

立法會

Legislative Council

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

(These minutes have been
seen by the Administration)

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**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

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23 September 2002