

立法會
Legislative Council

LC Paper No. CB(1)2557/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of twelfth meeting held on
Friday, 19 September 2003, 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 TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Dr Hon TANG Siu-tong, 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
- 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

Ms Rosalind MA
Senior Assistant Secretary (1)8

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)2416/02-03 — Minutes of eleventh meeting
held on 31 July 2003)

The minutes of the meeting held on 31 July 2003 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)2305/02-03(01) — “Follow-up to the tenth meeting on 17 July 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2464/02-03(01) — “Follow-up to the eleventh meeting on 31 July 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2464/02-03(02) — Submission dated 26 August 2003 from Heung Yee Kuk New Territories
- LC Paper No. CB(1)2464/02-03(03) — Paper provided by the Administration on “Indemnity Fund Operation — Supplementary Information”
- LC Paper No. CB(1)2305/02-03(06) — Submission dated 25 July 2003 from the Hong Kong Bar Association on the Administration’s paper on “The Constitutionality of the Indemnity Cap”
- LC Paper No. CB(1)2464/02-03(04) — Paper provided by the Administration on “Roles of Registration Authority and Solicitors — Comparison with English System”
- LC Paper No. CB(1)2464/02-03(05) — Paper provided by the Administration on “Response to Miscellaneous Issues”
- LC Paper No. CB(1)2464/02-03(06) — Paper provided by the Administration on “Cautions, Inhibitions and Restrictions”
- 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) Annex A to the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03)) set out the volume and value of transactions in Hong Kong over the past five years, including the value of assignments exceeding \$30 million. To facilitate the Bills Committee’s full understanding of the situation, the Administration was requested to revise Annex A to the paper by adding information on the number of assignments exceeding \$30 million.
 - (b) On the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03)), the Administration was requested to confirm whether there was any provision in the Bill which would give effect to the statement in paragraph 15 of the paper that “the case of the Indemnity Fund (IF) having to borrow money to cover a payment for which the Land Registry is liable will not arise” and also the Administration’s proposed arrangement that the IF would be indemnified by payment out of the Land Registry Trading Fund (LRTF) in case of mistake or omission of Land Registry staff; if there was, to highlight the relevant clause(s); if there was not, to consider adding such a provision to make the situation clear and to define the ambit of the provisions to be set out in the Regulations on the operation of the IF.
 - (c) According to paragraph 21 of the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03)), in general, fraud committed by anyone, including Land Registry staff, would be covered by clause 82(1)(a), and the LRTF would not be responsible for reimbursing the IF for indemnity payments so made. The Administration was requested to take the following actions:
 - (i) As a matter of law, to explain the position under the common law whether an employer was responsible for the fraud committed by his employee in the official capacity; as a matter of policy, to explain the general policy of the Government in this regard.
 - (ii) As regards this Bill, to explain why the Administration was taking the position mentioned in paragraph 21 of the paper and highlight the relevant provisions in the Bill.
 - (iii) In response to members’ view that the Land Registry should be responsible for all acts (including fraud) of its staff performed in their official capacity, the Administration was requested to advise whether the Government would be vicariously liable for the fraud committed by its employee if the act was within the course of

employment and whether the Bill changed the common law on this aspect. The Administration was also requested to advise whether the differentiation between a staff member of the Land Registry committing fraud in his official capacity and outside his duties was provided for in the Bill and whether it was practicable to make such a differentiation. Moreover, the Administration was requested to consider whether the Land Registry would be responsible for the fraud committed under the following scenarios:

- Fraud committed by a staff member of the Land Registry through the negligence of his supervisor; and
 - Fraud committed by someone who conspired with the Land Registry staff.
- (iv) To consider whether the existing provisions were sufficient to empower the Government to reimburse the IF from the LRTF for indemnity payments as proposed by the Administration.
- (d) In relation to the paper on “Roles of Registration Authority and Solicitors — Comparison with the English System” (LC Paper No. CB(1)2464/02-03(04)), the Administration was requested to consider adopting the English system under which there was a shared responsibility between the Chief Land Registrar and solicitors on the examination of title prior to first registration of a property. The Administration was also requested to seek the views of the Law Society of Hong Kong (Law Soc) in this regard and draw up a workable system for the proposed land title registration system (LTRS) in Hong Kong.
- (e) On the proposed format of the “Ownership Register” and “Long Term Lease Register” attached in Annexes 1 and 2 to the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05)), the Administration was requested to take the following actions:
- (i) Whilst appreciating that the proposal for a separate register for long-term lease was made by the Administration to address the concerns of the Law Soc about cases like the Robinson Place where the interest in the long-term lease and all rights attaching to the land thereto were vested in the person who leased the land from the registered owner of the land for a term over 21 years but shorter than the term under the Government lease, members were concerned about the need for such a separate register and the possible confusion arising from keeping two registers at the same time. The Administration was requested to take the following steps -
- To merge the two registers into one and, using cases like the Robinson Place as examples, fill in details in the merged register to enable members to examine whether the merged register was viable and whether clause 22 was needed. The

Administration was also requested to provide in the register a cross-reference to the relevant information, such as registration of consent cautions and non-consent cautions, if any; and

- If the Bills Committee considered the merged register viable and that clause 22 was not needed, to consult the Law Soc on adopting the merged register and the deletion of clause 22.
- (ii) The Administration was requested to reconsider the design of the title register in the light of the Assistant Legal Adviser's comments, as follows:
- The design of the title register was closely related to the operation of the LTRS which focused on registration of interests. However, the format of the two registers in Annexes 1 and 2 to the paper focused on the registration of documents. It was not clear how registration of covenants and easements was to be shown in the register;
 - The exclusive right to use the unit concerned and the date of presentation for registration should be provided in the title register;
 - The need for providing in the title register the date of registration and the date of the supporting instrument merited further consideration; and
 - Reference might be made to the English system under which separate registers for title, property and land charge were maintained to obviate the need to include too much property details in the title register and to promote clarity of the language of the legislation.
- (f) According to the paper on "Responses to Miscellaneous Issues" (LC Paper No. CB(1)2464/02-03(05)), the one-month relation back rule under the existing system would be abolished after the implementation of the LTRS. The Administration was requested to take the following actions:
- (i) To provide the justifications for the proposed abolition of the one-month relation back rule, including the problems encountered under the existing system.
 - (ii) To address members' concern that the proposed abolition of the one-month relation back rule might result in operational difficulties and possible confusion because the persons concerned might rush through all the procedures and documents involved in a property transaction in order to effect early registration, the Administration was requested to examine how the proposed arrangement could be improved. For example, a shorter relation back period might be provided. In this connection, the Administration was requested to take into account the normal time required for clearing bank cheques in a property transaction, and preparing a consent caution

and the Sales and Purchase Agreement. The Administration was also requested to make reference to the practices adopted in other jurisdictions in this regard.

- (iii) To provide a sample of the application form(s) for registration of consent cautions and non-consent cautions. The Administration was also requested to include in the application form(s) a cross-reference to the title register.

- (g) According to paragraph 11 of the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05)), the supporting instruments for registration of the matters would be returned to the lodging parties for their disposal. The Administration was requested to consider requiring the parties concerned to keep the documents for a certain period of time, say a period of six years, to enable examination of the original documents when there was a need to do so, e.g. when there was a need to determine whether the documents and/or signatures were authentic or forged.

- (h) According to paragraph 9 of the paper on “Responses to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05)), a charging order had to be re-registered every five years under section 17 of the Land Registration Ordinance (LRO) (Cap. 128), and clause 34(1) incorporated this requirement into the Bill. Given the Administration’s policy intent that the doctrine of notice would be abolished under the LTRS, the Assistant Legal Adviser was concerned that clause 34(1) was unable to ensure that the priority of a charging order would be retained upon its re-registration even though its wording was a replica of section 17 of the LRO. The Administration was requested to examine how this concern could be addressed.

(Post-meeting note: The information provided by the Administration in response to members’ request in paragraph 3(a) above was circulated to members vide LC Paper No. CB(1)2501/02-03(01) on 29 September 2003.)

Meeting arrangements

4. Owing to time constraints, the Bills Committee was unable to complete discussion of all items on the agenda. The Chairman proposed and members agreed that an additional meeting be scheduled for 29 September 2003 at 10:45 am to examine the remaining items.

(Post-meeting note: The notice of the additional meeting and the revised meeting schedule were issued to members vide LC Paper No. CB(1)2486/02-03 on 22 September 2003 and issued to the Administration on the same day.)

III. Any other business

5. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
8 October 2003

Appendix

**Proceedings of the twelfth meeting of the
Bills Committee on Land Titles Bill
on Friday, 19 September 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000019	Chairman	Confirmation of minutes of the meeting held on 31 July 2003	
000020-000244	Chairman	Reference to the submission dated 26 August 2003 from Heung Yee Kuk New Territories (LC Paper No. CB(1)2464/02-03(02))	
000245-000541	Chairman Administration	Briefing by the Administration on the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03))	
000542-000617	Chairman Administration	Clarification on Annex A to the paper on “Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03))	Administration to take the follow-up action under paragraph 3(a) of the minutes
000618-000917	Chairman Assistant Legal Adviser Administration	Concern about the absence of provisions in the Bill which gave effect to the statement that “the case of the Indemnity Fund (IF) having to borrow money to cover a payment for which the Land Registry is liable will not arise” (paragraph 15 of LC Paper No. CB(1)2464/02-03(03))	Administration to provide the required information under paragraph 3(b) of the minutes

Time marker	Speaker	Subject(s)	Action Required
000918-002636	Chairman Ms Miriam LAU Mr Abraham SHEK Ms Audrey EU Mr Albert HO Assistant Legal Adviser Administration	<p>(a) Whether it was reasonable that the Land Registry Trading Fund (LRTF) would not be responsible for reimbursing the IF for indemnity payments arising from fraud committed by Land Registry staff</p> <p>(b) Whether the Land Registry should be responsible for all acts (including fraud) of its staff performed in their official capacity</p> <p>(c) Difficulty and practicability of differentiating whether or not fraud had been committed by staff of the Land Registry in their official capacity</p> <p>(d) Position under the common law whether an employer was responsible for the fraud committed by his employee in the official capacity, and the general policy of the Government in this regard</p> <p>(e) Need to ensure the existing provisions were sufficient to empower the Government to reimburse the IF from the LRTF for indemnity payments as proposed by the Administration</p>	<p>Administration to provide the required information under paragraph 3(c)(ii) of the minutes</p> <p>Administration to provide the required information under paragraph 3(c)(iii) of the minutes</p> <p>Administration to provide the required information under paragraph 3(c)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(c)(iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		(Paragraph 21 of LC Paper No. CB(1)2464/02-03(03) and clause 82)	
002637-002851	Chairman Administration	Briefing by the Administration on the paper on “Roles of Registration Authority and Solicitors — Comparison with English System” (LC Paper No. CB(1)2464/02-03(04))	

Time marker	Speaker	Subject(s)	Action Required
002852-004857	Chairman Ms Miriam LAU Administration	<p>(a) Whether the Administration would consider adopting the English system under which there was a shared responsibility between the Chief Land Registrar and solicitors on the examination of title prior to first registration of a property</p> <p>(b) Concerns that the requirement for solicitors to issue a certificate of good title under the proposed land title registration system (LTRS) in Hong Kong would impose an on-going and onerous responsibility on them for the first registration of title</p> <p>(c) Need to seek the views of the Law Society of Hong Kong (Law Soc) in respect of (a) above and draw up a workable system for the LTRS</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) of the minutes</p>
		(Paragraphs 3, 4, 7 and 17 of LC Paper No. CB(1)2464/02-03(04))	

Time marker	Speaker	Subject(s)	Action Required
004858-005507	Chairman Administration	Briefing by the Administration on paragraphs 1 to 4, Annexes 1 and 2 of the paper on “Response to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05))	
005508-011058	Chairman Ms Audrey EU Ms Miriam LAU Mr Albert HO Assistant Legal Adviser Administration	<p>(a) Pros and cons of the proposal for a separate register for long-term lease to address the concerns of the Law Soc about cases like the Robinson Place, where the interest in the long-term lease and all rights attaching to the land thereto were vested in the person who leased the land from the registered owner of the land for a term of over 21 years but shorter than the term under the Government lease (paragraph 4 of LC Paper No. CB(1)2464/02-03(05) and clauses 21 and 22)</p> <p>(b) Need to provide in the register a cross-reference to the relevant information, such as registration of consent cautions and non-consent cautions, if any</p>	Administration to take the follow-up action under paragraph 3(e)(i) of the minutes
		(c) Whether and how the ownership register and the long-term lease register should be merged into one	

Time marker	Speaker	Subject(s)	Action Required
011059-011748	Chairman Administration	Briefing by the Administration on paragraphs 5 to 8 of the paper on “Response to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05))	
011749-011812	Chairman Assistant Legal Adviser Administration	<p>(a) Rationale for a charging order or lis pendens to have priority from the date of its registration under the Bill instead of the following day</p> <p>(b) Concern about possible confusion arising from the proposed arrangement in (a) above in the event that several documents were presented for registration at the same time</p> <p>(c) Whether the existing practice should be maintained, i.e. a charging order or lis pendens would have priority from the day following the date of its registration, to ensure protection for the purchaser from a charging order issued against the previous owner</p>	

Time marker	Speaker	Subject(s)	Action Required
		(d) Assurance given by the Administration that the Land Registry's new computer system could allocate a different time sequence to different documents presented for registration at the same time	
012450-013656	Chairman Ms Miriam LAU Mr Albert HO Assistant Legal Adviser Administration	<p>(a) Concern that the proposed abolition of the one-month relation back rule under the existing system might result in operational difficulties and possible confusion because the persons concerned might rush through all the procedures and documents involved in a property transaction in order to effect early registration</p> <p>(b) Need to strike a right balance between the concern mentioned in (a) above and the need for the proposed abolition to establish certainty of title</p> <p>(c) How the concern and difficulties mentioned in (a) above were addressed in other jurisdictions adopting a similar approach</p>	<p>Administration to take the follow-up action under paragraph 3(f)(ii) of the minutes</p> <p>Administration to provide the required information under paragraph 3(f)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(f)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
013657-014105	Chairman Assistant Legal Adviser	Comments on the proposed design of the title register (Annexes 1 and 2 to LC Paper No. CB(1)2464/02-03(05))	Administration to take the follow-up action under paragraph 3(e)(ii) of the minutes
014106-014220	Chairman Ms Audrey EU Administration	Need to provide a sample of the application form(s) for registration of consent cautions and non-consent cautions and include in the application form(s) a cross-reference to the title register	Administration to provide the required information under paragraph 3(f)(iii) of the minutes
014221-014430	Chairman Administration	Briefing by the Administration on paragraphs 9 to 11 of the paper on “Response to Miscellaneous Issues” (LC Paper No. CB(1)2464/02-03(05))	
014431-015051	Chairman Ms Miriam LAU Mr Albert HO Administration	Need to require the parties concerned to keep the supporting instruments for registration for a certain period of time to enable examination of the original documents when there was a need to do so (paragraph 11 of LC Paper No. CB(1)2464/02-03(05))	Administration to take the follow-up action under paragraph 3(g) of the minutes
015052-015430	Chairman Assistant Legal Adviser Administration	Concern that given the Administration’s policy intent that the doctrine of notice would be abolished under the LTRS, clause 34(1) was unable to ensure that the priority of a charging order would be retained upon its re-registration	Administration to provide the required information under paragraph 3(h) of the minutes

Time marker	Speaker	Subject(s)	Action Required
015431-015815	Chairman Ms Miriam LAU Clerk	Date and arrangements for next meeting	

Council Business Division 1
Legislative Council Secretariat
8 October 2003