

立法會
Legislative Council

LC Paper No. CB(1)151/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of fifteenth meeting held on
Tuesday, 14 October 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
Dr Hon TANG Siu-tong, 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
Hon Abraham SHEK Lai-him, 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

Ms Florence WONG
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. Confirmation of minutes of meetings

(LC Paper No. CB(1)2557/02-03

— Minutes of twelfth meeting held
on 19 September 2003

LC Paper No. CB(1)39/03-04

— Minutes of thirteenth meeting
held on 29 September 2003)

The minutes of the two meetings held on 19 and 29 September 2003 respectively were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)38/03-04(01)

— “Follow-up to the twelfth meeting on 19 September 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)38/03-04(02)

— “Follow-up to the thirteenth meeting on 29 September 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)38/03-04(03)

— “Follow-up to the fourteenth meeting on 30 September 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)38/03-04(04)

— Paper provided by the Administration on “Format of Title Registers”

LC Paper No. CB(1)38/03-04(05)

— Paper provided by the Administration on “Response to Miscellaneous Issues (13th and 14th Bills Committee Meetings)”

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 making it clear to the public, in particular solicitors, that they might search properties by owners’ names provided that they comply with the requirements under the Personal Data (Privacy) Ordinance (Cap. 486).
- (b) To further consider the details of the format of title register(s) and consult the Bills Committee before implementation of the land title registration system (LTRS).
- (c) To seek the views of the Law Society of Hong Kong (the Law Soc) on

whether the Administration's proposal for a separate register for long-term lease could address its concern, and report the outcome of the discussion to the Bills Committee in due course.

- (d) According to the sample register under the English system in Annex 2 of the paper on "Format of Title Registers" (LC Paper No. CB(1)38/03-04(04)), there was a restriction in the "Proprietorship Register" where it was stated that "Except under an order of the registrar no disposition by the proprietor(s) of the land is to be registered without the consent of the proprietor(s) of the Charge ...". In this connection, the Administration was requested to consider the following concerns raised by members:

- (i) The legal charge or mortgage normally contained a provision stipulating that the borrower should not cause or permit any second or further legal charge or mortgage to be effected on the property concerned without the prior written consent of the lender. Members were concerned that while a second mortgage made without such consent was registrable under the existing deeds registration system, it might not be registrable under the LTRS because of the restriction imposed by the legal charge.
- (ii) The restriction stated in the sample register under the English system seemed to have the effect of restricting transaction of the property concerned because no disposition of the property was to be registered without the consent of all the proprietors of a charge.

The Administration was requested to address members' concerns in items (i) and (ii) above and confirm whether there was any policy change under the LTRS; if there was, the Administration was requested to provide the reasons for the change and explain how the two scenarios could be dealt with under the LTRS.

- (e) Whilst having no objection to the provision of the "date of registration" in the Title Register (sample attached in Annex 1 to the paper on "Format of Title Registers" (LC Paper No. CB(1)38/03-04(04)), members noted that according to clause 33, matters appearing in the Title Register should have priority according to the order in which the applications which led to their registration were presented to the Land Registrar. The Administration was requested to consider whether it was more appropriate to replace the "date of registration" in the Title Register by other terms, such as "date of presentation for registration" or "date of delivery of application for registration". If the "date of registration" was to be retained in the Title Register, the Administration was requested to consider the need to make it clear to the public that upon registration of a dealing, the date of registration should be the date of presentation of that dealing (paragraph 6 of the paper on "Format of Title Registers").
- (f) To consider the Assistant Legal Adviser's view that the English system

had three separate registers, namely the property register, proprietorship register and charges register, which was a clearer arrangement to avoid any possible confusion.

- (g) According to paragraph 3 of the paper on “Response to Miscellaneous Issues” (LC Paper No. CB(1)38/03-04(05)), where a consent caution supporting a sub-sale of property was presented for registration but no principal sale agreement had been registered, the Land Registrar would require the confirmor to register a consent caution on his own purchase agreement. Members noted that under clause 32(1), the Registrar might, by notice in writing served on the person concerned, require the person to present the application to the Registrar not later than 30 days after the notice was served. If the application was not presented to the Registrar within the 30-day period, the Administration was requested to confirm whether the Registrar would merely refuse the application for registration of the agreement for sub-sale and purchase or take any other action.
- (h) To advise whether a purchaser in a sub-sale of a property might apply for the registration of the agreement for sub-sale and purchase as a non-consent caution under clause 70(3). The Administration was also requested to consider how restrictive a non-consent caution should be, taking into account the need for certainty of ownership and the development of electronic application.
- (i) To seek Law Soc’s views on whether clauses 70(2) and 33(7)(b), if read together, could provide for the proposed arrangement in relation to the registration and relation back of an interest created under a provisional agreement for sale and purchase or an agreement for sale and purchase during the stamping period of these instruments as elaborated in paragraph 4 of the paper on “Response to Miscellaneous Issues” (LC Paper No. CB(1)38/03-04(05)).
- (j) To provide a copy of section 35 of the Conveyancing and Property Ordinance (Cap. 219) to facilitate the Bills Committee’s consideration of the purpose of clause 43 as mentioned in paragraph 9 of the paper on “Response to Miscellaneous Issues” (LC Paper No. CB(1)38/03-04(05)).

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 Tuesday, 21 October 2003, at 8:30 am to examine the remaining item.

(Post-meeting note: The notice of the additional meeting and the revised meeting schedule were issued to the Administration on 14 October 2003 and issued to members vide LC Paper No. CB(1)72/03-04 on 15 October 2003.)

III. Any other business

5. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
27 October 2003

Appendix

**Proceedings of the fifteenth meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 14 October 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000045	Chairman	Confirmation of minutes of the two meetings held on 19 and 29 September 2003 respectively	
000046-000158	Chairman	Welcoming and introductory remarks	
000159-001308	Administration	Briefing by the Administration on the paper on "Format of Title Registers" (LC Paper No. CB(1)38/03-04(04))	
001309-002614	Chairman Mr Albert CHAN Ms Audrey EU Administration	(a) Types of property searches that could be conducted through the computerized Title Register (b) How orders issued by the Building Authority would be shown on the Title Register (c) Whether the address of the party in favour of/applicant would be readily available on the Title Register and if not, how such information could be obtained and its accuracy ensured	

Time marker	Speaker	Subject(s)	Action Required
002615-002943	Chairman Ms Audrey EU Administration	<p>(a) The need to maintain two formats of registers instead of one as in the case of the English system</p> <p>(b) The public’s right to search properties by owners’ names and the need to make this clear to the public, in particular solicitors</p>	Administration to take the follow-up action under paragraph 3(a) of the minutes
002944-003653	Chairman Ms Miriam LAU Assistant Legal Adviser 6 Administration	<p>(a) Query of the use of the term “lessee” in the Long Term Lease Register to denote the individual assignees of the interests in the undivided shares of a property under a long-term lease</p> <p>(b) Need for a separate register for long-term lease to address the concerns of the Law Society of Hong Kong (Law Soc) about cases like the Robinson Place</p>	<p>Administration to take the follow-up action under paragraph 3(b) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(c) of the minutes</p>
003654-004700	Chairman Ms Miriam LAU Assistant Legal Adviser 6 Administration	<p>(a) Concern about whether a second mortgage made without consent of the first mortgagee bank presently registrable under the existing deeds registration system would be registrable under the land title registration system (LTRS)</p>	Administration to provide the required information under paragraph 3(d)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Concern that the restriction stated in the sample register under the English system seemed to have the effect of restricting transaction of the property concerned because no disposition of the property was to be registered without the consent of all the proprietors of a charge</p> <p>(Annex 2 to LC Paper No. CB(1)38/03-04(04))</p>	<p>Administration to provide the required information under paragraph 3(d)(ii) of the minutes</p>
004701-004838	<p>Chairman Ms Audrey EU</p>	<p>Definitions of “lease”, “long term lease”, “owner” and “lessee” in the Bill (clause 2) and hence use of the term “lessee” in the Long Term Lease Register</p>	
004839-005308	<p>Chairman Mr Albert HO Administration</p>	<p>(a) Whether a charge on the residual term of a long-term lease would have effect on the undivided shares of the property concerned</p> <p>(b) How a trust instrument and the restrictions therein should be registered</p>	
005309-005758	<p>Chairman Ms Miriam LAU Administration</p>	<p>(a) Whether an agreement for sale and purchase would be registered as a caution or a disposition</p> <p>(b) Registration of an equitable mortgage as a second consent caution and the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>implications thereof on the enforceability of the mortgage</p> <p>(Annex 2 to LC Paper No. CB(1)38/03-04(04) and clause 2)</p>	
005759-010510	<p>Chairman Ms Audrey EU Assistant Legal Adviser 6 Administration</p>	<p>(a) Suggestion to replace the “date of registration” in the Title Register (sample attached in Annex 1 to the paper on “Format of Title Registers” (LC Paper No. CB(1)38/03-04(04)) by other terms, such as “date of presentation for registration” or “date of delivery of application for registration” (clause 33)</p> <p>(b) Comments on the sample registers under the Hong Kong system and the English system respectively (Annexes 1 and 2 to LC Paper No. CB(1)38/03-04(04))</p>	<p>Administration to take the follow-up action under paragraph 3(e) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(f) of the minutes</p>
010511-010720	<p>Chairman Administration</p>	<p>Briefing by the Administration on paragraphs 1 to 3 of the paper on “Response to Miscellaneous Issues (13th and 14th Bills Committee Meetings)” (LC Paper No. CB(1)38/03-04(05))</p>	
010721-011643	<p>Chairman Mr Albert HO Administration</p>	<p>(a) How a trust instrument and the restrictions therein should be registered</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) The Land Registrar's duty to ensure correct interpretation of the restrictions in a document supporting registration and, in the case of doubt, to reject the relevant application for registration (clause 77(1)(c))</p>	
011644-014116	<p>Chairman Ms Miriam LAU Ms Audrey EU Administration</p>	<p>(a) Whether in the event that a consent caution supporting a sub-sale of property was presented for registration but no principal sale agreement had been registered, the Land Registrar would have the obligation to require the confirmor to register a consent caution on his own purchase agreement (paragraph 3 of LC Paper No. CB(1)38/03-04(05)) and clause 32)</p> <p>(b) The need for the Land Registrar to take on the responsibility at (a) above and concern about the implications thereof</p> <p>(c) Whether a sub-sale agreement could be registered as a non-consent caution under clause 70(3) to support claims to interests in the property concerned (clause 70(3))</p>	<p>Administration to provide the required information under paragraph 3(g) of the minutes</p> <p>Administration to provide the required information under paragraph 3(h) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
014117-014228	Chairman Ms Audrey EU Administration	Clarification on whether all applications for registration of matters would be placed under “Applications Record (Applications Pending Registration)” and on whether their dates of presentation would determine their priorities	
014229-014512	Chairman Ms Audrey EU Ms Miriam LAU	Proposal to schedule an additional meeting	
014513-014829	Administration	Briefing by the Administration on paragraphs 4 and 5 of the paper on “Response to Miscellaneous Issues (13 th and 14 th Bills Committee Meetings)” (LC Paper No. CB(1)38/03-04(05))	
014830-015706	Chairman Ms Miriam LAU Mr Albert HO Assistant Legal Adviser 6 Administration	<p>(a) Whether clauses 70(2) and 33(7)(b), if read together, could provide for the proposed arrangement in relation to the registration and relation back of an interest created under a provisional agreement for sale and purchase or an agreement for sale and purchase during the stamping period of these instruments (paragraph 4 of LC Paper No. CB(1)38/03-04(05))</p> <p>(b) Pros and cons of the proposed arrangement in (a) above</p>	Administration to take the follow-up action under paragraph 3(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
015707-015740	Chairman Administration	Briefing by the Administration on paragraphs 6 to 9 of the paper on “Response to Miscellaneous Issues (13 th and 14 th Bills Committee Meetings)” (LC Paper No. CB(1)38/03-04(05))	Administration to provide the required information under paragraph 3(j) of the minutes
015741-015913	Chairman	Arrangements for next meeting	

Council Business Division 1
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