

**立法會**  
***Legislative Council***

LC Paper No. CB(1)311/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of seventeenth meeting held on  
Tuesday, 28 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 Andrew WONG Wang-fat, JP  
Hon Miriam LAU Kin-ye, JP  
Hon TAM Yiu-chung, GBS, 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 Abraham SHEK Lai-him, 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

Ms Florence WONG  
Solicitor  
Land Registry

Miss Miranda F H NG  
Senior Assistant Law Draftsman  
Department of Justice

Mr Denis LI  
Assistant Secretary (Buildings)<sup>3</sup>  
Housing, Planning and Lands Bureau

**Clerk in attendance :** Miss Salumi CHAN  
Chief Assistant Secretary (1)<sup>5</sup>

**Staff in attendance :** Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Sarah YUEN  
Senior Assistant Secretary (1)<sup>6</sup>

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- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)151/03-04 — Minutes of fifteenth meeting  
held on 14 October 2003)

The minutes of the meeting held on 14 October 2003 were confirmed.

## II. Meeting with the Administration

- (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)149/03-04(01) — “Follow-up to the fifteenth meeting on 14 October 2003” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)149/03-04(02) — Paper provided by the Administration on “Supplementary Response to Miscellaneous Issues (Implied Covenants)”
- LC Paper No. CB(1)149/03-04(03) — Paper provided by the Administration on “Wrongful Registration of Cautions”
- LC Paper No. CB(1)38/03-04(05) — Paper provided by the Administration on “Response to Miscellaneous Issues (13<sup>th</sup> and 14<sup>th</sup> 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) In relation to clause 43, the Administration was requested to take the following actions:
- (i) Members noted that the new land title registration system (LTRS) was different from the existing deeds registration system (DRS) in the sense that it was a system focusing on registration of interests but not registration of documents. Under the LTRS, implied covenants would come into effect upon registration of the relevant interest transferred but not upon registration of the relevant document. Members therefore considered it not appropriate for

clause 43(a) to provide that the provisions of the Bill should not prejudice the operation of section 35 (Implied covenants) of the Conveyancing and Property Ordinance (CPO) (Cap. 219). In this connection:

- The Administration was requested to consider amending clause 43(a) and other relevant clauses in the Bill to rectify the situation; and
  - The Administration was requested to liaise with the Assistant Legal Adviser on how the drafting of clause 43 could be improved to clearly spell out the policy intent that implied covenants would come into effect upon registration of the relevant interest transferred.
- (ii) Section 35(2) of CPO provided that the covenants implied under section 35 might be excluded, varied or extended in the assignment or legal charge. Members were concerned how implied covenants which had been excluded, varied or extended would be dealt with under the LTRS. Noting that clause 43(b) provided that no reference to a covenant implied under section 35 of CPO should be entered in the Title Register, members requested the Administration to clarify whether implied covenants which had been excluded, varied or extended would be entered in the Title Register, and whether there was any express provision in the Bill in this regard.
- (iii) The Administration was requested to consider issuing guidelines on how implied covenants would be dealt with under the LTRS for reference of legal practitioners.
- (b) The Administration was requested to take the following actions in response to the concerns and views of members about wrongful registration of cautions:
- (i) To ensure the consistency between clause 73 of the Bill and the common law. In this connection:
    - The Administration was requested to research into case law in Hong Kong and overseas places, and advise whether, according to the principles in relation to tort under the common law, a person who suffered loss from wrongful registration of cautions might claim damages. If so, the Administration was requested to set out with examples the circumstances under which such claims might be made;
    - The Administration was requested to explain in detail its view that clause 73 clarified, but not changed, the existing law; and
    - The Administration was requested to clarify whether the phrase “wrongfully and without reasonable cause” in clause 73 was a new condition imposed on claim for damages.

- (ii) To ensure the consistency between the existing DRS and the new LTRS, as the two systems would operate in parallel for some time after enactment of the Bill. In this connection, the Administration was requested to consider the need to amend the relevant provisions in the Land Registration Ordinance (Cap. 128).
  - (iii) To ensure the consistency between the Chinese and English versions of the terms “wrongful” (“錯誤的”) and “wrongfully” (“錯誤地”) in clause 73. The Administration was requested to introduce appropriate amendments to address members’ concern that the Chinese version did not accurately reflect the meaning of the two terms.
  - (iv) To consider whether clause 73, as presently drafted, was sufficiently clear to reflect the policy intent.
- (c) In the paper on the substance and general policy issues on clause 92 (Determination of lot boundaries) to be provided by the Administration, the Administration was requested to set out the policy intent, views of the concerned parties (such as surveyors) and the Administration’s response to the views.
- (d) To advise whether the meaning of the phrase “opportunity of being heard” as provided for in clause 94 was in any way different from that provided for in other ordinances, such as the Securities and Futures Ordinance (Cap. 571).
- (e) Noting the Administration’s advice that clause 95 (Application to Court of First Instance by person other than Registrar) of the Bill was an improved procedure modelled on section 12 of CPO (Application to court by vendor and purchaser), members were concerned that the scope of the former was much wider than that of the latter. In this connection:
- (i) The Administration was requested to provide the background and justifications for the expanded scope of clause 95, including:
    - the justifications for the application of clause 95 to “a person interested in registered land, a registered charge or a registered long-term lease” instead of “a vendor or purchaser of land” as provided for in section 12 of CPO;
    - the justifications for the application of clause 95 to “any question relating to the title to the land, charge or lease or an interest in the land, charge or lease” instead of “any question arising out of or connected with any contract for the sale or exchange of land” as provided for in section 12 of CPO; and
    - the views of the Law Society of Hong Kong in this regard.
  - (ii) The Administration was requested to provide a paper to address the following concerns of members -
    - It was not clear who would be regarded as “a person

- interested in registered land” in clause 95. It might not cover a purchaser, or a title owner subject to certain restrictions or charges. The ambiguity might give rise to disputes on whether a person had interest in registered land and whether he might apply to the Court of First Instance under clause 95; and
- The reference to “petition” in clause 95 did not fit present day circumstances, as people rarely applied to the Court of First Instance in respect of questions of title by petition.
- (iii) The Administration was requested to consider the need to amend section 12 of CPO for improving the existing procedure.
  - (iv) The Administration was requested to make rules on the procedures under clause 95.
- (f) In relation to clause 96, the Administration was requested to take the following actions:
- (i) To explain how the different levels of penalty under clause 96(1) to (6) had been fixed, and describe how they compared with those fixed for other offences.
  - (ii) To improve the drafting of the Chinese version of clause 96(1) to address members’ view that the Chinese words “尋求將” were redundant.
- (g) In relation to clause 100, the Administration was requested to take the following actions:
- (i) Clause 100(1)(zi) provided that the Land Registrar might be empowered by regulations to manage, borrow and invest the moneys of the indemnity fund. The Administration was requested to consider whether it was appropriate to empower the Registrar to borrow moneys of the indemnity fund and amend the subclause accordingly.
  - (ii) Clause 100(1)(zm) provided that the Secretary for Housing, Planning and Lands (SHPL) might make regulations for procedures for instituting court proceedings for claiming indemnity. The Administration was requested to clarify and provide justifications for this provision.
  - (iii) To explain the reasons for empowering SHPL under clause 100(3)(a) to grant exemptions from the regulations.
  - (iv) To provide explanations for other provisions in clause 100 where necessary.

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 11 November 2003, at 10:45 am.



**III. Any other business**

5. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1  
Legislative Council Secretariat  
12 November 2003



## Appendix

**Proceedings of the seventeenth meeting of the  
Bills Committee on Land Titles Bill  
on Tuesday, 28 October 2003, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000024	Chairman	Opening remarks	
000025-000034	Chairman	Confirmation of minutes of the meeting held on 14 October 2003	
<i>Part A: Matters arising from previous meetings</i>			
000035-000654	Chairman Administration	Briefing by the Administration on the paper on “Supplementary Response to Miscellaneous Issues (Implied Covenants)” (LC Paper No. CB(1)149/03-04(02))	
000655-003510	Chairman Ms Miriam LAU Mr TAM Yiu-chung Mr Albert HO Assistant Legal Adviser Administration	Discussion on implied covenants -  (a) Clarification that as different from the existing deeds registration system (DRS), implied covenants under the new land title registration system (LTRS), would come into effect upon registration of the relevant interest transferred but not upon registration of the relevant document (clause 43 and section 35 of the Conveyancing and Property Ordinance (CPO))	Administration to take the follow-up action under paragraph 3(a)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(Cap. 219))</p> <p>(b) Concern that no reference to an implied covenant under section 35 of CPO should be entered in the Title Register under the LTRS (clause 43(b))</p> <p>(c) Clarification that variations, exclusions and extensions of implied covenants could be traced from the documents supporting the relevant registrations and would be noted on the Title Register (clause 10(3)(k))</p> <p>(d) Need for guidelines on how implied covenants would be dealt with under the LTRS for reference of legal practitioners</p> <p>(e) Concern about the implications of the need to identify the interests embodied in an instrument and register such under the LTRS, instead of simply registering the instrument under the DRS</p> <p>(f) Clarification that clause 43(b) sought to provide that no reference to an implied covenant “shall be” entered in the Title Register instead of “need not be” as stated in</p>	<p>Administration to provide the required information under paragraph 3(a)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(a)(iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>paragraph 7 of LC Paper No. CB(1)149/03-04(02)</p> <p>(g) Comment that it was not appropriate for clause 43(a) to provide that the provisions of the Bill should not prejudice the operation of section 35 of CPO because the DRS and the LTRS, with different focus of registration, would operate differently and hence section 35 of CPO would not operate under the LTRS in the same way as it did under the DRS</p>	<p>Administration to take the follow-up action under paragraph 3(a)(i) of the minutes</p>
003511-003923	Chairman Administration	Briefing by the Administration on the paper on “Wrongful Registration of Cautions” (LC Paper No. CB(1)149/03-04(03))	
003924-010819	Chairman Mr TAM Yiu-chung Mr Albert HO Ms Miriam LAU Mr Andrew WONG Administration	<p>Discussion on wrongful registration of cautions -</p> <p>(a) What actions were available if a person from whom damages for wrongful registration of cautions were claimed did not have the means to pay the damages</p> <p>(b) Whether, according to the principles in relation to tort under the common law, a person who suffered loss from wrongful registration of cautions might claim damages and if so, the</p>	<p>Administration to take the follow-up action under paragraphs 3(b)(i) and (iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>circumstances under which such claims might be made (clause 73 and paragraph 14 of LC Paper No. CB(1)149/03-04(03))</p> <p>(c) Concern about the consistency between the Chinese and English versions of the terms “wrongful” (“錯誤的”) and “wrongfully” (“錯誤地”) (clause 73 and paragraph 14(2) of LC Paper No. CB(1)149/03-04(03))</p> <p>(d) Confirmation that clause 73 sought to clarify, but not change, the existing law</p> <p>(e) Whether the phrase “wrongfully and without reasonable cause” in clause 73 was a new condition imposed on claim for damages described at (a) above</p> <p>(f) Concern about the consistency between the existing DRS and the new LTRS should the new condition at (e) above be imposed on claim for damages described at (a) above</p>	<p>Administration to take the follow-up action under paragraph 3(b)(iii) of the minutes</p> <p>Administration to provide the required information under paragraph 3(b)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(b)(i) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(b)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
<b><i>Part B: Examination of the relevant parts of the Bill</i></b>			
<u>Part 11: Miscellaneous - Clauses 92 to 102</u>			
010820-011114	Chairman Administration	The new provisions in clause 92 regarding determination of lot boundaries	Administration to provide the required information under paragraph 3(c) of the minutes
011115-011327	Chairman Administration	Clarifications regarding clause 93	
011328-011547	Chairman Administration	Whether the meaning of the phrase “opportunity of being heard” as provided for in clause 94 was in any way different from that provided for in other ordinances (clauses 6, 79 and 94)	Administration to provide the required information under paragraph 3(d) of the minutes
011548-013629	Chairman Mr Albert HO Ms Miriam LAU Ms Audrey EU Administration	Discussion on clause 95 -  (a) Background and justifications for the expanded scope of clause 95  (b) Concern that the expanded scope of clause 95 appeared too wide and confusing and hence might not facilitate the filing of the application  (c) Concern that it was not clear who would be regarded as “a person interested in registered land” in clause 95	Administration to provide the required information under paragraph 3(e)(i) of the minutes          Administration to provide the required information under paragraph 3(e)(ii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(d) Comment that under present day circumstances, people rarely applied to the Court of First Instance in respect of questions of title by petition</p> <p>(e) Need for rules on the procedures under clause 95</p> <p>(f) Clarification that clause 95 would only deal with filing of the application under the LTRS, and that filing of the application under the DRS would be governed by section 12 of CPO</p>	<p>Administration to provide the required information under paragraph 3(e)(ii) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(e)(iv) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(e)(iii) of the minutes</p>
013630-014217	Chairman Ms Miriam LAU Ms Audrey EU Administration	<p>(a) How the different levels of penalty under clauses 96(1) to (6) had been fixed, and how they compared with those fixed for other offences</p> <p>(b) Comment that the Chinese words “尋求將”, which appeared in certain places in the Chinese version of clause 96(1), were redundant</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>
014218-014310	Chairman Administration	Briefing by the Administration on clause 97	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
014311-014602	Chairman Mr Albert HO Assistant Legal Adviser Administration	Meaning of “regulations” referred to in clause 98	
014603-014743	Chairman Administration	Briefing by the Administration on clause 99	
014744-015114	Chairman Albert HO Assistant Legal Adviser Administration	<p>Discussion on clause 100 -</p> <p>(a) Whether it was appropriate to empower the Land Registrar to borrow moneys of the indemnity fund (clause 100(1)(zi))</p> <p>(b) Power of the Secretary for Housing, Planning and Lands (SHPL) under clause 100(1)(zm) to make regulations for procedures for instituting court proceedings for claiming indemnity</p> <p>(c) Confirmation that the SHPL would only have power to prescribe anything that was expressly permitted to be prescribed under the Bill (clause 100(1)(zn))</p> <p>(d) Reasons for empowering SHPL under clause 100(3)(a) to grant exemptions from the regulations</p>	<p>Administration to take the follow-up action under paragraph 3(g)(i) of the minutes</p> <p>Administration to provide the required information under paragraph 3(g)(ii) of the minutes</p> <p>Administration to provide the required information under paragraphs 3(g)(iii) and (iv) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
015115-015200	Chairman Administration	Briefing by the Administration on clauses 101 and 102	
015201-015238	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
12 November 2003