

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2009/02-03

(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of seventh meeting held on  
Monday, 9 June 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 Andrew WONG Wang-fat, JP  
Hon Miriam LAU Kin-ye, 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 Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Albert CHAN Wai-yip  
Hon WONG Sing-chi  
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
- 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 meetings**

- |                               |   |   |
|-------------------------------|---|---|
| (LC Paper No. CB(1)1772/02-03 | — | Minutes of fifth meeting held on 12 May 2003  |
| LC Paper No. CB(1)1886/02-03  | — | Minutes of sixth meeting held on 22 May 2003) |

The minutes of the meetings held on 12 and 22 May 2003 respectively were confirmed.

**II. Meeting with the Administration**

- (LC Paper No. CB(1)1885/02-03(01) — “Follow-up to the sixth meeting on 22 May 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1885/02-03(02) — Second paper provided by the Administration on “Indemnity”
- LC Paper No. CB(1)1885/02-03(03) — Further submission from Hong Kong Bar Association dated 30 May 2003 on the Administration’s paper on “Indemnity”
- LC Paper No. CB(1)1885/02-03(04) — Preliminary submission from The Law Society of Hong Kong on the Administration’s paper on “Indemnity”
- LC Paper No. CB(1)1664/02-03(01) — First 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 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 paper elaborating on the coverage of the term “mistake” in clause 82(1)(b) and clarify whether such a mistake covered the following -
- (i) Registration of a property in the name of another person without proper regard to any consent or non-consent cautions registered in the Land Registry; and
  - (ii) Transfer of a property to another name in blatant breach of a charging order or a trust instrument due to erroneous interpretation of the charging order or trust instrument.
- (b) To provide a paper addressing the following points of concern raised on the proposed indemnity scheme:
- (i) The Administration was requested to provide details of the proposed levy on registration, including the following information:
    - the assumptions on which the level of levy would be set and reviewed;
    - what the level of levy would be with and without the cap on the indemnity;
    - a comparison between the level of levy and the level of stamp

- duty;
  - the estimated time required for the Indemnity Fund to establish reserves of its own with the proposed level of levy; and
  - whether the level of levy would be increased if the Indemnity Fund was exhausted;
- (ii) To ensure that an innocent owner would be compensated in the case of fraud even if the fraudster was nowhere to be found and hence could not be convicted, the Administration was requested to consider introducing a provision into the Bill to ensure that the court would, in the case of fraud, consider whether payment of indemnity should be made upon fraud being proved on the balance of probabilities irrespective of whether criminal proceedings were instituted against the fraudster or not; and
- (iii) Under clause 84(2)(b), a successful claimant for indemnity could recover the costs and expenses incurred in relation to the claim. The Administration was requested to clarify the source of funds for the reimbursement of such costs.
- (c) To provide details on the respective steps that would need to be taken for seeking rectification and claiming indemnity in case of loss caused by fraud and in case of loss caused by mistakes or omissions.
- (d) To clarify whether under the current deeds registration system as well as the proposed land titles registration system an innocent owner could have remedies or seek rectification or claim indemnity in the case of fraudulent misrepresentation.

#### Next two meetings

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 19 June 2003, at 2:30 pm to discuss the following administrative arrangements of the proposed land title registration system -

- (a) Title certificates and searches;
- (b) Dispositions;
- (c) Instruments; and
- (d) Transmissions and trusts.

5. The Chairman urged the Administration to provide the paper(s) on the above subjects to the Bills Committee before the next meeting on 19 June 2003.

6. The Chairman also urged the Administration to provide its written response to the submissions received by the Bills Committee on the paper on "Indemnity" before the meeting on 30 June 2003. The Land Registrar advised that the Administration

aimed to provide by 23 June 2003 a paper to address the Hong Kong Bar Association's concern about the constitutionality of the proposed cap on indemnity.

**III. Any other business**

7. There being no other business, the meeting ended at 4:20 pm.

Council Business Division 1  
Legislative Council Secretariat  
18 June 2003

## Appendix

**Proceedings of the seventh meeting of the  
Bills Committee on Land Titles Bill  
on Monday, 9 June 2003, at 2:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000-000010	Chairman	Confirmation of minutes of the meetings held on 12 and 22 May 2003 respectively	
000011-000236	Chairman	Opening remarks	
000237-000507	Administration	Briefing by the Administration on the second paper on "Indemnity" (LC Paper No. CB(1)1885/02-03(02))	
000508-000746	Chairman Assistant Legal Adviser 6	Further comments on the proposed indemnity scheme	
000747-001054	Chairman Administration	Administration's initial response to the preliminary submission from The Law Society of Hong Kong (LC Paper No. CB(1)1885/02-03(04)) (clause 82(5))	
001055-001552	Chairman Mr TAM Yiu-chung Administration	(a) Measures to prevent mistakes or omissions from being committed by Land Registry staff	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>(b) Follow-up actions on mistakes or omissions that had given rise to an indemnity, and disciplinary actions against the Land Registry staff who committed the mistakes or omissions</p> <p>(c) Whether Land Registry staff whose mistakes or omissions had given rise to an indemnity would be held personally liable in damages for the mistakes or omissions (clause 8(1))</p>	
001553-002051	Chairman Mr Albert HO Administration	Grey areas in the coverage of the term “mistake” in clause 82(1)(b) (paragraph 4 of LC Paper No. CB(1)1885/02-03(02))	Administration to provide the required information under paragraph 3(a) of the minutes
002052-002448	Chairman Mr TAM Yiu-chung Ms Audrey EU Administration	<p>(a) Assumptions on which the level of the levy on registration (levy) would be set and reviewed</p> <p>(b) What the level of levy would be with and without the cap on the indemnity</p> <p>(c) Affordability of the levy and comparison between the level of levy and the level of stamp duty</p> <p>(d) Whether and how the levy would be graduated</p>	Administration to provide the required information under paragraph 3(b)(i) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
002449-002915	Chairman Ms Miriam LAU Administration	(a) Sustainability of the indemnity fund vis-a-vis the level of levy  (b) Other sources of finance for the indemnity fund	Administration to provide the required information under paragraph 3(b)(i) of the minutes
002916-003249	Chairman Mr IP Kwok-him Administration	Need for a graduated levy to reflect the different values of properties	
003250-004137	Chairman Mr TAM Yiu-chung Administration	(a) Respective steps that would need to be taken for seeking rectification and claiming indemnity in case of loss caused by fraud and in case of loss caused by mistakes or omissions (paragraphs 7 to 13 of LC Paper No. CB(1)1724/02-03(08))  (b) Scope of rectification (clause 81)	Administration to provide the required information under paragraph 3(c) of the minutes
004138-005858	Chairman Ms Audrey EU Assistant Legal Adviser 6 Administration	Whether payment of indemnity in the case of fraud needed be contingent on the establishment of fraud in court (clauses 81(1), 81(3) and 82(1)(a)(iii))	
005859-011125	Chairman Mr Albert HO Assistant Legal Adviser 6 Administration	(a) Standard and burden of proof (clause 84)	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>(b) How would the court handle applications for rectification where neither the former owner nor the purchaser but the Land Registry was at fault (clause 81(3))</p> <p>(c) Other common law rights available to the owner for claiming compensation for losses other than title which were suffered as a result of default by the Land Registry (clauses 8(2), 81(3) and 86(2))</p>	
011126-012304	<p>Chairman Ms Audrey EU Assistant Legal Adviser 6 Administration</p>	<p>(a) Whether payment of indemnity would cover rental loss</p> <p>(b) Timing for determining the value of a property for the purpose of indemnity payment (clauses 8(2), 83(1)(a)(i) and 83(1)(a)(ii))</p> <p>(c) Arguments for and against the need to wait for conclusion of criminal proceedings to establish fraud before determination of indemnity payment for loss arising from fraud, namely, concern about preempting the relevant criminal proceedings versus</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>concerns about the costs and expenses incurred in relation to the claim (clause 84(2)(b))</p> <p>(d) The source of funds for the reimbursement of the costs mentioned in (c) above</p> <p>(e) The need to introduce a provision into the Bill to ensure that the court would, in the case of fraud, consider whether payment of indemnity should be made upon fraud being proved on the balance of probabilities irrespective of whether criminal proceedings were instituted against the fraudster concerned or not</p>	<p>Administration to provide the required information under paragraph 3(b)(iii) of the minutes</p> <p>Administration to provide the required information under paragraph 3(b)(ii) of the minutes</p>
012305-013659	Chairman Mr Albert HO Administration	(a) Concern about the broad definition of “fraud” and hence reliance on the court to rule whether there was fraud (paragraph 9 of LC Paper No. CB(1)1885/02-03(02)) (clause 2)	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(b) Whether under the current deeds registration system an innocent owner could claim any remedies in the case of fraudulent misrepresentation of property value, and if so the need to retain such right under the proposed land title registration system (clause 82)	Administration to provide the required information under paragraph 3(d) of the minutes
013700-014107	Chairman Mr Andrew WONG Administration	Whether indemnity would be paid for the sale of “tso” and “tong” properties in the New Territories without the consent of the “tso” and “tong” concerned	
014108-014202	Chairman Administration	Inviting further views from members on the paper on “Rectification and Appeal” (LC Paper No. CB(1)1724/02-03(08))	
014203-014223	Chairman	Inviting members’ views on the paper on “Effect and Benefits of Title Registration” (LC Paper No. CB(1)1664/02-03(02))	
014224-014618	Chairman	(a) Date and arrangements for next meeting  (b) Papers to be provided by the Administration for next two meetings	