

立法會
Legislative Council

LC Paper No. CB(1)2485/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the thirty-fifth meeting held on
Friday, 11 June 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 Andrew WONG Wang-fat, JP
Hon Miriam LAU Kin-ye, 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 Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Abraham SHEK Lai-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)2110/03-04 — Minutes of thirty-second meeting held on 25 May 2004)

The minutes of the meeting held on 25 May 2004 were confirmed.

II. Meeting with the Administration

(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)2109/03-04(01) — “Follow-up to the thirty-third meeting on 1 June 2004” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2120/03-04(01) — Submission dated 9 June 2004 from The Real Estate Developers Association of Hong Kong

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)2042/03-04(02) — Draft proposed Committee Stage amendments to Schedule 2 to the Bill provided by the Administration

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)2109/03-04(02) — Marked-up copy of Schedule 2

to the Bill provided by the Administration

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 discussing the submission dated 9 June 2004 from The Real Estate Developers Association of Hong Kong (REDA) (LC Paper No. CB(1)2120/03-04(01)), the Administration agreed to address REDA’s concerns highlighted therein in the context of further Committee Stage amendments (CSAs) to clause 81. The Administration also agreed to provide a written response to REDA’s submission as far as practicable.
- (b) In examining the draft proposed CSAs to clause 77, members and the Assistant Legal Adviser (ALA) expressed the following views:
 - (i) The phrase “application for the making of an order under this section” in subclause (1)(a) could be simplified to “application for an order under this section”. Similar phrases in the Bill should be so simplified as far as possible;
 - (ii) Subclause (5)(c) was unnecessary because the general law already provided for the same. The subclause might have the effect of broadening the category of “interested person”; and
 - (iii) All the instances of “in relation to” in the Bill should be tightened up where appropriate.The Administration was invited to consider the above views and introduce amendments as appropriate.
- (c) In examining the draft proposed CSAs to clause 80, members considered the expression “the Registrar shall comply with an application” in subclause (4) undesirable. The Administration was invited to improve the drafting of the subclause in the light of members’ comment.

- (d) In examining the draft proposed CSAs to clause 81, members noted that the Administration would introduce further CSAs to the clause to address REDA's concerns (item (a) above). Members also invited the Administration to introduce appropriate CSAs to address the following concerns:
- (i) The drafting of clause 81 could not reflect the objectives of the clause. In particular, it was not clear when the court should or should not rectify the Title Register;
 - (ii) The Hong Kong Bar Association was concerned about whether a "knowledge test" should be adopted as the statutory criterion in determining whether the Title Register was subject to the Court of First Instance's power of rectification;
 - (iii) Clause 81(2)(a) provided that the Title Register should not be rectified so as to affect the title of the registered owner unless the owner had knowledge of the fraud, mistake or omission in relation to the transfer of ownership, or had knowledge of the voidness or voidability of the instrument in relation to such transfer. Given that "knowledge of the fraud" was one of the statutory criteria in determining whether the Title Register should be rectified, it should be clearly stipulated in the Bill that the time of knowledge was the time when the fraud was committed but not any point in time;
 - (iv) The references to "knowledge of the voidness or voidability of the instrument" in clause 81(2)(a)(ii) and "caused voidness or voidability" in clause 81(2)(b) were not appropriate because ordinary people would not be able to judge whether an instrument was void or voidable; and
 - (v) Clause 81(2)(b) provided that the Title Register should not be rectified so as to affect the title of the registered owner unless the owner had substantially contributed to the fraud by his act, neglect or default. The expression "substantially contributed" gave rise to uncertainty. The Administration was invited to make reference to the relevant court case on the interpretation of this expression. As this expression implied active involvement, it was not fair to include the element of "neglect". A similar provision in clause 81(3) gave rise to the same concern.
- (e) In examining the proposed new clause 81A, ALA highlighted REDA's view that the new clause seemed to be more restrictive than the Limitation Ordinance (Cap. 347) or the general law on limitation. The Administration agreed to confirm whether the above was its policy intention.
- (f) In examining the draft proposed CSAs to clause 82, members noted that

the Administration would propose a CSA to delete subclause (5) so as to address the concern of the Law Society of Hong Kong (Law Soc). The Administration was invited to explain the reasons for and the effect of deleting subclause (5), and how far Law Soc's concern had been addressed.

- (g) In examining the draft proposed CSAs to clause 83, members noted that the Administration would withdraw the proposed CSA to the first part of clause 83(1).
- (h) In examining the draft proposed CSAs to clause 83, members noted that at the request of the Hong Kong Association of Banks, the Administration proposed a CSA to subclause (2) to provide that "where ... a registered charge ceases to be a registered charge ...; and ...the chargor in respect of the charge is entitled to be paid an indemnity ... in respect of loss suffered in relation to the registered land or registered long term lease which was the subject of the charge, then the Registrar shall cause ... the indemnity to be first applied towards discharging the charge". Members considered it essential for the Administration to balance the interests of banks and property owners, and to consider whether it was desirable to spell out the proposed arrangement in law to preclude any exercise of discretion under special circumstances. Some members also pointed out that banks might amend the provisions of a mortgage to put in place the proposed arrangement mentioned above. The Administration agreed to reconsider how the issue should be dealt with.
- (i) In examining the draft proposed CSAs to clause 83, members noted that the proposed new subclause (2A)(d) provided that the Land Registrar (LR) should cause the indemnity to be applied towards co-owners "proportionately to reflect the interests they respectively had in the land...". They opined that the LR should not take on such responsibilities and that the above subclause should be taken out.
- (j) In examining the draft proposed CSAs to clause 84, members noted that the Administration would withdraw the proposed CSA to subclause (2)(b).
- (k) On the draft proposed CSAs to clause 92, the Administration confirmed that subclause (2)(b) would be deleted as agreed at the meeting on 8 June 2004.

- (l) On the draft proposed CSAs to clause 95, the Administration agreed to introduce further CSAs as necessary to address ALA's drafting comments (e.g. the second half of subclause (2) was not necessary) and to ensure that the clause would not conflict with the rectification provisions in clause 81.
- (m) On the draft proposed CSAs to clause 98, the Administration confirmed that it would redraft the clause to deal with fees and levy separately.
- (n) In examining the draft proposed CSAs to clause 100, members noted that the new subclause (1)(oa) had been added to empower the Secretary for Housing, Planning and Lands (SHPL) to make regulations to set out the circumstances in which the LR should refuse to register any matter relating to any undivided share in registered land with an exclusive right to use and occupy a part of a building. The new subclause was added to clause 100 to address members' concern that clause 20(5) (which provided that the "Registrar..... unless and until an application for the division of the land into undivided shares has been registered showing or specifying such rights to the use and occupation of the land") related to administrative arrangements only and had nothing to do with title, and that it might be more appropriate to include the provision in the Regulations. Members however opined that the new subclause should be linked to clause 20 to make the policy intention clearer.
- (o) In examining the draft proposed CSAs to clause 100, members noted that the new subclause (1)(ob) had been added to empower SHPL to make regulations on the documents relating to title to be retained under the new land title registration system (LTRS). Members opined that the new subclause, as presently drafted, was too wide, and that it should be linked to clause 44(1)(a)(iv) and any other relevant clauses. Members also opined that the new subclause was not clear enough and urged the Administration to improve it.
- (p) In examining the draft proposed CSAs to clause 100, members noted that the new subclause (1)(oc) had been added to empower SHPL to make regulations on the classes of persons who fell within paragraph (d) of the definition of "interested person" in the new subclause (5) of clause 77. In this regard, members considered it undesirable to defer defining the classes of persons under paragraph (d) of the definition of "interested person" until making of the relevant regulations because such an arrangement would make clause 77(5)(d) empty and unable to function before the regulations are in place. It should be ensured that even before the making of the relevant regulations, a person who qualified as "interested person" might go to the court to claim such status. In this connection, the Administration was invited to consider a member's

suggestion that the new subclause (5)(d) of clause 77 be amended to read “who otherwise has a sufficient interest in the making of the application concerned under subsection (1)(a), including a person determined in accordance with regulations made under section 100(1)(oc)”.

- (q) In examining the draft proposed CSAs to clause 100, members noted that the Administration proposed a CSA to subclause (1)(zi) to provide that SHPL might make regulations to empower the LR to manage and invest the moneys of the indemnity fund, and to borrow for the purposes of the fund. Members also noted that the proposed CSA had not addressed ALA’s concern about the adequacy of providing such power in the regulations, given that the indemnity fund and the power of the LR in respect of the fund were not mentioned in the main body of the Bill. Members considered it more appropriate to provide in the main body of the Bill for the establishment of the indemnity fund and that the LR might manage and invest the moneys of the indemnity fund, and borrow for the purposes of the fund subject to the regulations to be made by SHPL under clause 100. The Administration agreed to amend clause 6 to address the above concerns.
- (r) The Administration was invited to liaise with ALA to ensure that his drafting comments on the draft proposed CSAs to clause 101 would be addressed.
- (s) The Administration was invited to liaise with ALA to ensure that his drafting comments on the draft proposed CSAs to clause 102 would be addressed.
- (t) In examining the draft proposed CSA to section 20B of the High Court Ordinance (Cap. 4) set out in section 2 of Schedule 2 to the Bill (page 3 of the marked-up copy of Schedule 2 to the Bill (LC Paper No. CB(1)2109/03-04(02))), members noted that section 20B(6) provided that “if an order...discharging the charging order is made, the Land Registrar shall, on the presentation to him of an application for the purpose accompanied by an office copy of the order, remove from the Title Register kept under the Ordinance the entry referring to the order, and may issue certificates of such removal”. Having regard that the LTRS should essentially be a system for the registration of interests and not instruments, members considered it undesirable that in addition to the title certificate and the deed of mutual covenant, there should be additional instruments that would need to be dealt with under the LTRS. The Administration was invited to delete the last part of section 20B(6) starting with “and”.
- (u) On the draft proposed CSA to Order 47 of the Rules of the High Court (Cap. 4A) set out in section 3 of Schedule 2 to the Bill (page 4 of LC

Paper No. CB(1)2109/03-04(02)), the Administration agreed to delete from rule 7(4)(b) of Order 47 the expression “shall be taken and deemed to be a valid transfer of such right, title and interest and”.

- (v) On the draft proposed CSA to section 2 of the Government Leases Ordinance (Cap. 40) set out in section 17 of Schedule 2 to the Bill (page 28 of LC Paper No. CB(1)2109/03-04(02)), the Administration agreed to provide a paper on how Government leases would be affected under the LTRS and by the proposed CSA to address members’ concerns about changes in this regard.
- (w) In examining the draft proposed CSA to section 16(2) of the Government Leases Ordinance (Cap. 40) set out in section 24 of Schedule 2 to the Bill (page 37 of LC Paper No. CB(1)2109/03-04(02)), members noted that the Administration might further revise section 16(1)(b), in particular the reference to “title record”.
- (x) On the proposed new section 67 of the Stamp Duty Ordinance (Cap. 117) set out in section 42 of Schedule 2 to the Bill (page 62 of LC Paper No. CB(1)2109/03-04(02)), the Administration was invited to liaise with ALA on how to address his drafting comments on section 67(2) and 67(3) (on whether the charge in respect of registered land would be removed automatically upon expiry or upon application) and 67(4) (that the section was not necessary).
- (y) In examining the draft proposed CSAs to the consequential amendments to be made to the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) set out in section 65 of Schedule 2 to the Bill (page 101 of LC Paper No. CB(1)2109/03-04(02)), ALA considered it undesirable to continue registering vesting notices because, to make the Financial Secretary Incorporated holder of the land concerned, it would be better to draft the provisions in such a way as to provide that upon the Government exercising such right of re-entry, the Financial Secretary Incorporated would be registered as the holder of the land. This would avoid giving people the impression that the LTRS would still be a system for the registration of instruments. The Administration agreed to consider ALA’s views and report back to the Bills Committee.
- (z) In examining the proposed amendments to section 153M of the Crimes Ordinance (Cap. 200) set out in section 85 of Schedule 2 to the Bill (page 128 of LC Paper No. CB(1)2109/03-04(02)), members noted that registration of notices and orders relating to premises thereunder would be dealt with under clause 4(a) of the Bill as a matter expressly provided for in other enactments. In this regard, ALA opined that there was a need for the Administration to consider the means by which such orders should be registered. The Administration agreed to consider his views

and specify such in the regulations.

(za) In examining the proposed amendment to section 2 of the Conveyancing and Property Ordinance (CPO) (Cap. 219) set out in section 87 of Schedule 2 to the Bill (page 132 of LC Paper No. CB(1)2109/03-04(02)), ALA opined that the proposed provisions that “an assignment include a transfer” and “a legal charge include a charge” in section 2(2) were inappropriate because it was very much in doubt whether such inclusions were proper, especially as the scope of a charge under the Bill was broader than that of a legal charge under CPO. Members opined that since the section concerned was essentially an avoidance of doubt section, if there were still doubts about the matters concerned, it might be better to take the section out. The Administration accepted members’ views.

(zb) In examining the draft proposed CSAs to the consequential amendments to be made to CPO, members expressed concern about the compatibility of the CPO with the Bill, and the possible existence of loopholes in the Bill because of the many changes that had to be made to it within a short time. Given the time constraints and hence the difficulty in rectifying any such incompatibility, the Administration undertook that it would ensure that any incompatible provision would be rectified during the 2-year period between the enactment and commencement of the Bill.

Meeting arrangements

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 15 June 2004, from 8:30 am to 12:30 pm.

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
20 August 2004

Appendix

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

Time marker	Speaker	Subject(s)	Action Required
000000-000256	Chairman	(a) Welcoming and introductory remarks (b) Confirmation of minutes of meeting on 25 May 2004 (c) Reference to the additional meeting scheduled for 18 June 2004 from 8:30 am to 11:30 am	
000257-000523	Chairman Mr Albert CHAN Administration	(a) Reference to the submission dated 9 June 2004 from The Real Estate Developers Association of Hong Kong (REDA) (LC Paper No. CB(1)2120/03-04(01)), in particular its concern about clause 81 (b) Administration's agreement to address REDA's concerns in the context of further Committee Stage amendments (CSAs) to clause 81 (c) A member's view that a written response should be provided to REDA's	Administration to take the follow-up action under paragraph 3(a) of the minutes Administration to take the follow-up action under

Time marker	Speaker	Subject(s)	Action Required
		submission as far as practicable, and the Administration's undertaking to do so	paragraph 3(a) of the minutes
000524-000734	Chairman Administration	Reference to clauses 75 and 76, where there was no CSA	
000735-001600	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to clause 77</p> <p>(b) Chairman's view that the phrase "application for the making of an order under this section" in clause 77(1)(a) could be simplified to "application for an order under this section". Similar phrases in the Bill should be so simplified as far as possible</p> <p>(c) A member's concern about whether the power of the Land Registrar (LR) in making a restriction as set out in clause 77(1)(a), (1)(b) and (1)(c) was comprehensive enough</p> <p>(d) Administration's confirmation that the subclauses highlighted in item (c) above had been introduced to address members' concern that the scope of the power of the LR in making a restriction under clause 77(1) was not</p>	Administration to take the follow-up action under paragraph 3(b)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>clear. In so doing, the Administration had adopted the criteria laid down in the UK Land Registration Act 2002 with suitable modifications</p> <p>(e) Discussion on the need of clause 77(5)(c), which in the Assistant Legal Adviser (ALA)'s view was unnecessary because the general law had already provided for the same, and that the clause might have the effect of broadening the category of "interested person"</p> <p>(f) Chairman's view that all the instances of "in relation to" in the Bill should be tightened up where appropriate</p>	<p>Administration to take the follow-up action under paragraph 3(b)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(b)(iii) of the minutes</p>
001601-001717	Chairman	Reference to clauses 78 and 79, where there was no CSA	
001718-001822	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to clause 80</p> <p>(b) Members' view that the expression "the Registrar shall comply with an application" in clause 80(4) was undesirable</p>	Administration to take the follow-up action under paragraph 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action Required
001823-002542	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to clause 81</p> <p>(b) Administration's advice that it would introduce further CSAs to clause 81 to address REDA's concerns</p> <p>(c) Members' reference to The Hong Kong Bar Association's concern about whether a "knowledge test" should be adopted as the statutory criterion in determining whether the Title Register was subject to the Court of First Instance's power of rectification</p> <p>(d) Members' view that since "knowledge of the fraud" was one of the statutory criteria provided in clause 81(2)(a) for determining whether the Title Register should be rectified, it should be clearly stipulated in the Bill that the time of knowledge was the time when the fraud was committed but not any point in time</p> <p>(e) ALA's view that the references to "knowledge of the voidness or voidability of the</p>	<p>Administration to take the follow-up action under paragraph 3(d) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(d)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(d)(iii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(d)(iv)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>instrument” in clause 81(2)(a)(ii) and “caused..... voidness or voidability” in clause 81(2)(b) were not appropriate because ordinary people would not be able to judge whether an instrument was void or voidable</p> <p>(f) Members’ view that the expression “substantially contributed” in clause 81(2)(b) gave rise to uncertainty</p> <p>(g) Invitation of the Administration to make reference to the relevant court case on the interpretation of the expression highlighted in item (f) above; members’ view that as this expression implied active involvement, it was not fair to include the element of “neglect” in clause 81(2)(b)</p>	<p>of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(d)(v) of the minutes</p>
002543-003200	<p>Chairman Ms Miriam LAU Ms Audrey EU Administration</p>	<p>(a) A member’s concern about the indefeasibility of title if the Title Register could be rectified in the case of mistake or omission</p> <p>(b) Administration’s explanation that while the court might order that a property be returned to its former owner, it was not</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>mandatory to do so; the court would only do so when no innocent party would be put at risk. Moreover, an innocent purchaser for value would be protected and the Title Register could not be rectified against him. Protection was also available under the indemnity scheme (clause 81(1) and (2))</p> <p>(c) Administration's emphasis of the need for a mechanism for the rectification of the Title Register in the event of mistake or omission, and that such a mechanism was also available in some other jurisdictions</p> <p>(d) Some members' agreement on the need highlighted in item (c) above, as mistakes in or omissions from the Title Register might not necessarily be related to title, such as typographical errors</p>	
003201-005057	Chairman Mr Albert HO Assistant Legal Adviser Administration	(a) ALA's concern that clause 81(3) might not be able to achieve its purpose because it had yet to be determined how the LR would conceive the final form of the Title Register, namely, what would be	

Time marker	Speaker	Subject(s)	Action Required
		<p>regarded as an entry in the Title Register, and whether there would be only one single Title Register, or one register for each property</p> <p>(b) Administration’s assurance that it would ensure that all references to “Title Register” in the Bill would mean the whole of the register, and Administration’s clarification on what types of entries clause 81(3) referred to</p> <p>(c) Members’ concern that the drafting of clause 81 could not reflect the objectives of the clause. In particular, it was not clear when the court should or should not rectify the Title Register</p> <p>(d) Administration’s explanation of the policy intention of clause 81</p> <p>(e) Chairman’s query of the adoption of the “knowledge test” under clause 81(3) in deciding whether to order rectification of the Title Register in favor of the former owner</p> <p>(f) ALA’s and Administration’s</p>	<p>Administration to take the follow-up action under paragraph 3(d)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>explanation that the approach of clause 81(3) was necessary to ensure the indefeasibility of title, so that the interests of the innocent purchaser for value would not be lightly overridden in favour of the former owner. Moreover, the former owner could also seek rectification of the Title Register through clause 81(1) and (2)</p> <p>(g) Members' view that clause 81(3) gave rise to the same concern as that about clause 81(2)(b)</p>	<p>Administration to take the follow-up action under paragraph 3(d)(v) of the minutes</p>
005058-005515	<p>Chairman Mr Albert HO Assistant Legal Adviser Administration</p>	<p>(a) Briefing by the Administration on the proposed new clause 81A</p> <p>(b) ALA's reference to REDA's view that the proposed new clause 81A seemed to be more restrictive than the Limitation Ordinance (Cap. 347) or the general law on limitation</p> <p>(c) Administration's agreement to confirm whether the case highlighted in item (b) above was its policy intention</p> <p>(d) Administration's confirmation that in the</p>	<p>Administration to take the follow-up action under paragraph 3(e) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>event of fraud or forgery, the limitation period would start to run upon knowledge of such fraud or forgery</p>	
005516-005830	<p>Chairman Administration</p>	<p>(a) Briefing by the Administration on the draft proposed CSAs to clause 82</p> <p>(b) Administration's advice that it would propose a CSA to delete clause 82(5) so as to address the concern of the Law Society of Hong Kong (Law Soc)</p> <p>(c) Invitation of the Administration to explain the reasons for and the effect of deleting clause 82(5), and how far Law Soc's concern had been addressed</p>	<p>Administration to take the follow-up action under paragraph 3(f) of the minutes</p>
005831-012639	<p>Chairman Mr Albert HO Mr Andrew WONG Assistant Legal Adviser Administration</p>	<p>(a) Briefing by the Administration on the draft proposed CSAs to clause 83</p> <p>(b) ALA's comment that the right of a person other than the owner to be indemnified would be limited under clause 83 because it did not provide for the situation where the person who suffered loss was not the owner</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) Administration’s advice that a new provision had already been added to address the concern highlighted in item (b) above</p> <p>(d) ALA’s comment that the proposed CSA to the first part of clause 83(1) might have the effect of allowing regulations to override the provision therein, and the Administration’s advice that it would withdraw the proposed CSA</p> <p>(e) Discussion on the proposed change to the date from which indemnity would be calculated, namely, that it would be the date on which the mistake or omission concerned was made (clause 83(1)(b))</p> <p>(f) Administration’s advice that at the request of the Hong Kong Association of Banks, it had proposed a CSA to clause 83(2) to provide that “where ... a registered charge ceases to be a registered charge ...; and ...the chargor in respect of the charge is entitled to be paid an indemnity ... in respect of loss suffered in relation to the registered land or registered long term lease</p>	<p>Administration to take the follow-up action under paragraph 3(g) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>which was the subject of the charge, then the Registrar shall cause ... the indemnity to be first applied towards discharging the charge”, and the Administration’s view that the proposed provisions reflected the existing position in law</p> <p>(g) ALA’s concern that the proposed provisions in clause 83(2) would have implications on the overall amount of indemnity</p> <p>(h) Administration’s view that the LR might have the obligation to cause the indemnity to be first applied towards discharging the charge, or else he might be sued by the bank</p> <p>(i) Some members’ and ALA’s view that it was essential for the Administration to balance the interests of banks and property owners, and to consider whether it was desirable to spell out the proposed arrangement in law to preclude any exercise of discretion under special circumstances</p> <p>(j) Some members’ view that banks might amend the</p>	<p>Administration to take the follow-up</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>provisions of a mortgage to put in place the proposed arrangement mentioned in item (f) above, and Administration's agreement to reconsider how the issue should be dealt with</p> <p>(k) ALA's comment that it was undesirable for the proposed new subclause (2A)(d) of clause 83 to provide that the LR should cause the indemnity to be applied towards co-owners "proportionately to reflect the interests they respectively had in the land..."</p> <p>(l) Members' view that the LR should not take on the responsibilities described in item (k) above, and that clause 83(2A)(d) should be taken out</p>	<p>action under paragraph 3(h) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(i) of the minutes</p>
012640-012732	Chairman Administration	<p>(a) Briefing by the Administration on the draft proposed CSA to clause 84</p> <p>(b) Administration's advice that it would withdraw the proposed CSA to clause 84(2)(b)</p>	Administration to take the follow-up action under paragraph 3(j) of the minutes
012733-012807	Chairman Administration	(a) Reference to clauses 85 to 87, where there was no CSA	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Administration's advice that the original clause 88 with modifications had been moved to Part 2 as the proposed new clause 6A</p> <p>(c) Reference to clauses 89 to 91, where there was no CSA</p>	
012808-012850	Chairman Administration	<p>(a) Briefing by the Administration on the draft proposed CSA to clause 92</p> <p>(b) Administration's confirmation that clause 92(2)(b) would be deleted as agreed at the meeting on 8 June 2004</p> <p>(c) Reference to clauses 93 and 94, where there was no CSA</p>	Administration to take the follow-up action under paragraph 3(k) of the minutes
012851-013043	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to clauses 95 and 96</p> <p>(b) Administration's advice that it would introduce further CSAs to clause 95 as necessary to address ALA's drafting comments (e.g. the second half of subclause (2) was not necessary) and to ensure that the clause would not conflict with the rectification provisions in</p>	Administration to take the follow-up action under paragraph 3(l) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>clause 81</p> <p>(c) Reference to clause 97, where there was no CSA</p>	
013044-013603	Chairman Ms Miriam LAU Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to clause 98</p> <p>(b) Administration's confirmation that it would redraft clause 98 to deal with fees and levy separately</p> <p>(c) Administration's confirmation that solicitors would not be required to collect the levy for the LR, and that details about the collection of levy would be provided in the Regulations</p>	Administration to take the follow-up action under paragraph 3(m) of the minutes
013604-013615	Chairman	Reference to clause 99, where there was no CSA	
013616-013940	Chairman Ms Miriam LAU Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to clause 100</p> <p>(b) Administration's advice that the new subclause (1)(oa) had been added to clause 100 to empower the Secretary for Housing, Planning and Lands (SHPL) to make regulations to set out the circumstances in which the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>LR should refuse to register any matter relating to any undivided share in registered land with an exclusive right to use and occupy a part of a building</p> <p>(c) Administration’s explanation that the new subclause (1)(oa) was added to clause 100 to address members’ concern that clause 20(5) (which provided that the “Registrar..... unless and until an application for the division of the land into undivided shares has been registered showing or specifying such rights to the use and occupation of the land”) related to administrative arrangements only and had nothing to do with title, and that it might be more appropriate to include the provision in the Regulations</p> <p>(d) Members’ view that the new subclause (1)(oa) of clause 100 should be linked to clause 20 to make the policy intention clearer</p>	<p>Administration to take the follow-up action under paragraph 3(n) of the minutes</p>
013941-014350	Chairman Assistant Legal Adviser Administration	(a) Administration’s advice that the new subclause (1)(ob) had been added to clause 100 to empower SHPL to make	

Time marker	Speaker	Subject(s)	Action Required
		<p>regulations on the documents relating to title to be retained under the new land title registration system (LTRS)</p> <p>(b) Members' view that the new subclause (1)(ob), as presently drafted, was too wide, and that it should be linked to clause 44(1)(a)(iv) and any other relevant clauses</p> <p>(c) Members' view that the new subclause (1)(ob) was not clear enough and should be improved</p>	<p>Administration to take the follow-up action under paragraph 3(o) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(o) of the minutes</p>
014351-015535	<p>Chairman Ms Miriam LAU Assistant Legal Adviser Administration</p>	<p>(a) Administration's advice that the new subclause (1)(oc) had been added to clause 100 to empower SHPL to make regulations on the classes of persons who fell within paragraph (d) of the definition of "interested person" in the new subclause (5) of clause 77</p> <p>(b) Members' view that it was undesirable to defer defining the classes of persons under paragraph (d) of the definition of "interested person" until making of the relevant regulations because such an</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>arrangement would make clause 77(5)(d) empty and unable to function before the regulations were in place. It should be ensured that even before the making of the relevant regulations, a person who qualified as “interested person” might go to the court to claim such status</p> <p>(c) ALA’s view that the deferral mentioned in item (b) above was occasioned by the need of the Administration for more time to consider the matter. Since the application of restriction would be limited to the owner of land, the deferral might not be a big problem.</p> <p>(d) Discussion on whether the new subclause (1)(oc) should be taken out from clause 100</p> <p>(e) Invitation of the Administration to consider a member’s suggestion that the new subclause (5)(d) of clause 77 be amended to read “who otherwise has a sufficient interest in the making of the application concerned under subsection (1)(a), including a person determined in accordance with</p>	<p>Administration to take the follow-up action under paragraph 3(p) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>regulations made under section 100(1)(oc)”</p> <p>(f) ALA’s view that it should be made clear how trustees registered as owners, such as the managers of “t’so” and “t’ong” land in the New Territories, would be dealt with under clause 77(5)</p>	
015536-015940	Chairman Assistant Legal Adviser Administration	<p>(a) Administration’s advice that it had proposed a CSA to subclause (1)(zi) of clause 100 to provide that SHPL might make regulations to empower the LR to manage and invest the moneys of the indemnity fund, and to borrow for the purposes of the fund</p> <p>(b) Members’ view that the proposed CSA had not addressed ALA’s concern about the adequacy of providing the power highlighted in item (a) above in the Regulations, given that the indemnity fund and the power of the LR in respect of the fund were not mentioned in the main body of the Bill</p> <p>(c) Members’ view that it might be more appropriate to provide in the main body of the Bill for the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>establishment of the indemnity fund and that the LR might manage and invest the moneys of the indemnity fund, and borrow for the purposes of the fund subject to the regulations to be made by SHPL under clause 100</p> <p>(d) Administration's agreement to amend clause 6 to address the concerns highlighted in items (b) and (c) above</p>	<p>Administration to take the follow-up action under paragraph 3(q) of the minutes</p>
Break from 015941 to 021410			
021411-021534	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to clauses 101 and 102</p> <p>(b) Administration's agreement to liaise with ALA to ensure that his drafting comments on the draft proposed CSAs to clauses 101 and 102 would be addressed</p>	<p>Administration to take the follow-up actions under paragraphs 3(r) and 3(s) of the minutes</p>
021535-021922	Chairman Administration	<p>(a) Briefing by the Administration on the additional provisions to be added to the proposed new Schedule 1A</p> <p>(b) Members' agreement to revisit the proposed new Schedule 1A when the additional provisions</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>mentioned in item (a) above were ready</p> <p>(c) Reference to the draft proposed CSA to Schedule 1</p>	
021923-022531	Chairman Administration	<p>(a) Chairman's invitation of ALA to look at the CSAs to the Chinese version of Schedule 2</p> <p>(b) General introduction by the Administration of the marked-up copy of Schedule 2 (LC Paper No. CB(1)2109/03-04(02))</p> <p>(c) Briefing by the Administration on the proposed amendments to section 1 of Schedule 2</p>	
022532-023005	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSA to section 20B of the High Court Ordinance (Cap. 4) set out in section 2 of Schedule 2</p> <p>(b) Member's view that it was undesirable that section 20B(6) should provide that "if an order...discharging the charging order is made, the LR shall, on the presentation to him of an application for the purpose accompanied by an office copy of the order, remove</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>from the Title Register kept under the Ordinance the entry referring to the order, and may issue certificates of such removal”. Having regard that the LTRS should essentially be a system for the registration of interests and not instruments, it was undesirable that in addition to the title certificate and the deed of mutual covenant, there should be additional instruments that would need to be dealt with under the LTRS</p> <p>(c) Invitation of the Administration to delete the last part of section 20B(6) starting with “and”</p>	<p>Administration to take the follow-up action under paragraph 3(t) of the minutes</p>
023006-024818	<p>Chairman Ms Miriam LAU Assistant Legal Adviser Administration</p>	<p>(a) Briefing by the Administration on the draft proposed CSA to Order 47 of the Rules of the High Court (Cap. 4A) set out in section 3 of Schedule 2</p> <p>(b) ALA’s comment that the word “transfer” in rule 7(4)(c) should be “assignment” instead because under the Land Registration Ordinance (Cap. 128), interests were only assigned, and the Administration’s explanation that the word</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>“transfer” was used in the original rule</p> <p>(c) ALA’s view that there was confusion as to whether the word “transfer” in rule 7(4)(b) and (c) referred to the legal effect or the document concerned</p> <p>(d) Administration’s explanation of the reason for introducing the draft proposed CSAs mentioned in item (a) above, namely, to enable sale of immovable property by the court when the owner was not available to sign the transfer</p> <p>(e) Chairman’s view that the issue of what constituted an “assignment” should be examined further. Hence her suggestion to take out the phrase “as an assignment of the same property” from rule 7(4)(b) and (c)</p> <p>(f) Administration’s advice that the phrase highlighted in item (e) above was in the original rule</p> <p>(g) Chairman’s view that any proposed CSA to rule 7(4)(b) should not add any new legal effect to it</p>	

Time marker	Speaker	Subject(s)	Action Required
		(h) Administration's agreement to delete from rule 7(4)(b) of Order 47 the expression "shall be taken and deemed to be a valid transfer of such right, title and interest and" to address member's and ALA's concerns above	Administration to take the follow-up action under paragraph 3(u) of the minutes
024819-025602	Chairman Assistant Legal Adviser Administration	(a) Briefing by the Administration on the draft proposed CSAs to sections 4 to 8, 10 and 15 of Schedule 2 (b) Reference to sections 9, 11, 12, 13, 14 and 16 of Schedule 2	
025603-030002	Chairman Assistant Legal Adviser Administration	(a) Briefing by the Administration on the draft proposed CSA to section 2 of the Government Leases Ordinance (Cap. 40) set out in section 17 of Schedule 2 (b) ALA's comment on the need of every Government department dealing with land to review their practices about land administration after the implementation of the LTRS (c) Administration's agreement to provide a paper on how Government leases would be affected under the LTRS and by the	Administration to take the follow-up action under paragraph 3(v) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		proposed CSA to address members' concerns about changes in this regard	
030003-030012	Chairman Administration	(a) Reference to sections 18 and 22 of Schedule 2 (b) Briefing by the Administration on the draft proposed CSAs to sections 19 to 21 of Schedule 2	
030013-030400	Chairman Assistant Legal Adviser Administration	(a) Briefing by the Administration on the draft proposed CSA to section 15 of the Government Leases Ordinance (Cap. 40) set out in section 23 of Schedule 2 (b) ALA's comment that the expression "equitable mortgage" in the new section 15(ab) might have a different meaning from a normal equitable mortgage (c) Administration's confirmation that the expression "equitable mortgage" in the new section 15(ab) had a slightly broader meaning as an equitable mortgage which was the subject of a non-consent caution	
030401-030600	Chairman Administration	(a) Briefing by the Administration on the draft proposed CSA to	

Time marker	Speaker	Subject(s)	Action Required
		<p>section 16(2) of the Government Leases Ordinance (Cap. 40) set out in section 24 of Schedule 2</p> <p>(b) Administration's advice that it might further revise section 16(1)(b), in particular the reference to "title record"</p> <p>(c) Briefing by the Administration on the draft proposed CSA to section 25 of Schedule 2</p> <p>(d) Reference to sections 26 to 30 of Schedule 2</p>	<p>Administration to take the follow-up action under paragraph 3(w) of the minutes</p>
030601-030640	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSA to section 15 of the New Territories Ordinance (Cap. 97) set out in section 31 of Schedule 2</p> <p>(b) ALA's advice that he would reserve his comment on re-entry</p>	
030641-030820	Chairman Administration	<p>(a) Reference to sections 32 to 36 of Schedule 2</p> <p>(b) Briefing by the Administration on the draft proposed CSA to section 37 of Schedule 2</p>	
030821-031449	Chairman Ms Miriam LAU	<p>(a) Briefing by the Administration on the draft</p>	

Time marker	Speaker	Subject(s)	Action Required
	Assistant Legal Adviser Administration	<p>proposed CSA to section 18 of the Estate Duty Ordinance (Cap. 111) set out in section 38 of Schedule 2</p> <p>(b) ALA's doubt about the need to introduce the proposed new subsection (2A)</p> <p>(c) Administration's explanation that the proposed new subsection (2A) had been introduced to deal with the registration of a notice of charge under the LTRS through the registration of a non-consent caution against the property concerned</p> <p>(d) Discussion on the need for the new subsection (2A), and whether the charge per se or the notice of charge should be registered</p>	
031450-031910	Chairman Administration	Briefing by the Administration on the draft proposed CSA to section 39 of Schedule 2	
031911-032027	Chairman Assistant Legal Adviser Administration	(a) Briefing by the Administration on the proposed new section 2A of the Stamp Duty Ordinance (Cap. 117) set out in section 40 of Schedule 2	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) ALA's advice that he had different views from the Administration on the assumption upon which the proposed new section 2A had been drafted</p> <p>(c) Chairman's view that if the assumption referred to in item (b) above was incorrect, the Administration should readily rectify the situation to enable section 2A to operate properly to ensure payment of stamp duty</p>	
032028-032140	Chairman Assistant Legal Adviser Administration	Briefing by the Administration on the draft proposed CSA to section 41 of Schedule 2	
032141-033734	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the proposed new section 67 of the Stamp Duty Ordinance (Cap. 117) set out in section 42 of Schedule 2</p> <p>(b) ALA's comment that the proposed new section 67 would only be necessary if the relation back provision was still in place</p> <p>(c) Administration's explanation that the proposed new section 67 was necessary to effect a first charge on land over which there was dispute over stamp duty payment</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>to serve as a special caution against conversion during the adjudication of the relevant instrument</p> <p>(d) A member's view that the first charge on land highlighted in item (c) above would no longer exist upon payment of the stamp duty in question, and the Administration's confirmation that section 67(2)(b) would see to that</p> <p>(e) Administration's agreement to liaise with ALA on how to address his drafting comments on sections 67(2) and 67(3) (on whether the charge in respect of registered land would be removed automatically upon expiry or upon application) and 67(4) (that the section was not necessary)</p>	<p>Administration to take the follow-up action under paragraph 3(x) of the minutes</p>
033735-033915	Chairman Administration	Reference to sections 43 to 48 of Schedule 2	
033916-034308	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSAs to section 33 of the Buildings Ordinance (Cap. 123) set out in section 49 of Schedule 2</p> <p>(b) ALA's query of whether</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the orders under Cap. 123 should be registrable by themselves or rather by non-consent cautions</p> <p>(c) Administration's explanation that since registration meant making an entry of an interest, so registration of the order did not mean that the relevant instruments would be registered</p> <p>(d) ALA's view that the normal mode of removal of registered matter was effected by the removal of the relevant entry</p> <p>(e) Administration's advice that such mode of removal referred to in item (d) above would be provided in the new section 33(11)</p>	
034309-034513	Chairman Administration	<p>(a) Reference to section 50 of Schedule 2</p> <p>(b) Briefing by the Administration on the draft proposed CSAs to sections 51 and 52 of Schedule 2</p>	
034514-034525	Chairman Assistant Legal Adviser Administration	(a) Briefing by the Administration on the draft proposed CSAs to section 2 of the Government Rent and Premium (Apportionment) Ordinance (Cap. 125) set	

Time marker	Speaker	Subject(s)	Action Required
		<p>out in section 53 of Schedule 2</p> <p>(b) ALA's confirmation that apart from his prior comment on "section", he did not have any other comment on section 53 of Schedule 2</p>	
034526-034650	Chairman Administration	<p>(a) Reference to sections 54 to 59, 61 to 63 of Schedule 2 and the draft proposed CSAs</p> <p>(b) Reference to section 60 of Schedule 2</p>	
034651-034718	Chairman Administration	Briefing by the Administration on the draft proposed CSA to section 5 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) set out in section 64 of Schedule 2	
034719-034938	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the draft proposed CSA to section 7(1), (1A), (2) and (3) of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) set out in section 65 of Schedule 2</p> <p>(b) ALA's comment that it was undesirable to continue registering vesting notices because, to make the</p>	Administration to take the follow-up action under paragraph 3(y) of

Time marker	Speaker	Subject(s)	Action Required
		<p>Financial Secretary Incorporated holder of the land concerned, it would be better to draft the provisions in such a way as to provide that upon the Government exercising such right of re-entry, the Financial Secretary Incorporated would be registered as the holder of the land. This would avoid giving people the impression that the LTRS would still be a system for the registration of instruments</p>	the minutes
034939-035148	Chairman	<p>(a) Reference to sections 66 to 68, 75 and 82 of Schedule 2</p> <p>(b) Reference to sections 69 to 74, 76 to 81 and the draft proposed CSAs</p>	
035149-035230	Chairman Administration	<p>(a) Administration's advice that a CSA would be proposed to delete the amendments to paragraphs 4 and 6 of Schedule 1 to the Solicitors (General) Costs Rules (Cap. 159G) set out in section 83 of Schedule 2</p> <p>(b) Reference to section 84 of Schedule 2</p>	
035231-035450	Chairman Ms Miriam LAU	(a) Briefing by the Administration on the	

Time marker	Speaker	Subject(s)	Action Required
	Assistant Legal Adviser Administration	<p>proposed amendments to section 153M of the Crimes Ordinance (Cap. 200) set out in section 85 of Schedule 2</p> <p>(b) Administration's explanation that registration of notices and orders relating to premises under section 153M would be dealt with under clause 4(a) of the Bill as a matter expressly provided for in other enactments</p> <p>(c) ALA's view that there was a need for the Administration to consider the means by which the orders mentioned in item (b) above should be registered, and the Administration's agreement to consider his views and specify such in the regulations</p> <p>(d) Reference to the draft proposed CSAs to section 86 of Schedule 2</p>	Administration to take the follow-up action under paragraph 3(z) of the minutes
035451-040748	Chairman Ms Miriam LAU Ms Audrey EU Assistant Legal Adviser Administration	(a) Briefing by the Administration on the proposed amendment to section 2 of the Conveyancing and Property Ordinance (CPO) (Cap. 219) set out in section 87 of Schedule 2	

Time marker	Speaker	Subject(s)	Action Required
		any incompatible provision would be rectified during the 2-year period between the enactment and commencement of the Bill	
040749-040833	Chairman Administration	Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
20 August 2004