

立法會

Legislative Council

LC Paper No. CB(2)2753/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/BC/3/01

**Legislative Council
Bills Committee on Immigration (Amendment) Bill 2001**

**Minutes of the first meeting
held on Thursday, 27 June 2002 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon LAU Kong-wah
Hon Howard YOUNG, JP
Hon Miriam LAU Kin-ye, JP
Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS
Hon LEUNG Fu-wah, MH, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member attending** : Hon Albert HO chun-yan
- Members absent** : Dr Hon David CHU Yu-lin, JP
Hon Abraham SHEK Lai-him, JP
- Public Officers attending** : Mrs Regina IP
Secretary for Security

Ms Linda SO
Acting Deputy Secretary for Security

Ms Winnie NG
Assistant Secretary for Security

Mr Ian WINGFIELD
Law Officer (Civil Law)

Mr Gilbert MO
Deputy Law Draftsman

Mr C T LAI
Assistant Director of Immigration

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Lolita SHEK
Senior Assistant Secretary (2)7

I. Election of Chairman

Mr James TO was elected Chairman of the Committee.

II. Meeting with the Administration

(The Bill; the LegCo Brief on the Bill; and LC Paper Nos. LS16/01-02, CB(2)2413/01-02(02) and (03))

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

3. Members noted that the number of Mainland residents working in Hong Kong under official sponsorship who had acquired the right of abode was 1 360 as at 30 September 2001. The number was increased to 1 480 as at the end of May 2002, despite the fact that a new administrative measure to clearly identify Mainland officials directed to work in Hong Kong was implemented by the Central People's Government (CPG) with effect from 11 October 2001.

4. Senior Assistant Legal Adviser (SALA) made the following comments

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- (a) the concept of "ordinarily resident" mentioned in Article 24 of the Basic Law (BL) had been interpreted by the Court of Final Appeal (CFA) in a local case in accordance with the common law;
- (b) according to case law, the term "ordinarily resident" was construed according to its natural and ordinary meaning. In determining whether a person was ordinarily resident, there were two main considerations, namely, the residence must be voluntarily adopted and there must be a degree of settled purpose; and
- (c) a CFA judge had said "No single judicial pronouncement or combination of such pronouncements in regard to the meaning of the expression 'ordinarily resident' can be conclusive for the purposes of every context in which that expression appears."

SALA added that it would appear that the Administration had tried to set down some restrictions for the term "ordinarily resident" in the Bill. He suggested that the Administration should be invited to explain the basis of these restrictions, preferably by reference to authorities in case law.

5. Miss Margaret NG said that her main concern was whether the Bill was consistent with BL. She pointed out that BL 24(2)(ii) provided that Chinese citizens who had ordinarily resided in Hong Kong for a continuous period of not less than seven years could apply for the right of abode in Hong Kong and that the term "ordinarily resident" was a concept under the common law. She opined that the Administration, by introducing the Bill, was imposing restrictions on the meaning of "ordinarily resident" in BL 24 through amendment of local legislation. She considered that Mainland officials directed to work in Hong Kong by CPG in their official capacity were no different from people of other countries who were posted to work in Hong

Kong. The former should therefore be accorded the same treatment as the latter, in terms of eligibility for the right of abode in Hong Kong.

6. Ms Audrey EU shared the views of Miss Margaret NG. She added that the fact that more than 1 400 Mainland officials had become permanent residents of Hong Kong after having worked in Hong Kong for more than seven years implied that this type of people had all along been regarded as ordinarily residents of Hong Kong under BL 24 and the existing Immigration Ordinance (IO). She considered that the Administration was seeking to amend BL through local legislation.

7. Ms Emily LAU echoed the views of Miss Margaret NG and Ms Audrey EU. She added that she agreed with the comments of the Law Society of Hong Kong in its letter dated 28 November 2001 (Appendix IV to LC Paper No. CB(2)2413/01-02(03)) that the Bill was in apparent conflict with BL.

8. The Chairman expressed concern whether additional restrictions would be imposed on BL through amendments to local legislation in future.

9. Secretary for Security explained that similar to members of a consular post or the Hong Kong Garrison, Mainland residents directed by CPG to work in State organisations or enterprises in Hong Kong did not come to Hong Kong voluntarily or for settlement. It was the policy of CPG that they were not allowed to bring along their families and they could retain their household registration in Mainland. They were different from people from other countries working in Hong Kong and should not be regarded as ordinarily resident while in Hong Kong.

10. Law Officer (Civil Law) (LO(CL)) supplemented that the term "ordinarily resident", as CFA had recognised, should be looked at in its particular context. The Administration considered that the term should be interpreted in accordance with its purpose in the context of BL 24 and with section 2(4) of IO, which excluded certain categories of persons from being treated as ordinarily resident during the period they remained in Hong Kong. The purpose of the Bill was not to add restrictions to but to clarify the interpretation of BL 24. Moreover, as the common law was developing, the interpretation of the term "ordinarily resident" in previous court cases in the United Kingdom should not be adopted strictly in the present case. The term should be interpreted in its particular context. The fact that more than 1 400 Mainland officials had become permanent residents of Hong Kong after having worked in Hong Kong for more than seven years did not necessarily

imply that the existing IO could not be amended to help define the term "ordinarily resident" more clearly.

11. Mr Howard YOUNG, Dr LUI Ming-wah and Dr Philip WONG were in support of the Bill. They considered that since a member of a consular post or a member of the Hong Kong Garrison was excluded from being treated as ordinarily resident during the period of stay in Hong Kong under section 2(4)(a) of IO, the same arrangement should apply to Mainland residents under official sponsorship by CPG to work in State organisations or enterprises in Hong Kong.

12. Both Mrs Selina CHOW and Mr Henry WU considered that the Mainland residents mentioned in paragraph 9 above should not be regarded as ordinarily resident of Hong Kong since they did not come to Hong Kong voluntarily or for the purpose of settlement. Mrs CHOW added that there was no conflict between the Bill and the common law interpretation of the term "ordinarily resident" as explained by SALA. The Bill merely sought to clarify, but not to impose restrictions on, BL 24(2). Mr Andrew WONG supported her view. He suggested that BL 24 should be read in conjunction with BL 22 which provided that the number of persons who entered Hong Kong for the purpose of settlement should be determined by CPG after consultation with the government of the Hong Kong Special Administrative Region.

13. The Committee agreed that the Law Society of Hong Kong be requested to elaborate on its comments given in its letter dated 28 November 2001 and that the Hong Kong Bar Association and the law faculties of the two universities be invited to comment on the Bill. The Committee also requested that legal advice given previously to other committees in their discussion on the term "ordinarily resident" be made available to members.

14. The Administration was requested to provide a written response to -

- (a) explain the term "ordinarily resident"; and
- (b) provide details of court cases, if any, as examples to illustrate how local legislation could impose restrictions on or clarify certain provisions of constitution.

III. Date of next meeting

15. The Committee agreed that the date of the next meeting should be decided after receipt of the information in paragraphs 13 and 14 above.

(Post-meeting note : the next meeting of the Bills Committee was scheduled for Monday, 30 September 2002 at 10:45 am.)

16. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 2
Legislative Council Secretariat
23 September 2002

Annex

**Proceedings of the first meeting Bills Committee on
Immigration (Amendment) Bill 2001
Meeting on Thursday, 27 June 2002 at 4:30 pm.
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000030	Dr LUI Ming-wah	Election of Chairman of Committee	
000030 - 000031	Mr Howard YOUNG	- ditto -	
000031 - 000033	Ms Miriam LAU Kin-yee	- ditto -	
000033 - 000107	Dr LUI Ming-wah	- ditto -	
000107 - 000256	Chairman	Opening remark	
000256 - 000615	Administration	Introduction of the major aspects of the Bill	
000615 - 000638	Dr LUI Ming-wah	Mainland officials applying for the right of abode (ROA) in Hong Kong	
000638 - 000740	Administration	- ditto -	
000740 - 000748	Dr LUI Ming-wah	- ditto -	
000748 - 000839	Administration	- ditto -	
000839 - 000935	Mr Howard YOUNG	Eligibility of Mainland residents working in business organisations in Hong Kong to apply for ROA	
000935 - 001111	Administration	- ditto -	
001111 - 001204	Mr Howard YOUNG	- ditto -	
001204 - 001240	Administration	- ditto -	
001240 - 001244	Chairman	- ditto -	
001244 - 001256	Administration	- ditto -	
001256 - 001323	Chairman	- ditto -	
001323 - 001338	Administration	- ditto -	
001338 - 001404	Dr LUI Ming-wah	The need for HKSAR government to inform Central People's Government (CPG) of the applications from Mainland residents for right of abode in Hong Kong	
001404 - 001431	Administration	- ditto -	
001431 - 001528	Miss Margaret NG	Restrictions on the meaning of "ordinarily resident" in BL 24 through amendment of local legislation	
001528 - 001820	Administration	- ditto -	
001820 - 002011	Miss Margaret NG	- ditto -	

Time	Speaker	Subject(s)	Action required
002011 - 002313	Administration	- ditto -	
002313 - 002450	Miss Margaret NG	- ditto -	
002450 - 002558	Administration	- ditto -	
002558 - 002638	Miss Margaret NG	- ditto -	
002638 - 002818	Administration	- ditto -	
002818 - 003011	Ms Audrey EU Yuet-mee	Amendment of BL through amendment of local legislation	
003011 - 003015	Chairman	- ditto -	
003015 - 003100	Ms Audrey EU Yuet-mee	- ditto -	
003100 - 003205	Administration	- ditto -	
003205 - 003313	Ms Audrey EU Yuet-mee	- ditto -	
003313 - 003320	Chairman	- ditto -	
003320 - 003442	Administration	- ditto -	
003442 - 003509	Chairman	Judgment of the Court of Final Appeal in Fateh Muhammad v Commissioner of Registration	
003509 - 004710	SALA	- ditto -	
004710 - 004930	Administration	- ditto -	
004930 - 005039	Ms Audrey EU Yuet-mee	Different treatment for Mainland officials and people from other countries working in Hong Kong in applying for ROA	
005039 - 005114	Administration	- ditto -	
005114 - 005143	Chairman	- ditto -	
005143 - 005155	Administration	- ditto -	
005155 - 005213	Chairman	- ditto -	
005213 - 005224	Administration	- ditto -	
005224 - 005228	Chairman	- ditto -	
005228 - 005330	SALA	- ditto -	
005330 - 005340	Chairman	- ditto -	
005340 - 005346	SALA	- ditto -	
005346 - 005446	Administration	- ditto -	
005446 - 005505	Chairman	- ditto -	
005505 - 005651	Mr Henry WU King-cheong, BBS, JP	Eligibility of Mainland residents working or studying in local universities to apply for ROA in Hong Kong	
005651 - 005735	Administration	- ditto -	
005735 - 005741	Chairman	- ditto -	
005741 - 010241	Mrs Selina CHOW LIANG Shuk-ye, GBS, JP	The Bill sought to clearly define the meaning of "ordinarily resident" in BL 24 rather than amending BL	

Time	Speaker	Subject(s)	Action required
010241 - 010245	Chairman	- ditto -	
010245 - 010428	Mr Andrew WONG Wang-fat	Suggestion that BL 24 should be read with BL 22	
010428 - 010526	Administration	Differences between Mainland officials posted to Hong Kong under the directive of the State and people from other countries working in Hong Kong	
010526 - 010621	Dr Philip WONG	Eligibility of a member of a consular post to apply for ROA in Hong Kong	
010621 - 010632	Chairman	- ditto -	
010632 - 010653	Dr Philip WONG	- ditto -	
010653 - 010713	Chairman	- ditto -	
010713 - 010732	Dr Philip WONG	- ditto -	
010732 - 010749	Chairman	- ditto -	
010749 - 010906	Administration	- ditto -	
010906 - 011105	Ms Miriam LAU Kin-ye	Interpretation of "ordinarily resident" in accordance with the common law or statute law	
011105 - 011114	Chairman	- ditto -	
011114 - 011220	Ms Emily LAU Wai-hing	Restriction on the meaning of "ordinarily resident" in BL imposed by the Bill Letter from the Law Society of Hong Kong (Appendix IV to LC Paper No. CB(2)2413/01-02(03))	
011220 - 011503	Chairman	Concern about additional restrictions to be imposed on BL in future	
011503 - 011857	Administration	- ditto -	
011857 - 011925	Dr LUI Ming-wah	Eligibility of a member of a consular post or the Hong Kong Garrison to apply for ROA in Hong Kong	
011925 - 012032	Administration	- ditto -	
012032 - 012102	Dr LUI Ming-wah	- ditto -	
012102 - 012128	Administration	- ditto -	
012128 - 012153	Dr LUI Ming-wah	- ditto -	
012153 - 012211	Administration	- ditto -	
012211 - 012227	Dr LUI Ming-wah	- ditto -	
012227 - 012239	Chairman	- ditto -	
012239 - 012248	Dr LUI Ming-wah	- ditto -	
012248 - 012301	Chairman	- ditto -	

Time	Speaker	Subject(s)	Action required
012301 - 012322	Administration	- ditto -	
012322 - 012333	Dr LUI Ming-wah	- ditto -	
012333 - 012344	Chairman	- ditto -	
012344 - 012739	Miss Margaret NG	Interpretation of "ordinarily resident" Categories of permits issued to Mainland officials posted to Hong Kong by CPG	
012739 - 012832	Administration	- ditto -	
012832 - 012844	Chairman	- ditto -	
012844 - 012858	Miss Margaret NG	- ditto -	
012858 - 013005	Administration	- ditto -	
013005 - 013016	Miss Margaret NG	- ditto -	
013016 - 013050	Administration	- ditto -	
013050 - 013120	Miss Margaret NG	- ditto -	
013120 - 013214	Administration	- ditto -	
013214 - 013225	Chairman	- ditto -	
013225 - 013242	Administration	- ditto -	
013242 - 013248	Chairman	- ditto -	
013248 - 013257	Miss Margaret NG	- ditto -	
013257 - 013453	Administration	- ditto -	
013453 - 013546	Dr Philip WONG	Eligibility of a member of a consular post to apply for ROA in Hong Kong	
013546 - 013720	Administration	- ditto -	
013720 - 013738	Chairman	- ditto -	
013738 - 013751	Dr Philip WONG	- ditto -	
013751 - 013914	Chairman	Court cases that challenged section 2(4)(a) of the Immigration Ordinance	
013914 - 013933	Administration	- ditto -	
013933 - 014006	Chairman	Further examination of the Bill by the Committee at its next meeting	
014006 - 014035	Miss Margaret NG	- ditto -	
014035 - 014120	Chairman	Clerk to invite the Law Society of Hong Kong to elaborate on its comments given in its letter dated 28 November 2001 as well as the Hong Kong Bar Association and the law faculties of the local universities to comment on the Bill	
014120 - 014238	Miss Margaret NG	Administration to explain the term "ordinarily resident"	
014238 - 014244	Chairman	- ditto -	

Time	Speaker	Subject(s)	Action required
014244 - 014249	Administration	- ditto -	
014249 - 014322	Chairman	- ditto -	Adm (para. 14(a) and (b))
014322 - 014345	Miss Margaret NG	Previous legal advice on the term "ordinarily resident" provided by LSD	
014345 - 014503	Chairman	- ditto - Date of next meeting	SALA (para. 13)

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

Council Business Division 2
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23 September 2002