

立法會

*Legislative Council*

LC Paper No. CB(2)2650/01-02

(These minutes have been  
seen by the Administration)

Ref : CB2/BC/24/00

**Legislative Council  
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001**

**Minutes of the ninth meeting  
held on Monday, 10 June 2002 at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Margaret NG (Chairman)  
Hon Jasper TSANG Yok-sing, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Member Attending** : Hon Miriam LAU Kin-ye, JP
- Members Absent** : Hon Cyd HO Sau-lan  
Hon James TO Kun-sun  
Hon Mr Ambrose LAU Hon-chuen, GBS, JP  
Hon Emily LAU Wai-hing, JP
- Public Officers Attending** : Mr Michael SCOTT  
Senior Assistant Solicitor General
- Miss Monica LAW  
Acting Senior Assistant Law Draftsman
- Mr Gavin SHIU  
Senior Government Counsel Prosecutions Division
- Miss Doris LO  
Acting Senior Government Counsel  
Legal Policy Division

Mr Michael LAM  
Senior Government Counsel  
Law Drafting Division

**Clerk in Attendance** : Mr Paul WOO  
Chief Assistant Secretary (2)6

**Staff in Attendance** : Ms Bernice WONG  
Assistant Legal Adviser 1

Miss Lolita SHEK  
Senior Assistant Secretary (2)7

---

## **I. Meeting with the Administration**

The Committee deliberated (index of proceedings attached at **Annex**).

Matters arising from the meeting on 23 May 2002 relating to Parts VII and X of the Bill

---

(LC Paper Nos. CB(2)2231/01-02(01) and (02))

2. Members noted the Administration's letters dated 6 and 7 June 2002 which responded to the issues raised at the meeting on 23 May 2002 concerning Parts VII and X of the Bill.

Part V of the Bill (Marital rape and related sexual offences)

(LC Paper Nos. CB(2)2231/01-02(06) to (08))

### *Clause 11*

3. The Administration tabled the 5<sup>th</sup> working draft of Committee Stage amendments (CSAs), which included a newly revised amendment to section 117 of the Crimes Ordinance (Cap. 200) (circulated after the meeting vide LC Paper No. CB(2)2253/01-02(03)). Members shared the Assistant Legal Adviser's view that the Administration should explain the implications of the new by proposed amendment on the other sexual offence provisions in Part XII of the Crimes Ordinance. Members also agreed that the Law Society of Hong Kong and the Hong Kong Bar Association should be consulted on the latest proposed amendment to section 117.

Part VII of the Bill (Power of Court to Order Repayment of Deposit)

4. Ms Audrey EU said that she had discussed with some members of the Committee the proposed amendment to section 12 of the Conveyancing and

Property Ordinance to provide the court with a discretion to order a return of deposit to the purchaser. She said that Mr Albert HO and Mr Ambrose LAU had indicated that the Democratic Party and the Hong Kong Progressive Alliance were likely not to vote for the amendment as proposed in the Bill.

5. Mr Jasper TSANG said that the Democratic Alliance for Betterment of Hong Kong also held serious reservations about supporting the proposed amendment.

6. Ms Miriam LAU informed the Committee that the Liberal Party would not vote for the proposed amendment. In the views of the Liberal Party, the amendment would adversely impact on the certainty of contract, encourage purchasers to rescind transactions, particularly in a downturning market, even if the title to the property was good, and bring unmeritorious litigation with a view to recovering the deposit. Ms LAU suggested that the Administration should consider ways to expedite the process of vendor and purchaser summons to enable disputes between the two parties to be resolved before the completion date of the transaction. Ms LAU suggested and the Committee agreed that this issue about vendor and purchaser summons should be referred to the Panel on Administration of Justice and Legal Services for consideration.

7. The Chairman invited the Administration to take into account members' views in deciding whether to proceed with the proposed amendment. She said that she tended to support the Administration's position. She added that as there was no unanimous view of members on Part VII of the Bill, it would be a matter for individual members to vote on the matter if the Administration decided to put forward the proposed amendment.

#### Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)

##### *Clause 105*

8. Members noted the letter from a member of the Law Society (LC Paper No. CB(2)2098/01-02(01)) expressing concern that the proposed amendments to section 6 of the Legal Practitioners Ordinance would result in unrestricted power of the Council of the Law Society to refuse the issue of practising certificate and to impose any conditions on a practising certificate. Members also noted the response from the President of the Law Society (LC Paper No. CB(2)2231/01-02(03)).

9. Ms Audrey EU said that the Law Society being a self-governing body elected by its own members should be given the proposed power to make appropriate rules as it saw fit for the better regulation of matters relating to solicitors' practices. She added that the proposed amendment would not restrict any aggrieved persons from seeking redress through other proper and legal means.

10. The Chairman opined that the concern expressed by the member of the Law Society did not constitute sufficient ground for rejecting the proposed transfer of rule-making power from the Chief Justice to the Council of the Law Society under clause 105.

*Clause 108*

11. Referring to the new section 9A(1AA) of the Legal Practitioners Ordinance as proposed in the 5<sup>th</sup> working draft of CSAs, Ms Audrey EU said that it might be difficult to determine beforehand whether a breach involved an element of dishonesty, and problems of scope of the Rules might arise from the proposed amendment. Ms Audrey EU said that whether or not a particular breach would be fit for summary disposal by way of a fixed penalty should be determined having regard to the facts and circumstances of each specific case. She further pointed out that deliberate breaches might not necessarily involve dishonesty, although in most cases they did. She suggested that a more effective alternative might be to add an express provision in the new section 9A(1B) to specify that the Council of the Law Society should take into account whether the alleged breach involved dishonesty.

12. The Chairman considered that the element of dishonesty should be specified in a separate provision in the proposed section 9A(1B).

*Clause 126*

13. Members noted the letter from the Hong Kong Society of Notaries (circulated after the meeting vide LC Paper No. CB(2)2253/01-02(01)) responding to the issues raised at the meeting on 28 March 2002.

Committee Stage amendments to be moved by the Administration

14. The Committee studied and accepted the 5<sup>th</sup> working draft of CSAs tabled by the Administration, apart from those relating to Parts V, VII and XIV of the Bill, pending follow-up on the Administration's responses to be made to the issues raised.

15. In the light of the issues raised at the meeting, the Administration was requested -

Part V of the Bill (Marital rape and related sexual offences)

- (a) to explain the effects of the latest proposed amendment to section 117 of the Crimes Ordinance (i.e. the proposed section 117(1B) set out in the 5<sup>th</sup> working draft of the CSAs) on the other sexual offence sections in Part XII of the Ordinance, and the justifications for not

introducing an express provision in the proposed section 117(1B) to confine the interpretation of "unlawful sexual intercourse" to sections 118, 119, 120 and 121;

Part XIV of the Bill (Amendments to the Legal Practitioners Ordinance)

- (b) in consultation with the Law Society, to consider, as an alternative to the newly proposed section 9A(1AA) of the Legal Practitioners Ordinance, the proposal to introduce an additional express provision under the proposed section 9A(1B) to require the Council of the Law Society to take into account whether the alleged breach involved dishonesty.

**II. Date of next meeting**

16. To allow sufficient time for the Administration to respond to the issues raised relating to Parts V, VII and XIV of the Bill, the Committee agreed that the meeting originally scheduled for 13 June 2002 should be cancelled. The next meeting would be held at 8:30 am on Friday, 21 June 2002.

17. There being no other business, the meeting ended at 10:05 am.

*(Post-meeting note : Due to absence of a quorum, the meeting on 21 June 2002 turned into an informal meeting with the Administration.)*

Council Business Division 2  
Legislative Council Secretariat  
25 July 2002

**Proceedings of the ninth meeting of the  
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001  
Meeting on Monday, 10 June 2002 at 8:30 am.  
in Conference Room B of the Legislative Council Building**

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000112	Chairman	Adm's response to the issues raised at the meeting on 23 May 2002 relating to Parts VII and X of the Bill (LC Paper Nos. CB(2)2231/01-02(01) and (02))	
000112 - 000210	Ms Audrey EU Yuet-mee	Part VII of the Bill (Power of Court to Order Repayment of Deposit)  Members' stance on the proposed amendment to section 12 of the Conveyancing and Property Ordinance	
000210 - 000219	Chairman	-ditto-	
000219 - 000242	Ms Audrey EU Yuet-mee	-ditto-	
000242 - 000245	Chairman	-ditto-	
000245 - 000259	Ms Audrey EU Yuet-mee	-ditto-	
000259 - 000301	Chairman	-ditto-	
000301 - 000552	Ms Miriam LAU Kin-ye	Reasons for the Liberal Party's decision not to support the proposed amendment in Part VII of the Bill	
000552 - 000651	Chairman	Adm to take into account members' views in deciding whether to proceed with the proposed amendment	
000651 - 000702	Ms Miriam LAU Kin-ye	The Bills Committee to refer to the Panel on Administration of Justice and Legal Services for consideration the suggestion that Adm should consider ways to expedite the processing of vendor and purchaser summons	
000702 - 001058	Chairman	Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)  Comments received from a member of the Law Society on the proposed amendments to section 6 of the Legal Practitioners Ordinance (LC Paper No. CB(2)2098/01-02(01)) and the response from President of the Society (LC Paper No. CB(2)2231/01-02(03))	
001058 - 001151	Ms Audrey EU Yuet-mee	-ditto-	
001151 - 001354	Chairman	-ditto-	
		Part XV of the Bill (Miscellaneous amendments)  ALA's letter dated 28 May 2002 to Adm on the Draft Resolution on the proposed	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		accountability system for principal officials and letter dated 3 June 2002 from the Adm on clause 131 of the Bill (LC Paper No. CB(2)2231/01-02(05))	
001354 - 001407	ALA	-ditto-	
001407 - 001816	Chairman	-ditto-	
001816 - 001819	ALA	-ditto-	
001819 - 002000	Chairman	-ditto-	
002000 - 002027	Administration	-ditto-	
002027 - 002058	Chairman	Part V of the Bill (Marital rape and related sexual offences)  Adm's revised amendment to section 117 of the Crimes Ordinance (LC Paper No. CB(2)2231/01-02(06)), ALA's queries concerning the amendment (LC Paper No. CB(2)2231/01-02(07)), Adm's response to her queries (LC Paper No. CB(2)2231/01-02(08)) and the 5th working draft of CSAs tabled by the Adm (LC Paper No. CB(2)2253/01-02(03))	
002058 - 002156	ALA	Implications of the newly proposed amendment to section 117 on the other sexual offence provisions in Part XII of the Crimes Ordinance	
002156 - 002158	Chairman	-ditto-	
002158 - 002448	Administration	-ditto-	
002448 - 002532	Chairman	-ditto-	
002532 - 002641	Administration	-ditto-	
002641 - 002718	Chairman	-ditto-	
002718 - 002724	Administration	-ditto-	
002724 - 002831	Chairman	-ditto-	
002831 - 002837	Administration	-ditto-	
002837 - 002912	Chairman	-ditto-	
002912 - 003158	Administration	-ditto-	
003158 - 003310	Chairman	-ditto-	
003310 - 003349	Administration	-ditto-	
003349 - 003411	Chairman	-ditto-	
003411 - 003428	Administration	-ditto-	
003428 - 003548	Chairman	-ditto-	
003548 - 003553	Administration	-ditto-	
003553 - 003609	Chairman	-ditto-	
003609 - 003621	Administration	-ditto-	
003621 - 003627	Chairman	-ditto-	
003627 - 003716	Ms Audrey EU Yuet-mee	-ditto-	
003716 - 004012	Administration	-ditto-	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
004012 - 004122	Chairman	-ditto-	
004122 - 004128	Administration	-ditto-	
004128 - 004141	Chairman	-ditto-	
004141 - 004147	Administration	-ditto-	
004147 - 004158	Chairman	-ditto-	
004158 - 004205	Administration	-ditto-	
004205 - 004212	Ms Audrey EU Yuet-mee	-ditto-	
004212 - 004216	Administration	-ditto-	
004216 - 004257	Chairman	-ditto-	
004257 - 004313	Ms Audrey EU Yuet-mee	-ditto-	
004313 - 004417	Chairman	Clerk to consult the Law Society of Hong Kong and the Hong Kong Bar Association on the latest proposed amendment to section 117 of the Crimes Ordinance	Adm (para. 15(a))
004417 - 004450	Administration	-ditto-	
004450 - 004648	Chairman	-ditto-	
004648 - 004801	Chairman	Other amendments included in the 5th working draft of CSAs to be moved by the Adm	
004801 - 004821	Administration	-ditto-	
004821 - 004911	Chairman	-ditto-	
004911 - 004929	ALA	-ditto-	
004929 - 004950	Chairman	-ditto-	
004950 - 005026	Administration	-ditto-	
005026 - 005044	Chairman	-ditto-	
005044 - 005053	Administration	-ditto-	
005053 - 005056	Chairman	-ditto-	
005056 - 005112	Administration	-ditto-	
005112 - 005201	Chairman	-ditto-	
005201 - 005223	ALA	-ditto-	
005223 - 005608	Chairman	CSA to clause 108 of Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)	
005608 - 005749	Ms Audrey EU Yuet-mee	Introduction of an express provision under the proposed section 9A(1B) of the Legal Practitioners Ordinance to require the Council of the Law society to take into account whether the alleged breach involved dishonesty	
005749 - 005921	Chairman	-ditto-	
005921 - 005951	Administration	-ditto-	
005951 - 010048	Chairman	-ditto-	
010048 - 010148	Administration	-ditto-	
010148 - 010440	Ms Audrey EU Yuet-mee	-ditto-	
010440 - 010520	Chairman	-ditto-	



<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
010520 - 010533	Ms Audrey EU Yuet-mee	-ditto-	
010533 - 010812	Chairman	-ditto- CSA to clause 126	Adm (Para. 15(b))
010812 - 010901	ALA	-ditto-	
010901 - 011029	Chairman	-ditto-	
011029 - 011037	Ms Audrey EU Yuet-mee	Part VII of the Bill (Power of Court to Order Repayment of Deposit)  Whether Adm would proceed with the amendment to section 12 of the Conveyancing and Property Ordinance	
011037 - 011114	Chairman	-ditto-	
011114 - 011124	Administration	-ditto-	
011124 - 011218	Chairman	-ditto-	
011218 - 011221	Mr Jasper TSANG	-ditto-	
011221 - 011408	Chairman	-ditto-	
011408 - 011414	Administration	-ditto-	
011414 - 011429	Chairman	-ditto-	
011429 - 011433	Administration	-ditto-	
011433 - 011521	Chairman	Date of next meeting and outstanding issues to be discussed at the next meeting	
011521 - 011535	Administration	-ditto-	
011535 - 011614	Chairman	-ditto-	
011614 - 011621	Ms Audrey EU Yuet-mee	-ditto-	
011621 - 011631	Mr Jasper TSANG	-ditto-	
011631 - 011644	Ms Audrey EU Yuet-mee	-ditto-	
011644 - 004600	Chairman	-ditto-	

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

Council Business Division 2  
Legislative Council Secretariat  
 25 July 2002