May 2004.)

Progress of preparation of the Committee Stage amendments

5. At the Chairman's invitation to account for the slippage in providing the draft Committee Stage amendments (CSAs) proposed by the Administration for examination at this meeting, the Land Registrar (LR) reported that the CSAs had already been sent to the ALA and Law Soc for comments in two batches, the first batch in April and the second batch the week before. However, the draft of the CSAs had yet to be finalized pending agreement with the ALA and Law Soc on certain issues. At the Chairman's request, LR agreed to provide on or before 20 May 2004 the draft CSAs to the Bills Committee for examination at its next meeting to be held on Tuesday, 25 May 2004, from 8:30 am to 12:30 pm.

6. In the course of discussion, members also noted that instead of adopting the agreed approach for drafting the CSAs, i.e. to provide for the daylight conversion mechanism by setting out the transitional arrangements for the 12-year period in a schedule to the Bill and the full implementation of the LTRS in the main body of the Bill, the Administration had adopted a different approach under which the CSAs to effect the daylight conversion mechanism would be introduced to various clauses of the Bill. LR explained that the reasons for adopting a different approach were twofold. Firstly, there was a need to cater for land which could not be converted upon expiry of the 12-year period. Secondly, during the course of preparing the relevant CSAs, it had been found that the agreed approach might not be workable and acceptable to all parties concerned. LR however assured members that the Administration would ensure that the CSAs so prepared could reflect the conversion mechanism agreed on by all relevant parties. To allow the Bills Committee sufficient time to examine whether the draft CSAs were in order, the Chairman urged the Administration to provide the draft CSAs as soon as possible.

Further examination of clauses

7. Members agreed that the Bills Committee would further examine clauses 21, 22, 25, 29, 33, 34, 43, 44, 47, 50, 51, 53 and 59 when the draft CSAs or the Administration's responses were available.

III. Any other business

8. There being no other business, the meeting ended at 12:45 pm.

Appendix

**Proceedings of the thirty-first meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 11 May 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action Required |
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| I. Confirmation of minutes of meeting | | | |
| 000000-000202 | Chairman | (a) Welcoming and introductory remarks (b) Confirmation of minutes of the meeting held on 13 April 2004 | |
| 000203-001738 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | (a) Progress of the preparation of the draft Committee Stage amendments (CSAs) to the Bill (b) Discussion on the approach to be adopted for the preparation of CSAs to provide for the daylight conversion mechanism | |
| II. Meeting with the Administration | | | |
| <u>Clause-by-clause examination of the Bill</u> | | | |
| <i>Part 3: Effect of registration, etc. - Clauses 21 to 25</i> | | | |
| 001739-005139 | Chairman Ms Miriam LAU Ms Audrey EU Mr Albert HO Assistant Legal Adviser Administration | Discussion on clause 21 (Effect of registration) - (a) Briefing by the Administration on clause 21 and its proposal to | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>amend clause 21(1) by deleting the words “or transmission” to reflect the policy intent that under the new land title registration system (LTRS), transmission on death of a joint tenant would, as at present, take effect by operation of law on the date of death of the deceased joint tenant (clause 14)</p> <p>(b) Administration’s and Assistant Legal Adviser (ALA)’s explanation that notwithstanding the policy intent confirmed in item (a) above, the surviving joint tenant would only be able to deal with the land concerned upon registration of the transmission</p> <p>(c) Members’ concern that the policy intent elaborated in items (a) and (b) above was not reflected in clause 21, and that clause 21(1), which provided that “a transfer or transmission shall, when registered, vest in the person becoming the owner of the land”, might imply that transmission would take effect upon registration of the transmission</p> | <p>Administration to take the follow-up action under paragraph 3(a)(ii) of the minutes</p> <p>Administration to take the follow-up</p> |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>(d) Members' view that the Administration's policy intent elaborated in items (a) and (b) above should be clearly set out in clause 21(1) because the timing of the vesting of interest in land would have implications on the calculation of estate duty and further transfer or transmission</p> <p>(e) ALA's view that the proposed deletion in clause 21(1) was not necessary because the clause dealt with the effect of registration only. However, it should be made clear that the clause would not affect the operation of law, and that transmission would take effect on the date of death of the deceased joint tenant</p> <p>(f) A member's suggestion to delete the words "or transmission" in clause 21(1), and place all provisions on dealings in relation to transmission in clause 29</p> <p>(g) A member's enquiry on the implications, in particular the implications on the third parties involved, should the surviving joint tenant deal with the land</p> | <p>action under paragraph 3(a)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(a)(iii) of the minutes</p> |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>concerned before registration of the transmission</p> <p>(h) Administration's confirmation that it would introduce CSAs to effect the proposed amendments to clause 21 and related provisions, in particular clause 21(2), as highlighted 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> | |
| 005140-005308 | Chairman Administration | Administration's confirmation that it would introduce CSAs to effect the proposed amendments to clause 22 (Effect of registration of long term lease) as highlighted in LC Paper No. CB(1)1544/03-04(01) | |
| 005309-005430 | Chairman Ms Audrey EU Administration | <p>(a) The Chairman's concern about whether the Chinese version "無償" of the term "voluntary" in clause 23 (Voluntary transfer) was appropriate</p> <p>(b) Administration's confirmation that the Chinese version "無償"</p> | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | had been agreed upon by the Bilingual Laws Advisory Committee | |
| 005431-005807 | Chairman Assistant Legal Adviser Administration | <p>Discussion on clause 24 (Overriding interests) -</p> <p>(a) Administration’s explanation that it might not be necessary to introduce CSAs to effect the proposed amendments to clause 24(4) as highlighted in LC Paper No. CB(1)1544/03-04(01) because under the Interpretation and General Clauses Ordinance (Cap. 1), “the Court of First Instance” would also imply “the Court of Appeal”</p> <p>(b) Administration’s advice that there might be CSAs to address The Law Society of Hong Kong (Law Soc)’s concerns over the treatment of easements, as well as to clarify in clause 24(f)(i) that the rights under the Government lease would include the Government rights of re-entry</p> <p>(c) ALA’s view that given the Administration’s agreement to apply the doctrine of notice to deal with the priority issue under the LTRS, it might not be necessary to retain</p> | Administration to take the follow-up action under paragraph 3(b) of the minutes |

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| | | <p>subclause (1)(g)</p> <p>(d) Administration's explanation that since subclause (1)(g) had been introduced at the Estate Duty Office's request, there was a need to seek its views on whether the subclause could be removed</p> | |
| 005808-005940 | Chairman Administration | Administration's advice that clause 25 (Entries in Title Register to constitute notice) might be affected by its decision on the priority issue | |

Part 4: Certificates and searches - Clauses 26 to 28

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| 005941-012338 | Chairman Mr Albert HO Ms Miriam LAU Ms Audrey EU Dr TANG Siu-tong Assistant Legal Adviser Administration | Discussion on clause 26 (Title certificates) - (a) Briefing by the Administration on clause 26, and its explanation that the issue of the title certificate had been provided for in the Bill at the request of the Hong Kong Association of Banks and Law Soc for use as additional evidence for the identity of the vendor (b) Administration's clarification that a title certificate was only a document showing all current entries in the Title Register affecting the land | |
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| | | <p>concerned (subclause (1)) and was not conclusive evidence of title (subclause (4))</p> <p>(c) Members' query that, given the policy intent in item (b) above, there might not be a need for the requirement of returning the title certificate for cancellation before a transfer or transmission could be registered (subclause (5)). There might be cases in which the holders of title certificates, who were not the owners of the land concerned, refused to return the certificates for cancellation upon the death of the owners</p> <p>(d) Members' question on what needed to be produced to prove that a title certificate had been lost or destroyed so that a new title certificate might be issued in place of the lost or destroyed title certificate under subclause (7)</p> <p>(e) Administration's advice that a statutory declaration or an advertisement notice might be required to satisfy the Land Registrar (LR) that a title certificate had been lost or destroyed.</p> | <p>Administration to take the follow-up action under paragraph 3(c)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(c)(ii) of the minutes</p> |

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| | | <p>The relevant details would be specified in the regulations made under clause 100 (clause 26(7))</p> <p>(f) Discussion on the legal effect of giving a title certificate to effect a gift to someone else under LTRS, e.g., as a donatio mortis causa (a gift in prospect of death), and the procedures involved to ensure the validity of the gift</p> <p>(g) Discussion on the legal effect of using a title certificate as a security for mortgage under LTRS</p> | <p>Administration to take the follow-up action under paragraph 3(c)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(c)(i) of the minutes</p> |
| 012339-012506 | <p>Chairman Mr Albert HO Administration</p> | <p>Administration's confirmation that, as at present, searches under clause 27 (Searches) could also be conducted through the Internet</p> | |
| 012507-013652 | <p>Chairman Ms Miriam LAU Mr Albert HO Ms Audrey EU Assistant Legal Adviser Administration</p> | <p>Discussion on clause 28 (Evidence) -</p> <p>(a) Rationale behind subjecting to the Stamp Duty Ordinance (Cap. 117) the admissibility of a document purporting to be a copy, print or extract of the Title Register or of other documents referred to in subclause (1) as evidence in any proceedings</p> | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>(b) Administration's confirmation that clause 28(1) covered the title certificate but since it was not required to be stamped, the provision in item (a) above would not apply to it (clause 28(1)(a)(v))</p> <p>(c) Administration's confirmation that all documents supporting the current entries in the Title Register would be kept in the Land Registry for searching where necessary</p> <p>(d) Briefing by the Administration on subclause (2), which provided that no solicitor, trustee or other person in a fiduciary position should be liable in damages for any loss occasioned by the inaccuracy of the document referred to in item (a) above</p> <p>(e) Members' view that the protection afforded by subclause (2) should be made available to all users of the document referred to in item (a) above and not only the categories of persons mentioned in the subclause</p> | <p>Administration to take the follow-up action under paragraph 3(d) of the minutes</p> |

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| Part 5: Dispositions - Clauses 29 to 57 | | | |
| 013653-014648 | <p>Chairman Ms Audrey EU Ms Miriam LAU Assistant Legal Adviser Administration</p> | <p>Discussion on clause 29 (Dealings) -</p> <ul style="list-style-type: none"> (a) Administration’s confirmation that it would introduce CSAs to effect the proposed amendments to clause 29 as highlighted in LC Paper No. CB(1)1544/03-04(01) (b) Administration explanation that “dealing” meant disposition and transmission but “disposition” did not include transmission. The heading of clause 29 would be amended to “disposition and instrument” to reflect more clearly what it covered (c) A members’ view that the fact that “disposition” did not include transmission should be more clearly spelt out in the definition of “disposition” in clause 2 (d) A member’s doubt about whether “dealing” could cover disposition and transmission. The reasons were twofold. Firstly, the term “dealing” appeared to have a narrower meaning than “disposition”. Secondly, the term | <p>Administration to take the follow-up action under paragraph 3(e)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(e)(ii) of the minutes</p> |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>“dealing”, especially its Chinese version (交易, which normally denoted “transaction”) seemed to be a conscious act of the parties concerned rather than an effect of law. Transmission however was essentially effected by the operation of law</p> <p>(e) A member’s view on the need to improve the definition of “transmission” by explaining when the vesting of interest in land took place</p> <p>(f) Another member’s view that in connection with item (d) above, there was a need to review the Chinese version of the relevant terms. In so doing, there was a need to ensure that the Chinese version adopted in the Bill was consistent with that adopted in existing legislation</p> | <p>Administration to take the follow-up action under paragraph 3(e)(iv) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(e)(iii) of the minutes</p> |
| 014649-014826 | Chairman Administration | Administration’s confirmation that it would introduce CSAs to effect the proposed amendments to clause 30 (Protection of persons dealing in registered land, etc.) as highlighted in LC Paper No. CB(1)1544/03-04(01) | |
| 014827-014854 | Chairman | Administration’s explanation | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | Administration | that the words “any matter” in subclause (1) of clause 31 (Additional fee for delayed registration) would be replaced by “a dealing” | |
| 014855-014942 | Chairman Administration | Administration’s confirmation that it would introduce CSAs to effect the proposed amendments to clause 32 (Power to compel registration) as highlighted in LC Paper No. CB(1)1544/03-04(01). In addition, it would also replace the words “a matter” in clause 32(1) by “a dealing” | |
| 014943-015042 | Chairman Administration | Administration’s advice that substantial CSAs would be introduced to clause 33 (Priority of registered matters) because of the adoption of the daylight conversion mechanism and the likely decision to take out from the Bill the relating back provision | |
| 015043-015206 | Chairman Administration | Administration’s confirmation that it would introduce CSAs to effect the proposed amendments to clause 34 (Charging orders and lis pendens) as highlighted in LC Paper No. CB(1)1544/03-04(01) | |
| 015207-015402 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | ALA’s view that in order to ensure consistency with the Conveyancing and Property Ordinance (Cap. 219) (CPO), | Administration to take the follow-up action under paragraph 3(f) of the |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | the term “charge” in clause 35 (Form and effect of charges) should preferably be replaced by such terms as used in CPO | minutes |
| 015403-015448 | Chairman Administration | Reference to clause 36 (Second or subsequent charges) | |
| 015449-015459 | Chairman Ms Miriam LAU Administration | Administration’s explanation that the second or subsequent charges covered by clause 37 (Charge on registered charge) referred to submortgages | |
| 015500-015736 | Chairman Administration | Reference to clause 38 (Discharge or partial discharge of registered charge) | |
| 015737-020300 | Chairman Ms Miriam LAU Mr Albert HO Administration | <p>Discussion on clause 39 (Satisfaction of registered charge) -</p> <p>(a) Members’ concern about under what circumstances the LR would exercise his power under clause 39 to remove from the Title Register the entry referring to a registered charge. A member’s doubt about whether it was appropriate to give LR, instead of the court, such power of removal</p> <p>(b) Administration’s advice that clause 39 had been introduced at the request of Law Soc to deal with long outstanding mortgages which might become unfair</p> | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>encumbrances</p> <p>(c) Members' comment that in a previous Statue Law Bill passed by the Legislative Council, the power of discharge of encumbrances was vested in the court</p> <p>(d) Members' agreement to the policy intent in item (b) above. They were however concerned that clause 39, as presently drafted, might appear to be a general provision that was interchangeable with clause 38, so that it could be resorted to lightly</p> | <p>The Clerk to take the follow-up action under paragraph 4 of the minutes</p> |
| Break from 020301-022055 | | | |
| 022056-022325 | Chairman Ms Miriam LAU Administration | <p>Continued discussion on clause 39 -</p> <p>(a) Administration's assurance that clause 39 only served as a remedial provision, and the power concerned would be exercised by LR only under special circumstances</p> <p>(b) Members' view that clause 39 should be amended to reflect the policy intent in item (a) above</p> | <p>Administration to take the follow-up action under paragraph 3(g) of the minutes</p> |
| 022326-022400 | Chairman | Reference to clause 40 (Floating charge) and clause 41 (Transfer) | |

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| 022401-022420 | Chairman Administration | Administration's explanation that the heading of clause 42 (Divisions, etc.) would be amended as "Divisions of land" | |
| 022421-022511 | Chairman Administration | Administration's confirmation that it would introduce CSAs to effect the proposed amendments to clause 43 (Covenants for title) as highlighted in LC Paper No. CB(1)1544/03-04(01) | |
| 022512-022652 | Chairman Administration | Administration's confirmation that it would introduce CSAs to effect the proposed amendments to clause 44 (Provisions as between vendor and purchaser) as highlighted in LC Paper No. CB(1)1544/03-04(01) | |
| 022653-022800 | Chairman Administration | Administration's advice that it would introduce a CSA to add the words "transferor or" before the last word, namely, "transferee", of clause 45 (Transfer subject to lease) | |
| 022801-024420 | Chairman Mr Albert HO Ms Miriam LAU Assistant Legal Adviser Administration | Discussion on clause 46 (Leases) - (a) Difference between "lease" and "tenancy agreement", namely, that the former was normally granted for a longer period and had more detailed provisions (clause 2) (b) Members' view on the need for a more detailed definition of "lease", and | |

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| | | <p>Administration's and ALA's explanation that such had already been provided in clause 24(1)(h)(i)</p> <p>(c) Administration's confirmation that leases exceeding three years could be registered under clause 46, while those not exceeding three years could, as a matter of general principle, be registered under clause 24(2) although the LR could exercise discretion in this regard for quality control</p> <p>(d) ALA's view that under the revised caution system to be introduced by the Bill, leases not exceeding three years could be registered by a caution to achieve the notice effect if the LR refused to register it under clause 24(2)</p> | |
| 024421-024443 | Chairman Administration | <p>(a) Administration's advice that it might introduce CSAs to clause 47 (Long term leases) to provide for the daylight conversion mechanism</p> <p>(b) Administration's confirmation to delete clause 48 (Special provisions applicable to</p> | |

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| | | <p>certain leases granted before date of first registration) because of the new conversion system</p> | |
| 024444-024750 | <p>Chairman Mr Albert HO Assistant Legal Adviser Administration</p> | <p>Discussion on clause 49 (Easements) -</p> <p>(a) ALA's concern that it was not clear whether easements might be granted between tenants in common of the same land</p> <p>(b) Administration's advice that a judgment of the court could be used as an instrument creating, or evidencing the existence of, an easement to effect the registration of the easement concerned</p> | <p>Administration to take the follow-up action under paragraph 3(h) of the minutes</p> |
| 024751-030808 | <p>Chairman Mr Albert HO Ms Miriam LAU Assistant Legal Adviser Administration</p> | <p>Discussion on clause 50 (Covenants) and clause 51 (Deeds of mutual covenant) -</p> <p>(a) Administration's advice that clause 51 had been introduced to address the Law Soc's concern that there was a need to provide for the registration of deeds of mutual covenant (DMC) in a single clause, having regard to the fact that DMC was a very common instrument affecting land in</p> | |

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| | | <p>Hong Kong and the difficulties in separating and registering each of the rights, easements or covenants contained therein</p> <p>(b) ALA’s view that the registration of DMCs had already been provided in the relevant provision in clause 50 (Covenants). A separate clause was not required if clause 50(3) was removed. This was because given that LTRS was a system for registration of interests and not registration of instruments, it did not seem appropriate to provide for the registration of DMC, which was an instrument, in the Bill.</p> <p>(c) ALA’s view that it was very difficult to define “DMC”, and there was no comprehensive definition of this term in existing legislation</p> <p>(d) ALA’s view that Law Soc’s concern in item (a) above could be addressed by a CSA to the effect that one single registration of a covenant in the DMC against the relevant title would operate to effect the registration of all the</p> | <p>Administration to take the follow-up action under paragraph 3(i)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(i)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(i)(iii) of the minutes</p> |

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| | | <p>easements, rights and covenants contained in the DMC which affected the registered land (paragraph 7 of the paper on “Registration of Deeds of Mutual Covenant” (LC Paper No. CB(1)2305/02-03(08))). To preserve the status quo, it could be further provided that the registration would not reflect on the validity or enforceability of the easements, rights and covenants</p> | |
| 030809-030842 | <p>Chairman Administration</p> | <p>Administration’s advice that it might introduce CSAs to clause 52 (Termination of leases)</p> | |
| 030843-031058 | <p>Chairman Administration</p> | <p>Administration’s advice that it would introduce CSAs to clause 53 (Release and extinguishment of registered easements and covenants)</p> | |
| 031059-031142 | <p>Chairman Administration</p> | <p>Reference to clause 54 (Modification or partial extinguishment of registered easements and covenants), clause 55 (Saving of certain rights) and clause 56 (Registration of more than one owner)</p> | |
| 031143-032022 | <p>Chairman Ms Audrey EU Mr Albert CHAN Assistant Legal Adviser Administration</p> | <p>Discussion on clause 57 (No interference with rights of succession) - (a) Whether dealings of “tso”</p> | <p>Administration to</p> |

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| | | <p>and “tong” land in the New Territories would be subject to the consent of the Secretary for Home Affairs under the LTRS (clause 63(3))</p> <p>(b) Administration’s confirmation that should there be any conflict or inconsistency between the provisions of the Bill and the provisions of the New Territories Ordinance (Cap. 97), then the provisions of Cap. 97 should prevail over the provisions of the Bill (clause 3)</p> <p>(c) ALA’s view that as the managers of “tso” and “tong” land in the New Territories were acting in the capacity of trustees, there might be a need to consider how such land should be dealt with under the LTRS to avoid wrongful dealings in such land by their managers, such as without consent of the Secretary for Home Affairs</p> <p>(d) Members’ and ALA’s view that it was advisable to clearly set out in the Bill how “tso” and “tong” land in the New Territories, which belonged to a special</p> | <p>take the follow-up action under paragraph 3(j) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(j) of the minutes</p> |

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| | | <p>category of land in the New Territories, would be dealt with under the LTRS; a member's suggestion that reference should be made to section 15 of the New Territories Ordinance (Cap. 97)</p> <p>(e) Implications of the Bill on matters relating to Wong Wai Tsak Tong in Cheung Chau, which involved disputes over interests in land by deeds</p> <p>(f) ALA's view that as the current practice of disposal of land by deeds would discontinue after the implementation of the LTRS, there was a need to make consequential amendments to the relevant legislation so that such legislation would not apply to land registered under the LTRS</p> | <p>Administration to take the follow-up action under paragraph 3(k) of the minutes</p> |
| <i>Part 6: Instruments - Clauses 58 to 61</i> | | | |
| 032023-032312 | Chairman Ms Miriam LAU Administration | <p>Discussion on clause 58 (Form of instruments) -</p> <p>(a) Administration's advice that in clause 58 (Form of instruments), the words "or 48" in subclause (1) would be deleted because clause 48 would be deleted</p> | |

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| | | <p>(b) Administration's advice that the specified forms of instruments would be set out in the relevant subsidiary legislation, and that initially such would cover transfer, charge and discharge, etc. Law Soc would be consulted on the specified forms (clause 58(1)(b))</p> | |
| 032313-032746 | <p>Chairman Ms Miriam LAU Assistant Legal Adviser Administration</p> | <p>Discussion on clause 59 (Stamping) -</p> <p>(a) ALA's view on the problems that might arise from the requirement to pay stamp duty before registration, and the need to introduce consequential amendments to the Stamp Duty Ordinance (Cap. 117) to specify instruments that would be required to be stamped under the LTRS. This was because the Bill would change the way properties were transferred, and a deed of transfer would not just be a deed of assignment that would not assign</p> <p>(b) Administration's confirmation that a new section 2A (Instruments affected by Land Titles Ordinance) would be added to Cap. 117 to provide a catch-all provision to cater</p> | |

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| | | <p>for any changes arising from the LTRS (item 40 of Schedule 2)</p> <p>(c) ALA's view that the proposed consequential amendment mentioned in item (b) above could not achieve its purpose</p> <p>(d) Administration's explanation that as the proposed consequential amendment mentioned in item (b) above had been agreed by the Stamp Duty Office and the Department of Justice, there was a need to consult them on any proposed changes</p> | <p>Administration to take the follow-up action under paragraph 3(l) of the minutes</p> |
| 032747-032956 | <p>Chairman Mr Albert HO Ms Miriam LAU Administration</p> | <p>Administration's advice that, in relation to clause 60 (Retention of land title records, etc.), the LR had statutory duty to ensure that the land title records retained by him would not be lost</p> | |
| 032957-033032 | <p>Chairman Ms Miriam LAU Administration</p> | <p>Legal position of subclause (2) of clause 61 (minors)</p> | |
| <i>Part 7: Transmissions and trusts - Clauses 62 to 69</i> | | | |
| 033033-033240 | <p>Chairman Administration</p> | <p>Administration's confirmation that it would introduce CSAs to effect the proposed amendments to clause 62 (Transmission on death of joint tenant) as highlighted in LC Paper No. CB(1)1544/03-04(01)</p> | |

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| 033241-033610 | Chairman Administration | Administration's confirmation that it would introduce a CSA to replace the phrase "a lessee of lessees" in subclauses (1) and (2) of clause 63 (Transmission on death of sole owner or tenant in common) by "one or two or more lessees" | |
| 033611-033649 | Chairman Administration | Reference to clause 64 (Transmission on death of trustee) | |
| 033650-034224 | Chairman Ms Audrey EU Administration | <p>Discussion on clause 63 -</p> <p>(a) Member's concern that the phrase "registered by transmission as the owner", in subclauses (1) and (3) was misleading and did not reflect the fact that transmission took place by operation of law first before registration of the transmission. The phrase might imply that registration was effected by way of transmission (clauses 2 and 21)</p> <p>(b) Administration's reiteration that under the LTRS, transmission would, as at present, take effect on the date of death of the deceased joint tenant by operation of law (clause 63(2))</p> <p>(c) A member's suggestion that the phrase highlighted</p> | Administration to take the follow-up |

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| | | <p>in item (a) above be amended to read “registered as the owner by transmission”</p> | <p>action under paragraph 3(n)(i) of the minutes</p> |
| 034225-035907 | <p>Chairman Ms Miriam LAU Mr Albert HO Ms Audrey EU Assistant Legal Adviser Administration</p> | <p>Discussion on clause 61 -</p> <p>(a) Members’ question on where the burden of proof lay as to whether “the person to whom the disposition is made acted in good faith” (clause 61(2))</p> <p>(b) A member’s view that it was undesirable that according to subclause (3), the name of a minor “may” be entered in the Title Register as the owner of registered land with the addition after the minor’s name of the words “a minor”. In order to better protect a minor’s interests, the addition of the words “a minor” should be made a mandatory requirement</p> <p>(c) Some members’ view that the solicitors involved in the dealing should check the age of the vendor to ensure that he had the capacity to deal with the property concerned</p> <p>(d) Administration’s confirmation that clause 80 would be amended to provide LR the power to</p> | <p>Administration to take the follow-up action under paragraph 3 (m)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3 (m)(ii) of the minutes</p> |

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| | | <p>remove, when a minor who had been registered in the Title Register as the owner of registered land attained the age of majority, the annotation “a minor” added after the minor’s name in the Title Register</p> <p>(e) A member’s suggestion that the date of birth of the minor be added after the annotation “a minor” to save the trouble of having to remove the annotation later</p> <p>(f) Chairman’s and ALA’s concern that the suggestion in item (e) above might give rise to enhanced risk of accuracy</p> | <p>Administration to take the follow-up action under paragraph 3 (m)(iii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3 (m)(iii) of the minutes</p> |
| 035908-040859 | <p>Chairman Mr Albert HO Ms Miriam LAU Assistant Legal Adviser Administration</p> | <p>Discussion on clause 63 -</p> <p>(a) Administration’s explanation that in order to minimize the need for registration, and in consideration that the time gap between transfers of title might be very short, subclause (2) provided that LR might, on the presentation to him of the grant concerned by the personal representative of the deceased owner or lessee, and without requiring the personal</p> | |

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| | | <p>representative to be registered, register by transmission a transfer of the land or a discharge of the charge by the personal representative</p> <p>(b) A member's view that the exemption of registration of the personal representative described in item (a) above was not conducive to the preservation of the chain of title, which might need to be traced as a result of the proposal to modify the rectification provisions under the Bill to provide for rectification in favour of an innocent former owner if the change of ownership was procured by a forgery</p> <p>(c) Administration's and ALA's explanation that the only title record that mattered under the LTRS was the Title Register, and that the name of the personal representative would be shown on all supporting documents of transfer</p> <p>(d) Some other members' view that, in consideration of the assurance given in item (c) above, and that the Title Register was the conclusive</p> | <p>Administration to take the follow-up action under paragraph 3(n)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(n)(ii) of the minutes</p> |

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| | | evidence of ownership under the LTRS, the exemption might be acceptable and necessary to keep the LTRS simple (clause 63(1)) | |
| 040900-040920 | Chairman | Meeting arrangements | |

Council Business Division 1
Legislative Council Secretariat
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