

立法會
Legislative Council

LC Paper No. CB(1)39/03-04
(These minutes have been
seen by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of thirteenth meeting held on
Monday, 29 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 Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, 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 Andrew WONG Wang-fat, JP
Dr Hon TANG Siu-tong, 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

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 Rosalind MA
Senior Assistant Secretary (1)8

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- I. Meeting with the Administration**
(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)

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 consider issuing guidelines in due course to set out clearly the circumstances under which the Land Registrar would exercise his power to compel registration as provided for in clause 32.
- (b) To consider revising both the English and Chinese texts of the drafting of the first part of clause 70(1) to improve the clarity of the provision.
- (c) To examine whether the stamping requirement under clause 70(2) was consistent with that under clause 59.
- (d) Regarding the provision on effect of cautions in clause 71, the Bills Committee noted the advice of the Assistant Legal Adviser that there was no similar provision in the relevant English legislation. The Administration was requested to provide justifications for including the provision in the Bill and examine the impact of the provision, in particular its impact on the priority of a mortgagee bank in a property transaction when a consent caution was registered by a sub-purchaser immediately after the registration of a consent caution by a purchaser.
- (e) To address members' concern about a person's liability for damages for wrongful cautions under clause 73, the Administration was requested to provide a paper to set out the practice under the existing deeds registration system and advise whether a policy change was involved under the new land title registration system. The Administration was also requested to set out the threshold test for "wrongfully and without reasonable cause" adopted by other jurisdictions, illustrating with relevant cases.
- (f) To provide a paper to compare the differences of inhibitions (clause 74), restrictions (clause 77) and injunctions, particularly in the following aspects:
 - (i) nature of the restrictions imposed by inhibitions/restrictions/injunctions;
 - (ii) circumstances under which inhibitions/restrictions/injunctions should be applied for;
 - (iii) procedures for handling applications for inhibitions/restrictions/injunctions by the relevant authorities; and
 - (iv) legal effect of inhibitions/restrictions/injunctions.
- (g) According to paragraph 15 of the paper on "Cautions, Inhibitions and

Restrictions” (LC Paper No. CB(1)2464/02-03(06)), the Land Registrar might make an order (“the restriction”) prohibiting all dealings or imposing conditions on a dealing upon application by a person who proved to his satisfaction to be interested in the land and after making such enquiry and hearing such persons as he thought fit so as to be satisfied that the powers of the registered owner should be restricted (clause 77(1)). The Administration was requested to provide a paper to cover the following points:

- (i) To examine whether the policy intent set out in paragraph 15 of the paper was clearly reflected in clause 77(1). In this connection, the Administration was requested to examine whether the drafting of clause 77(1)(c) was too broad and how it could be improved; and
- (ii) To define the ambit of the power of the Land Registrar in making a restriction, including in what ways such power was limited under the Bill, and whether the ambit of the power and the limitations were clearly set out in clause 77.

Date of next meeting

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 30 September 2003 at 10:45 am.

II. Any other business

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

Council Business Division 1
Legislative Council Secretariat
13 October 2003

Appendix

**Proceedings of the thirteenth meeting of the
Bills Committee on Land Titles Bill
on Monday, 29 September 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000123	Chairman	Welcoming and introductory remarks	
000124-002806	Administration	Briefing by the Administration on the paper on "Cautions, Inhibitions and Restrictions" (LC Paper No. CB(1)2464/02-03(06))	
002807-003910	Ms Audrey EU Administration Chairman	<p>(a) Differences between inhibitions (clause 74) and restrictions (clause 77)</p> <p>(b) Circumstances under which inhibitions/restrictions/injunctions should be applied for</p> <p>(c) Views of concerned parties on the provisions relating to inhibitions and restrictions during the consultation conducted by the Administration on the proposed land title registration system</p>	

Time marker	Speaker	Subject(s)	Action Required
003911-004152	Ms Audrey EU Chairman Administration	<p>(a) Interests in land by way of proprietary estoppel (paragraph 2(f) of LC Paper No. CB(1)2464/02-03(06))</p> <p>(b) Protection of interests under trust</p>	
004153-010900	Ms Miriam LAU Administration Chairman Assistant Legal Adviser Ms Audrey EU	<p>(a) Circumstances under which inhibitions/restrictions/injunctions should be applied for</p> <p>(b) In a divorce case where the husband assigned the title of his property to his wife to hold it on trust for their child, whether inhibitions or restrictions should be applied for and who should make the application (clauses 68, 69, 74 and 77)</p>	
010901-011842	Mr Albert HO Administration Chairman	<p>(a) Whether the Land Registrar has the power to impose a restriction prohibiting all dealings in the land, i.e. not upon application</p> <p>(b) Functions and powers of the Land Registrar under clause 6</p> <p>(c) Power of the Land Registrar to compel registration as provided for in clause 32</p>	The Administration to take the follow-up action under paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
011843-012240	Ms Audrey EU Administration Chairman	Whether the definition of “owner” should be amended to make it clear that it included a trustee (clauses 2 and 69(3))	
012241-013142	Mr Albert HO Chairman Administration Assistant Legal Adviser	<p>(a) Whether the policy intent set out in paragraph 15 of the paper on “Cautions, Inhibitions and Restrictions” was clearly reflected in clause 77(1) and whether the drafting of clause 77(1)(c) was too broad and how it could be improved</p> <p>(b) Ambit of power of the Land Registrar in making a restriction, in what ways such power was limited under the Bill and whether the ambit of the power and the limitations were clearly set out in clause 77</p>	The Administration to provide the required information under paragraph 2(g) of the minutes
013143-014518	Ms Audrey EU Chairman Administration Assistant Legal Adviser Ms Miriam LAU	<p>Differences of inhibitions, restrictions and injunctions in the following aspects:</p> <p>(a) nature of the restrictions imposed by inhibitions/restrictions/injunctions</p> <p>(b) circumstances under which inhibitions/restrictions/injunctions should be applied for</p>	The Administration to provide the required information under paragraph 2(f) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) procedures for handling applications for inhibitions/restrictions/injunctions by the relevant authorities</p> <p>(d) legal effect of inhibitions/restrictions/injunctions</p>	
014519-014722	Mr Albert HO Ms Miriam LAU Chairman	Ambit of power of the Land Registrar in making a restriction, in what ways such power was limited under the Bill and whether the ambit of the power and the limitations were clearly set out in clause 77	
014723-015103	Chairman Administration Ms Miriam LAU	<p>(a) Need to revise the drafting of the first part of clause 70(1) to improve the clarity of the provision</p> <p>(b) Whether the stamping requirement under clause 70(2) was consistent with that under clause 59</p>	The Administration to take the follow-up action under paragraph 2(b) and (c) of the minutes
015104-015353	Assistant Legal Adviser 6 Chairman	<p>(a) Justifications for including the provision on effect of cautions (clause 71) in the Bill notwithstanding that there was no similar provision in the relevant English legislation</p> <p>(b) Impact of the provision on property transactions</p>	The Administration to provide the required information under paragraph 2(d) of the minutes

Time marker	Speaker	Subject(s)	Action Required
015354-020135	Chairman Mr Albert HO Administration Ms Audrey EU	(a) A person's liability for damages for wrongful cautions under clause 73 and whether there was a policy change under the new land title registration system (b) Threshold test for "wrongfully and without reasonable cause" (clause 73) adopted by other jurisdictions	The Administration to provide the required information under paragraph 2(e) of the minutes
020136-020218	Chairman	Date of next meeting	

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