

立法會
Legislative Council

LC Paper No. CB(1)1772/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of fifth meeting held on
Monday, 12 May 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Hon Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
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 Albert CHAN Wai-yip
Hon WONG Sing-chi
- Public officers attending** : Mr Kim SALKELD
Land Registrar
- Mr Parrish NG
Principal Assistant Secretary for Housing, Planning
and Lands (Planning and Lands) 3
- Mrs Alice LEE
Registry Manager
Land Registry

Ms May LEE
Assistant Official Receiver
(formerly Deputy Principal Solicitor (Land Registry))

Ms Monica LO
Senior Solicitor/Title Registration
Land Registry

Mr Geoffrey FOX
Senior Assistant Law Draftsman
Department of Justice

Ms Rayne CHAI
Government Counsel
Department of Justice

Mr Denis LI
Assistant Secretary (Planning and Lands) (Buildings) 3
Housing, Planning and Lands Bureau

Attendance by invitation : The Real Estate Developers Association of Hong Kong

Mr Keith KERR
Chairman, Executive Committee

Mr Louis LOONG
Secretary General

Mr Robert S Y LYNN
Legal Adviser

Consumer Council

Mrs CHAN WONG Shui
Chief Executive

Ms Wendy CHAN
Senior Legal Counsel

The Law Society of Hong Kong

Mr Peter AHERNE
Chairman of the Working Party on Land Titles Bill

Ms Judith SIHOMBING
Member of the Working Party on Land Titles Bill

The Hong Kong Institute of Surveyors

Mr Tony TSE Wai-chuen
Senior Vice-President

Mr LEUNG Shou-chun
Representative of Land Surveying Division

Hong Kong Bar Association

Mr Edward CHAN, SC
Chairman

Mr Horace WONG
Member

Heung Yee Kuk New Territories

Mr LAM Kwok-cheong, JP
Ex-officio Executive Councillor

Mr Kenneth WONG Ho-ming
Co-opted Councillor

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Sarah YUEN
Senior Assistant Secretary (1)6

I. Meeting with deputations and the Administration

- (LC Paper No. CB(1)1517/02-03(01) — Submission from The Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1)1517/02-03(03) — Submission from Consumer Council
- LC Paper No. CB(1)1517/02-03(04) — Submission from The Law Society of Hong Kong
- LC Paper No. CB(1)1517/02-03(04)(a) — Supplementary information from The Law Society of Hong Kong
- LC Paper No. CB(1)1517/02-03(06) — Submission from The Hong Kong Institute of Surveyors
- LC Paper No. CB(1)1517/02-03(07) — Submission from Hong Kong Bar Association
- LC Paper No. CB(1)1517/02-03(08) — Submission from Heung Yee Kuk New Territories
- LC Paper No. CB(1)1517/02-03(02) — Submission from the Director, Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong
- LC Paper No. CB(1)1517/02-03(05) — Submission from Hong Kong Society of Accountants
- LC Paper No. CB(1)1604/02-03(01) — Summary of eight submissions prepared by the LegCo Secretariat)

The English version of the following two papers provided by the Administration were tabled at the meeting -

- (a) Paper on “Indemnity”; and
- (b) Paper on “Effect and Benefits of Title Registration”.

(*Post-meeting note:* The English version of the above two papers was circulated to members vide LC Paper No. CB(1)1664/02-03 on 13 May 2003.)

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) To provide a written response to the submissions received by the Bills Committee as well as the views expressed by the deputations at the meeting.
- (b) To address the following points of concern raised on the proposed indemnity scheme:
 - (i) Clause 8(2) should be amended to reflect the policy intent that if any act or default on the part of the Government gave rise to an indemnity under Part 9 of the Bill, there should be no limit to the amount of the liability;
 - (ii) It was not clear as to whether a person who suffered loss from default of a Government employee would be compensated directly from the Government or through the indemnity fund;
 - (iii) In connection with item (b) above, the Government would have two roles: the party who was liable for the loss of the person and the administrator of the indemnity fund. To address the problems arising from the conflict between these two roles, there should be a neutral third party:
 - to determine the amount of indemnity;
 - to determine whether the Government should pay back to the indemnity fund; and if so, the amount of money to be paid; and
 - to monitor whether the Government had paid back the amount of money to the indemnity fund; and if not, to take the appropriate action.

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

- ALA6 4. At the request of the Bills Committee, Assistant Legal Adviser 6 agreed to provide written advice on the Administration's view on whether the proposed indemnity scheme, in particular the indemnity limit, was contrary to the Basic Law.

Follow-up action to be taken by the deputations

- Deputations 5. The Chairman invited the deputations to provide views in writing on the

Administration's paper on "Indemnity" before the next meeting of the Bills Committee on 22 May 2003.

(*Post-meeting note:* On paragraph 5 above, invitation letters were sent to the deputations on 13 May 2003.)

II. Meeting with the Administration

- (LC Paper No. CB(1)1464/02-03(04) — Paper provided by the Administration on “The Conversion Mechanism”
- LC Paper No. CB(1)1464/02-03(05) — Paper provided by the Administration on “Comparison between Proposed Land Title Registration System for Hong Kong and other Jurisdictions”
- LC Paper No. CB(1)1567/02-03(02) — Paper provided by the Administration on “Certificate of Good Title”
- LC Paper No. CB(1)1567/02-03(03) — Paper provided by the Administration on “Financial and Staffing Implications of Title Registration”)

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

Follow-up action to be taken by the Administration

7. At the request of the Bills Committee, the Administration agreed to provide a paper addressing the following clarifications sought by the Assistant Legal Adviser -

- (a) Whether the unique features of the conveyancing system in Hong Kong had been taken into account in the proposed land title registration system (LTRS)? In Hong Kong, the undivided shares in land and the exclusive right to use a particular unit in a building are joined together by a deed of mutual covenant which is itself not an interest in land and would therefore not be registrable under the new scheme. The Administration’s response should explain how the proposed LTRS would deal with the two components of ownership of land in form of units in high-rise buildings in Hong Kong and highlight the relevant clauses in the Bill.

- (b) Whether the proposed LTRS follow the title registration system in England? In particular -
- whether the proposed LTRS should allow registration of equitable estate which is not allowed under the system in England; and
 - whether the Bill intends that the power to dispose of a registered property would be available purely on a statutory basis as is the case under the system in England; and if so, whether this should be specifically provided in the Bill.

Issue for future discussion

8. Members agreed that the issue of adverse possession, including the Law Society's views on the issue, should be examined in detail when the Bills Committee scrutinized the relevant part of the Bill in due course.

Date of next meeting

9. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 22 May 2003, at 2:30 pm to discuss the proposed indemnity scheme.

III. Any other business

10. There being no other business, the meeting ended at 5:15 pm.

Council Business Division 1
Legislative Council Secretariat
26 May 2003

Appendix

**Proceedings of the fifth meeting of the
Bills Committee on Land Titles Bill
on Monday, 12 May 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
<i>Agenda Item I - Meeting with deputations and the Administration</i>			
000000-000537	Chairman	Welcoming and introductory remarks	
000538-001422	The Real Estate Developers Association of Hong Kong (REDA)	Presentation by Mr Keith KERR	
001423-002016	Consumer Council (CC)	Presentation by Mrs CHAN WONG Shui	
002017-002335	The Law Society of Hong Kong (Law Soc)	Presentation by Mr Peter AHERNE	
002336-003425	The Hong Kong Institute of Surveyors (IS)	Presentation by Mr Tony TSE Wai-chuen and Mr LEUNG Shou-chun	
003426-004215	Hong Kong Bar Association (The Bar)	Presentation by Mr Edward CHAN	
004216-004546	Heung Yee Kuk New Territories (HYK)	Presentation by Mr LAM Kwok-cheong	
004547-005744	Chairman Administration	Administration's brief response to the views of the deputations	Administration to provide the required information under paragraph 3(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
005745-010711	The Chairman Ms Miriam LAU Law Soc Administration	(a) Progress of the joint efforts made by the Administration and Law Soc in solving problems relating to the issue of certificates of good title (b) Stance of Law Soc that unless the problem of defective title could be resolved satisfactorily, it would not support the Bill	
010712-011035	Ms Audrey EU Law Soc	Measures available to Law Soc to prevent solicitors from issuing a certificate of good title even though they were not satisfied that the vendor had good title to the property	
011036-012709	Chairman Ms Audrey EU The Bar Administration	(a) Constitutionality of the cap on indemnity (Paper on “Indemnity” tabled at the meeting and issued vide LC Paper No. CB(1)1664/02-03(01) after the meeting) (b) Policy intent that if any act or default on the part of the Government gave rise to an indemnity under Part 9 of the Bill, there should be no limit to the amount of the liability (clauses 8(2), 82 and 83)	ALA6 and all deputations to provide the required information under paragraphs 4 and 5 respectively of the minutes Administration to provide the required information under paragraph 3(b)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
012710-012932	Chairman Ms Audrey EU REDA	Details of REDA's proposal of carrying out a “test” of the proposed land title registration system (LTRS)	
012933-013222	Chairman Mr LAU Ping-cheung Administration	Whether a person who suffered loss from default of a Government employee would be compensated directly from the Government or through the indemnity fund	Administration to provide the required information under paragraph 3(b)(ii) of the minutes
013223-013710	Chairman Mr Abraham SHEK Administration	(a) Whether the requirement to take legal proceedings to claim indemnity was in contravention of the Basic Law (b) The need to strike a balance between the interests of the former owner and those of the purchaser	
013711-014652	Chairman Ms Miriam LAU The Bar Administration	(a) The right of a person to whom an indemnity had been paid to take legal proceedings in respect of damages he had not recovered (clause 86(2)) (b) Compensation for loss from default of a Government employee to be paid directly from the Government and reclaimed from the person who caused the loss	

Time marker	Speaker	Subject(s)	Action Required
014653-015016	Chairman Ms Audrey EU Administration	Need for a neutral third party to determine the amount of indemnity, whether the Government should pay back to the indemnity fund, and to monitor and take actions as appropriate to ensure the Government had paid back the amount	Administration to provide the required information under paragraph 3(b)(iii) of the minutes
015208-015217	Chairman Mr Abraham SHEK The Bar	The Bar's views on whether the expropriatory effects of the Bill were compatible with the Basic Law	
015819-020906		Ten-minute break	
<i>Agenda Item II - Meeting with the Administration</i>			
020907-022149	Chairman Administration	Briefing by the Administration on the paper on "Comparison between Proposed Land Title Registration for Hong Kong and other Jurisdictions" (LC Paper No. CB(1)1464/02-03(05))	
022150-023110	Chairman Ms Miriam LAU Administration	(a) Law Soc's call to address the issue of adverse possession in the Bill and to consider the proposals in the UK Law Reform Commission Report in this regard (b) Arrangements regarding registration of title acquired through adverse possession	

Time marker	Speaker	Subject(s)	Action Required
023111-023140	Chairman	Inviting members' views on the paper on "Financial and Staffing Implications of Title Registration" (LC Paper No. CB(1)1567/02-03(03))	
023141-023842	Chairman Assistant Legal Adviser 6 Administration	(a) Whether and how the unique features of the conveyancing system in Hong Kong had been taken into account in the LTRS (b) Whether the proposed LTRS followed the title registration system in England	Administration to provide the required information under paragraph 7 of the minutes
023843-023922	Chairman	Date and arrangements for next meeting	

Council Business Division 1
Legislative Council Secretariat
26 May 2003