

立法會
Legislative Council

LC Paper No. CB(2)2726/01-02
(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 fourteenth meeting
held on Monday, 24 June 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 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 Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Bernard CHAN
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Sing-chi
- Public Officers Attending** : Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)
- 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
Acting 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

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I. Meeting with the Administration
[LC Paper No. CB(2)2384/01-02(01)]

The Committee deliberated on the Administration's response to issues raised at the previous meeting [LC Paper No. CB(2)2384/01-02(01)] and the Administration's latest position on the proposed amendments to sections 25 and 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and Organized and Serious Crimes Ordinance (Cap. 455) (index of proceedings attached at **Annex**).

Administration's latest position regarding the proposed amendments to sections 25 and 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and Organized and Serious Crimes Ordinance

2. The Administration informed the Committee that it would amend the mental element regarding the reporting requirement of terrorist financing from "having reasonable grounds to suspect" to "suspect" in the United Nations (Anti-Terrorism Measures) Bill. In view of this development and for the sake of maintaining consistency in legislation, the Administration would withdraw its proposals to amend sections 25 and 25A of Cap. 405 and Cap. 455

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respectively. It would move Committee Stage amendments (CSAs) to repeal sections 10 and 11 of Schedule 1 and sections 9 and 10 of Schedule 2 to the Bill.

3. Mr Eric LEE welcomed the Administration's decision to withdraw its proposals to amend sections 25 and 25A of Cap. 405 and Cap. 455 respectively. He said that since the introduction of the Bill in 2000, the Hong Kong Society of Accountants and the financial sector had done a lot in the area and issued many guidelines on the reporting of suspicious transactions. He hoped that it would not be necessary for the Administration to reintroduce the proposed amendments in the future. Mr NG Leung-sing also welcomed the Administration's decision, saying that it would help maintaining Hong Kong's position as a financial centre. He hoped that the Administration would consult the relevant sectors before any reintroduction of the proposed amendments. Other members present at the meeting raised no objection to the Administration's decision.

4. The Administration pointed out that similar proposed amendments to sections 25 and 25A of Cap. 405 and 455 would still be needed in future, pending the completion of the Financial Action Task Force on Money Laundering's (FATF) Review of its 40 Recommendations, which encompassed the possible change of the mental element in money laundering and reporting offences from "suspect" to "having reasonable grounds to suspect". A number of FATF members/jurisdictions had already adopted the lower mental element of "having reasonable grounds to suspect". In order to ensure the effectiveness of the law, Hong Kong would eventually need to adopt the same approach. In doing so, the Administration would no doubt consult the relevant sectors before putting legislative proposals to LegCo.

Draft Committee Stage amendments to be moved by the Administration

5. Assistant Legal Adviser 4 drew members' attention that there was inconsistency between the drafting of the Chinese and English versions of the CSAs to section 3(a) of Schedule 1 to the Bill in that there was no corresponding phrase in the English version for the phrase "已採取行動" in the Chinese version. The Administration undertook to consider revising the English version of the CSAs for the sake of maintaining consistency with the Chinese version and provide the CSAs for members' reference.

Adm

Legal aid for a defendant whose assets were subject to a restraint order

6. Regarding the eligibility of a defendant for legal aid, the Chairman said that the restrained assets of a defendant whose assets were subject to a restraint order should not be included in the computation of the financial resources of the defendant. He would consider raising the issue at meetings of the relevant

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Panels, such as the Panel on Administration of Justice and Legal Services or the Panel on Security.

Legal privilege of a legal representative

Adm 7. At the request of the Committee, the Administration agreed that if CSAs relating to the protection of legal privilege of a legal representative were to be moved by the Administration to the United Nations (Anti-Terrorism Measures) Bill, it would move similar CSAs to relevant provisions in the Bill and provide the relevant CSAs for members' reference. The Chairman requested the Clerk
Clerk to report developments on the matter, if any, to the Committee.

II. Any other business

8. The Committee agreed to recommend to the House Committee that the Second Reading debate on the Bill be resumed at the Council meeting on 10 July 2002, subject to the CSAs to be moved by the Administration. The Chairman informed the meeting that the deadline for giving notice to move CSAs at the Council meeting on 10 July 2002 would be 29 June 2002. The Committee would make a written report to the House Committee on 28 June 2002.

9. As the Committee had completed scrutiny of the Bill, members agreed that the next meeting originally scheduled for 28 June 2002 would be cancelled.

10. There being no other business, the meeting ended at 3:35 pm.

Council Business Division 2
Legislative Council Secretariat
30 August 2002

Annex

Bills Committee on Drug Trafficking and Organized Crimes (Amendment) Bill 2000 Meeting on Monday, 24 June 2002 at 2:30 pm in the Chamber of the Legislative Council Building

Time	Speaker	Subject(s)	Action required
000000 - 000206	Chairman	Relevant papers	
000206 - 000825	Administration	Administration's latest position regarding the proposed amendments to sections 25 and 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and Organized and Serious Crimes Ordinance (Cap. 455)	
000825 - 000849	Chairman	Ditto	
000849 - 001105	Mr Eric LI Ka-cheung	Administration's decision to withdraw its proposals to amend sections 25 and 25A of Cap. 405 and Cap. 455, and reintroduction of the proposed amendments in the future	
001105 - 001157	Administration	Ditto	
001157 - 001300	Mr NG Leung-sing	Ditto	
001300 - 001318	Mr IP Kwok-him	Clarification of Administration's decision to withdraw its proposals to amend sections 25 and 25A of Cap. 405 and Cap. 455	
001318 - 001425	Administration	Ditto	
001425 - 001449	Chairman	Ditto	
001449 - 001547	Chairman	Administration's response to issues raised at the meeting on 17 June 2002	
001547 - 001610	Administration	Briefing on the Administration's response to issues raised at the meeting on 17 June 2002	
001610 - 001623	Chairman	Committee Stage amendments (CSAs) at Annex A to the Administration's response to issues raised at the meeting on 17 June 2002	
001623 - 001805	Administration	Ditto	
001805 - 001816	ALA4	Ditto	
001816 - 001936	Administration	Ditto	
001936 - 001948	Chairman	Ditto	
001948 - 002012	Administration	Ditto	
002012 - 002040	Chairman	Ditto	The Administration was requested to provide the CSAs to repeal sections 10 and 11 of Schedule 1 and sections 9 and 10 of Schedule 2 to the Bill
002040 - 002217	ALA4	Consistency between the drafting of the Chinese and English versions of the CSAs to section 3(a) of Schedule 1 to the Bill	
002217 - 002306	Chairman	Ditto	
002306 - 002500	ALA4	Ditto	
002500 - 002522	Administration	Ditto	

002522 - 002532	Chairman	Ditto	
002532 - 002547	Administration	Ditto	
002547 - 002610	Chairman	Ditto	
002610 - 002630	Administration	Ditto	
002630 - 002709	Chairman	Ditto	
002709 - 002929	Administration	Briefing on the Administration's response on the legal expenses of a defendant whose assets were subject to a restraint order	
002929 - 003439	Administration	Briefing on the Administration's response on payment received from a client whose asset was subject to a restraint order	
003439 - 003601	Mr IP Kwok-him	Adequacy of restrained assets set aside for settling legal expenses and the meaning of "reasonable grounds" in paragraph 5 of the Administration's paper	
003601 - 003742	Administration	Ditto	
003742 - 003758	Mr IP Kwok-him	Ditto	
003758 - 003806	Administration	Ditto	
003806 - 003844	Mr IP Kwok-him	Ditto	
003844 - 004013	Administration	Ditto	
004013 - 004127	Chairman	Ditto	
004127 - 004139	Administration	Ditto	
004139 - 004150	Chairman	Ditto	
004150 - 004215	Administration	Ditto	
004215 - 004244	Chairman	Ditto	
004244 - 004816	Chairman	Legal aid for a defendant whose assets were subject to a restraint order	
004816 - 05050	Chairman	CSAs relating to the legal privilege of a legal representative	
005050 - 005234	ALA4	Ditto	
005234 - 005245	Chairman	Ditto	
005245 - 005310	Administration	Ditto	
005310 - 005356	Chairman	Ditto	
005356 - 005424	Mr NG Leung-sing	Ditto	
005424 - 005515	Chairman	Ditto	
005515 - 005644	ALA4	Ditto	
005644 - 005649	Chairman	Ditto	
005649 - 005728	Administration	Ditto	The Administration undertook that if CSAs relating to the protection of legal privilege of a legal representative were moved by the Administration to the United Nations (Anti-terrorism Measures) Bill, it would move similar CSAs to relevant provisions in

			the Bill
005728 - 010019	Chairman	Resumption of Second Reading debate on the Bill and deadline for giving notice to move CSAs to the Bill	

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

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