

立法會
Legislative Council

LC Paper No. CB(2)2379/01-02
(These minutes have been seen
by the Administration)

Ref : CB2/BC/3/00

**Bills Committee on
Drug Trafficking and Organized Crimes (Amendment) Bill 2000**

**Minutes of twelfth meeting
held on Monday, 27 May 2002 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members Present** : Hon James TO Kun-sun (Chairman)
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Bernard CHAN
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Henry WU King-cheong, BBS
Hon IP Kwok-him, JP
- Members Absent** : Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Sing-chi
- Public Officers Attending** : Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)
- Mr Geoffrey FOX
Senior Assistant Law Draftsman
Department of Justice
- Ms Marie SIU
Senior Government Counsel
Department of Justice

Mr Kelvin LEE
Government Counsel
Department of Justice

Mr LEUNG Lap-fun
Superintendent, Narcotics Bureau
Hong Kong Police Force

Mr Stephen Barry TARRANT
Superintendent, Organized Crime and Triad Bureau
Hong Kong Police Force

Mr Eric HO Wai-man
Superintendent, Financial Investigation
Customs and Excise Department

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I. Confirmation of minutes
[LC Paper No. CB(2)2036/01-02]

The minutes of the meeting held on 3 May 2002 were confirmed.

II. Meeting with the Administration
[LC Paper No. CB(2)2044/01-02(01)]

2. The Committee deliberated on the Administration's response to issues raised at the previous meeting [LC Paper No. CB(2)2044/01-02(01)] (index of proceedings attached at **Annex**).

Restraint/charging order

3. Some members queried whether the Administration had adequate justification to revise the maximum expiry period of a restraint/charging order

Action

to six months, instead of three months, given the Administration could apply for extension if necessary. The Administration explained that it might take about six months or longer to complete the necessary work for complicated cases. Moreover, there was adequate protection to any person affected by the restraint/charging order because he could apply to the Court to have the order lifted and seek compensation. Mrs Selina CHOW said that as an inter partes hearing would be held to consider an application for a restraint/charging order, the proposed maximum expiry period of six months was acceptable.

Adm 4. After consideration, members suggested and the Administration agreed that the draft Committee Stage amendment (CSA) would be revised along the line that the Court would specify the expiry period of a restraint/charging order which was reasonable in the circumstances of the case concerned, subject to a maximum period of six months.

Adm 5. At the Chairman's suggestion, the Administration also undertook to consider adding "or has refused bail" after "released on bail" in section 2 of Schedule 1 and section 2 of Schedule 2 to the Bill.

Notifying the abscondee of proceedings in respect of a confiscation order

Adm 6. The Chairman requested the Administration to consider moving a CSA to provide the Court with the discretion to require extra steps be taken to notify the abscondee of proceedings in respect of a confiscation order. Miss Margaret NG said that as the Administration had confirmed that the proposal of a deemed service provision would be incorporated as an additional step to ascertaining the abscondee's whereabouts, in addition to the requirements under Order 65 rule 5(1)(d) of the High Court Ordinance (Cap. 4), she considered that the Court could order extra steps under Order 65 rule 5(1)(d) of the High Court Ordinance. The Administration agreed to take members' views into consideration in revising the draft CSA to section 3(a) of Schedule 1 and section 3(a) of Schedule 2 to the Bill.

Provision of information about the value of property

7. The Administration informed the Committee that protection provisions similar to those currently provided for under section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) had been incorporated into the draft CSAs to sections 8 and 9 of Schedule 1, section 7 and 8 of Schedule 2 and section 3 of Schedule 3.

8. The Committee requested the Administration to consider amending "readily ascertainable" as "readily available" in the relevant draft CSAs. Miss Margaret NG pointed out that the draft CSA would not be necessary if the requirement to provide "a statement in writing as to the value of the property" would be deleted from section 9 of Schedule 1 and section 8 of Schedule 2

Action

Adm respectively. The Administration agreed to take members' views into consideration in revising the draft CSA.

Amendments to the Mutual Legal Assistance in Criminal Matters Ordinance

Adm 9. Assistant Legal Adviser 4 advised that he agreed that the amendments to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) proposed by the Administration could be considered as consequential. If members agreed to the Administration's proposal, the long title of the Bill should be amended to reflect that the Bill also sought to amend the Ordinance.

10. The Chairman said that while he did not disagree with the proposed amendments to Cap. 525, he had doubts as to whether these proposed amendments should be considered as consequential amendments. The Administration explained that it considered the proposed amendments to Cap. 525 purely consequential because the amendments to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455) were proposed in the Bill after the Administration had considered all the policy implications of the relevant provisions. As Cap. 525 contained similar restraint, charging and confiscation provisions, consequential amendments to the Ordinance were required.

ALA4 11. Members agreed that the Committee would consider the proposed amendments to Cap. 525 when a marked-up copy of the relevant provisions of Cap. 525 to be amended was available.

Miscellaneous amendments

12. Members noted that the Administration proposed to rectify an oversight when section 25 of Cap. 405 and section 25 of Cap. 455 were introduced in 1995 by amending the descriptions at paragraphs 15 and 16 of Schedule 1 to Cap. 455 from "assisting another to retain the benefit of drug trafficking" and "assisting a person to retain proceeds of indictable offence" to "dealing with property known, believed or suspected to represent proceeds of drug trafficking" and "dealing with property known, believed or suspected to represent proceeds of indictable offence" respectively.

13. The Chairman said that he had strong reservations that the amendments were proposed as miscellaneous amendments because they presented a change in substance. The Administration explained that the Bill which sought to introduce various miscellaneous amendments to Cap. 405 and Cap. 455 did not have a major theme. The Chairman said that while he did not disagree with the proposed amendments, he could not support the Administration's proposal of introducing the amendments as miscellaneous amendments as he considered that it was improper to do so as a matter of legislative proceedings.

Action

III. Any other business

14. The Committee agreed that the next meeting would be held when the Administration's response to the issues raised by members was available.

15. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
21 June 2002

Annex

Bills Committee on Drug Trafficking and Organized Crimes (Amendment) Bill 2000 Meeting on Monday, 27 May 2002 at 2:30 pm in the Chamber of the Legislative Council Building

Time	Speaker	Subject(s)	Action Required
000000 - 000242	Chairman	Confirmation of minutes of meeting on 3 May 2002	
000242 - 000453	Administration	Briefing on the Administration's response in respect of threshold for making charges	
000453 - 000516	Chairman	Issue of whether there was proposed change to the threshold for making charges	
000516 - 000541	Administration	- Ditto -	
000541 - 000654	Mr IP Kwok-him, JP	Justification for revising the maximum expiry period of a restraint/charging order to six months	
000654 - 001006	Administration	- Ditto -	
001006 - 001143	Mr IP Kwok-him, JP	- Ditto -	
001143 - 001415	Administration	- Ditto -	
001415 - 001631	Miss Margaret NG	- Ditto -	
001631 - 001637	Chairman	- Ditto -	
001637 - 001655	Administration	- Ditto -	
001655 - 001726	Miss Margaret NG	- Ditto -	
001726 - 001748	Administration	- Ditto -	
001748 - 001835	Miss Margaret NG	- Ditto -	
001835 - 001913	Chairman	- Ditto -	
001913 - 002046	Administration	- Ditto -	
002046 - 002124	Miss Margaret NG	- Ditto -	
002124 - 002223	Chairman	- Ditto -	
002223 - 002239	Miss Margaret NG	- Ditto -	
002239 - 002304	Administration	- Ditto -	

002304 - 002324	Chairman	- Ditto -	
002324 - 002419	Administration	- Ditto -	
002419 - 002422	Chairman	- Ditto -	
002422 - 002509	Miss Margaret NG	- Ditto -	
002509 - 002728	Administration	- Ditto -	
002728 - 002737	Miss Margaret NG	- Ditto -	
002737 - 002801	Chairman	- Ditto -	
002801 - 003018	Administration	Moving of an amendment to the effect that the court had to be satisfied that the expiry period for a restraint/charging order was reasonable	
003018 - 003151	Mr IP Kwok-him, JP	Gathering of necessary evidence before a charge was made	
003151 - 003243	Administration	- Ditto -	
003243 - 003335	Chairman	- Ditto -	
003335 - 003426	Administration	- Ditto -	
003426 - 003430	Mr IP Kwok-him, JP	- Ditto -	
003430 - 003453	Administration	- Ditto -	
003453 - 003518	Chairman	- Ditto -	
003518 - 003604	Administration	- Ditto -	
003604 - 003635	Chairman	- Ditto -	
003635 - 004032	Administration	- Ditto -	
004032 - 004248	Mrs Selina CHOW LIANG Shuk-ye, JP	If an inter partes hearing would be held to consider an application for a restraint/charging order, the proposed expiry period of six months was accepted	
004248 - 004605	Miss Margaret NG	- Ditto -	
004605 - 004635	Chairman	- Ditto -	
004635 - 004721	Administration	- Ditto -	

004721 - 004734	Chairman	- Ditto -	
004734 - 004745	Administration	- Ditto -	√ The Administration was requested to revise the draft Committee Stage amendment (CSA) along the line that the Court would specify the expiry period of a restraint/charging order which was reasonable in the circumstances of the case concerned, subject to a maximum period of six months
004745 - 004843	Chairman	Applicability of the proposed threshold for making charges to cases where an arrested person refused bail	
004843 - 004900	Administration	- Ditto -	
004900 - 004941	Chairman	- Ditto -	
004941 - 005101	Administration	- Ditto -	
005101 - 005127	Chairman	- Ditto -	
005127 - 005216	Administration	- Ditto -	
005216 - 005316	Mrs Selina CHOW LIANG Shuk-ye, JP	- Ditto -	
005316 - 005347	Administration	- Ditto -	√ The Administration undertook to consider adding "or has refused bail" after "released on bail" in section 2 of Schedule 1 and section 2 of Schedule 2 to the Bill
005347 - 005402	Chairman	- Ditto -	
005402 - 005647	Administration	Briefing on the Administration's response in respect of notifying the abscondee of	

		proceedings in respect of a confiscation order	
005647 - 005751	Miss Margaret NG	Issue of whether the Administration's proposal involved the taking of an extra step in addition to the requirements under Order 65 of the High Court Ordinance	
005751 - 005823	Administration	- Ditto -	
005823 - 005838	Chairman	- Ditto -	
005838 - 005947	Administration	- Ditto -	
005947 - 010035	Chairman	- Ditto -	
010035 - 010116	Administration	- Ditto -	
010116 - 010233	Chairman	Appropriateness of publishing of a notification order in newspapers circulating generally in Hong Kong in cases where there was intelligence indicating that the abscondee was in a place outside Hong Kong	
010233 - 010300	Administration	- Ditto -	
010300 - 010332	Chairman	- Ditto -	
010332 - 010347	Administration	- Ditto -	
010347 - 010404	Chairman	- Ditto -	
010404 - 010606	Administration	- Ditto -	√ The Administration was requested to consider moving a CSA to provide the Court with the discretion to require extra steps be taken to notify the abscondee of proceedings in respect of a confiscation order
010606 - 010614	Chairman	- Ditto -	
010614 - 010619	Administration	- Ditto -	

010619 - 010856	Miss Margaret NG	Ordering of extra steps by the Court under Order 65 rule 5(1)(d) of the High Court Ordinance	
010856 - 010902	Chairman	- Ditto -	
010902 - 010935	Administration	- Ditto -	
010935 - 011046	Miss Margaret NG	- Ditto -	
011046 - 011057	Administration	- Ditto -	
011057 - 011112	Chairman	Administration's response on application of procedure for enforcing confiscation order	
011112 - 011233	Administration	Briefing on the Administration's response on application of procedure for enforcing confiscation order	
011233 - 011237	Chairman	Administration's response on punishment for non-compliance with restraint and charging orders	
011237 - 011338	Administration	Briefing on the Administration's response on punishment for non-compliance with restraint and charging orders	
011338 - 011345	Chairman	Administration's response on the provision of information about the value of property	
011345 - 011711	Administration	Briefing on the Administration's response on the provision of information about the value of property	
011711 - 011851	Chairman	Provision of information that was "readily ascertainable"	
011851 - 011929	Administration	- Ditto -	
011929 - 012057	Mrs Selina CHOW LIANG Shuk-ye, JP	- Ditto -	
012057 - 012135	Administration	- Ditto -	
012135 - 012209	Chairman	- Ditto -	
012209 - 012211	Administration	- Ditto -	
012211 - 012247	Chairman	- Ditto -	
012247 - 012316	Administration	- Ditto -	
012316 - 012402	Chairman	- Ditto -	
012402 - 012409	Administration	- Ditto -	

012409 - 012429	Chairman	- Ditto -	
012429 - 012654	Mrs Selina CHOW LIANG Shuk-ye, JP	- Ditto -	
012654 - 012816	Administration	- Ditto -	
012816 - 012821	Chairman	- Ditto -	
012821 - 012830	Administration	- Ditto -	
012830 - 012849	Chairman	- Ditto -	
012849 - 012955	Mrs Selina CHOW LIANG Shuk-ye, JP	- Ditto -	
012955 - 013026	Chairman	- Ditto -	
013026 - 013036	Administration	- Ditto -	√ The Administration was requested to consider amending "readily ascertainable" as "readily available" in the relevant draft CSAs
013036 - 013042	Miss Margaret NG	- Ditto -	
013042 - 013047	Administration	- Ditto -	
013047 - 013137	Miss Margaret NG, Chairman	- Ditto -	
013137 - 013214	Miss Margaret NG	- Ditto -	
013214 - 013229	Administration	- Ditto -	
013229 - 013516	Miss Margaret NG	Need for the draft CSA if the requirement to provide "a statement in writing as to the value of the property" was to be deleted from section 9 of Schedule 1 and section 8 of Schedule 2 respectively	
013516 - 013539	Administration	- Ditto -	
013539 - 013613	Miss Margaret NG	- Ditto -	
013613 - 013626	Administration	- Ditto -	
013626 - 013654	Mrs Selina CHOW LIANG Shuk-ye, JP	- Ditto -	
013654 - 013710	Chairman	Amendments to the Mutual Legal Assistance in Criminal Matters Ordinance	

		(Cap. 525)	
013710 - 013746	Administration	Briefing on the consequential amendments to Cap. 525	
013746 - 013800	Chairman	Issue of whether the amendments to Cap. 525 proposed by the Administration could be considered as consequential	
013800 - 013827	ALA	Issue of whether the amendments to Cap. 525 proposed by the Administration could be considered as consequential and amendment of the long title of the Bill to reflect that the Bill also sought to amend Cap. 525	
013827 - 014003	Chairman	- Ditto -	
014003 - 014121	Administration	- Ditto -	
014121 - 014154	Miss Margaret NG	Consideration of the proposed amendments to Cap. 525 when a marked-up copy of the relevant provisions of Cap. 525 was available	
014154 - 014208	Chairman	Miscellaneous amendments proposed in paragraph 12 of the Administration's paper (LC Paper No. CB(2) 2044/01-02(01))	
014208 - 014330	Administration	Briefing on the miscellaneous amendments proposed in paragraph 12 of the Administration's paper (LC Paper No. CB(2) 2044/01-02(01))	
014330 - 014332	Chairman	Issue of whether the proposed miscellaneous amendments had been discussed in the past	
014332 - 014359	Administration	- Ditto -	
014359 - 014405	Chairman	Issue of whether the amendments referred to in paragraph 12 of the Administration's paper (LC Paper No. CB(2) 2044/01-02(01)) should be proposed as miscellaneous amendments	
014405 - 014410	Administration	- Ditto -	
014410 - 014450	Chairman	- Ditto -	
014450 - 014522	Mrs Selina CHOW LIANG Shuk-ye, JP	- Ditto -	
014522 - 014533	Chairman	- Ditto -	
014533 - 014551	ALA4	- Ditto -	

014551 - 014559	Chairman, Mrs Selina CHOW LIANG Shuk- yee, JP	- Ditto -	
014559 - 014612	Miss Margaret NG	- Ditto -	
014612 - 014625	Mrs Selina CHOW LIANG Shuk-yee, JP	- Ditto -	
014625 - 014631	Chairman	- Ditto -	
014631 - 014633	Mrs Selina CHOW LIANG Shuk-yee, JP	- Ditto -	
014633 - 014703	Chairman	- Ditto -	
014703 - 014709	Mrs Selina CHOW LIANG Shuk-yee, JP	- Ditto -	
014709 - 014737	Chairman	Issue of whether the proposed amendments should be introduced as miscellaneous amendments as a matter of legislative proceedings	
014737 - 014816	Administration	- Ditto -	
014816 - 014841	Chairman	- Ditto -	
014841 - 014919	Administration	Scrutiny work of the Bills Committee on United Nations (Anti-Terrorism Measures) Bill in respect of consideration of the proposed amendments to sections 25 and 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455)	
014919 - 014928	Chairman	- Ditto -	
014928 - 014945	Administration	- Ditto -	
014945 - 014603	Chairman	- Ditto -	

Note : The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 2
Legislative Council Secretariat
21 June 2002