

立法會
Legislative Council

LC Paper No. CB(1)275/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of sixteenth meeting held on
Tuesday, 21 October 2003, at 8:30 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 Abraham SHEK Lai-him, JP
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 Albert CHAN Wai-yip
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

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)89/03-04 — Minutes of fourteenth meeting
held on 30 September 2003)

The minutes of the meeting held on 30 September 2003 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(3)210/02-03 — The Bill)

2. The Chairman drew members' attention to the following submission tabled at the meeting:

- The submission from The Real Estate Developers Association of Hong Kong (REDA) on the Administration's second paper on "The Constitutionality of the Indemnity Cap".

3. The Chairman also pointed out that the Hong Kong Bar Association might be able to provide its submission on the Administration's second paper on "The Constitutionality of the Indemnity Cap" in early November 2003. Members agreed that REDA's submission be dealt with at a later stage when Bar Association's submission was available.

(Post-meeting note: REDA's submission was issued to members vide LC Paper No. CB(1)126/03-04(01) on 21 October 2003.)

4. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Admin 5. At the request of the Bills Committee, the Administration agreed to take the following actions -

- (a) Clause 61(2) provided that where a disposition by a minor of registered land had been registered and the person to whom the disposition was made acted in good faith and for valuable consideration and the minority of that minor was not disclosed to that person at any time before the registration of the disposition, that disposition should not be set aside only on the ground of that minority. Members noted that this arrangement was different from the existing law under which the disposition concerned could be set aside. To facilitate the Bills Committee's consideration of the issue, the Administration was requested to advise how disposition by a minor was dealt with under the English system, in particular whether an arrangement similar to that under clause 61(2) had been adopted.
- (b) In examining clause 61(2), members expressed the view that there should be a clause in the Bill setting out clearly in simple terms that once a person was registered as the owner of a property, his title was absolute except in certain circumstances, e.g. in cases where the purchaser knew that the person selling the property was a minor. Noting the

Administration's view that clause 61 was related to clause 21 (Effect of registration), members expressed concern that clause 21 was not sufficiently self-contained for the purpose and it was, as presently drafted, repetitive and clumsy. To address members' concerns, the Administration was requested to consider how the structure and drafting of the relevant provisions could be improved so that the effect of registration and any exceptions would be clearly set out in simple terms in a single clause.

- (c) According to clause 62, where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease died, the Land Registrar, on proof to his satisfaction of the death, should remove the name of the deceased from the Title Register concerned. To facilitate the Bills Committee's consideration of whether the name of the deceased should be removed from the Title Register or retained in the Title Register as a historical record, the Administration was requested to take the following actions:
- (i) To explain by way of an example how transmission on death of a joint tenant was done, and provide a sample to show what the Title Register would look like in such a case. The Administration was also requested to examine whether the proposed arrangement was clearly reflected in clause 62.
 - (ii) Noting the Assistant Legal Adviser's view that a registered charge involving a deceased joint tenant chargor should continue to take effect after his death and the name of the deceased should be traceable through the Title Register, members were concerned how the actual process would work whenever there was a change to the particulars in the Title Register. The Administration was requested to provide a few examples to show how the actual process would work and samples of Title Register to show how the changes would be presented in the Register within the confines of clause 10. In this connection, The Administration was also requested to provide another sample to show how a case involving more complicated transfers, such as inhibitions, trust documents, etc. would be presented in the Title Register. If in producing the samples the Administration noticed that there were things which were not yet set in stone, the Administration was requested to draw the Bills Committee's attention to them.
 - (iii) Clause 62(1) provided that where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease died, the remaining joint tenant or tenants should be subject to any interests subject to which the deceased joint tenant held the land, charge or lease immediately prior to his death; which were unregistered; and which were enforceable against the land or lease. The Administration was requested to confirm whether it was the

policy intent that the remaining joint tenant or tenants should be subject to the same rights and incumbrances as those before the death of the deceased joint tenant. In other words, transmission on death of a joint tenant would not change the status quo apart from the change in ownership, and the remaining joint tenant would hold the land subject to exactly the same rights and incumbrances as before without any alterations. If it was so, the Administration was requested to improve the drafting of clause 62(1) to set out clearly the policy intent.

- (iv) In relation to clause 62(2)(b), the Administration was requested to explain how the purchaser of a property could come to know that the payment of estate duty had been postponed in accordance with the provisions in the Estate Duty Ordinance (Cap. 111), and how such postponement would affect registration of the property and the interests of the purchaser under the land title registration system (LTRS), in particular where there was a charge on the property as a result of the postponed payment. The Administration was also requested to consider the Assistant Legal Adviser's view that the registered charge was not an interest in land chargeable to estate duty and hence might not need to be mentioned in clause 62(2)(a).

- (d) To improve the drafting of clause 65 in the same way as clause 62(1) so as to clearly set out the policy intent that transmission on death would not change the status quo apart from the change in ownership. In other words, upon death of the owner of registered land, the personal representative to be registered as the owner would hold the land subject to exactly the same rights and incumbrances as before without any alterations.

- (e) In relation to clause 67 which provided for the transmission on liquidation, the Administration was requested to consider how receivership should be dealt with under the LTRS.

- (f) To examine the need to cover in clause 68 a person who had become entitled to registered land as a trustee under a court order.

- (g) In relation to clause 69, the Administration was requested to take the following actions:
 - (i) To amend the heading of clause 69 to make it clear that particulars of trusts, but not the trusts themselves, were not to be entered in the Title Register.
 - (ii) Clause 69(1) and (2) provided that the Land Registrar should not enter particulars of the trust in the Title Register. As restrictions were the exceptions, the Administration was requested to consider amending the two subclauses to make it clear that they were subject

to the provisions on restrictions in the Bill. The Administration was also requested to provide a sample to show how restrictions were entered in the Title Register.

- (h) To consider adding a new item (c) to clause 80(1) to provide for other circumstances not covered by item (a) or (b) in the same subclause. For example, according to the Administration, where there was a typographical error in relation to the name of the registered owner which materially affected the interests of the owner (hence not covered by clause 80(1)(a)), the Land Registrar might rectify the error if the rectification was justified by relevant supporting documents. In the circumstance, there was no need to seek the consent of all persons interested (hence not covered by clause 80(1)(b)).
- (i) To facilitate the Bills Committee's examination of clause 81 (Rectification by Court of First Instance), the Administration was requested to provide a paper on the substance of and issues relating to the clause. In this connection, the Bills Committee noted that the procedure for seeking rectification had been set out in the paper on "Mistake, Rectification and Indemnity — Supplementary Paper" (LC Paper No. CB(1)2305/02-03(04)).
- (j) Clause 88 provided that "in any case of doubt or difficulty or in any matter not provided for under this Ordinance", the Land Registrar might apply to the Court of First Instance for directions on principles of law. The Administration was requested to take the following actions:
 - (i) As the scope of "any matter not provided for under this Ordinance" was very broad, the Administration was requested to explain the policy intent behind and the justifications for clause 88, and define the scope of powers of the Land Registrar under the clause.
 - (ii) To advise whether any other Government officials in a similar position had powers comparable to those of the Land Registrar under clause 88.
 - (iii) As clause 88 was included in Part 10 of the Bill on appeals, the Administration was requested to clarify whether the Land Registrar would only exercise his power provided for in the clause in dealing with appeal cases.

Date of next meeting

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 28 October 2003, at 10:45 am.

III. Any other business

7. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
10 November 2003

Appendix

**Proceedings of the sixteenth meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 21 October 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000156	Chairman	Opening remarks and reference to the submission from The Real Estate Developers Association of Hong Kong on the Administration's second paper on "The Constitutionality of the Indemnity Cap" (tabled at the meeting and issued vide LC Paper No. CB(1)126/03-04(01) after the meeting)	
000157-000214	Chairman	Confirmation of minutes of the meeting held on 30 September 2003	
<i>Part 6: Instruments - Clauses 58 to 61</i>			
000215-001318	Chairman Mr Albert HO Ms Miriam LAU Dr TANG Siu-tong Assistant Legal Adviser 6 Administration	(a) The need to create a new head "registered land" under the Stamp Duty Ordinance (SDO) (Cap. 117) to take into account the difference in the legal effect of documents in relation to interests in land under the existing deeds registration system (DRS), which focused on the registration of documents, and the new land title registration system (LTRS), which	

Time marker	Speaker	Subject(s)	Action Required
		<p>focused on the registration of interests, having regard that the two systems were to run in parallel for a period of time after enactment of the Bill (clause 59)</p> <p>(b) The linking mechanism between DRS and LTRS to be provided by the consequential amendment to SDO (paragraph 40 of Schedule 2)</p> <p>(c) Clarifications regarding the provisions of clause 59(2)) in response to concern that they might cause delays in registration of cautions, inhibitions or restrictions</p> <p>(d) Implications of failure to stamp an instrument in accordance with the requirements of SDO (section 15(2) of SDO)</p>	
001319-001610	Chairman Ms Miriam LAU Administration	Whether clause 60 could provide for any technological development or future arrangement to be worked out between the Administration and the legal profession regarding the retention of land title records (clause 60)	

Time marker	Speaker	Subject(s)	Action Required
001611-004854	Chairman Mr Albert HO Dr TANG Siu-tong Ms Miriam LAU Ms Audrey EU Mr TAM Yiu-chung Administration	Discussion relating to clause 61 - (a) Clarification that the policy change embodied in clause 61(2) was that as different from the existing law, disposition should not be set aside only on the ground of minority where the disposition concerned had been registered and the person to whom the disposition was made had acted in good faith and for valuable consideration and the minority of that minor was not disclosed to that person before the registration of the disposition (b) How a party in a disposition involving a minor could claim that he had no knowledge of the minority of the minor concerned (c) Whether the Land Registry had the duty to check if any party involved in a disposition of a property was a minor (d) Whether a minor could deal with registered land (clause 61(1)) and if not, the implications of a minor having done so on the validity of the transaction	Administration to provide the required information under paragraph 5(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>concerned, particularly the implications on the subsequent purchaser of the property concerned</p> <p>(e) Concern that addition of the words “a minor” after the minor’s name in the Title Register was not mandatory and hence clause 61(3) might not be able to effect the intended protection for minors</p> <p>(f) Responsibility of a solicitor handling a disposition of property involving a minor to ensure the addition of the words “a minor” after the minor’s name in the Title Register</p> <p>(g) Concern that clause 21 was not sufficiently self-contained for the purpose of setting out clearly in simple terms that once a person was registered as the owner of a property, his title was absolute except in certain circumstances, e.g. in cases where the purchaser knew that the person selling the property was a minor</p> <p>(h) Concern that clause 21 was, as presently drafted, repetitive and clumsy</p>	<p>Administration to take the follow-up action under paragraph 5(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(e) How postponed payment of estate duty would affect registration and the interests of the purchaser of the property concerned under the LTRS, in particular where there was a charge of estate duty on the property as a result of the nonpayment, and the responsibility of the solicitor involved to ascertain the status of estate duty payment before effecting the deal (clause 62(2) and section 18(1) of the Estate Duty Ordinance (Cap. 111))</p> <p>(f) Assistant Legal Adviser's view that the registered charge was not an interest in land chargeable to estate duty and hence might not need to be mentioned in clause 62(2)(a)</p>	<p>Administration to provide the required information under paragraph 5(c)(iv) of the minutes</p> <p>Administration to take the follow-up action under paragraph 5(c)iv of the minutes</p>
011526-011809	<p>Chairman Ms Audrey EU Ms Miriam LAU Assistant Legal Adviser 6 Administration</p>	<p>(a) Clarification that transmission on death of sole owner or tenant in common would not constitute a transfer without valuable consideration under the LTRS (clause 63)</p> <p>(b) Clarification that an executor de son tort would not be registered as the owner of registered land under the LTRS (clause 63)</p>	

Time marker	Speaker	Subject(s)	Action Required
		(c) Confirmation that the probate of the will and the letters of administration of the estate would be shown on the Title Register	
011810-012135	Chairman Administration	Briefing by the Administration on clause 64	
012136-012156	Chairman Administration	Briefing by the Administration on clause 65	Administration to take the follow-up action under paragraph 5(d) of the minutes
012157-012318	Chairman Mr Albert HO Administration	Requirement to authenticate death certificates issued overseas	
012319-012550	Chairman Administration	Briefing by the Administration on clause 66	
012551-012725	Chairman Mr Albert HO Ms Audrey EU Administration	How receivership should be dealt with under the LTRS (clause 67)	Administration to take the follow-up action under paragraph 5(e) of the minutes
012726-013000	Chairman Ms Audrey EU Assistant Legal Adviser 6 Administration	The need to cover in clause 68 a person who had become entitled to registered land as a trustee under a court order (clauses 2 and 68)	Administration to take the follow-up action under paragraph 5(f) of the minutes
013001-013248	Chairman Mr Albert HO Ms Audrey EU Administration	(a) Heading of clause 69	Administration to take the follow-up action under paragraph 5(g)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(b) How restrictions were entered in the Title Register (clause 69)	Administration to take the follow-up action under paragraph 5(g)(ii) of the minutes
<i>Part 8: Cautions and Restrictions on Disposition - Clauses 70 to 79</i>			
013249-013352	Chairman	Reference to Part 8: Cautions and Restrictions on Disposition - Clauses 70 to 79	
<i>Part 9: Rectification and Indemnity - Clauses 80 to 87</i>			
013353-014612	Chairman Ms Miriam LAU Mr Albert HO Assistant Legal Adviser 6 Administration	Need for and implications of adding a new item (c) to clause 80(1) to provide for other circumstances not covered by item (a) or (b) in the same subclause	Administration to take the follow-up action under paragraph 5(h) of the minutes
014613-014811	Chairman Administration	Need to provide a paper on the substance of and issues relating to clause 81 to facilitate examination of the clause	Administration to provide the required information under paragraph 5(i) of the minutes
014812-015027	Chairman Mr Albert HO Assistant Legal Adviser	Reference to clauses 82 to 87	
<i>Part 10: Appeals - Clauses 88 to 91</i>			
015028-015813	Chairman Ms Miriam LAU Mr Albert HO Administration	(a) Concern about the broad scope of matters which the Land Registrar might apply to the Court of First Instance for directions on principles of law and the need to define the scope of	Administration to provide the required information under paragraph 5(j) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		powers of the Registrar under clause 88 (b) Policy intent behind and justifications for clause 88	Administration to provide the required information under paragraph 5(j) of the minutes
015814-020004	Chairman Assistant Legal Adviser 6	Difference between an appeal and a judicial review in respect of a decision made by the Land Registrar (clause 89)	
020005-020038	Chairman Administration	Briefing by the Administration on clauses 90 and 91	
020039-020235	Chairman Mr Abraham SHEK Administration	Date and arrangements for next meeting	