

立法會
Legislative Council

LC Paper No. CB(1)89/03-04
(These minutes have been
seen by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of fourteenth meeting held on
Tuesday, 30 September 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
Hon IP Kwok-him, JP
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)
Hon Andrew WONG Wang-fat, JP
Dr Hon TANG Siu-tong, 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
- 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

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

I. Meeting with the Administration

- (LC Paper No. CB(1)2501/02-03(01) — Addendum to Annex A of LC Paper No. CB(1)2464/02-03(03) “Indemnity Fund Operation — Supplementary Information”
- LC Paper No. CB(1)2501/02-03(02) — Second paper provided by the Administration on “The Constitutionality of the Indemnity Cap”
- 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)2089/02-03(02) — First paper provided by the Administration on “The Constitutionality of the Indemnity Cap”
- LC Paper No. CB(1)2305/02-03(05) — Third paper provided by the Administration on “Indemnity”
- 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)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)2501/02-03(03) — Paper provided by the Administration on “Response to Drafting Issues”
- 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) Regarding its proposal to cap the indemnity payable in fraud cases at \$30 million, the Administration was requested to explore feasible options to strengthen the protection to be provided to owners of the properties valued over \$30 million. In this connection, the Administration was requested to consider members' suggestions, as follows:
 - (i) To consider revising the level of the estimated levy rates for the properties valued over \$30 million set out in Annex A to the paper on "Indemnity Scheme: Levy Rates and Miscellaneous Matters" (LC Paper No. CB(1)2207/02-03(06)); and
 - (ii) To consider revising the proposed arrangement under the proposed land title registration system (LTRS) to the effect that an innocent owner, who had lost the title of his property through fraud committed by a third party, would be able to recover the title of the property even where an innocent purchaser had paid full value for the property, and that the innocent bona fide purchaser would be able to recover his loss by making a claim against the Indemnity Fund.
 - (b) Regarding the Administration's view that owners of the properties valued over \$30 million could secure title insurance for value in excess of \$30 million if necessary, the Administration was requested to provide information on title insurance to facilitate the Bills Committee's consideration of the issue.
 - (c) According to paragraph 17 of the paper on "Response to Drafting Issues" (LC Paper No. CB(1)2501/02-03(03)), the Administration proposed to make appropriate amendments to clause 34 to state clearly that re-registration of a charging order or lis pendens should have a priority relating back to its first registration. In drafting the proposed amendments, the Administration was requested to set out clearly the legal effects of the re-registration before and after the expiry of the five-year period provided in clause 34(1) and the priority of the charging order or lis pendens upon the re-registration.
 - (d) To discuss with the Assistant Legal Adviser on the technical issues relating to priority of registered matters (e.g. clause 33) and to seek the views of the Law Society of Hong Kong (the Law Soc) on the issues. The Administration was requested to report the outcome of the discussion to the Bills Committee in due course.

- (e) To discuss with the relevant parties, including the Law Soc, on the proposed procedures, forms and documents for the implementation of the LTRS. The Administration was then requested to provide a paper to the Bill Committee, summarizing the views and concerns of the relevant parties, and advising how the views and concerns could be addressed. To facilitate the Bills Committee's understanding, the Administration was also requested to arrange a presentation on the relevant procedures, forms and documents.
- (f) To go through the Bill to review whether the relevant documents are all needed for the implementation of the LTRS, which would be a system focusing on registration of interests but not registration of documents. In this connection, the Administration was requested to review clause 44(1)(a)(ii) and consider whether it would be appropriate to require the vendor to provide the purchaser with a copy, print or extract of or from any instrument referred to in any current entries in the Title Register.
- (g) To review clause 44(1)(b) and consider whether it would be appropriate to require the vendor to provide the purchaser with particulars of any overriding interests affecting the land or lease.
- (h) To facilitate the Bills Committee's examination of clause 43 (Covenants for title), the Administration was requested to provide a paper to explain the purpose of the clause and the provisions of section 35 of the Conveyancing and Property Ordinance (Cap. 219) referred to in the clause.

Follow-up action to be taken by the Clerk

3. The Bills Committee noted that the paper on "The Constitutionality of the Indemnity Cap" set out the Administration's response to the further submissions by the Real Estate Developers Association of Hong Kong (REDA) and the Hong Kong Bar Association (Bar Association) on the constitutionality of the proposed cap on the indemnity available in fraud cases under the LTRS. The Chairman directed that the paper be forwarded to REDA and Bar Association for their information and comments, if any.

(Post-meeting note: The paper was forwarded to REDA and Bar Association on 30 September 2003.)

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee

Action

- 7 -

would be held on Tuesday, 14 October 2003 at 10:45 am.

II. Any other business

5. There being no other business, the meeting ended at 12:55 pm.

Council Business Division 1
Legislative Council Secretariat
16 October 2003

Appendix

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

Time marker	Speaker	Subject(s)	Action Required
Agenda Item I — Meeting with the Administration			
<i>Part A: Matters arising from previous meetings</i>			
000000-000114	Chairman	Welcoming and introductory remarks	
000115-000414	Administration	Briefing by the Administration on the Addendum to Annex A of LC Paper No. CB(1)2464/02-03(03) “Indemnity Fund Operation - Supplementary Information” (LC Paper No. CB(1)2501/02-03(01))	
000415-001044	Chairman Mr TAM Yiu-chung Administration	(a) Concern about the protection to be provided to owners of the properties valued over \$30 million under the Administration’s proposal to cap the indemnity payable in fraud cases at \$30 million	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Suggestion of revising the proposed arrangement under LTRS to the effect that an innocent owner, who had lost the title of his property through fraud committed by a third party, would be able to recover the title of the property even where an innocent purchaser had paid full value for the property, and that the innocent bona fide purchaser would be able to recover his loss by making a claim against the Indemnity Fund</p>	
001045-002231	Ms Miriam LAU Chairman Administration	<p>(a) Funding arrangements for indemnity in other jurisdictions where there was no cap on the amount of indemnity payable</p> <p>(b) Justifications for proposing a cap on the indemnity under LTRS notwithstanding that there was no indemnity cap in other jurisdictions, including the need to keep the levy rates at acceptable levels</p>	

Time marker	Speaker	Subject(s)	Action Required
002232-003608	Ms Miriam LAU Chairman Administration	<p>(a) Suggestion of revising the level of the estimated levy rates for properties valued over \$30 million set out in Annex A to the paper on “Indemnity Scheme: Levy Rates and Miscellaneous Matters” (LC Paper No. CB(1)2207/02-03(06))</p> <p>(b) Feasibility of owners of the properties valued over \$30 million to secure title insurance for value in excess of the protection provided</p> <p>(c) Levy rates in the United Kingdom compared with the proposed levy rates under LTRS in Hong Kong</p> <p>(d) Reasons for proposing a cap on the indemnity under LTRS notwithstanding that there was no indemnity cap in other jurisdictions</p> <p>(e) Protection to be provided to owners of the properties valued over \$30 million under the Administration’s proposal to cap the indemnity payable in fraud cases at \$30 million</p>	<p>The Administration to take the follow-up action under paragraph 2(a)(i) of the minutes</p> <p>The Administration to provide the required information under paragraph 2(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
003609-004805	Administration Chairman Ms Miriam LAU Mr TAM Yiu-chung	Suggestion of revising the proposed arrangement under LTRS to the effect that an innocent owner, who had lost the title of his property through fraud committed by a third party, would be able to recover the title of the property even where an innocent purchaser had paid full value for the property, and that the innocent bona fide purchaser would be able to recover his loss by making a claim against the Indemnity Fund	The Administration to take the follow-up action under paragraph 2(a)(ii) of the minutes
004806-005206	Chairman	Second paper provided by the Administration on “The Constitutionality of the Indemnity Cap” (LC Paper No. CB(1)2501/02-03(02))	Clerk to forward a copy of the paper to the Real Estate Developers Association of Hong Kong and the Hong Kong Bar Association for information and comments, if any
005207-005554	Mr TAM Yiu-chung Chairman Administration	(a) How the Administration would handle the situation where the cap on the indemnity was challenged and subsequently ruled to be unconstitutional by the court (b) The Administration’s view that the indemnity cap was fully constitutional and the situation mentioned in (a) above would not arise	

Time marker	Speaker	Subject(s)	Action Required
005555-005912	Chairman Administration	Impact on other provisions of the Bill if the cap on indemnity was challenged and subsequently ruled unconstitutional	
005913-010125	Chairman Assistant Legal Adviser	The Administration's paper on "Response to Drafting Issues" (LC Paper No. CB(1)2501/02-03(03))	
010126-011432	Ms Miriam LAU Administration Chairman Assistant Legal Adviser	Legal effects of the re-registration of a charging order or lis pendens before and after the expiry of the five-year period provided in clause 34(1) and the priority of the charging order or lis pendens upon the re-registration	The Administration to take the follow-up action under paragraph 2(c) of the minutes
<i>Part B: Examination of the relevant parts of the Bill</i>			
011433-015252	Assistant Legal Adviser Chairman Administration Mr TAM Yiu-chung Ms Miriam LAU Clerk	<i>Part 5: Dispositions — Clauses 29 to 57</i> (a) Technical issues relating to priority of registered matters (e.g. clause 33) (b) Proposed procedures, forms and documents for the implementation of LTRS	The Administration to take the follow-up action under paragraph 2(d) of the minutes The Administration to take the follow-up action under paragraph 2(e) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) Purpose of clause 43 (Convenants for title) and the provisions of section 35 of the Conveyancing and Property Ordinance (Cap 219) referred to in the clause</p> <p>(d) Whether it was appropriate to require the vendor to provide the purchaser with a copy, print or extract of or from any instrument referred to in any current entries in the Title Register (clause 44(1)(a)(ii)) given that the proposed LTRS was a system focusing on registration of interests but not registration of documents</p> <p>(e) Whether it was appropriate to require the vendor to provide the purchaser with particulars of any overriding interests affecting the land or lease (clause 44(1)(b))</p>	<p>The Administration to provide the required information under paragraph 2(h) of the minutes</p> <p>The Administration to take the follow-up action under paragraph 2(f) of the minutes</p> <p>The Administration to take the follow-up action under paragraph 2(g) of the minutes</p>
015253-015439	Chairman	Date of next meeting	