

立法會
Legislative Council

LC Paper No. CB(1)2303/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of tenth meeting held on
Thursday, 17 July 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Hon Miriam LAU Kin-ye, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon IP Kwok-him, JP
- Members absent** : Hon Andrew WONG Wang-fat, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
- Public officers attending** : Mr Kim SALKELD
Land Registrar
- Miss CHEUNG Siu-hing
Deputy Secretary for Housing, Planning and Lands
(Planning and Lands)²
- Ms Monica LO
Senior Solicitor/Title Registration
Land Registry

Mr M K TAM
Senior Solicitor
Land Registry

Mrs Alice LEE
Registry Manager
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. Confirmation of minutes of meetings

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| (LC Paper No. CB(1)2184/02-03 | — | Minutes of eighth meeting held on 19 June 2003 |
| LC Paper No. CB(1)2199/02-03 | — | Minutes of ninth meeting held on 30 June 2003) |

The minutes of the two meetings held on 19 and 30 June 2003 respectively were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)2207/02-03(01) — Submission from the Hong Kong Association of Banks
- LC Paper No. CB(1)2207/02-03(02) — “Summary of follow-up actions by the Administration (Position as at 16 July 2003)” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2207/02-03(03) — Letter dated 9 July 2003 from the Administration with the list of papers to be presented to the Bills Committee for its meetings on 17 July or 31 July 2003
- LC Paper No. CB(1)2207/02-03(03)(a) — Letter dated 15 July 2003 from the Administration
- LC Paper No. CB(1)2207/02-03(04) — Paper provided by the Administration on “Comparison of Registrable Matters”
- LC Paper No. CB(1)1464/02-03(02) — Paper provided by the Administration on “Application of Land Titles Bill”
- LC Paper No. CB(1)2207/02-03(05) — Paper provided by the Administration on “Indemnity Scheme: Government’s Role”
- LC Paper No. CB(1)2207/02-03(06) — Paper provided by the Administration on “Indemnity Scheme: Levy Rates and Miscellaneous Matters”
- LC Paper No. CB(1)2207/02-03(07) — Paper provided by the Administration on “Response to Submissions on Indemnity”
- LC Paper No. CB(1)2207/02-03(08) — Administration’s initial response to the Law Society’s submission of 27 June 2003

- LC Paper No. CB(1)2207/02-03(09) — Submission from The Real Estate Developers Association of Hong Kong on the Administration's paper on "The Constitutionality of the Indemnity Cap"
- LC Paper No. CB(1)2207/02-03(10) — "Follow-up to the ninth meeting on 30 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(3)210/02-03 — The Bill)

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 consider issuing practice directions or guidelines on the operation of the land title registration system (LTRS) to relevant practitioners after implementation of the system.
 - (b) To provide a paper to address the following issues raised by the Assistant Legal Adviser on the Indemnity Fund (IF) and the Land Registry Trading Fund (LRTF):

According to paragraph 3 of the paper on "Indemnity Scheme: Government' Role" (LC Paper No. CB(1)2207/02-03(05)), the IF would be the mechanism through which all indemnity payments were to be made, whether arising from fraud or mistakes or omissions on the part of the Land Registry, but the LRTF would reimburse the IF for any payments attributable to mistakes or omissions of staff of the Land Registry.

 - (i) As both the LRTF and IF were operated by the Land Registry, the Administration was requested to review the need for the above reimbursement arrangement, and consider whether it would be more desirable to effect indemnity payment directly from the LRTF for any payments attributable to mistakes or omissions of staff of

- the Land Registry.
- (ii) In connection with the above reimbursement arrangement, should there be a need for the IF to borrow money for indemnity payment, it was unclear as to whether the LRTF would reimburse the IF the interest payment arising therefrom. The Administration was requested to review and explain the arrangement for reimbursement of such interest payment, and highlight the relevant provisions in the Bill.
- (c) To provide a paper to explain why it was not feasible for Hong Kong to implement the LTRS without a cap on the indemnity while it was feasible for other jurisdictions to do so, including the following information:
- (i) The practical considerations for not operating in Hong Kong an indemnity scheme like those of other jurisdictions;
 - (ii) How other jurisdictions managed to implement their title registration systems without a cap on the indemnity; and
 - (iii) Facts and figures of the indemnity schemes of other jurisdictions, such as the frequency and scale of the transactions involved, how much each of those schemes had paid out annually in indemnity, etc.
- (d) To clarify whether levy would be charged according to the valuation of the property registered in the case of a registration of voluntary transfer under the LTRS, and how levy would be charged on registration of matters without express value.
- (e) To provide a breakdown of the estimated administrative cost of the IF.
- (f) To provide a comparison of the level of levy under the LTRS and under the title registration systems in other jurisdictions.
- (g) To clarify how fraud was dealt with under the indemnity scheme of the English title registration system, in particular the application of the *nemo dat* rule in this regard.
- (h) Apart from loss of land title, to clarify whether loss of other interests would be compensated by the IF and highlight the relevant provisions in the Bill.

Date and arrangements for next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 31 July 2003, at 2:30 pm. In view of the large number of issues to be dealt with at the next meeting, the Chairman drew the attention of members and the Administration to the need to extend the meeting to a 4-hour meeting, i.e. from 2:30 pm to 6:30 pm.

(Post-meeting note: A circular on the extension of meeting time was issued to members vide LC Paper No. CB(1)2241/02-03 on 18 July 2003. A letter to that effect was also issued to the Administration on 18 July 2003.)

5. The Chairman pointed out that the Bills Committee would go through parts 1 to 7 of the Bill clause by clause at the next meeting and identify any further policy issues that needed to be dealt with.

II. Any other business

6. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
29 July 2003

Appendix

**Proceedings of the tenth meeting of the
Bills Committee on Land Titles Bill
on Thursday, 17 July 2003, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000016	Chairman	Confirmation of minutes of the two meetings held on 19 and 30 June 2003 respectively	
000017-000200	Chairman	Opening remarks	
000201-000243	Chairman	Submission from the Hong Kong Association of Banks (LC Paper No. CB(1)2207/02-03(01))	
000244-000408	Administration	Briefing by the Administration on the paper on “Comparison of Registrable Matters” (LC Paper No. CB(1)2207/02-03(04))	
000409-001028	Chairman Administration	(a) Reasons why a power of attorney was considered a dealing in a piece of registered land and hence registrable under the land title registration system (LTRS) (b) Circumstances under which a power of attorney should be registered (Items 51 and 52 of the Annex to LC Paper No. CB(1)2207/02-03(04) and clause 4)	

Time marker	Speaker	Subject(s)	Action Required
001029-001947	Chairman Ms Miriam LAU Administration	<p>(a) Whether and why there would be a new requirement under the LTRS that all registrable powers of attorney must be registered (clause 4)</p> <p>(b) Which types of powers of attorney would be required to be registered under the LTRS and the consequences of failure to do so</p>	
001948-002341	Chairman Ms Miriam LAU Administration	<p>(a) The need to produce for registration the power of attorney under which an officer of the mortgagee bank was authorized to execute the discharge of mortgage</p> <p>(b) Financial implications of the requirement to register powers of attorney</p> <p>(c) The need to issue practice directions or guidelines on the operation of the LTRS to relevant practitioners after implementation of the system</p>	Administration to provide the required information under paragraph 3(a) of the minutes
002342-003112	Chairman Mr Albert HO Assistant Legal Adviser 6 Administration	<p>(a) Whether there was a need to register the resolutions passed at the annual general meeting of a company</p>	

Time marker	Speaker	Subject(s)	Action Required
		(b) Clarification that instruments like power of attorney would not be required to be registered but would only need to be produced as supporting documents for title registration (clause 4)	
003113-004243	Chairman Assistant Legal Adviser 6 Administration	The supporting documents required and the vetting role of the Land Registry in the registration of interests such as cautions, charges, easements, etc. where issue of a certificate of good title was not applicable (clauses 2, 4, 5, 10, 34(3), 34(4), 49 and 62)	
004244-004715	Chairman Ms Miriam LAU Mr Albert HO Administration	(a) How petitions for maintenance with application for property transfers would be dealt with under the Bill (clauses 70(3) and 70(12), and paragraph 4(c) of LC Paper No. CB(1)2207/02-03(04)) (b) Likely tendency for property owners to register all registrable instruments after implementation of the LTRS	
004716-004730	Chairman Dr TANG Siu-tong Administration	Circumstances under which the Land Registrar might not permit a matter to be registered under clause 4(d)	

Time marker	Speaker	Subject(s)	Action Required
004731-004913	Administration	Undertaking to issue practice guidelines and publicity materials on the operation of the LTRS to relevant practitioners and the public	
004914-005002	Chairman	Inviting members' views on the paper on "Indemnity Scheme: Government's Role" (LC Paper No. CB(1)2207/02-03(05))	
005003-005735	Chairman Assistant Legal Adviser 6 Administration	<p>(a) Justifications for the Indemnity Fund (IF) to be the mechanism through which all indemnity payments were to be made, with the Land Registry Trading Fund (LRTF) reimbursing the IF for any payments attributable to mistakes or omissions of staff of the Land Registry</p> <p>(b) Reviewing the need for the reimbursement arrangement at (a) above and to consider effecting indemnity payment directly from the LRTF for payments attributable to mistakes or omissions of staff of the Land Registry</p>	Administration to provide the required information under paragraph 3(b)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) Concern that under the reimbursement arrangement at (a) above, should there be a need for the IF to borrow money for indemnity payment, it would be unclear as to whether the LRTF would reimburse the IF the interest payment arising therefrom</p> <p>(d) Assurances that the LRTF would be responsible for the interest payment at (c) above and that a suitable margin of safety would be built in to obviate the need for the IF to borrow money for indemnity payment</p>	Administration to provide the required information under paragraph 3(b)(ii) of the minutes
005736-010408	Chairman Administration	Briefing by the Administration on the paper on “Indemnity Scheme: Levy Rates and Miscellaneous Matters” (LC Paper No. CB(1)2207/02-03(06))	
010409-011359	Chairman Administration	<p>(a) Whether the public would accept the levy rates under possible schemes set out in Annex A to LC Paper No. CB(1)2207/02-03(06)</p> <p>(b) The need for the proposed cap on the indemnity to keep the levy rates at a reasonable level for most owners</p>	

Time marker	Speaker	Subject(s)	Action Required
		(c) The mechanism for adjusting levy rates (paragraphs 3 and 12 of LC Paper No. CB(1)2207/02-03(06))	
011400-012534	Chairman Mr Albert HO Administration	Reasons why it was not feasible for Hong Kong to implement the LTRS without a cap on the indemnity while it was feasible for other jurisdictions to do so	Administration to provide the required information under paragraph 3(c) of the minutes
012535-012630	Chairman Assistant Legal Adviser 6 Administration	Whether levy would be charged according to the valuation of the property registered in the case of a registration of voluntary transfer under the LTRS, and how levy would be charged on registration of matters without express value	Administration to provide the required information under paragraph 3(d) of the minutes
012631-013343	Chairman Mr TAM Yiu-chung Administration	(a) Concern that with insufficient levy income to support a self-financed IF, levy rates might have to be increased (b) Estimation of the number of properties which could not be registered under the LTRS (paragraph 7 of LC Paper No. CB(1)2207/02-03(06))	

Time marker	Speaker	Subject(s)	Action Required
013344-014328	Chairman Ms Miriam LAU Administration	<p>(a) Comparison of the LTRS with the title registration systems in other jurisdictions in terms of scope</p> <p>(b) Estimated administrative cost of the IF and how the cost would be funded (paragraph 2(a)(d) of LC Paper No. CB(1)2207/02-03(06))</p> <p>(c) Acceptability and equity of the two examined approaches to the levy, namely, the tiered fixed levy approach and the fixed percentage approach (Annex A to LC Paper No. CB(1)2207/02-03(06))</p> <p>(d) Comparison of the level of levy under the LTRS and under the title registration systems in other jurisdictions</p>	<p>Administration to provide the required information under paragraph 3(e) of the minutes</p> <p>Administration to provide the required information under paragraph 3(f) of the minutes</p>
014329-014448	Chairman Administration	How fraud was dealt with under the indemnity scheme of the English title registration system	Administration to provide the required information under paragraph 3(g) of the minutes
014449-014800	Chairman Assistant Legal Adviser 6 Administration	Whether loss of other interests would be compensated by the IF	Administration to provide the required information under paragraph 3(h) of the minutes

Time marker	Speaker	Subject(s)	Action Required
014801-015310	Chairman Mr Albert HO Dr TANG Siu-tong Assistant Legal Adviser 6 Administration	Definition of “entry” and whether there would be limitations on the carving out of a lot into sections for title registration and hence for indemnity claim purposes (paragraph 20 of LC Paper No. CB(1)2207/02-03(06))	
015311-015721	Chairman	(a) Reference to the paper on “Response to Submissions on Indemnity” (LC Paper No. CB(1)2207/02-03(07)) (b) Drawing Administration’s attention to paragraph 4.1 of the submission from The Real Estate Developers Association of Hong Kong on the Administration’s paper on “The Constitutionality of the Indemnity Cap” (LC Paper No. CB(1)2207/02-03(09)) (c) Reference to Administration’s initial response to the Law Society’s submission of 27 June 2003 (LC Paper No. CB(1)2207/02-03(08))	
015722-015810	Chairman	Date and arrangements for next meeting	