

立法會
Legislative Council

LC Paper No. CB(1)1886/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of sixth meeting held on
Thursday, 22 May 2003 at 2:30 pm
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-yeet, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, 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
- Member absent** : Dr Hon TANG Siu-tong, JP
- 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 (Buildings) 3
Housing, Planning and Lands Bureau

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

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1691/02-03 — Minutes of fourth meeting held
on 5 May 2003)

The minutes of the fourth meeting held on 5 May 2003 were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)1724/02-03(01) — “Follow-up to the fourth meeting on 5 May 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1724/02-03(02) — “Follow-up to the fifth meeting on 12 May 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1664/02-03(01) — Paper provided by the Administration on “Indemnity”
- LC Paper No. LS114/02-03 — Paper prepared by Assistant Legal Adviser on “Observations on the issue whether the proposed cap on the amount of indemnity payable to an owner deprived of his property by fraud is contrary to the Basic Law”
- LC Paper No. CB(1)1724/02-03(03) — Submission from Consumer Council on the Administration’s paper on “Indemnity”
- LC Paper No. CB(1)1724/02-03(04) — Submission from The Real Estate Developers Association of Hong Kong on the Administration’s paper on “Indemnity”
- LC Paper No. CB(1)1724/02-03(05) — Submission from The Hong Kong Institute of Surveyors on the Administration’s paper on “Indemnity” and other issues
- LC Paper No. CB(1)1724/02-03(06) — Submission from Heung Yee Kuk New Territories on the Administration’s paper on “Indemnity”
- LC Paper No. CB(1)1724/02-03(07) — Submission from Hong Kong Bar Association on the Administration’s paper on

“Indemnity”

LC Paper No. CB(1)1664/02-03(02) — Paper provided by the Administration on “Effect and Benefits of Title Registration”

LC Paper No. CB(1)1724/02-03(08) — Paper provided by the Administration on “Rectification and Appeal”)

2. The English version of the submission from the Hong Kong Bar Association (the Bar) was tabled at the meeting.

(Post-meeting note: The English version of the submission from the Bar was circulated to members vide LC Paper No. CB(1)1756/02-03 on 23 May 2003.)

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

Way forward

4. Mr Andrew WONG considered that before the Bills Committee examined the details of the proposed land title registration system (LTRS), it should first be ascertained whether members accepted the proposed change from the current deeds registration system to LTRS. If members did not accept the proposed change, there was no need to further scrutinize the Bill.

5. Whist appreciating Mr Andrew WONG’s concern, the Chairman pointed out that the Bills Committee needed to examine the key features of the proposed LTRS before members could decide whether the proposed system should be supported. Other members shared her view. At the suggestion of the Chairman, the Bills Committee decided to continue discussion of the policy issues and review the situation in June before deciding on the way forward.

6. The Land Registrar advised that the Administration would try to address the concerns raised by the Bills Committee and the relevant parties, including the legal practitioners. In this connection, the Administration would continue to work closely with The Law Society of Hong Kong (Law Soc).

Follow-up actions to be taken by the Administration

- Admin 7. At the request of the Bills Committee, the Administration agreed to take the following actions -
- (a) To provide, before the seventh Bills Committee meeting on 9 June 2003, a paper addressing the following points of concern raised on the

proposed indemnity scheme and highlighting the relevant clauses in the Bill with explanations:

- (i) Circumstances under which losses would be compensated by the indemnity fund
 - The Administration was requested to illustrate the circumstances with examples, including examples of “mistake” and “omission” referred to in clause 82;
 - (ii) Circumstances under which the cap on the indemnity would apply
 - The Administration was requested to illustrate the circumstances with examples;
 - (iii) How the indemnity fund was financed;
 - (iv) Financial burden to be borne by the Government for the implementation of the proposed indemnity scheme
 - The Administration’s response should address the concern expressed by Heung Yee Kuk New Territories (HYK) in its submission dated 21 May 2003;
 - The Administration’s response should also provide the required information mentioned in paragraph 6 of the HYK’s submission, i.e. the statistics on the amount of indemnity paid to meet indemnity claims in the past in circumstances similar to those which would give rise to a claim for indemnity under the proposed scheme.
- (b) To provide a written response to the submissions received by the Bills Committee on the paper on “Indemnity”, in particular the submission dated 22 May 2003 from the Bar and that from Law Soc which would be available in early June.

Other follow-up action

8. The Bills Committee decided that the Bar should be invited to comment particularly on the following point raised in paragraph 30(d) of the Administration’s paper on “Indemnity”:

“Where the scheme is insufficient to meet the full extent of the loss it does not take away the right that individuals now have to seek personal remedy against the third party fraudster.....”

(Post-meeting note: An invitation letter was issued to the Bar on 22 May 2003.)

Date of next meeting

9. Members agreed that the next meeting of the Bills Committee be re-scheduled for Monday, 9 June 2003, at 2:30 pm.

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
6 June 2003

Appendix

**Proceedings of the sixth meeting of the
Bills Committee on Land Titles Bill
on Thursday, 22 May 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000024	Chairman	Confirmation of minutes of the meeting held on 5 May 2003	
000025-000206	Chairman	Opening remarks	
000207-002439	Chairman Mr Andrew WONG Mr LAU Ping-cheung Mr TAM Yiu-chung Ms Miriam LAU Mr Abraham SHEK Mr IP Kwok-him Administration	Discussion on how to take the Bill forward	
002440-005132	Chairman Administration	(a) Briefing by the Administration on the paper on "Indemnity" (LC Paper No. CB(1)1664/02-03(01)) (b) Discussion on the constitutionality of the cap on the indemnity and whether the cap should be removed	

Time marker	Speaker	Subject(s)	Action Required
005133-005912	Chairman Assistant Legal Adviser 6	Briefing by Assistant Legal Adviser 6 on the paper prepared by him on “Observations on the issue whether the proposed cap on the amount of indemnity payable to an owner deprived of his property by fraud is contrary to the Basic Law” (LC Paper No. LS114/02-03)	
005913-010410	Chairman	Submission from the Bar on the Administration’s paper on “Indemnity” (tabled at the meeting and issued vide LC Paper No. CB(1)1756/02-03 after the meeting)	Administration to provide the required information under paragraph 7(b) of the minutes
010411-011347	Chairman Mr Albert HO Administration	<ul style="list-style-type: none"> (a) How the indemnity fund was financed (b) Exploring alternatives to imposing the \$30 million cap on the indemnity, for example, liability beyond \$30 million to be borne by insurance companies (c) Difference between the proposed indemnity scheme and insurance scheme 	

Time marker	Speaker	Subject(s)	Action Required
011348-013607	Chairman Ms Miriam LAU Mr TAM Yiu-chung Assistant Legal Adviser 6 Administration	(a) Comparison between the circumstances under which losses would be compensated by the indemnity fund and those under which losses would be compensated by the Law Society's Professional Indemnity Scheme (PIS) (b) Circumstances under which the cap on the indemnity would apply (clauses 8(2), 82(1)(a), 82(1)(b), 83(1)(a), 83(1)(b), and paragraph 3 of the Bar's submission)	Administration to provide the required information under paragraph 7(a) of the minutes
013608-015018	Chairman Mr TAM Yiu-chung Administration	(a) How the indemnity fund would be financed and maintained (LC Paper No. CB(1)1724/02-03(06)) (b) Administration's assurance that measures would be taken to prevent mistake or omission from being committed by Government employees, and that if such was committed there would be no cap on the indemnity for losses so arising (c) Problems arising from the difficulty in differentiating between "mistake or omission" and "fraud", and hence the undesirability of imposing a cap on the indemnity where the latter was the cause of loss	Administration to provide the required information under paragraph 7(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(d) Need to invite the Bar to comment on paragraph 30(d) of the Administration's paper on "Indemnity"	
015019-015108	Chairman	Date and arrangements for next meeting	

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