

立法會
Legislative Council

LC Paper No. CB(1)592/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the nineteenth meeting held on
Wednesday, 3 December 2003, at 8:30 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
Dr Hon TANG Siu-tong, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)
Hon Andrew WONG Wang-fat, JP
Hon Abraham SHEK Lai-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. Meeting with the Administration

(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. CB(1)468/03-04(01) — Paper provided by the Administration on “Schedules 1 and 2 of the Bill”
- 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”
- 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)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)468/03-04(02) — Paper provided by the Administration on “Inhibitions, Restrictions and Injunctions: A comparison”
- LC Paper No. CB(1)468/03-04(03) — Paper provided by the Administration on “Powers of Land Registrar (Miscellaneous Issues)”

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) To address members’ concern that the Chinese version of the phrase

“application for the registration of any matter” in clause 96(7) (“尋求將任何事項註冊的申請”) was clumsy, the Administration was requested to consider improving the Chinese version of the phrase. A member suggested that the Chinese version be simplified as “要求註冊任何事項的申請”.

- (b) In discussing the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07)), members noted that under clause 102, the Secretary for Housing, Planning and Lands might by Gazette notice amend Schedule 2 to the Bill. Members also noted the Administration’s advice that the purpose of clause 102 was to cater for any additional consequential amendments that might become necessary during the period between the passage of the Bill and the implementation of the land title registration system. The Administration was requested to consider introducing such additional consequential amendments in the form of subsidiary legislation that required positive vetting of the Legislative Council.
- (c) Members were concerned that clause 74(1) had not specified the circumstances under which the Court of First Instance (CFI) might make an order inhibiting the registration of any dealing in registered land. Given that “inhibitions” was a new feature provided under the Bill, the Administration was requested to set out clearly in the Bill the circumstances under which the CFI might make the order.

Meeting arrangements

3. Owing to time constraints, the Bills Committee was unable to complete discussion of all papers on the agenda. The Chairman proposed and members agreed that the paper on “Powers of Land Registrar (Miscellaneous Issues)” (LC Paper No. CB(1)468/03-04(03)) should be examined at the next meeting scheduled for Tuesday, 9 December 2003, at 10:45 am.

II. Any other business

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

Appendix

**Proceedings of the nineteenth meeting of the
Bills Committee on Land Titles Bill
on Wednesday, 3 December 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000154	Chairman	Welcoming and introductory remarks	
<i>Part A: Examination of the relevant parts of the Bill</i>			
000155-000413	Chairman Administration	Briefing by the Administration on paragraphs 15 and 16 of the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07))	
000414-000712	Chairman Ms Audrey EU Administration	(a) Relationship between clauses 8(3) and 96(3) (b) Difference between clauses 96(1) and 96(3)	
000713-000906	Chairman Administration	Briefing by the Administration on paragraphs 17 and 18 of the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07))	
000907-001114	Chairman Ms Audrey EU Administration	Concern that the Chinese version of the phrase “application for the registration of any matter” in clause 96(7) (“尋求將任何事項註冊的申請”) was clumsy	Administration to take the follow-up action under paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
001115-001414	Chairman Administration	Briefing by the Administration on paragraph 19 of the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07))	
001415-001701	Chairman Ms Miriam LAU Administration	<p>(a) Administration’s confirmation that under the new land title registration system (LTRS), as different from the existing deeds registrations system (DRS), the Land Registrar might register a matter notwithstanding that a prescribed fee or levy had not been paid (clause 99(1))</p> <p>(b) Reason for the change mentioned in item (a) above</p> <p>(c) How the Land Registrar would recover the unpaid fees in the event of item (a) above (clause 99(3))</p>	
001702-001848	Chairman Administration	Briefing by the Administration on paragraph 20 of the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07))	
001849-005118	Chairman Ms Miriam LAU Mr TAM Yiu-chung Administration	<p>Discussion in relation to the Indemnity Fund -</p> <p>(a) Whether the following items were provided for in the Bill: definition and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>establishment of the Indemnity Fund (IF), the financing of IF by payment of levy on registration, and use of IF as the mechanism for payment of compensation for loss arising from negligence or error on the part of the Government (clauses 82, 82(1), 98(1)(k), 98(3) and 100(1)(zh))</p> <p>(b) Administration's confirmation that the matters in item (a) above would be provided for in the relevant regulations to be made after enactment of the Bill, and that the LTRS would not be implemented until thereafter (clauses 98(1)(k), 98(3) and 100(1)(zh))</p> <p>(c) Members' concern about the types of application covered by the phrase "the levy for any application for registration" in clause 98(1)(k)</p> <p>(d) Administration's clarification that there would be two charges: fees for registration to cover the cost for dealing with the registration; and the levy to be imposed on assignments only and not on other matters submitted for</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>registration (clauses 98(1)(k) and 100(1)(zj))</p> <p>(e) Administration’s confirmation of the policy intent to ensure that other prescribed fees to be charged under the LTRS would be cheaper than those under the DRS, and that they would be charged at a flat rate irrespective of the values of the properties concerned</p> <p>(f) Possible levy rates under the LTRS, how they would compare with stamp duty, and reference to the Administration’s paper on “Indemnity Scheme: Levy Rates and Miscellaneous Matters” (LC Paper No. CB(1)2207/02-03(06))</p> <p>(g) Members’ concern about the need to increase the levy should there be substantial claims before the Indemnity Fund had established its own reserves</p> <p>(h) Administration’s assurance that compulsory registration of title on first assignment and prudence exercised in setting the levy rates should help address the concern at item (g) above, and reference to the Administration’s paper on</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>“Indemnity Fund Operation — Supplementary Information” (LC Paper No. CB(1)2464/02-03(03))</p>	
005119-005316	Chairman Administration	Briefing by the Administration on paragraphs 21 and 22 of the paper on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)274/03-04(07))	
005317-010019	Chairman Assistant Legal Adviser 6 Administration	<p>(a) Members’ concern that under clause 102(2), the Secretary for Housing, Planning and Lands (SHPL) might by Gazette notice amend Schedule 2</p> <p>(b) Administration’s clarification that the reason for empowering SHPL to amend Schedule 2 was that there was a need to cater for any additional consequential amendments that might become necessary during the period between the passage of the Bill and the implementation of the LTRS</p> <p>(c) Members’ view that the additional consequential amendments in item (b) above should not be made unnoticed and hence should be introduced in the form of subsidiary legislation that required positive vetting of the Legislative</p>	Administration to take the follow-up action under paragraph 2(b) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		Council	
010020-011329	Chairman Administration	(a) Briefing by the Administration on the paper on “Schedules 1 and 2” (LC Paper No. CB(1)468/03-04(01)) (b) Agreement to examine in more detail Schedule 2 of the Bill during the clause-by-clause examination stage	
011330-011456	Chairman Assistant Legal Adviser 6 Administration	Agreement to examine the Administration’s reply to Assistant Legal Adviser’s letter of 5 September 2003 on Schedule 2 (Annex 2 to LC Paper No. CB(1)468/03-04(01)) during the clause-by-clause examination stage	
<i>Part B: Matters arising from previous meetings</i>			
011457-013431	Chairman Administration	Briefing by the Administration on the paper on “Inhibitions, Restrictions and Injunctions: A comparison” (LC Paper No. CB(1)468/03-04(02))	
013432-015026	Chairman Ms Miriam LAU Assistant Legal Adviser 6 Administration	(a) Administration’s confirmation that the Land Registrar would have the primary duty to remove from the Title Register a restriction registered pursuant to a covenant not to further charge in a charge should he have knowledge of the release of	

Time marker	Speaker	Subject(s)	Action Required
		<p>the charge concerned (clauses 17, 39 and 79)</p> <p>(b) Concern about the seemingly lack of objective criteria against which the Land Registrar could make an order prohibiting dealings in the land, charge or lease by the owner thereof (clause 77(1)(c)), and agreement to deal with this issue when discussing on the paper on “Powers of Land Registrar (Miscellaneous Issues)” (LC Paper No. CB(1)468/03-04(03))</p> <p>(c) Concern about the appropriateness of quoting section 42 of the English Land Registration Act 2002 as the legal basis of the power of the Land Registrar to take action to prevent invalidity or unlawfulness in relation to any disposition or to protect rights or claims (paragraph 12 of LC Paper No. CB(1)468/03-04(02))</p> <p>(d) Doubts on the rationale for registering a restriction upon the loss of a title certificate (Item 5 of the Annex to LC Paper No. CB(1)468/03-04(02))</p> <p>(e) Concern about the appropriateness of</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>permitting the registration of a restriction upon the appointment of a receiver under a debenture or legal charge, and agreement to deal with this issue after the Administration had provided a paper on how receivership should be dealt with under the LTRS (Item 6 of the Annex to LC Paper No. CB(1)468/03-04(02))</p>	
015027-020131	<p>Chairman Mr LAU Ping-cheung Ms Miriam LAU Assistant Legal Adviser 6 Administration</p>	<p>(a) Members' concern about malicious application to the Court for an inhibition having regard that the category of persons who might make such an application was not limited to a person having an interest in the land, and the Administration's assurance that the applicant would need to satisfy the court that he had reasonable grounds for the application (paragraph 7 of LC Paper No. CB(1)468/03-04(02))</p> <p>(b) Members' concern that inhibitions might be removed only upon an application to the Land Registrar and that in the absence of a court order for removal, the Registrar might only remove the inhibition under one or more of the three</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>circumstances specified in clauses 76(a), 76(b) and 76(c) (paragraph 11 of LC Paper No. CB(1)468/03-04(02))</p> <p>(c) Members' concern about whether compensation was available for damage resulting from item (a) above, and the Administration's confirmation that application for removal of the registration of the inhibition concerned and for the compensation mentioned above could be made by order of the Court of First Instance (CFI) (clauses 74(1)) and 76(d))</p> <p>(d) Members' concern that clause 74(1) had not specified the circumstances under which CFI might make an order inhibiting the registration of any dealing in registered land (paragraph 8 of LC Paper No. CB(1)468/03-04(02))</p> <p>(e) Members' concern about the absence of indemnity for wrongful registration of restrictions by the Land Registrar and whether clause 82(1) could address such concern, and agreement to deal with these issues at the next</p>	<p>Administration to take the follow-up action under paragraph 2(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		meeting	
020132-020148	Chairman	Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
16 December 2003