

立法會
Legislative Council

LC Paper No. CB(1)2523/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the thirty-ninth meeting held on
Monday, 21 June 2004, at 10:45 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 Abraham SHEK Lai-him, JP
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Albert CHAN Wai-yip
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

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. Meeting with the Administration

(LC Paper No. CB(1)2206/03-04(01) — Submission dated 18 June 2004 from The Real Estate Developers Association of Hong Kong

LC Paper No. CB(3)210/02-03 — The Bill

LC Paper No. CB(1)2195/03-04(01) — Further revised marked-up copy of the Bill provided by the Administration)

Members noted the following papers tabled at the meeting -

- (a) Index of further revised marked-up copy of the Bill (LC Paper No. CB(1)2195/03-04(01));
- (b) Further revised marked-up copy of the Bill (excluding Schedule 2) (LC Paper No. CB(1)2195/03-04(02));
- (c) Further revised marked-up copy of Schedule 2 to the Bill (LC Paper No. CB(1)2195/03-04(03));
- (d) Follow-up to the thirty-seventh meeting on 17 June 2004 prepared by the Legislative Council Secretariat (LC Paper No. CB(1)2195/03-04(04)); and
- (e) Follow-up to the thirty-eighth meeting on 18 June 2004 prepared by the Legislative Council Secretariat (LC Paper No. CB(1)2195/03-04(05)).

(Post-meeting note: The above papers were issued to members vide LC Paper No. CB(1)2218/03-04 on 23 June 2004.)

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) On the submission dated 18 June 2004 from The Real Estate Developers Association of Hong Kong (REDA) (LC Paper No. CB(1)2206/03-04(01)), members were advised by the Administration that REDA had been assured that its concerns in the

above submission had been adequately addressed by the Administration's paper on "Responses to Bills Committee on Outstanding Matters" (LC Paper No. CB(1)2182/03-04(05)) and by the further Committee Stage amendments (CSAs) to clause 81A which had already been incorporated in the further revised marked-up copy of the Bill tabled at the meeting. The Administration was invited to obtain written confirmation from REDA on this point.

- (b) On the latest version of clause 29, ALA expressed concern about the ambit of the clause. In his view, by putting in subclause (1) a universal prohibition on disposition of registered land which would be effectual to create, extinguish, transfer, vary or affect the land unless and until the disposition was registered under the Bill, and qualifying such with subclause (2), the power of an owner to dispose of his property would be significantly affected. ALA pointed out that there were no similar provisions in the title registration system in the United Kingdom. In this regard, the Administration explained that it had been a feature of the Bill since its inception that any disposition of registered land would without exception only have legal effect when it was registered, and that protection of equitable interests would be provided for in subclause (2). Moreover, clause 29 had the support of the Law Society of Hong Kong (Law Soc). Members invited the Administration to do some research, and revisit ALA's points in consultation with Law Soc, Hong Kong Bar Association and other relevant parties during the 2-year period between the enactment and commencement of the Bill.
- (c) On the latest version of clause 33, the Administration advised that the phrase "under a provisional agreement for sale and purchase or an agreement for sale and purchase" had not been deleted from subclause (8) as previously proposed because of the concern raised earlier by ALA about the effect of bringing the relation back provision into the Bill again (item 11 of the list of follow-up actions to the thirty-seventh meeting of the Bills Committee on 17 June 2004). However, to address Law Soc's concern about the subclause as a result of the retention of the phrase, the Administration undertook to revisit subclause (8) after enactment of the Bill.
- (d) On the latest version of clause 35, the Administration undertook to revisit subclause (3) after enactment of the Bill to address Law Soc's concern that the protection given to a registered charge under the Bill might be too limited.
- (e) On the latest version of clause 51, the Administration agreed to take the following actions:
 - (i) A member was concerned that the definition of "deed of mutual covenant" (DMC) in subclause (3) was not wide enough to cover

developments where there were no undivided shares, such as Hong Lok Yuen and Fairview Park. To address the member's concern, ALA suggested that the word "means" therein could be amended to "includes". The Administration agreed to check the cases highlighted by the member, and consider ALA's suggestion; and

- (ii) ALA opined that subclause (4) should, instead of serving as an avoidance of doubt clause, directly prescribe the effect of the registration of a DMC. In response to his views, the Administration agreed to split subclause (4) into two subclauses to the effect that:
 - the proposed subclause (4)(a) would become subclause (4);
 - the proposed subclause (4)(b) would become subclause (5);
 - and
 - the phrase "For the avoidance of doubt" in the beginning of subclause (4) would be moved to the beginning of subclause (5).

- (f) On the latest version of clause 70, the Administration agreed to liaise with ALA on how to address his comment on subclause (1A), namely, that the phrase "who may give consent" was not required to achieve the legislative intent, and to confirm with Law Soc that the version of the subclause so amended was agreeable to Law Soc.

- (g) On the latest version of clause 7 of the new Schedule 1A, the Administration confirmed that the inadvertent repetition of "to be" in subclause (2) would be rectified.

- (h) On the latest version of clause 8 of the new Schedule 1A, the Administration agreed to move the phrase "Subject to the regulations," to after "the register shall".

- (i) On the latest version of section 76 of Schedule 2, the Administration agreed to delete the phrase "the title of" from the proposed new subsection (10)(a) of the Public Health and Municipal Services Ordinance (Cap. 132) pursuant to ALA's suggestion.

Examination of Chinese version of draft CSAs

4. The Chairman suggested and members agreed that ALA would, on behalf of the Bills Committee, examine the Chinese version of the draft CSAs and liaise with the Administration for any necessary amendments to achieve consistency with the English version. Any unresolved issues would be brought to the attention of the Bills Committee.

5. The Administration agreed to provide the updated Chinese version of the draft

CSAs on 23 June 2004.

Way forward

6. The Chairman advised that the Bills Committee had completed its work and would present a written report to the House Committee on 25 June 2004.

(Post-meeting note: The English version of the report of the Bills Committee (LC Paper No. CB(1)2219/03-04) was issued to members of the House Committee on 24 June 2004. The Chinese version of the report was tabled at the House Committee meeting on 25 June 2004.)

Expression of thanks

7. In concluding the meeting, the Chairman said that she would like to record her thanks to members for their support and their participation in the Bills Committee's work. Ms Miriam LAU expressed her thanks to the Chairman.

8. On behalf of the Bills Committee, the Chairman expressed her thanks to ALA and the Clerk for their hard work. She also thanked the Administration for its assistance in the scrutiny of the Bill and all parties which had submitted views to the Bills Committee, in particular Law Soc, for their valuable comments on the Bill.

9. On behalf of the Administration, the Land Registrar expressed thanks to the Chairman and members for their contribution, to ALA for his comments on the drafting of the Bill, and to the Clerk for her unfailing support.

II. Any other business

10. There being no other business, the meeting ended at 12:20 pm.

Appendix

**Proceedings of the thirty-ninth meeting of the
Bills Committee on Land Titles Bill
on Monday, 21 June 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000325	Chairman Administration	(a) Welcoming and introductory remarks (b) Reference to the letter dated 18 June 2004 from the Law Society of Hong Kong (Law Soc) confirming its support for the enactment of the Bill before the end of the current legislative term (LC Paper No. CB(1)2203/03-04) (c) Members' agreement that the Assistant Legal Adviser (ALA) would, on behalf of the Bills Committee, examine the Chinese version of the draft Committee Stage amendments (CSAs) and liaise with the Administration for any necessary amendments to achieve consistency with the English version	
000326-000635	Chairman Ms Miriam LAU Administration	(a) Reference to the submission dated 18 June 2004 from The Real Estate Developers Association of	

Time marker	Speaker	Subject(s)	Action Required
		<p>Hong Kong (REDA) (LC Paper No. CB(1)2206/03-04(01))</p> <p>(b) Administration's advice that REDA had been assured that its concerns in the submission highlighted in item (a) above had been adequately addressed by the Administration's paper on "Responses to Bills Committee on Outstanding Matters" (LC Paper No. CB(1)2182/03-04(05)) and by further CSAs to clause 81A already incorporated in the further revised marked-up copy of the Bill (excluding Schedule 2) (LC Paper No. CB(1)2195/03-04(02) tabled at the meeting and issued vide LC Paper No. CB(1)2218/03-04 on 23 June 2004)</p> <p>(c) Members' invitation of the Administration to obtain written confirmation from REDA on the point elaborated in item (b) above</p>	<p>Administration to take the follow-up action under paragraph 3(a) of the minutes</p>
000636-000737	Chairman Clerk Administration	(a) Reference to the Administration's papers tabled at the meeting, namely, the index of further revised marked-up copy of the Bill, the further revised marked-up copy of	

Time marker	Speaker	Subject(s)	Action Required
		<p>the Bill (excluding Schedule 2) and the further revised marked-up copy of Schedule 2 to the Bill (issued vide LC Paper No. CB(1)2218/03-04 on 23 June 2004)</p> <p>(b) Briefing by the Administration on the papers listed in item (a) above</p>	
000738-001133	Chairman Administration	Briefing by the Administration on the latest version of clauses 2(2)(b) and 5(2)(a)(v)	
001134-001310	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the latest version of clause 6(2)(g)</p> <p>(b) ALA's view that the addition of the phrase "and exercise of his power" to clause 6(2) was not necessary, and the Administration's explanation that the phrase was needed to ensure consistency because the words "functions" and "powers" were both used in the Bill</p>	
001311-001622	Chairman Administration	Briefing by the Administration on the latest version of clause 15(1) and (2), the proposed new clause 20B, clause 21(1) and clause 24(1)(d)	

Time marker	Speaker	Subject(s)	Action Required
001623-002535	Chairman Ms Miriam LAU Mr Abraham SHEK Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the latest version of clause 29</p> <p>(b) ALA's concern about the ambit of clause 29. In his view, by putting in subclause (1) a universal prohibition on disposition of registered land which would be effectual to create, extinguish, transfer, vary or affect the land unless and until the disposition was registered under the Bill, and qualifying such with subclause (2), the power of an owner to dispose of his property would be significantly affected. ALA pointed out that there were no similar provisions in the title registration system in the United Kingdom</p> <p>(c) Administration's explanation that it had been a feature of the Bill since its inception that any disposition of registered land would without exception only have legal effect when it was registered, and that protection of equitable interests would be provided for in clause 29(2). Moreover, clause 29 had</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the support of Law Soc</p> <p>(d) Discussion on the need to follow provisions in the title registration system in the United Kingdom</p> <p>(e) Members' invitation of the Administration to do some research, and revisit ALA's points elaborated in item (b) above in consultation with Law Soc, Hong Kong Bar Association and other relevant parties during the 2-year period between the enactment and commencement of the Bill</p>	<p>Administration to take the follow-up action under paragraph 3(b) of the minutes</p>
002536-002728	Chairman Administration	<p>(a) Briefing by the Administration on the latest version of clause 33</p> <p>(b) Administration's advice that the phrase "under a provisional agreement for sale and purchase or an agreement for sale and purchase" had not been deleted from clause 33(8) as previously proposed because of the concern raised earlier by ALA about the effect of bringing the relation back provision into the Bill again (item 11 of the list of follow-up actions to the thirty-seventh meeting of the Bills Committee on 17 June 2004). However, to</p>	<p>Administration to take the follow-up action under paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		address Law Soc's concern about the subclause as a result of the retention of the phrase, subclause (8) would be revisited after enactment of the Bill	
002729-002948	Chairman Administration	<p>(a) Briefing by the Administration on the latest version of clause 35</p> <p>(b) Administration's undertaking to revisit clause 35(3) after enactment of the Bill to address Law Soc's concern that the protection given to a registered charge under the Bill might be too limited</p>	Administration to take the follow-up action under paragraph 3(d) of the minutes
002949-003146	Chairman Assistant Legal Adviser Administration	Briefing by the Administration on the latest version of clauses 46(2)(c), 47(5) and 61A	
003147-004923	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the latest version of clause 70</p> <p>(b) ALA's comment that the phrase "who may give consent to" in clause 70(1A) was not required to achieve the legislative intent</p> <p>(c) Discussion on the need for the phrase "who may give consent to" in clause 70(1A)</p>	

Time marker	Speaker	Subject(s)	Action Required
		(d) Administration's agreement to liaise with ALA on how to address his comment in item (b) above, and to confirm with Law Soc that the version of the clause so amended was agreeable to it	Administration to take the follow-up action under paragraph 3(f) of the minutes
004924-005126	Chairman Mr Abraham SHEK Administration	(a) Briefing by the Administration on the latest version of clauses 81 and 81A (b) Administration's confirmation that the latest version of clause 81A(2) could address REDA's concern about the limitation period	
005127-010110	Chairman Ms Miriam LAU Mr Albert HO Assistant Legal Adviser Administration	(a) Briefing by the Administration on the latest version of clause 86 (b) ALA's concern that it appeared that under clause 86(1) and (2), different courses of action could be pursued at the same time, and the Administration's explanation that such arrangement existed in the United Kingdom Land Registration Act 1925 (c) Administration's explanation of the difference between	

Time marker	Speaker	Subject(s)	Action Required
		<p>clause 86(1) and 86(2), namely, that subclause (1) created a direct right in favour of the Government against the fraudster, while subclause (2) described the right of the person indemnified through whom the Government could recover from the fraudster the indemnity paid from the Indemnity Fund</p> <p>(d) A member's concern about the implications of clause 86(1) on Law Soc's Professional Indemnity Scheme</p> <p>(e) Administration's confirmation that clause 86(1) would not subject Law Soc's Professional Indemnity Scheme to additional liabilities</p>	
010111-010415	Chairman Administration	Briefing by the Administration on the latest version of clauses 92 and 100	
010416-011458	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the new Schedule 1A</p> <p>(b) In relation to the latest version of clause 7 of the new Schedule 1A, the Administration's confirmation that the inadvertent repetition of</p>	Administration to take the follow-up action under paragraph 3(g) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>“to be” in subclause (2) would be rectified</p> <p>(c) In relation to the latest version of clause 8 of the new Schedule 1A, the Administration’s agreement to move the phrase “Subject to the regulations,” to after “the register shall” in response to ALA’s comment</p> <p>(d) ALA’s view that clause 9 of the new Schedule 1A should be removed and incorporated in the regulations instead, and the Administration’s view that the clause, which dealt with priority, should be retained</p> <p>(e) A member’s concurrence with the Administration that clause 9 of the new Schedule 1A should be retained</p>	<p>Administration to take the follow-up action under paragraph 3(h) of the minutes</p>
011459-011636	Chairman Administration	Briefing by the Administration on the latest version of the new Schedule 3	
011637-012214	Chairman Mr Albert HO Assistant Legal Adviser Administration	<p>Discussion on the latest version of clause 51 -</p> <p>(a) A member’s concern that the definition of “deed of mutual covenant” (DMC) in subclause (3) was not wide enough to cover</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>developments where there were no undivided shares, such as Hong Lok Yuen and Fairview Park</p> <p>(b) ALA’s suggestion that the word “means” in subclause (3) could be amended to “includes” to address the concern highlighted in item (a) above</p> <p>(c) Administration’s agreement to check the cases highlighted in item (a) above, and consider ALA’s suggestion in item (b) above</p> <p>(d) ALA’s view that subclause (4) should, instead of serving as an avoidance of doubt clause, directly prescribe the effect of the registration of a DMC</p> <p>(e) Administration’s agreement to split subclause (4) into two subclauses to the effect that the proposed subclause (4)(a) would become subclause (4); the proposed subclause (4)(b) would become subclause (5); and the phrase “For the avoidance of doubt” in the beginning of subclause (4) would be moved to the</p>	<p>Administration to take the follow-up action under paragraph 3(e)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(e)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		beginning of subclause (5)	
012215-012812	Chairman Ms Miriam LAU Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on the further revised marked-up copy of Schedule 2 (LC Paper No. CB(1)2195/03-04(03) tabled at the meeting and issued vide LC Paper No. CB(1)2218/03-04 on 23 June 2004)</p> <p>(b) In relation to the latest version of section 53 of Schedule 2, ALA's query of whether the expression "in the lot" in the definition of "relevant interest" in section 2 of the Government Rent and Premium (Apportionment) Ordinance (Cap. 125) should be "in the land" instead</p> <p>(c) A member's and the Administration's explanation that the expression mentioned by ALA in item (b) above was widely used in other legislation</p> <p>(d) In relation to the latest version of section 76 of Schedule 2, the Administration's agreement to delete, pursuant to ALA's suggestion, the phrase "the</p>	Administration to take the follow-up action under paragraph 3(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		title of” from the proposed new subsection (10)(a) of the Public Health and Municipal Services Ordinance (Cap. 132)	
012813-013040	Chairman Ms Miriam LAU Administration	(a) Administration’s confirmation that the updated Chinese version of the CSAs to the Bill would be available on 23 June 2004 (b) Expression of thanks	