

立法會
Legislative Council

LC Paper No. CB(2)297/00-01

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**Bills Committee on Hong Kong Court of Final Appeal
(Amendment) Bill 2001**

**First meeting
held on Thursday, 19 July 2001 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Dr Hon Philip WONG Yu-hong
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon Albert HO Chun-yan
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP

Clerk in Attendance : Mr Paul WOO
Acting Chief Assistant Secretary (2)3

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

I. Election of Chairman

Miss Margaret NG was elected Chairman of the Bills Committee.

II. The meeting

2. The Bills Committee deliberated. (Index of proceedings attached at Annex).

3. The Bills Committee agreed that the Secretariat should ask the Administration to respond in writing to the following issues to facilitate future discussion of the Bills Committee -

- (a) to explain the rationale for introducing the "leapfrog appeal" mechanism and what kind of cases was the mechanism intended for;
- (b) to provide information on similar "leapfrog appeal" system in overseas common law countries, particularly as regards the conditions and the procedures for the application for and granting of leave for such appeals;
- (c) whether the Administration had consulted the Judiciary on the impact of the Bill on judicial procedures, and if so, what were the views of the Judiciary;
- (d) since the deliberation of the Court of Appeal (CA) on a point of law of great general or public importance might be extremely valuable, to explain whether the "leapfrog appeal" mechanism would deprive all parties of the benefit of the CA's decision and the right to appeal to CA;
- (e) to explain the reasons and policy considerations for the criteria and conditions for the grant of a certificate by the trial judge, in particular, to explain the need for the judge to be satisfied :
 - (i) under proposed section 27C(2)(a), that a point of law had been fully argued in the proceedings and fully considered in his judgment; or
 - (ii) under proposed section 27C(2)(b), that a point of law was fully considered in the judgments given by the CA or the Court of Final Appeal (CFA) in previous proceedings;
- (f) to explain the factors that would assist the trial judge to conclude that the relevant conditions laid down in proposed section 27C(2) were satisfied;
- (g) whether proposed section 27C applied to cases where a point of law related wholly or mainly to the construction of the Basic Law;
- (h) to explain the purpose of having proposed section 27C(3) as a separate subsection, and to consider whether it could be incorporated in proposed section 27C(2);

- (i) to explain the meaning of "immediately" in proposed section 27C(4). What would happen if judgment was handed down? How could consent of all parties be obtained immediately after judgment? Furthermore, parties to the proceedings would need reasonable time, among other things, to seek legal advice on whether there were sufficient grounds for an appeal before deciding whether an application for a certificate was to be made. The Administration was requested to review the drafting of proposed sections 27C(4) and 27C(5) in the light of these considerations;
- (j) to explain why no appeal should lie against the grant or refusal of a certificate under proposed section 27C(6);
- (k) to explain the mechanism for calculation of time for appeal to the CA if an application was made for appeal to the CFA;
- (l) to review whether the terms "judge", "trial judge", "Court" and "Court of First Instance"(CFI) were used consistently; and
- (m) to clarify if there were any implications arising from the amendments introduced by the Chief Executive Election Ordinance providing for a leapfrog mechanism for appeal against the decision of the CFI in relation to the election of the Chief Executive.

4. The Bills Committee also agreed that the Hong Kong Bar Association, the Law Society of Hong Kong and the law schools of the two universities should be invited to make submissions on the Bill for the consideration of the Bills Committee.

5. The Bills Committee agreed to hold the next meeting on 24 September 2001 at 4:30 pm.

(Post-meeting note - The date of the meeting was subsequently changed to 4 October 2001 at 4:30 pm.)

6. There being no other business, the meeting ended at 11:05 am.

Legislative Council Secretariat

6 November 2001

**Proceedings of the first meeting of the Bills Committee on
Hong Kong Court of Final Appeal (Amendment) Bill 2001
on Thursday, 19 July 2001 at 10:45 am
in Conference Room B of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000139-000208	Mr Martin LEE/ Mr Philip WONG/ Miss Margaret NG	Election of Chairman of Bills Committee	
000209-000236	Miss Margaret NG	Invite views on the Bill	
000237-000324	Mr Martin LEE	Use of the terms "judge", "trial judge", "Court" and "Court of First Instance"/Information on similar leapfrog appeal systems in other countries	
000325-000329	Miss Margaret NG	-ditto-	
000330-000333	Mr Martin LEE	-ditto-	
000334-000340	ALA	-ditto-	
000341-000419	Miss Margaret NG	-ditto-	
000420-000444	Mr Martin LEE	Clause 4 of the Bill - proposed section 27C(4)	
000445-000532	Miss Margaret NG	Proposed section 27C(5)	
000533-000548	Mr Martin LEE	Consultation of legal professional bodies, academics and the Judiciary on the Bill	
000549-000632	Miss Margaret NG	-ditto-	
000633-000635	Mr Philip WONG	Legislative timetable	
000636-000757	Miss Margaret NG	Background to the legislative proposal	
000758-000801	Mr Philip WONG	Legislative timetable	
000802-000819	Miss Margaret NG	-ditto-	
000820-000823	Mr Philip WONG	-ditto-	
000824-000954	Miss Margaret NG	Proposed section 27C(3)	
000955-001139	Mr Martin LEE	Proposed sections 27C(2)(a) and (b) and 27C(3)	
001140-001234	Miss Margaret NG	Criteria and conditions for leapfrog appeal	
001235-001307	Mr Philip WONG	Judiciary independence a factor for consideration	
001308-001618	Miss Margaret NG	Rationale for introducing a leapfrog appeal mechanism	
001619-001828	Mr Martin LEE / Miss Margaret NG/ Mr Philip WONG	Fixing date for next meeting	

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

Legislative Council Secretariat
6 November 2001