

立法會

## *Legislative Council*

LC Paper No. CB(2)203/02-03

(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 second meeting held on Monday, 30 September 2002 at 10:45 am in the Chamber of the Legislative Council Building**

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

Ms Winnie M W WONG  
Assistant Secretary for Security

Mr Anthony WU  
Deputy Law Officer (Civil Litigation)

Mr Peter WONG  
Senior Assistant Solicitor General (Basic Law)

Mr Gilbert MO  
Deputy Law Draftsman (Bilingual Drafting and  
Administration)

Mr C T LAI  
Assistant Director of Immigration (Enforcement and  
Liaison)

Mr David CHIU  
Principal Immigration Officer (Visa Control  
(Administration))

**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. Confirmation of minutes**  
(LC Paper No. CB(2)2753/01-02)

The minutes of the meeting held on 27 June 2002 were confirmed.

## II. Meeting with the Administration

(LC Paper Nos. CB(2)2744/01-02(01) to (03), CB(2)2755/01-02(02), CB(2)2771/01-02(01), CB(2)2787/01-02(01), CB(2)2813/01-02, CB(2)2838/01-02(01))

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

3. The Administration introduced its paper which further explained the term "ordinarily resident" and provided details of court cases as examples to illustrate how local legislation could impose restrictions on or clarify certain constitutional provisions (LC Paper No. CB(2)2787/01-02(01)), and its response to the further submission from the Law Society of Hong Kong (LC Paper No. CB(2)2838/01-02(01)).

4. Ms Margaret NG said that the Government was wrong in introducing the Bill to impose restrictions on the meaning of "ordinarily resident" in Article 24 of the Basic Law (BL) through amendment of local legislation. She indicated that she could not support the Bill and made the following comments-

- (a) the ruling of the Court of Final Appeal (CFA) in *Fateh Muhammad v. Commissioner of Registration & Another (Fateh Muhammad)* was neutral. It only clarified that the term "ordinarily resident" had to be given its natural and ordinary meaning;
- (b) the court had previously ruled that a generous and purposive approach should be adopted in the interpretation of a constitution such as BL. Hence, BL 24 should be interpreted in accordance with the common law;
- (c) she did not agree with the Administration's view that Mainland residents directed by the Central People's Government to work in State organisations or enterprises in Hong Kong did not come to Hong Kong on a voluntary basis. She was of the view that to be consistent with the spirit of BL 24(4), the Mainland officials should be treated as "ordinarily resident" in Hong Kong;
- (d) she agreed with the Law Society that if this was a policy issue, the Government should explore other options to resolve the problem instead of seeking to amend local legislation to impose

restrictions on BL; and

- (e) she queried the Administration's position on the differential treatment of Mainland officials before and after the proposed legislation.

5. The Administration explained that BL stated general principles and expressed purposes without condescending to particularity and definition of terms. Gaps and ambiguities were bound to arise. In respect of the interpretation of BL 24, the CFA held, in the case of CHONG Fung-yuen, that when interpreting the provision that defined the categories of permanent residents, the courts should simply consider the language in the light of any ascertainable purpose and the context. That was to be contrasted with the interpretation of other provisions in Chapter III of BL containing constitutional guarantees of freedoms to which a generous interpretation should be given. In the Administration's view, it would be within the legislative competence of the Legislative Council to specify by way of legislative amendment to section 2(4) of the Immigration Ordinance the category of the Mainland officials referred to in the Bill whose residence could fairly be regarded by the Council as falling outside the meaning of "ordinary residence" under BL 24. Moreover, the Bill would not apply retrospectively to the Mainland officials who had acquired right of abode before the commencement of the Bill. As a matter of general legal policy, actions involving retrospectivity should only be considered in exceptional circumstances. In addition, the new arrangement would not apply to those Mainland officials who had stayed in Hong Kong for seven years or more before commencement of the Bill, irrespective of whether the special endorsement was stamped on their Chinese Travel Permits.

6. Dr LUI Ming-wah was in support of the Bill which sought to clarify the status of the Mainland officials concerned so as to prevent disputes in future.

7. As members present at the meeting did not have further questions on the Bill and did not consider that further meetings were necessary, the Committee proceeded to examine the Bill clause by clause.

8. The Committee completed clause by clause examination of the Bill. The Chairman informed members that the Committee would submit its report to the House Committee on 11 October 2002. It was for the Administration to consider when to give notice for resumption of the Second Reading debate on the Bill.

9. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 2  
Legislative Council Secretariat  
29 October 2002

**Proceedings of the second meeting of the  
Bills Committee on Immigration (Amendment) Bill 2001  
Meeting on Monday, 30 September 2002 at 10:45 am  
in the Chamber of the Legislative Council Building**

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000252	Chairman	Confirmation of the minutes of the last meeting on 27 June 2002	
000253 - 001053	Admin Chairman	Admin's response to issues raised at the meeting on 27 June 2002 and the further submission from the Law Society of Hong Kong	
001054 - 001344	Chairman SALA	Extracts from dictionaries and court judgments on the legal meaning of the term "ordinarily resident" and extracts of documents from the Bills Committee on Legal Practitioners (Amendment) Bill 1999	
001345 - 002051	Chairman SALA Admin	SALA's views on the response of the Administration to the further submission from the Law Society of Hong Kong	
002052 - 004057	Chairman Ms Margaret NG Admin	Ms Margaret NG's views on Admin's response to issues raised at the meeting on 27 June 2002 and the further submission from the Law Society of Hong Kong	
004058 - 004728	Chairman Admin Dr LUI Ming-wah	Retrospectivity of the Bill	
004729 - 010408	Chairman Admin Dr LUI Ming-wah	Interpretation of the term "ordinarily resident" in BL 24	
010409 - 010919	Chairman Dr LUI Ming-wah Ms Miriam LAU	Consistency of the Bill with BL	
010920 - 011617	Chairman Admin	Effect of the Bill on the eligibility for applying for the right of abode of Mainland residents who had resided in Hong Kong for more than seven years continuously before enactment of the Bill	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
011618 - 012320	Chairman SALA Admin	Ambiguities in the interpretation of "ordinarily resident" in accordance with the common law	
012321 - 012511	Chairman Dr LUI Ming-wah Ms Miriam LAU	The need for further meetings to consider the Bill	
012512 - 013806	Chairman Admin SALA	Clause by clause examination of the Bill	
013807 - 013938	Chairman	Completion of clause by clause examination  Committee to submit report to the House Committee on 11 October 2002	

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

Council Business Division 2  
Legislative Council Secretariat  
29 October 2002