

立法會
Legislative Council

LC Paper No. CB(1)525/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of eighteenth meeting held on
Tuesday, 25 November 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-ye, JP
Hon TAM Yiu-chung, GBS, 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
- Members absent** : Hon Andrew WONG Wang-fat, JP
Dr Hon TANG Siu-tong, JP
Hon IP Kwok-him, JP
- 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) 275/03-04

— Minutes of sixteenth meeting
held on 21 October 2003

LC Paper No. CB(1)311/03-04

— Minutes of seventeenth meeting
held on 28 October 2003)

The minutes of the two meetings held on 21 and 28 October 2003 respectively were confirmed.

II. Meeting with the Administration

(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)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)274/03-04(01)

— “Follow-up to the sixteenth meeting on 21 October 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)274/03-04(02)

— “Follow-up to the seventeenth meeting on 28 October 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)274/03-04(03)

— Paper provided by the Administration on “Title Insurance”

LC Paper No. CB(1)274/03-04(04)

— Paper provided by the Administration on “Restrictions against Subsequent Charges”

LC Paper No. CB(1)274/03-04(05)

— Paper provided by the Administration on “Rectification of Title Register by Registrar”

LC Paper No. CB(1)274/03-04(06)

— Supplementary paper provided by the Administration on “Wrongful Registration of Cautions”

LC Paper No. CB(1)149/03-04(03)

— First paper provided by the Administration on “Wrongful Registration of Cautions”

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

— The Bill

LC Paper No. CB(1)274/03-04(07) — Paper provided by the Administration on “Part 11 of the Bill — Miscellaneous Provisions”

LC Paper No. LS12/03-04 — Paper prepared by Assistant Legal Adviser on “Observations on the Proposed Consequential Amendments in Schedule 2 of the Land Titles 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 discussing the paper on “Title Insurance” (LC Paper No. CB(1)274/03-04(03)), the Administration quoted some press reports on the experience in the operation of title insurance in the United States. To facilitate the Bills Committee’s consideration of the issue, the Administration was requested to provide the relevant press reports.
- (b) The Bills Committee was pleased to note that the Administration agreed to add a new item (c) to clause 80(1) to provide that, on provision of the relevant supporting documents, the Land Registrar might rectify an error in or omission from the Title Register if it had resulted from a clerical error (LC Paper No. CB(1) 274/03-04(05)). In preparing the relevant Committee Stage amendments, the Administration was invited to take account of members’ views that the scope of the new item should be confined to that proposed, and the power of rectification should rest with the Land Registrar personally and should not be delegable.
- (c) To address members’ concern about the problems of unclear land boundaries in the New Territories and the discrepancy between the actual locations of some small houses and their locations shown on the relevant boundary plans, the Administration was requested to advise whether it had any plans to deal with the problems and if so, how the problems could be addressed.

Follow-up action to be taken by the Clerk

Clerk

4. When examining the Administration's paper on "Title Insurance" (LC Paper No. CB(1)274/03-04(03)), members noted that there was only one company providing title insurance service in Hong Kong. Members agreed that the Clerk should approach the company for information on the following items -

- (a) According to paragraph 6 of LC Paper No. CB(1)274/03-04(03), a title insurance policy would usually be paid for by a premium based on a percentage of the value of the property. Whilst the Bills Committee appreciated that the percentage applied might vary from case to case, the company would be invited to advise on :
 - (i) the range of percentage normally applied in Hong Kong and other countries such as the United States, particularly for those properties valued over \$30 million; and
 - (ii) whether the range of percentage normally applied in Hong Kong was likely to be changed, i.e. whether the premium was likely to be increased or reduced, after the implementation of the new land title registration system (LTRS).
- (b) As title insurance was not common in Hong Kong, whether and how far it could complement the indemnity scheme under the LTRS;
- (c) Problems encountered in providing title insurance service in Hong Kong and other countries such as the United States; and
- (d) Problems envisaged in providing title insurance service in Hong Kong after the implementation of the LTRS.

(Post-meeting note: The Clerk wrote to the company concerned on 27 November 2003.)

Meeting arrangements

5. Owing to time constraints, the Bills Committee was unable to complete discussion of the paper on "Part 11 of the Bill — Miscellaneous Provisions" (LC Paper No. CB(1)274/03-04(07)). The Chairman proposed and members agreed that paragraphs 15 to 23 of the paper should be examined at the next meeting scheduled for Wednesday, 3 December 2003, at 8:30 am.

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
8 December 2003

Appendix

**Proceedings of the eighteenth meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 25 November 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000026	Chairman	Confirmation of minutes of the two meetings held on 21 and 28 October 2003 respectively	
000027-000135	Chairman	Welcoming and introductory remarks	
<i>Part A: Matters arising from previous meetings</i>			
000136-000602	Chairman Administration	Briefing by the Administration on the paper on "Title Insurance" (LC Paper No. CB(1)274/03-04(03))	
000603-002828	Chairman Mr Abraham SHEK Ms Miriam LAU Mr LAU Ping-cheung Mr TAM Yiu-chung Administration	Discussion on title insurance - (a) How title insurance could complement the indemnity scheme under the LTRS, in particular where fraud and protection for properties valued over \$30 million were concerned (items 3 and 4 of the Annex to LC Paper No. CB(1)274/03-04(03)) (b) Normal range of percentage of the value of the property on which title insurance premium was presently based, and	Administration and Clerk to take the follow-up actions under paragraphs 3(a) and 4 of the minutes respectively

Time marker	Speaker	Subject(s)	Action Required
		<p>whether such was likely to be changed after implementation of the new land title registration system (LTRS)</p> <p>(c) Problems encountered and envisaged in providing title insurance service in Hong Kong</p> <p>(d) Overseas experience in the operation of title insurance, in particular in relation to the premiums charged, the market situation and the problems encountered</p> <p>(e) Whether the Administration would assume the role of an underwriter to provide a title insurance scheme for properties valued over 30 million</p> <p>(f) Whether the Administration would approach insurance companies to ascertain whether they would be interested in providing title insurance after the implementation of the LTRS</p>	
002829-003343	Chairman Administration	Briefing by the Administration on the paper on “Restrictions against Subsequent Charges” (LC Paper No. CB(1)274/03-04(04))	

Time marker	Speaker	Subject(s)	Action Required
003344-005724	Chairman Ms Miriam LAU Mr Albert HO Assistant Legal Adviser 6 Administration	Whether the provision under clause 77 of the Bill for a chargee to apply for registration of a restriction (including the particulars of a “covenant not to charge”) on the Title Register - (a) would change the position under section 44(5) of the Conveyancing and Property Ordinance (Cap. 219); and (b) would impose additional responsibilities on solicitors for them to remind the chargees of their rights to apply for registration of restrictions.	
005725-010235	Chairman Administration	Briefing by the Administration on the paper on “Rectification of Title Register by Registrar” (LC Paper No. CB(1)274/03-04(05))	
010236-010738	Chairman Mr Albert HO Ms Miriam LAU Administration	Discussion on rectification of Title Register by the Land Registrar - (a) When the draft Committee Stage Amendments to clause 80(1) would be ready, i.e. the addition of a new item (c) to clause 80(1) to provide that, on provision of the relevant supporting documents, the Land Registrar might rectify an error in or	Administration to take the follow-up action under paragraph 3(b) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>omission from the Title Register if it had resulted from a clerical error</p> <p>(b) Members' views that the scope of the new item (c) in clause 80(1) should be confined to that proposed, and that the power of rectification should rest with the Land Registrar personally and should not be delegable</p> <p>(c) Benefits perceived from adding a new item (c) to clause 80(1)</p>	
010739-011023	Chairman Administration	Briefing by the Administration on the supplementary paper on "Wrongful Registration of Cautions" (LC Paper No. CB(1)274/03-04(06))	
011024-011549	Chairman Assistant Legal Adviser 6 Administration	<p>Discussion on wrongful registration of cautions -</p> <p>(a) Chairman's comment that the exclusion of the "malice" test from clause 73 of the Bill was a change from the common law position, and not just a slight departure from the common law position as claimed by the Administration</p> <p>(b) Assistant Legal Adviser's comment that clause 73 as drafted had the effect of</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>providing a clear statutory basis for a claim for damages arising out of wrongful registration of cautions and hence would enhance the deterrent effect</p> <p>(c) Need to amend the Chinese version of the terms “wrongful” and “wrongfully”</p>	
<i>Part B: Examination of the relevant parts of the Bill</i>			
011550-011945	Chairman Assistant Legal Adviser 6	<p>(a) Reference to Schedule 1</p> <p>(b) Briefing by Assistant Legal Adviser on the paper on “Observations on the Proposed Consequential Amendments in Schedule 2 of the Land Titles Bill” (LC Paper No. LS12/03-04)</p>	
011946-012222	Chairman Assistant Legal Adviser 6 Administration	<p>(a) Assistant Legal Adviser’s proposal to consider consequential amendments in relation to the Estate Duty Ordinance (Cap. 111), the Stamp Duty Ordinance (Cap. 117), the Land Registration Ordinance (Cap. 128) as amended by the Land Registration (Amendment) Ordinance (20 of 2002), and the Conveyancing and Property Ordinance (Cap. 219) in conjunction with the related provisions</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>in the Bill as a whole</p> <p>(b) Whether items 1, 33 to 36 and 90 of Schedule 2, which in Assistant Legal Adviser's view were not readily traceable to any specific provisions in the Bill that required the proposed amendments, should be dealt with in the context of the Bill</p>	
012223-012553	Chairman Administration	Briefing by the Administration on paragraphs 1 to 4 of the paper on "Part 11 of the Bill — Miscellaneous Provisions" (LC Paper No. CB(1)274/03-04(07))	
012554-014650	Chairman Mr LAU Ping-cheung Mr Albert HO Mr Albert CHAN Mr TAM Yiu-chung Assistant Legal Adviser 6 Administration	<p>Discussion on determination of lot boundaries -</p> <p>(a) Whether under the LTRS there would be any change regarding the legal status of plans showing the size, boundary and layout of landed interests, and overseas practice in this regard</p> <p>(b) Whether determination of the boundaries of a lot by the Director of Lands (the Director) and registration of the boundary plan concerned under clause 92 of the Bill would provide any form of guarantee for the boundaries of the lot and the accuracy of the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>plan</p> <p>(c) Administration's clarification that boundary plans would form part of the land title record but their accuracy would not be guaranteed except where the boundaries were determined by the Director. In the latter case, the Government would be legally liable for the accuracy of the boundary plans but such cases would not be covered by the indemnity scheme under the LTRS</p> <p>(d) Administration's clarification that it had no intention to make determination of lot boundaries a precondition of title registration</p> <p>(e) Regarding the provision under clause 92(2)(c) that the Director should not make a determination of boundaries where the application concerned did not have the consent of all the owners of the lot, whether this requirement could be waived under certain circumstances, such as in the event that one of the owners was dead or could not be located</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(f) Call on the Administration to examine solutions to the problems of unclear land boundaries in the New Territories and the discrepancy between the actual locations of some small houses and their locations shown on the relevant boundary plans</p> <p>(g) Confirmation that the issue of lost land deeds would be dealt with under a separate legislation being prepared by the Administration</p>	Administration to take the follow-up action under paragraph 3(c) of the minutes
014651-015039	Chairman Administration	Briefing by the Administration on paragraphs 5 to 8 of the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07))	
015040-015129	Chairman Assistant Legal Adviser 6 Administration	Confirmation that a person who was given the “opportunity of being heard” would be required to make oral but not written representation	
015130-015343	Chairman Administration	Briefing by the Administration on paragraphs 9 to 14 of the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07))	
015344-015410	Chairman Mr Albert HO Administration	Confirmation that the reference to petition would be deleted from clause 95 (paragraph 14 of LC Paper No. CB(1)274/03-04(07))	

Time marker	Speaker	Subject(s)	Action Required
015411-015530	Chairman	Date and arrangements for next meeting	

Council Business Division 1
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8 December 2003