

立法會
Legislative Council

LC Paper No. CB(1)704/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/02

Bills Committee on Land Titles Bill

**Minutes of the twentieth meeting held on
Tuesday, 9 December 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 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
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)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 meeting
(LC Paper No. CB(1)525/03-04 — Minutes of the eighteenth
meeting held on
25 November 2003)

The minutes of the meeting held on 25 November 2003 were confirmed.

II. Meeting with the Administration

(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)524/03-04(01)

— “Follow-up to the eighteenth meeting on 25 November 2003” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)468/03-04(03)

— Paper provided by the Administration on “Powers of Land Registrar (Miscellaneous Issues)”

LC Paper No. CB(1)524/03-04(02)

— Paper provided by the Administration on “Transmissions, Receivership and Trusts”

LC Paper No. CB(1)524/03-04(03)

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

LC Paper No. CB(1)524/03-04(04)

— Supplementary paper provided by the Administration on “Part 11 of the Bill — Miscellaneous Provisions”)

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) Clause 32(1) provided that where the Land Registrar was satisfied that a person, through that person's wilful default, had failed to present to the Registrar an application for the registration of a matter, he might serve notice on the person requiring him to present the application. Members were concerned why it was necessary for the Registrar to be satisfied that there was an element of wilful default before he might require the person to present the application. In this connection, the Administration was invited to:
- (i) consider whether there was a need for the test of "wilful default" in clause 32(1);
 - (ii) give some examples to show how the test of "wilful default" would operate; and
 - (iii) highlight any equivalent provisions in other jurisdictions.
- (b) Clause 96(5) provided that any person who, without reasonable excuse, failed to comply with a requirement under clause 32(1) would commit an offence and would be liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a daily penalty of \$1,250. Clause 96(6) provided that any person who, without reasonable excuse, failed to comply with a requirement under clause 93 (i.e. to provide the Land Registrar with his address in Hong Kong for service) would commit an offence and was liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a daily penalty of \$1,000. Members were concerned that in the absence of a clear definition of "reasonable excuse", the public might be easily caught by clause 96(5) and (6) and subject to criminal sanction. Members were also concerned that these provisions were different from the existing practice where no criminal sanction was imposed on a person for his failure to present an application or to provide his address to the Registrar. In this connection, the Administration was invited to:
- (i) give examples to illustrate what might constitute a "reasonable excuse" in clause 96(5) and (6);
 - (ii) examine whether there was any conflict between "wilful default" in clause 32(1) and "without reasonable excuse" in clause 96(5); and
 - (iii) provide a paper on overseas practices in relation to the Land Registrar's powers under clauses 32(1) and 93, including the relevant provisions on penalty.
- (c) Having examined the Administration's written response (LC Paper No. CB(1)468/03-04(03)), members still considered that the scope of the power of the Land Registrar in imposing a restriction under clause 77(1) was not clear. Members also expressed the following points of concern:
- (i) While the Administration had pointed out that the Registrar might

exercise the power only on application by a person interested in registered land and where he was satisfied that the powers of the owner of the registered land should be restricted, this was not clearly reflected in clause 77(1).

- (ii) Members were concerned how the Registrar would arrive at the conclusion that an order should be made to prohibit all dealings in the registered land (a restriction). In this connection, members noted that under clause 77(1)(b) and (c), the Registrar might impose a restriction after directing such inquiries to be made and notices to be served and hearing such persons as he thought fit, and after being satisfied that the powers of the owner of the registered land should be restricted. It seemed that the Registrar was empowered to perform certain quasi-judicial functions with a high degree of discretion. It appeared that the Registrar might impose a restriction after considering the evidence given by a third party who had no interest in the land. The Registrar's power seemed so broad that he might impose a restriction not directly consequential upon registered interests.
 - (iii) It was not clear whether the term "an application" in clause 77(1)(a) referred to an application for registration of a restriction, or other types of applications, such as an application for registration of title. The Administration was requested to provide a paper to set out the policy intent and the scope of power of the Registrar under clause 77(1), to give examples to illustrate how the Registrar would arrive at the conclusion that a restriction should be imposed, and to respond to the above points of concern expressed by members. The Administration was also requested to examine whether the present drafting of clause 77(1) could fully reflect all these aspects and if not, the Administration was requested to consider how the drafting could be improved.
- (d) To facilitate the Bills Committee's further consideration of whether indemnity should be provided for wrongful registration of restrictions by the Land Registrar, the Administration was invited to advise whether other remedies were available for a person who suffered from the wrongful registration of a restriction, in particular through fraud by a third party.
 - (e) Members were pleased to note from the paper on "Power of Land Registrar (Miscellaneous Issues)" (LC Paper No. CB(1)468/03-04(03)) that the Administration would propose suitable amendments to clause 88 to reflect the policy intent that the Registrar would not frequently use the power under the clause to apply to the Court of First Instance for directions on principles of law, and that the Registrar would have to justify fully to the court why he was seeking direction and not relying on

his own legal advisors. Members also pointed out that the direction should only be sought on principles of law in respect of a specific case, but not “[i]n any case of doubt or difficulty or in any matter not provided for under this Ordinance” as presently provided for in clause 88. In this connection, the Administration was invited to make reference to the relevant provisions in the Land Registration Act 1925 in England and Wales, and the Real Property Act 1900 in New South Wales (Annex to the paper). The relevant provisions in the Land Registration Act 1925 was preferable because they provided for the involvement of the affected parties.

- (f) Clause 81(5) provided that in any rectification case not involving any mistake or omission on the part of any person referred to in clause 8(3), if the Land Registrar was joined as a party, the Registrar should not pay costs incurred by the parties in the proceedings and damages suffered by any parties in the proceedings. Noting the Administration’s advice that the claims for such costs and damages would have to be made by application for indemnity and that this policy intent would be set out in the relevant regulations, members were concerned that it was not clear from the relevant clauses (including clauses 83 and 84(2)(b)) that such costs could be recovered from the Indemnity Fund. The Administration was requested to review the drafting of the relevant clauses to ensure that this point was clearly reflected.
- (g) The Administration was requested to provide a paper to address the following points of concern expressed by members when examining the paper on “Rectification of Title Register by Court” (LC Paper No. CB(1)524/03-04(03)):
 - (i) Members were concerned whether the original owner of a property, “A”, who had lost the ownership of the property to “B” through fraud many years before, during which the property was sold to “C” and then “D”, might still apply to the Court of First Instance (CFI) for rectification of the title register. While the Administration claimed that the original owner might do so, members doubted whether this was provided for in clause 81. According to clause 81(1), the CFI might order rectification of the Title Register by directing that an entry therein or omitted therefrom be removed, amended or entered, as the case might be. It seemed that the term “an entry” referred to the current entry only.
 - (ii) Having noted the Administration’s advice that the full meaning of the term “fraud” would be determined according to case law, members were concerned that the scope of the term might change from time to time. The Administration was requested to provide some typical examples of “fraud” that might be committed in relation to title registration.

- (iii) Clause 81(4) provided that the CFI might, in exercising its discretion on whether the Title Register should be rectified, consider such factors, including the “hardship to the parties”. Members were concerned that this requirement might give rise to uncertainty. The Administration was requested to provide information on overseas practices in this regard.
- (iv) Referring to the Hong Kong Bar Association’s concern about whether a “knowledge test” should be adopted as the statutory criterion in determining whether the Title Register was subject to the CFI’s power of rectification, the Administration was invited to provide a written response on this point.

Meeting arrangements

4. Owing to time constraints, the Bills Committee was unable to complete discussion of the following papers:

- (a) Paper provided by the Administration on “Transmissions, Receivership and Trusts” (LC Paper No. CB(1)524/03-04(02)); and
- (b) Supplementary paper provided by the Administration on “Part 11 of the Bill — Miscellaneous Provisions” (LC Paper No. CB(1)524/03-04(04)).

The Chairman proposed and members agreed that the above papers should be examined at the next meeting scheduled for Friday, 19 December 2003, at 10:45 am.

5. Ms Miriam LAU suggested that the next meeting be rescheduled to avoid clashing with the Transport Panel meeting to be held at 10:00 am on 19 December 2003 for meeting with deputations. The Chairman directed the Clerk to look into the issue.

Clerk

(Post-meeting note: With the concurrence of the Chairman, the next Bills Committee meeting was subsequently rescheduled to be held on 19 December 2003 from 8:30 am to 10:00 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
5 January 2004

Appendix

**Proceedings of the twentieth meeting of the
Bills Committee on Land Titles Bill
on Tuesday, 9 December 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action Required |
|---------------|--|---|-----------------|
| 000000-000014 | Chairman | Welcoming and introductory remarks | |
| 000015-000025 | Chairman | Confirmation of minutes of the meeting held on 25 November 2003 | |
| 000026-002525 | Chairman Administration | <p>(a) Briefing by the Administration on the paper on “Powers of Land Registrar (Miscellaneous Issues)” (LC Paper No. CB(1)468/03-04(03))</p> <p>(b) Drawing of members’ attention to the typographical error in the Chinese version of the Annex to LC Paper No. CB(1)468/03-04(03), namely, that the year of enactment of the Real Property Act should be “1900” and not “1990”</p> | |
| 002526-003659 | Chairman Mr Albert HO Administration | (a) Members’ concern that the power of the Land Registrar to impose restrictions on registrations under clause 77(1) seemed so broad that he might impose a restriction not | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>directly consequential upon registered interests, and that the Land Registrar seemed to be empowered to perform certain quasi-judicial functions with a high degree of discretion</p> <p>(b) Administration's assurance that the Land Registrar was under a duty to act in good faith and reasonably when exercising the power in item (a) above, and that he would act only when he was satisfied that the powers of the owner should be restricted</p> <p>(c) Members' view that the scope of the power in item (a) above should be limited and clearly defined in the Bill, and the Administration's assurance that it had been examining how to ensure such</p> | |
| 003700-005736 | <p>Chairman Ms Miriam LAU Ms Audrey EU Assistant Legal Adviser Administration</p> | <p>Discussion on the Land Registrar's power to compel registration -</p> <p>(a) Members' concern about the imposition of criminal sanction in respect of an offence committed by any person who, without reasonable excuse, failed to comply with the requirement under clause 32(1) to present to</p> | <p>Administration to provide the required information under paragraph 3(b)(iii) of the minutes</p> |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>the Registrar an application for the registration of a matter, and an offence committed by any person who, without reasonable excuse, failed to comply with the requirement under clause 93 to provide the Land Registrar with his address in Hong Kong for service (clauses 96(5) and 96(6))</p> <p>(b) Need to ensure that the Land Registrar’s power to compel registration would be effective</p> <p>(c) Members’ concern about the absence of a clear definition of “reasonable excuse”</p> <p>(d) Members’ concern about why, before the Land Registrar might require a person to present to him an application for the registration of a matter, it was necessary for him to be satisfied that it was through wilful default that the person had failed to present the application (clause 32(1))</p> <p>(e) Members’ concern about possible conflict between “wilful default” in clause 32(1) and “without</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(a) of the minutes</p> <p>Administration to take the follow-up action under paragraph 3(b)(ii) of</p> |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>Registrar might exercise the power in imposing a restriction only on application by a person interested in the registered land</p> <p>(e) Members' concern that it was not clear whether the term "an application" in clause 77(1)(a) referred to an application for registration of a restriction, or other types of applications, such as an application for registration of title</p> | <p>Administration to take the follow-up action under paragraph 3(c) of the minutes</p> |
| 011820-012316 | <p>Chairman Ms Miriam LAU Ms Audrey EU Administration</p> | <p>(a) Members' concern about the absence of indemnity for wrongful registration of restrictions by the Land Registrar</p> <p>(b) Justifications for the absence of the indemnity in item (a) above</p> <p>(c) Whether other remedies were available for a person who suffered from the wrongful registration of a restriction, in particular through fraud by a third party</p> | <p>Administration to take the follow-up action under paragraph 3(d) of the minutes</p> |
| 012317-012759 | <p>Chairman Administration</p> | <p>Discussion on the Land Registrar's power to apply to the Court of First Instance (CFI) for directions (clause 88) -</p> | |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>(a) Members’ concern about the wide scope of the Registrar’s power to apply to CFI for directions on principles of law, and the Administration’s undertaking to amend clause 88 to reflect the policy intent that the Registrar would not frequently use the power under the clause (paragraph 21 of and Annex to LC Paper No. CB(1)468/03-04(03))</p> <p>(b) Members’ view that the direction referred to in item (a) above should only be sought on principles of law in respect of a specific case, and that reference should be made to the relevant provisions in the Land Registration Act 1925 in England and Wales, and the Real Property Act 1900 in New South Wales (Annex to LC Paper No. CB(1)468/03-04(03))</p> | <p>Administration to take the follow-up action under paragraph 3(e) of the minutes</p> |
| 012800-013754 | Chairman Administration | Briefing by the Administration on the paper on “Rectification of Title Register by Court” (LC Paper No. CB(1)524/03-04(03)) | |

| Time marker | Speaker | Subject(s) | Action Required |
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| 013755-015522 | Chairman Ms Miriam LAU Mr TAM Yiu-chung Mr Albert HO Ms Audrey EU Assistant Legal Adviser Administration | Discussion on rectification of Title Register by Court - (a) Reference to the Hong Kong Bar Association's concern about whether a "knowledge test" should be adopted as the statutory criterion in determining whether the Title Register was subject to the CFI's power of rectification (b) Members' concern that if the full meaning of the term "fraud" would be determined according to case law, the scope of the term might change from time to time (c) Members' concern about whether the original owner of a property, "A", who had lost the ownership of the property to "B" through fraud many years before, during which the property was sold to "C" and then "D", might still apply to the CFI for rectification of the Title Register, and the Administration's reply that the original owner might do so (d) Members' doubt about whether the Administration's claim in item (c) above was provided for in clause 81 | Administration to provide the required information under paragraph 3(g)(iv) of the minutes Administration to provide the required information under paragraph 3(g)(ii) of the minutes Administration to take the follow-up action under paragraph 3(g)(i) of the minutes |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>having regard that according to clause 81(1), the CFI might order rectification of the Title Register by directing that an entry therein or omitted therefrom be removed, amended or entered, as the case might be, and it seemed that the term “an entry” referred to was the current entry only</p> <p>(e) Members’ concern about the uncertainty created by item (c) above as well as the need to consider such factors as the “hardship to the parties” when determining whether to order rectification of the Title Register (clause 81(4))</p> <p>(f) Members’ concern about the role which acquisition for value played in seeking rectification of an entry on the Title Register as presented in the flow chart in the Annex to LC Paper No. CB(1)524/03-04(03)</p> <p>(g) Administration’s advice that in any rectification case not involving any mistake or omission on the part of any person referred to in clause 8(3), if the Land Registrar was joined as a party, the Registrar</p> | <p>Administration to provide the required information under paragraph 3(g)(iii) of the minutes</p> |

| Time marker | Speaker | Subject(s) | Action Required |
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| | | <p>should not pay costs incurred by the parties in the proceedings and damages suffered by any parties in the proceedings but the claims for such costs and damages would have to be made by application for indemnity, and that this policy intent would be set out in the relevant regulations</p> <p>(h) Members' concern that notwithstanding the policy intent in item (g) above, it was not clear from clauses 83 and 84(2)(b) that such costs could be recovered from the Indemnity Fund</p> <p>(i) A member's view that clause 83 should be suitably amended to reflect the policy intent in item (g) above having regard that, when explaining the proposed cap on the indemnity, the clause only took into account the value of the property concerned</p> | <p>Administration to take the follow-up action under paragraph 3(f) of the minutes</p> |
| 015523-015908 | Chairman | Date and arrangements for next meeting | |