

立法會
Legislative Council

LC Paper No. CB(1)2199/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of ninth meeting held on
Monday, 30 June 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Miriam LAU Kin-ye, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)
Hon Andrew WONG Wang-fat, JP
Hon Abraham SHEK Lai-him, JP
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
- Mr Peter H H WONG
Senior Assistant Solicitor General
Department of Justice

Mr Paul TSANG
Senior Government Counsel
Department of Justice

Mrs Alice LEE
Registry Manager
Land Registry

Ms Monica LO
Senior Solicitor/Title Registration
Land Registry

Mr M K TAM
Senior Solicitor
Land Registry

Miss Miranda F H NG
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

I. Meeting with the Administration

- (LC Paper No. CB(1)2089/02-03(01) — “Follow-up to the eighth meeting on 19 June 2003” prepared by the Legislative Council Secretariat
- LC Paper No. LS141/02-03 — Paper prepared by Assistant Legal Adviser on “The Doctrine of Notice and the Land Titles Bill”
- LC Paper No. CB(1)2089/02-03(02) — Paper provided by the Administration on “The Constitutionality of the Indemnity Cap”
- LC Paper No. CB(1)2089/02-03(03) — Second submission from The Law Society of Hong Kong dated 20 June 2003 on the Administration’s paper on “Indemnity”
- LC Paper No. CB(1)2103/02-03(01) — Third submission from The Law Society of Hong Kong dated 27 June 2003 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. CB(1)1885/02-03(02) — Second 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(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(07) — First submission from Hong Kong Bar Association dated 22 May 2003 on the Administration's paper on "Indemnity"
- LC Paper No. CB(1)1885/02-03(03) — Second 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 dated 5 June 2003 on the Administration's paper on "Indemnity")

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

Follow-up actions to be taken by the Administration

- Admin 2. At the request of the Bills Committee, the Administration agreed to take the following actions -
- (a) To provide a paper on how the Administration would handle the following scenario, in particular, whether the Administration would seek an interpretation of Articles 6 and 105 of the Basic Law from the Standing Committee of the National People's Congress —
 - After enactment of the Bill, a person who lost ownership of his \$10 billion land as a result of fraud by a third party was entitled to indemnity up to \$30 million. The person then challenged the cap on the indemnity in court, and the cap was subsequently ruled to be unconstitutional by the court.
 - (b) To provide an initial response to the Law Society of Hong Kong (Law Soc)'s submission dated 27 June 2003, in particular paragraph 4 of the submission on "Subrogation rights", as soon as practicable so as to

enable Law Soc to comment on the Administration's initial response before the tenth Bills Committee meeting on 17 July 2003. The Administration's initial response should be followed by a full response in September 2003.

- (c) As stated in the letter dated 25 June 2003 from the Clerk to Bills Committee to the Secretary for Housing, Planning and Lands, to provide before the Bills Committee meeting on 31 July 2003 a progress report on the Administration's deliberation with Law Soc on issues relating to the certificate of good title.

Arrangements for next two meetings

3. The Bills Committee agreed on the following meeting arrangements should the Council meeting on 9 July 2003 be extended to 17 July 2003:

- (a) The next meeting of the Bills Committee scheduled for Thursday, 17 July 2003 be cancelled; and
- (b) The meeting of the Bills Committee scheduled for Thursday, 31 July 2003 from 2:30 pm to 4:30 pm be extended to end at 6:30 pm.

II. Any other business

4. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 1
Legislative Council Secretariat
10 July 2003

Appendix

**Proceedings of the ninth meeting of the
Bills Committee on Land Titles Bill
on Monday, 30 June 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000035	Chairman	Opening remarks	
000036-000216	Chairman Assistant Legal Adviser 6 Administration	Timing of discussion on the paper prepared by ALA6 on "The Doctrine of Notice and the Land Titles Bill" (LC Paper No. LS141/02-03)	
000217-000443	Chairman Ms Miriam LAU Administration	Need to clarify the policy on the application of the doctrine of notice in relation to the enforceability of unregistered equitable interests under the Bill and to address concerns about the implications thereof	
000444-001746	Administration	Briefing by the Administration on the paper on "The Constitutionality of the Indemnity Cap" (LC Paper No. CB(1)2089/02-03(02))	
001747-003015	Chairman Ms Audrey EU Administration Clerk	(a) Need to invite The Law Society of Hong Kong (Law Soc), Hong Kong Bar Association (the Bar) and The Real Estate Developers Association of Hong Kong to comment on the Administration's paper on	

Time marker	Speaker	Subject(s)	Action Required
		<p data-bbox="807 338 1203 495">“The Constitutionality of the Indemnity Cap” (LC Paper No. CB(1)2089/02-03(02))</p> <p data-bbox="743 544 1203 1149">(b) Whether the analysis of the constitutionality of the proposed cap on the indemnity should be based on the fact that prior to the reunification, the <i>nemo dat</i> rule was subject to statutory exceptions without any compensation from the Government for any incidental loss of an owner’s title (paragraphs 13 and 15 of Annex A to LC Paper No. CB(1)2089/02-03(02))</p> <p data-bbox="743 1198 1203 1765">(c) Whether the analysis of the constitutionality of the proposed cap on the indemnity should be based on the discrepancy in the meaning between the expression of “deprivation” in Article 105 of the Basic Law and its corresponding expression “徵用” in the Chinese text of the same article (paragraphs 7 to 10 of Annex A to LC Paper No. CB(1)2089/02-03(02))</p>	

Time marker	Speaker	Subject(s)	Action Required
003016-003939	Chairman Ms Miriam LAU Mr TAM Yiu-chung Administration	<p>(a) Policy that the Bill should protect commercial transactions (paragraph 16 of Annex A to LC Paper No. CB(1)2089/02-03(02))</p> <p>(b) Whether the Bill was consistent with the constitutional protection of property rights provided for in the Basic Law</p> <p>(c) Need to compare the situation before and after enactment of the Bill in deciding whether the Bill would deprive any property rights</p> <p>(d) Need to take into account the Bar's response to the Administration's paper on "The Constitutionality of the Indemnity Cap" (LC Paper No. CB(1)2089/02-03(02))</p>	
003940-004627	Chairman Mr Albert CHAN Administration	<p>(a) Opposition to the Bill for adversely affecting property rights</p> <p>(b) Concern about the narrow interpretation of the Basic Law adopted by the Administration</p>	

Time marker	Speaker	Subject(s)	Action Required
		(c) Benefits arising from the Bill and the constitutionality of the proposed cap on the indemnity (paragraph 10 of Annex A to LC Paper No. CB(1)2089/02-03(02) and paragraph 30 of LC Paper No. CB(1)1664/02-03(01))	
004628-005451	Chairman Ms Miriam LAU Ms Audrey EU Administration	<p>(a) Whether the Bill could be struck off after enactment if subsequently found to be unconstitutional</p> <p>(b) Whether the Administration would seek an interpretation of Articles 6 and 105 of the Basic Law from the Standing Committee of the National People's Congress if the cap on the indemnity was challenged and subsequently ruled to be unconstitutional by the court</p> <p>(c) Reference to the comparative jurisprudence of Australian Courts and that under Article 1 of the First Protocol of the European Convention on Human Rights to throw light on the construction of Article 105 of the Basic Law in relation to compensation right</p>	Administration to provide the required information under paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(d) Pros and cons of the Bill, namely, the benefits so arising versus its actual effect on property rights and hence on the right to full compensation	
005452-011506	Chairman Ms Audrey EU Administration	(a) Discussion on the submission from Law Soc dated 27 June 2003, in particular its concerns about “Increased liabilities on solicitors” and “Subrogation rights”, and how such concerns could be addressed (LC Paper No. CB(1)2103/02-03(01)) (b) Whether the Bill would introduce any change to the property owner’s duty of care in guarding his property against fraud	Administration to provide the required information under paragraph 2(b) of the minutes
011507-012641	Chairman Ms Miriam LAU Administration	Need to seriously address Law Soc’s concerns about “Increased liabilities on solicitors” and “Subrogation rights”, in particular the increase in workload for solicitors in cases where properties on the existing deeds registration system were brought under the title registration system	

Time marker	Speaker	Subject(s)	Action Required
012642-012830	Chairman Ms Miriam LAU Administration Clerk	(a) Dates and arrangements for the next two meetings (b) When representatives of the Bar and Law Soc should be invited to attend meetings of the Bills Committee again (c) When the Administration could report on the progress of its deliberation with Law Soc on issues relating to the certificate of good title	Administration to provide the required information under paragraph 2(c) of the minutes

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