

**立法會**  
**Legislative Council**

LC Paper No. CB(1)731/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/02

**Bills Committee on Land Titles Bill**

**Minutes of the twenty-first meeting held on  
Friday, 19 December 2003, at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Andrew WONG Wang-fat, 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 Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)  
Hon Miriam LAU Kin-yea, JP  
Hon Abraham SHEK Lai-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)<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>

Ms May LEUNG  
Legislative Assistant

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**I. Confirmation of minutes of meeting**

(LC Paper No. CB(1)592/03-04

— Minutes of the nineteenth  
meeting held on  
3 December 2003)

The minutes of the meeting held on 3 December 2003 were confirmed.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)615/03-04(01) — Submission dated 16 December 2003 from The Law Society of Hong Kong
- 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)600/03-04(01) — “Follow-up to the nineteenth meeting on 3 December 2003” prepared by the Legislative Council Secretariat
- 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(04) — Supplementary paper provided by the Administration on “Part 11 of the Bill — Miscellaneous Provisions”
- LC Paper No. CB(1)600/03-04(02) — Supplementary paper provided by the Administration on “Implied Covenants”
- LC Paper No. CB(1)600/03-04(03) — Paper provided by the Administration on “Part 6 of the Bill — Instruments (Minors)”
2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

### Follow-up actions to be taken by the Administration

#### *Matters arising from previous meetings*

- Admin 3. At the request of the Bills Committee, the Administration agreed to take the following actions -
- (a) In discussing the paper on “Transmissions, Receivership & Trust” (LC Paper No. CB(1)524/03-04(02)), members noted that where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease died, upon proof of the death of the joint tenant and payment of Estate Duty, the Land Registrar would remove the name of the deceased joint tenant from the column “Name of Owner” in the Title Register. An appropriate note would be added in another column to highlight the transmission of ownership to the surviving joint tenant(s) under clause 62. In this connection, the Administration was requested to consider the following views expressed by the Assistant Legal Adviser (ALA):
    - (i) Where there were more than two joint tenants, it was necessary to add the note mentioned above twice or more. It was suggested that a column on details of the registered charge be added to the Title Register to list out the names of all the joint chargors, so that the name of the deceased would be traceable.
    - (ii) In relation to clause 62(2)(b), the Administration was requested to consider whether there were any means to enable the purchaser of a property to know directly that the payment of estate duty had been postponed in accordance with the provisions of the Estate Duty Ordinance (Cap.111).
  - (b) The Administration was requested to follow up the following two points raised by members when discussing ALA’s concern about the appropriateness of permitting the registration of a restriction upon the appointment of a receiver under a debenture or legal charge:
    - (i) Members noted that whether a restriction would be registered depended very much on how the Land Registrar interpreted the relevant legislation, such as the insolvency law, and/or legal documents. Given the implication of the registration of restrictions and the absence of indemnity for wrongful registration of restrictions, there was a need to put in place safeguards against wrongful registration of restrictions caused by misinterpretation of the relevant legislation and/or legal documents. In members’ view, such safeguards might include soliciting legal advice where necessary, issuing relevant guidelines for reference, and putting in place a mechanism where the affected parties could present their

views if their legal points were different from those of the Land Registrar, etc.

- (ii) There were similarities and differences between the appointment of a receiver by court and the execution of a power of attorney by the owner of a property. The Administration was requested to advise how powers of attorney would be dealt with under the land title registration system.
- (c) In discussing the supplementary paper on “Implied Covenants” (LC Paper No. CB(1)600/03-04(02)), members noted that the Administration would work out a mechanism to ensure that if several registrable matters were provided for in one instrument, registration of the principal matter supported by that instrument would effect the registration of other matters in that instrument which also affected the registered land, registered charge or registered long term lease. Members also noted ALA’s concern that such other matters could only cover those which affected the registered land, registered charge or registered long term lease and registrable under the land title registration system. The problem relating to the modification of implied covenants under section 35 of the Conveyancing and Property Ordinance (Cap. 219) was not solved. The Administration was requested to consider how this concern could be addressed and how details of any implied covenants could be readily discernible from the Title Register to obviate the need to refer to the relevant instrument(s). The Administration was requested to make reference to relevant overseas practices.
- (d) The Administration was requested to follow up the following two points raised by members and ALA when discussing the paper on “Part 6 - Instruments (Minors)” (LC Paper No. CB(1)600/03-04(03)):
- (i) Clause 61(3) provided that the words “a minor” should be added after a minor’s name if the minor was registered in the Title Register as the owner of registered land. In ALA’s view, it should be the responsibility of the solicitors of the parties to a disposition to ascertain the status of the owner of the property, i.e. to ascertain whether the owner was a minor or mentally incapacitated, etc. The need for making a provision in the Bill to cater particularly for the situation where the owner was a minor had not been sufficiently demonstrated and should be reconsidered.
  - (ii) If the present drafting of clause 61(3) was to be retained, a mechanism should be put in place for the removal of the words “a minor” when the minor concerned attained the age of majority. In this regard, a member proposed an alternative that the words “minor until (date)” might be added.

*Submission from the Law Society*

4. The Chairman drew members' attention to the submission dated 16 December 2003 from The Law Society of Hong Kong (Law Soc). The Law Soc put forward its views that midnight conversion was the best and most practical way to implement the Land Titles Bill, and that if midnight conversion was not acceptable, the Law Soc would support a scheme of "daylight conversion" as a viable alternative. Members expressed concern about the implications of the proposed scheme on the Bill. Ms Audrey EU pointed out that while the new land title registration system (LTRS) would not be able to operate without the support of solicitors, the proposed scheme, if accepted by the Administration, would bring about a fundamental change to the LTRS, and might necessitate substantial redrafting of the Bill and a new round of consultation. In that case, it seemed unlikely that the Bills Committee would be able to complete scrutiny of the Bill before the end of the current legislative term in July 2004.

5. To facilitate the Bills Committee's consideration of the way forward, the Chairman invited the Administration to clarify with the Law Soc the details of the scheme of daylight conversion. She also invited the Administration to provide, for the Bills Committee's consideration at its meeting on 13 January 2004, a paper setting out an outline of the scheme, and the Administration's assessment of the implications of the scheme on the Bill if the scheme was to be adopted, including the parts of the Bill affected and the scope of amendments that needed to be made. The Land Registrar agreed to provide the paper.

Admin

Follow-up action to be taken by the Clerk

6. The Chairman pointed out that the Law Soc had commissioned a consultant to review the insurance arrangements of the Hong Kong Solicitors Indemnity Scheme. The review report, which was considered at the meeting of the Panel on Administration of Justice and Legal Services on 18 December 2003, had touched upon the Land Titles Bill. The Chairman directed that a copy of the relevant part of the report be translated into Chinese and circulated to members of the Bills Committee before the next meeting on 13 January 2004.

Clerk

Meeting arrangements

7. The Chairman reminded members that two meetings had been scheduled for January 2004. At the next meeting on 13 January 2004, the Bills Committee would consider the paper on the scheme of daylight conversion and any other papers to be provided by the Administration. At the meeting on 30 January 2004, the Bills Committee would consider the way forward in the light of the paper to be provided by the Administration on the progress of its discussion with the concerned parties, including the Law Soc, on the major policy issues involved in the Bill.

Clerk

**III. Any other business**

8. There being no other business, the meeting ended at 9:45 am.

Council Business Division 1  
Legislative Council Secretariat  
9 January 2004

## Appendix

**Proceedings of the twenty-first meeting of the  
Bills Committee on Land Titles Bill  
on Friday, 19 December 2003, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000045	Chairman	Welcoming and introductory remarks	
000046-000058	Chairman	Confirmation of minutes of the meeting held on 3 December 2003	
000059-000242	Chairman Administration	(a) Reference to the submission dated 16 December 2003 from The Law Society of Hong Kong (Law Soc) (LC Paper No. CB(1)615/03-04(01))  (b) Administration's undertaking to provide by the end of January 2004 a written response to Law Soc's proposal on the adoption of a "daylight conversion" scheme	
000243-000349	Chairman Administration	Reference to the Administration's paper on "Transmissions, Receivership and Trusts" (LC Paper No. CB(1)524/03-04)(02))	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000350-001203	Chairman Assistant Legal Adviser Administration	<p>Discussion on transmission on death of joint tenant -</p> <p>(a) Assistant Legal Adviser (ALA)'s concern about the following arrangement: where one of two or more joint tenants of registered land, a registered charge or a registered long-term lease died, upon proof of the death of the joint tenant and payment of Estate Duty, the Land Registrar would remove the name of the deceased joint tenant from the column "Name of Owner" in the Title Register, and an appropriate note would be added in another column to highlight the transmission of ownership to the surviving joint tenant(s). ALA was of the view that the above arrangement would not be so simple as presented should there be more than two joint tenants, and that the name of the deceased would not be easily traceable if the above arrangement was adopted (clause 62 and paragraph 9 of LC Paper No. CB(1)524/03-04)(02))</p> <p>(b) Administration's justifications for the arrangement described in item (a) above</p>	Administration to take the follow-up action under paragraph 3(a)(i) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>(c) ALA’s concern about how the purchaser of a property could know directly that the payment of estate duty had been postponed in accordance with the provisions of the Estate Duty Ordinance (Cap.111), and the Administration’s illustration of how the potential purchaser would be alerted to the potential charge of estate duty when proceeding with the disposition concerned (clauses 62(2) and 70)</p>	<p>Administration to take the follow-up action under paragraph 3(a)(ii) of the minutes</p>
<p>001204-002439</p>	<p>Chairman Ms Audrey EU Assistant Legal Adviser Administration</p>	<p>(a) ALA’s concern about the appropriateness of permitting the registration of a restriction upon the appointment of a receiver under a debenture or legal charge</p> <p>(b) Legal nature of receivership (paragraphs 21 and 22 of LC Paper No. CB(1)524/03-04)(02))</p> <p>(c) Members’ concern about how powers of attorney would be dealt with under the land title registration system (paragraph 25 of LC Paper No. CB(1)524/03-04)(02))</p> <p>(d) Members’ view that whether a restriction would be registered depended</p>	<p>Administration to take the follow-up action under paragraph 3(b)(ii) of the minutes</p> <p>Administration to take the follow-up action under</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>very much on how the Land Registrar interpreted the relevant legislation and/or legal documents, and hence there was a need to put in place safeguards against wrongful registration of restrictions caused by misinterpretation</p>	<p>paragraph 3(b)(i) of the minutes</p>
002440-002833	<p>Chairman Ms Audrey EU Assistant Legal Adviser Administration</p>	<p>Discussion on the Administration's supplementary paper on "Part 11 - Miscellaneous Provisions" (LC Paper No. CB(1)524/03-04)(04)) -</p> <p>(a) Clarification regarding paragraph 12 of LC Paper No. CB(1)524/03-04)(04) and reference to the Annex to the paper</p> <p>(b) Members' support of the Administration's proposal to amend the Chinese version of "application for the registration of any matter" in clause 96 to "要求將任何事項註冊的申請" (paragraph 10 of LC Paper No. CB(1)524/03-04)(04))</p>	
002834-003714	<p>Chairman Assistant Legal Adviser Administration</p>	<p>Discussion on the Administration's supplementary paper on "Implied Covenants" (LC Paper No. CB(1)600/03-04)(02)) -</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(a) Members' concern about the enforceability of implied covenants, which would be noted in the remarks column of the transfer or the legal charge concerned (paragraph 4 of LC Paper No. CB(1)600/03-04)(02))</p> <p>(b) Administration's undertaking to propose Committee Stage Amendments to ensure that if several registrable matters were provided for in one instrument, registration of the principal matter supported by that instrument would effect the registration of other matters in that instrument which also affected the registered land, registered charge or registered long term lease</p> <p>(c) ALA's concern that such other matters as described in item (b) above could only cover those which affected the registered land, registered charge or registered long term lease and registrable under the land title registration system, that the problem relating to the modification of implied covenants under section 35 of the Conveyancing and Property Ordinance (Cap. 219) was</p>	<p>Administration to take the follow-up action under paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>not solved, and that details of implied covenants would still not be readily discernible from the Title Register to obviate the need to refer to the relevant instrument(s)</p>	
003715-004831	<p>Chairman Ms Audrey EU Mr IP Kwok-him Assistant Legal Adviser</p>	<p>Discussion on the Administration's paper on "Part 6 - Instruments" (LC Paper No. CB(1)600/03-04)(03)) -</p> <p>(a) ALA's concern about the need to add the words "a minor" after a minor's name if the minor was registered in the Title Register as the owner of registered land (clause 61(3))</p> <p>(b) ALA's view that it should be the responsibility of the solicitors of the parties to a disposition to ascertain the status of the owner of the property, i.e. to ascertain whether the owner was a minor or mentally incapacitated, etc., and that the need for making a provision in the Bill to cater particularly for the situation where the owner was a minor had not been sufficiently demonstrated and should be reconsidered</p> <p>(c) Administration's</p>	<p>Administration to take the follow-up action under paragraph 3(d)(i) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>explanation that the intent of the provision in item (a) above was to provide protection for disponees</p> <p>(d) Members' concern about the absence of a mechanism for the removal of the words "a minor" when the minor concerned attained the age of majority, and views on how such a mechanism could be effected</p>	<p>Administration to take the follow-up action under paragraph 3(d)(ii) of the minutes</p>
004832-011445	<p>Chairman Ms Audrey EU Mr TAM Yiu-chung Clerk Administration</p>	<p>Discussion on Law Soc's submission -</p> <p>(a) Members' views on the scheme of daylight conversion (the scheme) proposed by Law Soc</p> <p>(b) Need to clarify the details of the scheme with Law Soc</p> <p>(c) Request for information on an outline of the scheme, and the Administration's assessment of the implications of the scheme on the Bill if the scheme was to be adopted, including the parts of the Bill affected and the scope of amendments that needed to be made</p> <p>(d) Members' concerns about the implications of the</p>	<p>Administration to take the follow-up action under paragraph 5 of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>scheme on the way forward of the Bills Committee</p> <p>(e) Meeting arrangements and the need for the Administration to provide for the Bills Committee's consideration at its meeting on 13 January 2004 a paper setting out the information in item (c) above</p> <p>(f) Reference to the Review Report on Insurance Arrangements of the Hong Kong Solicitors Indemnity Scheme considered at the meeting of the Panel on Administration of Justice and Legal Services on 18 December 2003</p>	<p>Clerk to take the follow-up action under paragraph 6 of the minutes</p>

Council Business Division 1  
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9 January 2004