

立法會
Legislative Council

LC Paper No. CB(1)2451/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the thirty-third meeting held on
Tuesday, 1 June 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Andrew WONG Wang-fat, JP
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 Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
- Public officers attending** : Mr Kim SALKELD
Land Registrar
- Mr Parrish NG
Principal Assistant Secretary for Housing, Planning
and Lands (Planning and Lands)3
- Ms Monica LO
Senior Solicitor/Title Registration
Land Registry

Mr M K TAM
Senior Solicitor
Land Registry

Ms Florence WONG
Solicitor
Land Registry

Mr Jeffrey Ernest GUNTER
Senior Assistant Law Draftsman
Department of Justice

Mr Michael LAM
Senior Government Counsel
Department of Justice

Ms Rayne CHAI
Government Counsel
Department of Justice

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

Mr John DAVISON
Land Registry's Consultant

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

- I. Confirmation of minutes of meeting**
 (LC Paper No. CB(1)1988/03-04 — Minutes of thirty-first meeting held on 11 May 2004)

The Chairman invited members' comments on the minutes of the meeting held on 11 May 2004. Ms Miriam LAU proposed an amendment to rectify a typo in the English version of page 13 of the Appendix to the minutes.

2. The minutes, as amended, were confirmed.

(Post-meeting note: The amended page 13 of the Appendix to the minutes was issued to members vide LC Paper No. CB(1)2023/03-04 on 2 June 2004.)

- II. Meeting with the Administration**
- (LC Paper No. CB(1)1917/03-04(01) — “Follow-up to the thirty-first meeting on 11 May 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1987/03-04(01) — “Follow-up to the thirty-second meeting on 25 May 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1987/03-04(02) — Paper provided by the Administration on “Revisions to the Land Titles Bill”
- LC Paper No. CB(3)210/02-03 — The Bill
- LC Paper No. CB(1)1899/03-04(04) — Draft proposed Committee Stage amendments to the Bill provided by the Administration (excluding Schedule 2)
- LC Paper No. CB(1)1899/03-04(05) — Marked-up copy of the Bill provided by the Administration (excluding Schedule 2)

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)

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

Follow-up actions to be taken by the Administration

Admin 4. At the request of the Bills Committee, the Administration agreed to take the following actions -

- (a) Given that the Bills Committee aimed to complete scrutiny of the Bill by mid-June to enable the resumption of the Second Reading debate on the Bill at the last Council meeting on 7 July, the Administration undertook to provide the Bills Committee with the written views of the Law Society of Hong Kong (Law Soc) on the draft proposed Committee Stage amendments (CSAs) before the Bills Committee meeting on 11 June 2004.
- (b) In examining the draft proposed CSAs to clause 3, members noted the Assistant Legal Adviser (ALA)’s view that it was not necessary to add the proposed new subclause (1A) to provide that the Bill would apply to unregistered land subject to the provisions of Schedule 1A, as Schedule 1A would automatically apply upon expiry of the 12-year incubation period. Members also noted the Administration’s view that subclause (1A) was needed to introduce Schedule 1A but the drafting of the subclause might be refined. The Chairman invited the Administration and ALA to discuss on the drafting issues.
- (c) Members noted that clause 3(3) provided that “where there is any conflict or inconsistency between the provisions of this Ordinance and the provisions of another enactment in relation to the validity of a transfer (including an agreement to transfer), then the provisions of that enactment shall, in relation to the land to which the transfer relates and to the extent of that conflict or inconsistency, as the case may be, prevail over the provisions of this Ordinance”. ALA was concerned that the proposed provisions would give rise to uncertainty because there would always be a possibility that the Bill was in conflict or inconsistent with certain existing or subsequent legislation, but whether there was a

conflict or inconsistency between the two was a matter of interpretation. In this connection, members invited the Administration to brief the Bills Committee on the purpose of clause 3(3) and to consider ALA's views.

- (d) In examining the draft proposed CSAs to clause 4, members reiterated their concern expressed at the meeting on 27 April 2004 that clause 4(d) was too wide, giving the Land Registrar (LR) 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). Moreover, such a wide scope might give rise to uncertainty on whether or not a matter was registrable under the Bill. Members stressed the importance of certainty because failure to register a registrable matter would result in loss of the relevant interests. The Administration was invited to improve the clause to address members' concerns, and to consult Law Soc on the issue.
- (e) In connection with clause 5 (Land Registry), members noted that the definition of "Land Registry" was added in clause 2. Members also noted that the Administration was considering amending the definition of "Land Registry" to remove the reference to the Land Registration Ordinance (Cap. 128), to delete clause 5(1), and to amend some key terms in the Bill such as "Title Register" in clause 5(2)(a).
- (f) In examining the proposed new clause 6A, members noted that the new clause, which was the modified version of the original clause 88, provided that the LR might apply to the Court of First Instance for direction if any question of law arose "in respect of the performance or exercise of any functions or powers imposed or conferred on the Registrar by or under this Ordinance". Some members cast doubt on the need for the provision having regard that the LR might seek legal advice from the Department of Justice and where there was a dispute between an applicant and the LR, the LR might seek judicial review. While the scope of the new clause 6A was narrower than that of the original clause 88, some members were concerned whether regulations would be made to govern the exercise of power by the LR under the new clause 6A and to provide for the procedures for implementation. The Administration agreed to check whether there were any existing laws of court that governed the exercise of such power and consider the need to make regulations. The Administration was also invited to address some members' views that since the provision might involve inter- parte hearings, there was a need to ensure that the other party would know what steps he should take and his rights in the circumstances, especially as the provision might have implications on any appeals against decisions made by the LR under clause 89.
- (g) In examining the proposed CSA to clause 10(3)(g), a member opined

that if the term “lessee” was meant to stand for long term lessee, the definition of the term in clause 2 would need to be improved to reflect such. A suggested option was to provide that the term “means the person named in the Title Register as the lessee of a long term lease”. The Administration was invited to improve the definition of “lessee” in the light of the above views.

- (h) In examining the proposed new clause 10A, members saw the need to improve and simplify the definition of “long term lease” in clause 2. They did not consider it necessary to make reference to “the owner of the land at the time of the grant as determined in accordance with the law applicable to land which is not registered land” in sub-paragraph (a)(ii) of the definition. The Administration was invited to consider these views and improve the definition of “long term lease”.
- (i) In examining the proposed new clause 10A, ALA noted that paragraph (c) of the definition of “owner” in clause 2 provided that in relation to registered land to which Part II of the New Territories Ordinance (NTO) (Cap. 97) applied, “owner” included “any clan, family or t’ong”. ALA was concerned that this definition might give rise to problems because members of clan, family or t’ong could not be exhaustively determined. ALA also pointed out that it was the managers of such land who were responsible for dealing with the land as trustees and there was a need to ensure that they might continue to deal with the land under the land title registration system (LTRS) as at present, so that the land would continue to be transferable. The Administration agreed to review the relevant provisions in the Bill, including clause 24 (1)(a), and advise the Bills Committee of how it would work under the LTRS. The Administration was also invited to link the relevant provisions in the Bill with NTO.
- (j) In examining the proposed CSAs to clause 11, ALA opined that the expression “on there being a Title Register in relation to the land to which the register relates” in subclause (1) was not precise enough because there was no reference to any particular point of time. A suggested option was to replace the expression by “on the appointed day on which the LTRS will come into full operation”. The Administration agreed to improve the drafting of subclause (1) with reference to ALA’s views and to paragraph 4 of the list of follow-up actions to be taken by the Administration arising from the thirtieth meeting of the Bills Committee on 27 April 2004 (LC Paper No. CB(1)1899/03-04(02)).
- (k) In examining the proposed CSA to clause 11(4)(a), ALA suggested that the phrase “uncompleted building units” be changed to “an uncompleted building unit” to correspond with the reference to “a” sale and purchase agreement before it. In this regard, a member opined that, to avoid misunderstanding that the phrase referred to an uncompleted building as

a whole, the phrase should be further amended to read “a unit in an uncompleted building”. The Administration agreed to check the normal expression used in other legislation and consider how the drafting could be improved.

- (l) In examining the proposed CSAs to clause 11, ALA opined that the drafting of subclause (4)(b), which provided that “equitable mortgage” excluded a mortgage of an equitable estate of land held under a Government Lease without a certificate of compliance, was quite loose having regard that many Government Leases, e.g. those granted for 999 years, did not require the issue of a certificate of compliance. The Administration was invited to clarify its policy intention and to improve the drafting of subclause (4)(b) to reflect the intention.
- (m) In examining the proposed new clause 11A and the new Schedule 3, ALA expressed the following views:
 - (i) References to “registered non-consent caution” in clause 11A(a), (b) and (c) were not necessary because it was through registration that a caution was effected and there was no such matter as an “unregistered non-consent caution”;
 - (ii) Along the same line as (i) above, there was no need for definitions of “registered caution against conversion” and “registered caveat” to be provided in Schedule 3. Only “caution against conversion” and “caveat” needed to be defined, and they should be defined in relation to the particular sections that provided for their registration;
 - (iii) Along the same line as (i) above, the phrase “a registered caveat against the land” in clause 11A should be amended to read “a caveat registered against the land”; and
 - (iv) Clause 11A(c), which provided that “all the provisions of this Ordinance.....shall apply to the deemed registered non-consent caution accordingly”, was not necessary because the provisions of the Bill would apply to the deemed registered non-consent caution even without the clause.

The Administration was invited to consider the above views of ALA, and improve the drafting of the proposed new clause 11A, new Schedule 3 and other relevant parts of the Bill where appropriate.

- (n) In examining the proposed CSAs to clause 12 and the definition of “new land” in clause 2, ALA expressed the following views:
 - (i) Unless the Administration would never grant land by means other than those listed in the definition of “new land”, the definition was inadequate, and would restrict the application of the LTRS to new land, so that the types of new land which could become registered land upon commencement of the Bill would be limited;
 - (ii) There might not be a need for clause 12(1)(a), which provided

that upon the issue of a Government lease “in respect of new land”, the LR should register the land concerned. This was because, to enable the amended clause 12 to continue to have effect after the 12-year incubation period, the issue of new land, namely, the types of land covered and the relevant timing of conversion, should be dealt with in the schedules, such as in the new Schedule 1A, instead of in the main body of the Bill;

- (iii) Clause 12(1)(b), which provided that the LR should register a piece of land upon the issue of a Government lease “on or after the commencement day”, should be deleted because the Bill would not have retrospective effect; and
- (iv) Instead of specifying in clause 12 when and what types of land would be converted under the LTRS as it did in subclauses (1)(a) and (1)(b), it would be safer and clearer to state that the LTRS would not apply to existing land before the appointed day on which the LTRS came into full operation. In this way, subclause (2) might also be deleted. There might then be no need for the use of the term “new land” and hence its definition in the Bill.

The Administration was invited to consider ALA’s views above.

- (o) In examining the proposed CSAs to clauses 14 and 21, members and ALA expressed the following views:
 - (i) In clause 14(1) on the effect of first registration of land on ownership, the reference to “first owner of the land” was misleading because the owner of existing land which became registered land by first registration under the LTRS might in fact not be the “first owner” of the land concerned. To avoid misunderstanding, the Administration was invited to improve the drafting and as a last resort, to consider the need to include in the Bill the definition of “first owner of the land” to specify that it meant the first owner after the first registration;
 - (ii) Clause 14(2)(d) was grammatically ill-fitted; and
 - (iii) Having regard that the differences between clauses 14 and 21, which dealt with first registration and subsequent registration respectively, were mainly in clauses 14(2)(d) and 14(3), the two clauses should be merged or redrafted to avoid repetition of certain subclauses and confusion.

The Administration agreed to consider the above views.

- (p) In examining the proposed new clause 15, ALA expressed the following views:
 - (i) In subclause (1), the reference to “other land” made the subclause impracticable because the phrase was not defined in the Bill; and
 - (ii) Subclause (2)(a) related to the proposed new clause 10A. If the new clause 10A was to be amended as proposed above, this

subclause might also need to be amended.

The Administration agreed to consider the above views, probably by moving all transitional arrangements under the daylight conversion mechanism to the new Schedules 1A and 3.

- (q) In examining the proposed CSAs to the proposed new clause 15A, ALA expressed his concern that the drafting did not achieve the purpose of the clause. The Administration agreed to review the drafting of the clause.
- (r) In examining the proposed CSAs to clause 20, ALA commented that the expression “there may be issued” in subclauses (6)(b) and (6)(d) was rather strange. The Administration was invited to consider ALA’s view and improve the drafting of the two subclauses.
- (s) In examining the proposed CSAs to clause 21, ALA commented that the expression “equitable interest” in subclause (1) should be changed to “equitable estate” because the former in normal usage indicated a lesser interest in land. The Administration was invited to consider his view.
- (t) In examining the proposed CSAs to clause 22, members and ALA made the following comments:
 - (i) In consideration of the Law Soc’s wish to ensure that the holder of a long term lease could enjoy a status equal to that of a land owner, the phrase “of a long term lease” should be added after “the lessee” in subclause (2). The phrase “will hold his interest and rights” therein should also be replaced by “will hold his land”; and
 - (ii) Subclause (2)(d) needed to be reformulated because it did not fit grammatically in the structure of the subclause. If the proposed new clause 10A was amended, this subclause might also need to be amended.

The Administration was invited to consider the above comments.

- (u) In examining the proposed CSAs to clause 24, ALA made the following comments:
 - (i) The addition of the phrase “easements provided for in any instrument” to subclause (1)(c)(i) would diminish the possibility of easements covering “easements by prescription”;
 - (ii) The proposed amendment to subclause (1)(d) would exclude all easements acquired by usage and therefore seriously narrow the scope of easements that could be carried over to the LTRS under this subclause; and
 - (iii) Subclause (1)(f) was wholly unnecessary and would tend to give the impression that unless the Government’s right of re-entry was preserved as overriding interest, it could be lost. This would raise the question of whether the rights of landlords and lessors

needed similar protection.

The Administration was invited to consider the above comments. The Administration was also invited to explain the Administration's policy intention regarding easements by prescription and the reasons behind, and consult the Hong Kong Bar Association on the issues relating to easements. The Administration was also invited to explain why clause 24(1)(g) was still retained given the Administration's agreement to apply the doctrine of notice to deal with the priority issue under the LTRS (item 2 of the list of follow-up actions to the thirty-first meeting of the Bills Committee on 11 May 2004 (LC Paper No. CB(1)1917/03-04(01))).

Meeting arrangements

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 8 June 2004, from 8:30 am to 12:30 pm. She also reminded members that representatives of The Hong Kong Institute of Surveyors would be attending the first part of the next meeting for a discussion on the land boundary issues.

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
29 July 2004

Appendix

**Proceedings of the thirty-third meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 1 June 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 meetings | | | |
| 000000-000038 | Chairman Ms Miriam LAU | (a) Welcoming and introductory remarks (b) Confirmation of minutes of the meeting held on 11 May 2004 | |
| II. Meeting with the Administration | | | |
| <u>Paper provided by the Administration explaining the draft Committee Stage amendments</u> | | | |
| 000039-002910 | Chairman Administration | Briefing by the Administration on the paper on "Revisions to the Land Titles Bill" (LC Paper No. CB(1)1987/03-04(02)) | |
| 002911-003005 | Chairman Ms Audrey EU Administration | Administration's advice that the lead time between enactment and commencement of the Bill would be 18 to 24 months because of the need to make various preparatory arrangements, to educate the public and the legal professionals, and to issue the relevant guidance notes | |

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| 003006-005048 | Chairman Ms Miriam LAU Administration | <p>(a) A member’s concern about the uncertainties surrounding the new concept of registration of caveats and cautions against conversion under the new land title registration system (LTRS), and the impact of such on the legal profession, especially where claims were concerned</p> <p>(b) Administration’s assurance that the registration of caveats would only serve as a notice of claim, and would not affect priority and how claims were treated under the existing law (the proposed new section 21B of the Land Registration Ordinance (LRO) (Cap. 128))</p> <p>(c) Administration’s emphasis that where registration of cautions against conversion was concerned, to contain its impact, there were strict time limits within which relevant actions had to be taken</p> <p>(d) Administration’s assurance that wrongful registration of caveats and cautions against conversion was liable to damages and could be removed or</p> | |

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| | | <p>withdrawn</p> <p>(e) Concern about the difficulties faced by the legal profession in understanding how the LTRS would eventually operate because of the various changes to it since the first attempt to introduce it in 1994, and the need for a vigorous education programme to enhance awareness of it</p> <p>(f) A member's concern about the interface between the LTRS and the existing deeds registration system (DRS) and the stance of the Law Society of Hong Kong (Law Soc) in this regard</p> <p>(g) Administration's advice that it was working closely with Law Soc and, apart from certain issues, Law Soc found the draft proposed Committee Stage amendments (CSAs) to the Bill largely agreeable (paragraph 24 of LC Paper No. CB(1)1987/03-04(02))</p> <p>(h) Administration's confirmation of Law Soc's awareness of the time pressure on the Bills Committee to complete scrutiny of the Bill by mid-June to enable the</p> | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>Second Reading debate on the Bill to be resumed at the last Council meeting of the current legislative term on 7 July</p> <p>(i) Members' view on the need to confirm the views of Law Soc on the draft proposed CSAs before the Bills Committee meeting on 11 June 2004</p> | <p>Administration to take the follow-up action under paragraph 4(a) of the minutes</p> |
| 005049-010101 | <p>Chairman Ms Miriam LAU Administration</p> | <p>(a) Administration's explanation of how the LTRS would phase in to replace the DRS</p> <p>(b) Administration's explanation of the background of and overseas experience in the registration of caveats and cautions against conversion</p> <p>(c) Chairman's comment that the legal profession would need time to familiarize with the LTRS; hence the need for early enactment of the Bill to enable education of the legal profession to proceed during the period between enactment and commencement of the Bill</p> | |
| <u>Examination of the draft Committee Stage amendments</u> | | | |
| 010102-010330 | <p>Chairman Administration</p> | <p>Reference to the long title of the Bill and clause 1, where there was no CSA, and to the draft</p> | |

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| | | proposed CSAs to clause 2 | |
| 010331-011200 | Chairman Assistant Legal Adviser Administration | <p>(a) Briefing by the Administration on the draft proposed CSAs to clause 3</p> <p>(b) ALA's view that it was not necessary to add the proposed new subclause (1A) to clause 3 to provide that the Bill would apply to unregistered land subject to the provisions of Schedule 1A, as Schedule 1A would automatically apply upon expiry of the 12-year incubation period</p> <p>(c) Administration's view that clause 3(1A) was needed to introduce Schedule 1A but the drafting of the clause might be refined</p> <p>(d) Reference to paragraph 1 of the list of follow-up actions to be taken by the Administration arising from the thirtieth meeting of the Bills Committee on 27 April 2004 (LC Paper No. CB(1)1899/03-04(02)), and the Administration's advice that clause 3(1) and (1A) might be merged together</p> <p>(e) ALA's concern that clause 3(3) (which provided that "where there is any conflict or inconsistency between</p> | <p>Administration to take the follow-up action under paragraph 4(b) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(c) of</p> |

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| | | <p>the provisions of this Ordinance and the provisions of another enactment in relation to the validity of a transfer (including an agreement to transfer), then the provisions of that enactment shall, in relation to the land to which the transfer relates and to the extent of that conflict or inconsistency, as the case may be, prevail over the provisions of this Ordinance”) would give rise to uncertainty because there would always be a possibility that the Bill was in conflict or inconsistent with certain existing or subsequent legislation, but whether there was a conflict or inconsistency between the two was a matter of interpretation</p> | <p>the minutes</p> |
| 011201-012340 | Chairman Administration | <p>(a) Briefing by the Administration on the draft proposed CSAs to clause 4</p> <p>(b) Members’ reiteration of their concern expressed at the meeting on 27 April 2004 that clause 4(d) was too wide, giving the LR unlimited power to permit registration of any matter that affected registered land, a registered charge or a registered long term lease</p> | |

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| | | <p>but not covered by clause 4(a), (b) or (c)</p> <p>(c) Administration's explanation of the need for the residual power described in item (b) above to register matters that needed to be registered but not covered by clause 4(a), (b) or (c)</p> <p>(d) Members' view that such a wide scope as described in item (b) above might give rise to uncertainty on whether or not a matter was registrable under the Bill</p> <p>(e) Administration's explanation that the test was that registrable matters should affect registered land, and Administration's advice that detailed guidelines on what matters and how they should be registered would be issued for the reference of legal practitioners and the public</p> <p>(f) Members' stress of the importance of certainty because failure to register a registrable matter would result in loss of the relevant interests</p> <p>(g) Administration's explanation that the consequence of failure to</p> | <p>Administration to take the follow-up action under paragraph 4(d) of the minutes</p> |

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| | | <p>register matters that should be registered was that they would not be protected against any subsequent purchaser for value</p> <p>(h) Some members' view that it was undesirable that a person who wanted to register a matter should have to take the initiative to seek Land Registrar (LR)'s permission to register it. Instead, the Administration should take the initiative to require registration where a matter should be registered</p> <p>(i) Administration's explanation that the LR could only work on applications because he was in no position to know what registrable matters were not registered</p> | |
| 012341-013542 | Chairman Assistant Legal Adviser Administration | <p>(a) Briefing by the Administration on clause 5 and in this connection, the definition of "Land Registry" in clause 2</p> <p>(b) Administration's advice that since the definition of "Land Registry" had been added to clause 2, clause 5(1) would be deleted</p> <p>(c) ALA's concern about the</p> | Administration to take the follow-up action under paragraph 4(e) of the minutes |

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| | | <p>implications of the proposed deletion of clause 5(1)</p> <p>(d) Administration’s explanation that clause 5(1) was an establishing clause only and, since the Land Registry had already been established, there was no need for the subclause</p> <p>(e) Administration’s advice that it was considering amending the definition of “Land Registry” to remove the reference to the LRO</p> <p>(f) Discussion on whether Part 2 of the Bill should be drafted with reference to the 1994 version of the Land Titles Bill, which had been drafted in such a way as to set out how the Bill would operate in a self-contained manner as if the LRO had been repealed</p> <p>(g) Administration’s confirmation that, as different from the 1994 Bill, the Bill would need to operate as a half-way house because, instead of being repealed immediately, the LRO would be repealed by stages to enable it to operate in parallel with the Bill for certain years after expiry of the 12-year</p> | <p>Administration to take the follow-up action under paragraph 4(e) of the minutes</p> |

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| | | <p>incubation period to handle land which had not been converted then</p> <p>(h) Administration’s advice that it would amend some key terms in the Bill such as “Title Register” in clause 5(2)(a). The term would be changed to “ownership register” where appropriate to differentiate between individual ownership registers and the general record of the Land Registry</p> | <p>Administration to take the follow-up action under paragraph 4(e) of the minutes</p> |
| 013543-015259 | <p>Chairman Ms Miriam LAU Administration</p> | <p>(a) Reference to clause 6</p> <p>(b) Briefing by the Administration on the proposed new clause 6A, which was the modified version of the original clause 88 and provided that the LR might apply to the Court of First Instance for direction if any question of law arose “in respect of the performance or exercise of any functions or powers imposed or conferred on the Registrar by or under this Ordinance”</p> <p>(c) Some members’ doubt on the need for the provision in item (b) above having regard that the LR might seek legal advice from the Department of Justice and</p> | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>where there was a dispute between an applicant and the LR, the LR could seek judicial review</p> <p>(d) Administration’s explanation that since the LR would already be making many quasi-judicial decisions under the LTRS, it was its intention that when questions of law arose, directions should be sought from the court. Moreover, unlike directions from the Department of Justice, directions from the Court of First Instance would be binding on the parties concerned and hence could minimize litigations</p> <p>(e) Administration’s explanation that the arrangement under the proposed new clause 6A was preferred to seeking of judicial review because the former would provide a quicker, less costly and easier way of settling disputes. Moreover, if aggrieved by the LR’s decision made on the basis of the direction from the Court of First Instance, the applicant could file an appeal (paper on “Outstanding Responses to Matters Raised by the Bills</p> | |

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| | | <p>Committee” (LC Paper No. CB(1)1425/03-04(02))</p> <p>(f) Some members’ concern about whether regulations would be made to govern the exercise of power by the LR under the new clause 6A and to provide for the procedures for implementation notwithstanding that the scope of the new clause was narrower than that of the original clause 88</p> <p>(g) Administration’s advice that there were provisions similar to the proposed new clause 6A in the Real Property Act 1900 in New South Wales. Law Soc also found the proposed new clause agreeable because it could contain the LR’s power and at the same time minimize litigations</p> <p>(h) Some members’ views that since the provision in item (b) above might involve inter-partie hearings, there was a need to ensure that the other party would know what steps he should take and his rights in the circumstances, especially as the provision might have implications on any</p> | <p>Administration to take the follow-up action under paragraph 4(f) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(f) of the minutes</p> |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | appeals against decisions made by the LR under clause 89 | |
| Break from 015300 - 020505 | | | |
| 020506-020710 | Chairman Administration | Reference to clauses 7 to 9, where there was no CSA | |
| 020711-020825 | Chairman Administration | Briefing by the Administration on the draft proposed CSA to clause 10 and the proposed new clause 10A | |
| 020826-021129 | Chairman Ms Miriam LAU Administration | <p>Discussion on the draft proposed CSA to clause 10 -</p> <p>(a) A member’s opinion that if the term “lessee” in clause 10(3)(g) was meant to stand for long term lessee, the definition of the term in clause 2 would need to be improved to reflect such. A suggested option was to provide that the term “means the person named in the Title Register as the lessee of a long term lease”</p> <p>(b) Administration’s explanation that the term “lessee” would have different meanings in different contexts and did not necessarily only mean a long term lessee</p> | Administration to take the follow-up action under paragraph 4(g) of the minutes |
| 021130-021654 | Chairman | Discussion on the definition of | |

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| | Assistant Legal Adviser Administration | <p>“long term lease” in clause 2 in relation to the proposed new clause 10A -</p> <p>(a) Members’ view on the need to improve and simplify the definition of “long term lease” in clause 2. They did not consider it necessary to make reference to “the owner of the land at the time of the grant as determined in accordance with the law applicable to land which is not registered land” in sub-paragraph (a)(ii) of the definition</p> <p>(b) Administration’s explanation that the reference in item (a) above had been included to cater for situations where there were disputes over the ownership of the land</p> | Administration to take the follow-up action under paragraph 4(h) of the minutes |
| 021655-022704 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | <p>Discussion on the definition of “owner” in clause 2 in relation to the proposed new clause 10A -</p> <p>(a) On paragraph (c) of the definition of “owner” in clause 2 which provided that in relation to registered land to which Part II of the New Territories Ordinance</p> | Administration to take the follow-up action under paragraph 4(i) of the minutes |

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| | | <p>(NTO) (Cap. 97) applied, “owner” included “any clan, family or t’ong”, ALA was concerned that this definition might give rise to problems because members of clan, family or t’ong could not be exhaustively determined</p> <p>(b) Administration’s explanation that “owner” was so defined in item (a) above to bring block Government leases under the LTRS</p> <p>(c) ALA’s comment that it was the managers of the land in item (a) above who were responsible for dealing with the land as trustees and there was a need to ensure that they might continue to deal with the land under the LTRS as at present, so that the land would continue to be transferable</p> <p>(d) Administration’s assurance that its intention was that the Bill would not disrupt the Chinese customary system and the NTO</p> <p>(e) A member’s view on the need to expressly subject the power of “t’so” and “t’ong” managers to the NTO to ensure that they</p> | <p>Administration to take the follow-up action under paragraph 4(i) of the minutes</p> |

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| | | would act properly (clause 3) | |
| 022705-023728 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | <p>(a) Briefing by the Administration on the draft proposed CSAs to clause 11</p> <p>(b) ALA's opinion that the expression "on there being a Title Register in relation to the land to which the register relates" in clause 11(1) was not precise enough because there was no reference to any particular point of time. A suggested option was to replace the expression by "on the appointed day on which the LTRS would come into full operation"</p> <p>(c) Administration's agreement to improve the drafting of clause 11(1) with reference to ALA's views in item (b) above and to paragraph 4 of the list of follow-up actions to be taken by the Administration arising from the thirtieth meeting of the Bills Committee on 27 April 2004 (LC Paper No. CB(1)1899/03-04(02))</p> <p>(d) Administration's indication of its plan to move all provisions relating to LRO to a schedule which would</p> | Administration to take the follow-up action under paragraph 4(j) of the minutes |

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| | | <p>be repealed after the 12-year incubation period</p> <p>(e) ALA’s suggestion that the phrase “uncompleted building units” in clause 11(4)(a) be changed to “an uncompleted building unit” to correspond with the reference to “a” sale and purchase agreement before it</p> <p>(f) A member’s opinion that, to avoid misunderstanding that the phrase highlighted in item (e) above referred to an uncompleted building as a whole, the phrase should be further amended to read “a unit in an uncompleted building”</p> <p>(g) ALA’s opinion that the drafting of clause 11(4)(b), which provided that “equitable mortgage” excluded a mortgage of an equitable estate of land held under a Government Lease without a certificate of compliance, was quite loose having regard that many Government Leases, e.g. those granted for 999 years, did not require the issue of a certificate of compliance</p> | <p>Administration to take the follow-up action under paragraph 4(k) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(k) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(l) of the minutes</p> |
| 023729-024654 | Chairman | (a) Briefing by the | |

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| | <p>Ms Miriam LAU Assistant Legal Adviser Administration</p> | <p>Administration on the proposed new clause 11A</p> <p>(b) ALA’s view that references to “registered non-consent caution” in clause 11A(a), (b) and (c) were not necessary because it was through registration that a caution was effected and there was no such matter as an “unregistered non-consent caution”</p> <p>(c) ALA’s view that along the same line as item (b) above, there was no need for definitions of “registered caution against conversion” and “registered caveat” to be provided in Schedule 3. Only “caution against conversion” and “caveat” needed to be defined, and they should be defined in relation to the particular sections that provided for their registration</p> <p>(d) Administration’s explanation that, to minimize disputes, there was a need to differentiate between caveats and cautions against conversion which were and were not registered</p> <p>(e) A member’s agreement to the need highlighted in</p> | <p>Administration to take the follow-up action under paragraph 4(m)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(m)(ii) of the minutes</p> |

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| | | <p>item (d) above to differentiate the different stages and hence different statuses of caveats and cautions against conversion</p> <p>(f) Chairman’s view that the required differentiation should be apparent from the context of the Bill</p> <p>(g) ALA’s view that along the same line as item (b) above, the phrase “a registered caveat against the land” in clause 11A should be amended to read “a caveat registered against the land”</p> <p>(h) ALA’s view that clause 11A(c), which provided that “all the provisions of this Ordinance.....shall apply to the deemed registered non-consent caution accordingly”, was not necessary because the provisions of the Bill would apply to the deemed registered non-consent caution even without the clause</p> | <p>Administration to take the follow-up action under paragraph 4(m)(iii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(m)(iv) of the minutes</p> |
| 024655-030640 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | (a) Briefing by the Administration on the draft proposed CSAs to clause 12 and in this connection, the definition of “new land” in clause 2 | |

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| | | <p>of new land, namely, the types of land covered and the relevant timing of conversion, should be dealt with in the schedules, such as in the new Schedule 1A, instead of in the main body of the Bill</p> <p>(e) Administration’s indication of its agreement with ALA’s view in item (d) above, and its intention to move all provisions relating to transitional arrangements during the 12-year incubation period to Schedule 1A</p> <p>(f) ALA’s view that clause 12(1)(b), which provided that the LR should register a piece of land upon the issue of a Government lease “on or after the commencement day”, should be deleted because the Bill would not have retrospective effect</p> <p>(g) Administration’s view that although the Bill would operate prospectively, there might be the possibility that it would affect transactions in the past; hence the need for clause 12(1)(b)</p> <p>(h) ALA’s view that instead of specifying in clause 12</p> | <p>Administration to take the follow-up action under paragraph 4(n)(iii) of the minutes</p> <p>Administration to take the follow-up action under</p> |

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| | | <p>when and what types of land would be converted under the LTRS as it did in subclauses (1)(a) and (1)(b), it would be safer and clearer to state that the LTRS would not apply to existing land before the appointed day on which the LTRS came into full operation. In this way, subclause (2) might also be deleted. There might then be no need for the use of the term “new land” and hence its definition in the Bill</p> <p>(i) A member’s emphasis of the need to know what types of land would be converted under the LTRS immediately after commencement of the Bill and what would not</p> | <p>paragraph 4(n)(iv) of the minutes</p> |
| 030641-032148 | <p>Chairman Ms Miriam LAU Assistant Legal Adviser Administration</p> | <p>(a) Briefing by the Administration on the draft proposed CSAs to clauses 13 and 14</p> <p>(b) ALA’s question on the purpose of the reference to “first owner of the land” in clause 14(1) on the effect of first registration of land on ownership, and his view that if the reference served no purpose, clause 14 could be deleted because it was there only to cater for</p> | |

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| | | <p>the situation where there was gradual conversion</p> <p>(c) Administration’s explanation that the phrase “first owner of the land” in clause 14(1) meant the first owner after the first registration who, unlike the subsequent purchaser for value, remained subject to any unregistered interests to which he was liable before the conversion</p> <p>(d) ALA’s view that the reference to “first owner of the land” was misleading because the owner of existing land which became registered land by first registration under the LTRS might in fact not be the “first owner” of the land concerned</p> <p>(e) Members’ view that to avoid misunderstanding highlighted in item (d) above, the Administration should improve the drafting of clause 14(1) and, as a last resort, consider the need to include in the Bill the definition of “first owner of the land” to specify that it meant the first owner after the first registration</p> <p>(f) ALA’s view that clause</p> | <p>Administration to take the follow-up action under paragraph 4(o)(i) of the minutes</p> <p>Administration to</p> |

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| | | <p>14(2)(d) was grammatically ill-fitted</p> <p>(g) ALA’s view that having regard that the differences between clauses 14 and 21, which dealt with first registration and subsequent registration respectively, were mainly in clauses 14(2)(d) and 14(3), the two clauses should be merged or redrafted to avoid repetition of certain subclauses and confusion</p> | <p>take the follow-up action under paragraph 4(o)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(o)(iii) of the minutes</p> |
| 032149-032536 | Chairman Assistant Legal Adviser Administration | <p>(a) Briefing by the Administration on the draft proposed CSAs to clause 15</p> <p>(b) ALA’s view that in clause 15(1), the reference to “other land” made the clause impracticable because the phrase was not defined in the Bill</p> <p>(c) ALA’s view that clause 15(2)(a) related to the proposed new clause 10A. If the new clause 10A was to be amended as proposed above, this clause might also need to be amended</p> | <p>Administration to take the follow-up action under paragraph 4(p)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(p)(ii) of the minutes</p> |
| 032537-032726 | Chairman Assistant Legal Adviser | (a) Briefing by the Administration on the | |

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| | Administration | <p>proposed new clause 15A and the draft proposed CSAs to clause 16</p> <p>(b) ALA's concern that the drafting of the proposed new clause 15A did not achieve the purpose of the clause</p> | Administration to take the follow-up action under paragraph 4(q) of the minutes |
| 032727-033140 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | <p>(a) Briefing by the Administration on the draft proposed CSAs to clause 17</p> <p>(b) Members' question on the circumstances under which the LR would remove an entry in the Title Register</p> <p>(c) Administration's explanation that the LR was not bound to remove an entry in the Title Register if he was not certain that such should be removed</p> | |
| 033141-033235 | Chairman Administration | <p>(a) Reference to the draft proposed CSAs to clause 18</p> <p>(b) Reference to clause 19, where there was no CSA</p> | |
| 033236-033404 | Chairman Assistant Legal Adviser Administration | (a) Briefing by the Administration on the draft proposed CSAs to clause 20 | |

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| | | (b) ALA's comment that the expression "there may be issued" in clause 20(6)(b) and (6)(d) was rather strange | Administration to take the follow-up action under paragraph 4(r) of the minutes |
| 033405-033832 | Chairman Assistant Legal Adviser Administration | <p>(a) Briefing by the Administration on the draft proposed CSAs to clause 21</p> <p>(b) ALA's comment that it was undesirable to remove from clause 21 the provisions on the effect of transmission because the move would lengthen the Bill</p> <p>(c) Administration's advice that the provisions on the effect of transmission removed from clause 21 had been placed in Part 7 of the Bill (the proposed new clause 61A)</p> <p>(d) ALA's comment that the expression "equitable interest" in clause 21(1) should be changed to "equitable estate" because the former in normal usage indicated a lesser interest in land</p> | Administration to take the follow-up action under paragraph 4(s) of the minutes |
| 033833-034214 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | (a) Briefing by the Administration on the draft proposed CSAs to clause 22 | |

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| | | <p>(b) ALA’s comment that in consideration of the Law Soc’s wish to ensure that the holder of a long term lease could enjoy a status equal to that of a land owner, the phrase “of a long term lease” should be added after “the lessee” in clause 22(2). The phrase “will hold his interest and rights” therein should also be replaced by “will hold his land”</p> <p>(c) Administration’s reservation about the amendment proposed in item (b) above because of the likely consequences, and its report that discussion with Law Soc in this regard was under way</p> <p>(d) A member’s view that if read with clause 22(1), clause 22(2) was clear and the amendment proposed in item (b) above might not be necessary</p> <p>(e) ALA’s comment that clause 22(2)(d) needed to be reformulated because it did not fit grammatically in the structure of the sub-clause</p> <p>(f) Chairman’s comment that if the proposed new clause 10A was amended,</p> | <p>Administration to take the follow-up action under paragraph 4(t)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(t)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(t)(ii) of</p> |

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| | | clause 22(2)(d) might also need to be amended | the minutes |
| 034215-040307 | Chairman Ms Miriam LAU Assistant Legal Adviser Administration | <p>(a) Reference to clause 23, where there was no CSA, and briefing by the Administration on the draft proposed CSAs to clause 24</p> <p>(b) Administration's confirmation that deeds of mutual covenant would be covered by clause 24(1)(c)(i)</p> <p>(c) ALA's comment that the addition of the phrase "easements provided for in any instrument" to clause 24(1)(c)(i) would diminish the possibility of easements covering "easements by prescription"</p> <p>(d) Administration's explanation that it was not intended that easements by prescription would be covered by clause 24. Moreover, there were pending legal proceedings in this regard</p> <p>(e) ALA's comment that the proposed amendment to clause 24(1)(d) would exclude all easements acquired by usage and therefore seriously narrow</p> | <p>Administration to take the follow-up action under paragraph 4(u)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(u)(ii) of the minutes</p> |

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| | | <p>the scope of easements that could be carried over to the LTRS under this clause</p> <p>(f) Administration's explanation of the background of the new clause 24(1)(d)</p> <p>(g) ALA's comment that clause 24(1)(f) was wholly unnecessary and would tend to give the impression that unless the Government's right of re-entry was preserved as overriding interest, it could be lost. This would raise the question of whether the rights of landlords and lessors needed similar protection</p> <p>(h) Administration's confirmation that dedication of land by usage would be covered under public rights but the word "dedication" would not be used for fear of creating misunderstanding</p> <p>(i) Chairman's view on the need to consult the Hong Kong Bar Association (the Bar) on the issues relating to easements</p> <p>(j) Administration's confirmation that the draft proposed CSAs had been</p> | <p>Administration to take the follow-up action under paragraph 4(u)(iii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 4(u) of the minutes</p> |

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| | | <p>sent to the Bar for comments</p> <p>(k) Chairman's view on the need to explain why clause 24(1)(g) was still retained given the Administration's agreement to apply the doctrine of notice to deal with the priority issue under the LTRS (paragraph 2 of the list of follow-up actions to the thirty-first meeting of the Bills Committee on 11 May 2004 (LC Paper No. CB(1)1917/03-04(01))</p> <p>(l) Administration's advice that clause 24(1)(g) was included in the Bill at the request of the Estate Duty Office (EDO), and that EDO's views on whether clause 24(1)(g) should be removed were being awaited</p> | <p>Administration to take the follow-up action under paragraph 4(u) of the minutes</p> |
| 040308-040354 | Chairman Administration | <p>(a) Progress of the preparation of CSAs to Schedule 2</p> <p>(b) Meeting arrangements</p> | |