

立法會

Legislative Council

LC Paper No. CB(2)2740/01-02

(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/01

Legislative Council Bills Committee on Adaptation of Laws Bill 2001

Minutes of first meeting held on Monday, 15 July 2002 at 4:30 pm in Conference Room A of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Jasper TSANG Yok-sing, GBS, JP
- Public Officers attending** : Ms CHANG King-yiu
Deputy Director of Administration
- Ms Maggie WONG
Assistant Director of Administration
- Mr John WONG
Senior Government Counsel
Department of Justice
- Mr CHEUNG Man-yiu
Senior Government Counsel
Department of Justice

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

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Paul WOO
Senior Assistant Secretary (2)3

I. Election of Chairman

Ms Margaret NG was elected Chairman of the Bills Committee.

II. Membership of the Bills Committee

2. In accordance with House Rule 23(b), the Bills Committee accepted the late application of Mr Howard YOUNG to join the Bills Committee.

III. Meeting with the Administration

(The Bill, the Legislative Council Brief issued by the Administration, marked-up copy of the Bill, LC Paper No. LS36/01-02)

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

Schedules 1 and 2 to the Bill

Adaptation of the definition of "Commissioner" and proposed definition of "prescribed officer" to replace "Crown servant" in the Prevention of Bribery Ordinance (Cap. 201) (POBO) and Independent Commission Against Corruption Ordinance (Cap. 204) (ICACO)

4. Deputy Director of Administration (DDA) advised that the purpose of adaptation of laws was to make statutory provisions, when adapted, consistent with the Basic Law (BL) and with Hong Kong's status as a Special Administrative Region of the People's Republic of China, and to preserve, to the extent possible, the legal effect the provisions had before 1 July 1997.

5. DDA further advised that the reference to "Crown servant" appeared only in POBO and ICACO, and was defined as "a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government". According to legal advice, the term "holder of an office of

emolument under the Crown in right of the Government" might have a wider scope than "holder of an office of emolument under the Government". Certain persons fell within the definition of "Crown servant" (i.e. the five offices specified in paragraph (b) of the proposed definition of "prescribed officer" in Schedules 1 and 2 to the Bill) but they might not be construed to fall automatically within the definition of "Government officer". These offices performed their functions in an independent manner and they did not form part of the permanent establishment of the civil service. Hence, there were doubts that some might not perceive these offices as "offices of emolument under the Government". To avoid possible doubts that could arise from simply adapting "Crown servant" to "Government officer" and to preserve the legal effect of the provision, the Administration proposed to replace "Crown servant" by "prescribed officer" and to make express reference to the five offices in the adapted definition.

6. Assistant Legal Adviser briefed members on the report prepared by the Legal Service Division (LSD) on the Bill (LC Paper No. LS36/01-02). He said that LSD was still considering the implications of the proposed new definition of "Crown servant" and whether it had the effect of altering the scope of the original term.

7. Ms Emily LAU questioned whether all the five offices listed in the new definition of "prescribed officer" operated independently of the Government, pointing out that the Monetary Authority, for example, was part of the Government and operating under the Financial Secretary. DDA confirmed that the Monetary Authority had been operating as part of the Government and as "an office of emolument under the Crown in right of the Government". She undertook to provide further information as to why this and other "prescribed officers" might not be construed automatically as "offices of emolument under the Government".

8. Some members expressed concern whether the definition of "Commissioner" was consistent with BL 48(5) which stated that the Commissioner Against Corruption should be nominated by the Chief Executive for appointment by the Central People's Government. BL 48(5) did not refer to the "Commissioner" as including other persons.

9. DDA advised that the term of "Commissioner" under POBO meant the person appointed by the Governor to be in charge of the Independent Commission Against Corruption and included the Deputy Commissioner and the Acting Commissioner. In order to preserve the original legal effect of the term, it was necessary to include the Commissioner, Deputy Commissioner and Acting Commissioner in the adapted definition. Members requested the Administration to reconsider the adapted definition.

10. The Chairman said that the scope of adaptation of laws should be narrow and restrictive. The proposed new definitions in Schedules 1 and 2 to the Bill, however, were not straightforward and mechanical terminological changes, and appeared to have the effect of interpreting and improving upon the existing terms and hence exceeded the scope of adaptation. She said that if the new definitions actually altered the legal effect of the original terms, the change should be implemented by way of an amendment bill.

11. The Administration was requested -

- (a) to explain the principles of adaptation of laws and provide legal advice on how the adaptation of "Commissioner" and "Crown servant" conformed with the intent and scope of adaptation of laws;
- (b) on the Administration's advice that the five offices under the definition of "prescribed officer" might not be construed to fall within the meaning of "offices of emolument under the Government", to provide the relevant references to these offices in the respective Ordinances and explain their independent functions and operation; and
- (c) subject to (a) and (b) above, to consider whether the adaptation of "Commissioner" and "Crown servant" should be done by way of an amendment bill.

12. Members agreed that the Bills Committee should seek the views of the two legal professional bodies on the Bill.

IV. Date of next meeting

13. The next meeting would be held on 16 September 2002 at 10:45 am.

(Post-meeting note - The next meeting was re-scheduled for 17 September 2002 at 10:45 am.)

14. There being no other business, the meeting ended at 6:00 pm.

Council Business Division 2
Legislative Council Secretariat
3 September 2002

**Proceedings of the meeting of the
Bills Committee on Adaptation of Laws Bill 2001
on Monday, 15 July 2002 at 4:30 pm.
in Conference Room A of the Legislative Council Building**

| Time | Speaker | Subject(s) | Action required |
|-----------------|-----------------------|---|------------------------|
| 000000 - 000030 | Ms Margaret NG | Election of Chairman of the Committee | |
| 000030 - 000347 | Members | Acceptance by Committee of late application of Mr Howard YOUNG to join the Committee | |
| 000347 - 000441 | Chairman | Introducing representatives of the Administration to members of the Committee | |
| 000441 - 000557 | Administration | Introduction on the major aspects of the Bill (LegCo Brief on the Bill issued by the Administration Wing of the Chief Secretary for Administration's Office) | |
| 000557 - 000610 | Chairman | -ditto- | |
| 000610 - 000734 | ALA | Report prepared by the Legal Service Division on the Bill (LC Paper No. LS36/01-02) | |
| 000734 - 000745 | Chairman | -ditto- | |
| 000745 - 001001 | ALA | Effect and implications of the proposed adaptation of "Crown servant" to "prescribed officer" | |
| 001001 - 001007 | Chairman | -ditto- | |
| 001007 - 001131 | Ms Audrey EU Yuet-mee | Review of the drafting of the definition of "prescribed officer" | |
| 001131 - 001220 | Chairman | Principles and scope of adaptation of laws and whether the proposed definition of "prescribed officer" fell within the scope of adaptation of laws | |
| 001220 - 001224 | Ms Audrey EU Yuet-mee | -ditto- | |
| 001224 - 001309 | Chairman | -ditto- | |
| | | Consultation with the legal professional bodies on the Bill | |
| 001309 - 001319 | Administration | Consultation on the Bill | |
| 001319 - 001327 | Chairman | -ditto- | |
| 001327 - 001331 | Clerk | -ditto- | |
| 001331 - 001347 | Chairman | -ditto- | |
| 001347 - 001418 | ALA | Whether the definition of "prescribed officer" fell within the scope of adaptation of laws | |
| 001418 - 001423 | Chairman | -ditto- | |

| Time | Speaker | Subject(s) | Action required |
|-----------------|--------------------------|---|------------------------|
| 001423 - 001431 | Ms Audrey EU Yuet-mee | Proposal to consult the two legal professional bodies on the Bill | |
| 001431 - 001437 | Chairman | -ditto- | |
| 001437 - 001445 | Ms Audrey EU Yuet-mee | -ditto- | |
| 001445 - 001505 | Chairman | -ditto- | |
| 001505 - 001627 | Mr Howard YOUNG | References to "Crown servant" in existing Ordinances | |
| 001627 - 001643 | Chairman | -ditto- | |
| 001643 - 001920 | Administration | -ditto- Reasons for proposing a new definition of "prescribed officer", which expressly included the five specified offices, in place of "Crown servant" | |
| 001920 - 001940 | Mr Howard YOUNG | Application and scope of the term "Crown servant" before reunification | |
| 001940 - 001958 | Administration | -ditto- | |
| 001958 - 002002 | Chairman | Adaptation of "Crown" to "State" or "Government" | |
| 002002 - 002017 | Administration | Purpose of the proposed adapted definition in the Bill | |
| 002017 - 002026 | Chairman | Proposed new definition of "Commissioner" | |
| 002026 - 002029 | Administration | -ditto- | |
| 002029 - 002105 | Chairman | -ditto- | |
| 002105 - 002217 | Administration | -ditto- | |
| 002217 - 002413 | Chairman | -ditto- | |
| 002413 - 002554 | Administration | -ditto- | |
| 002554 - 002624 | Chairman | -ditto- | |
| 002624 - 002656 | Administration | -ditto- | |
| 002656 - 002719 | Chairman | -ditto- | |
| 002719 - 002829 | ALA | -ditto- | |
| 002829 - 003010 | Chairman | Scope of the definition of "Commissioner" | |
| 003010 - 003049 | Administration | -ditto- | |
| 003049 - 003054 | Chairman | -ditto- | |
| 003054 - 003133 | Administration | -ditto- | |
| 003133 - 003137 | Chairman | -ditto- | |
| 003137 - 003418 | Administration | -ditto- | |
| 003418 - 003523 | Chairman | -ditto- | |
| 003523 - 003653 | Mr Ambrose LAU Hon-chuen | Scope of the definition of "Commissioner" vis-a-vis the relevant Basic Law provision | |
| 003653 - 003833 | Administration | -ditto- | |
| 003833 - 003921 | Chairman | -ditto- | |

| Time | Speaker | Subject(s) | Action required |
|-----------------|-----------------------|---|--|
| 003921 - 004024 | Ms Audrey EU Yuet-mee | Consistency with Article 48(5) of the Basic Law | |
| 004024 - 004045 | Chairman | -ditto- | |
| 004045 - 004140 | Ms Emily LAU Wai-hing | Object of the Bill | |
| 004140 - 004304 | Chairman | -ditto- | |
| 004304 - 004336 | Ms Emily LAU Wai-hing | -ditto- | |
| 004336 - 004505 | Administration | Principles and spirit of adaptaton of laws Written explanation with legal advice on how the proposed definitions conformed with the intent and scope of adaptation of laws | Adm to provide written response (para. 11(a)) |
| 004505 - 004509 | Ms Emily LAU Wai-hing | -ditto- | |
| 004509 - 004523 | Administration | -ditto- | |
| 004523 - 004532 | Chairman | -ditto- | |
| 004532 - 004848 | Mr Howard YOUNG | The implications of not including the five offices listed in the proposed definition of "prescribed officer" | |
| 004848 - 005108 | Administration | -ditto- | |
| 005108 - 005136 | Chairman | Whether the definition of "prescribed officer" exceeded the scope of adaptation of laws | |
| 005136 - 005155 | Mr Howard YOUNG | -ditto- | |
| 005155 - 005220 | Administration | -ditto- | |
| 005220 - 005237 | Chairman | -ditto- | |
| 005237 - 005312 | Ms Audrey EU Yuet-mee | Provisions in Ordinances indicating the functions and independence of the five offices stated in the definition of "prescribed officer" | |
| 005312 - 005343 | Administration | -ditto- | Adm to provide the relevant statutory references (para. 11(b)) |
| 005343 - 005542 | Ms Emily LAU Wai-hing | The Monetary Authority was part of the Government functioning under the Financial Secretary | |
| 005542 - 005648 | Administration | Organisations not within the permanent establishment of the civil service | |
| 005648 - 005652 | Chairman | -ditto- | |
| 005652 - 005713 | Ms Emily LAU Wai-hing | -ditto- | |
| 005713 - 010005 | Chairman | Possibility to deal with the proposed adaptation of "Commissioner" and "prescribed officer" by way of an amendment bill | |
| 010005 - 010038 | Administration | -ditto- | Adm to give written response (para. 11(c)) |

| Time | Speaker | Subject(s) | Action required |
|-----------------|---------------------------------|---|--|
| 010038 - 010146 | Chairman | -ditto- | |
| 010146 - 010303 | Administration | Intent and scope of the definition of "prescribed officer" | |
| 010303 - 010315 | Chairman, Ms Emily LAU Wai-hing | -ditto- | |
| 010315 - 010321 | Chairman | -ditto- | |
| 010321 - 010411 | Ms Emily LAU Wai-hing | -ditto- | |
| 010411 - 010444 | ALA | -ditto- | |
| 010444 - 010729 | Administration | Intent and criteria of specifying the five offices under paragraph (b) of the definition of "prescribed officer" | |
| 010729 - 010732 | Chairman | -ditto- | |
| 010732 - 010758 | Administration | -ditto- | |
| 010758 - 010840 | Ms Emily LAU Wai-hing | -ditto- | |
| 010840 - 010914 | Administration | -ditto- | |
| 010914 - 010920 | Ms Emily LAU Wai-hing | -ditto- | |
| 010920 - 011042 | Chairman | -ditto- | |
| 011042 - 011227 | Ms Audrey EU Yuet-mee | Whether the list of five offices in paragraph (b) of the definition of "prescribed officer" was exhaustive and sufficient to serve the legislative intent | |
| 011227 - 011430 | Administration | -ditto- | |
| 011430 - 011500 | Ms Audrey EU Yuet-mee | -ditto- | |
| 011500 - 011632 | Administration | -ditto- | |
| 011632 - 011700 | Mr Howard YOUNG | -ditto- | |
| 011700 - 011717 | Administration | -ditto- | |
| 011717 - 011729 | Mr Howard YOUNG | -ditto- | |
| 011729 - 011829 | Administration | -ditto- | |
| 011829 - 011909 | Ms Emily LAU Wai-hing | -ditto- | |
| 011909 - 012022 | Chairman | -ditto- | |
| 012022 - 012027 | Chairman, Ms Emily LAU Wai-hing | Adm to consider members' views and the Committee to consult the legal profession | Clerk to invite written views of the two legal professional bodies on the Bill (para.12) |
| 012027 - 012058 | Chairman | -ditto- | |
| 012058 - 012204 | Members | Date of next meeting | |
| 012204 - 012051 | Chairman | -ditto- | |

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