

# 立法會

## *Legislative Council*

LC Paper No. CB(2)241/02-03

(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 second meeting held on Tuesday, 17 September 2002 at 10:45 am in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Howard YOUNG, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon James TO Kun-sun  
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

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Action

**I. Confirmation of minutes of meeting**

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

The minutes of the meeting held on 15 July 2002 were confirmed.

**II. Meeting with the Administration**

(LC Paper Nos. CB(2)2774/01-02(01) to (04))

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

3. Members agreed to continue discussion on the merit of the proposed amendments in the Bill, and to defer consideration as to whether the proposed amendments were within the scope of the adaptation exercise.

Adaptation of "Crown servant" to "prescribed officer"

4. Members expressed concern whether the proposed definition of "prescribed officer" would preserve the same scope that "Crown servant" covered before 1 July 1997. The Chairman said that the definition of "prescribed officer" might not be able to cover all the offices falling within the meaning of "Crown servant". Mr Howard YOUNG said that it might be necessary to revise the definition of "prescribed officer" in future to include new offices which fell within the meaning of "Crown servant" but outside the definition of "prescribed officer". He opined that compared to the term "Crown servant", the proposed definition lacked flexibility and continuity.

5. Members sought the Administration's comment on the Bar Association's proposal to adapt "Crown servant" to "any person holding an office of emolument, whether permanent or temporary, under the Hong Kong Special Administrative Region (HKSAR)". The Administration replied that its initial response was that the scope of the proposed adaptation might be too wide as to include persons holding offices of emolument in the private sector in the HKSAR.

Action

6. Ms Audrey EU suggested that the Bar Association's proposal might be revised to "any person holding a public office of emolument, whether permanent or temporary, in the right of or in respect of the HKSAR". Members requested the Administration to consider replacing the proposed definition of "prescribed officer" by a descriptive statement along the line suggested by the Bar Association, in order to preserve the scope of the term "Crown servant".

Adm

The Government of HKSAR, Chief Executive (CE) and principal officials

7. In response to members' enquires, Deputy Director of Administration said that paragraph (a) of the proposed definition of "prescribed officer" covered the principal officials specified in Article 48(5) of the Basic Law (BL), but not CE. She advised that to address the unique constitutional position of CE and the fact that CE was not a "government officer" or a "public servant" as defined in the Prevention of Bribery Ordinance (Cap. 201) (POBO), the Administration was in the course of drafting legislative amendments with a view to applying certain provisions of POBO to CE. The Administration had discussed the matter with the Panel on Constitutional Affairs at a number of meetings.

8. The Chairman requested the Clerk to prepare a background brief on previous discussions of the Panel on Constitutional Affairs on application of POBO to CE for members' reference.

Clerk

9. Members requested the Administration to provide a written response to explain whether CE and the principal officials specified in BL 48(5), in particular, principal officials under the accountability system implemented on 1 July 2002, would be covered by the proposed definition of "prescribed officer" and the reasons for its views.

Adm

10. Members also requested the Administration to respond to the proposal of the Bar Association that principal officials should be separately categorised under the definition of "prescribed officer". The Bar Association queried whether they would be covered under paragraph (a) of the definition of "prescribed officer" since they were appointed by the Central People's Government.

Adm

11. The Chairman said that BL 59 specified that "the Government of the HKSAR shall be the executive authorities of the Region". She pointed out that in the view of the Bar Association, the present meaning of "Government" was narrower than that expressed in previous laws in force which was not confined to the executive authorities. She requested the Administration to comment on this view.

Adm

Action

Adm

12. Members requested the Administration to provide papers to respond to the various issues raised by them and the Bar Association for discussion at the next meeting.

**III. Date of next meeting**

13. The next meeting would be held on 5 November 2002 at 2:30 pm.

14. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 2  
Legislative Council Secretariat  
1 November 2002

**Proceedings of the second meeting of the  
Bills Committee on Adaptation of Laws Bill 2001  
on Tuesday, 17 September 2002 at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time</b>	<b>Speaker (s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000001-001315	Chairman Ms Emily LAU Adm	The Bills Committee to continue discussion on the merit of the proposed amendments and to defer consideration as to whether they were within the scope of the adaptation of laws exercise	
001316-001640	Ms Audrey EU Adm Ms Emily LAU Chairman	Difference between "public servant" and "Crown servant" under POBO	
001641-001938	Mr Howard YOUNG Adm	Concern about the scope of "prescribed officer" being narrower than that of "Crown servant" and therefore not able to cover new offices which fell within the meaning of "Crown servant" but outside the definition of "prescribed officer"	
001939-002759	Ms Audrey EU Adm Chairman Ms Emily LAU	The constitutional status of the Chief Executive (CE) and whether the proposed definition of "prescribed officer" covered CE and principal officials	
002800-003607	Adm Chairman Ms Emily LAU	Discussion at previous meetings of the Panel on Constitutional Affairs on applicability of POBO to CE	The Clerk to prepare a background brief on previous discussions of the Panel on Constitutional Affairs
003608-004133	Chairman Adm Ms Audrey EU Ms Emily LAU	(i) Whether the definition of "prescribed officer" is adequate to cover all existing and new offices which fell within the meaning of "Crown servant"; and  (ii) Whether paragraph (a) of the definition of "prescribed officer" covered the principal officials	
004134-005932	Ms Emily LAU Ms Audrey EU Chairman Adm ALA6	(i) The inadequacies of the proposed definition of "prescribed officer"; and  (ii) The Bar Association's proposal to substitute "Crown servant" with a descriptive statement "any person	

Time	Speaker (s)	Subject(s)	Action required
		<p>holding an office of emolument, whether permanent or temporary, under the Hong Kong Special Administrative Region" (paragraph 19 of LC Paper No. CB(2)2774/01-02(02))</p>	
005933-010831	<p>Chairman Mr Ambrose LAU Ms Emily LAU Adm</p>	<p>(i) Definition of "Government of the Hong Kong Special Administrative Region" under BL 59; and</p> <p>(ii) Whether "under the Crown in right of the Government" could be replaced by "under the Hong Kong Special Administrative Region"</p>	
010832-011033	<p>Ms Audrey EU Adm</p>	<p>Suggestion of Ms Audrey EU to revise the Bar Association's proposal to "any person holding a public office of emolument, whether permanent or temporary, in the right of or in respect of the Hong Kong Special Administrative Region"</p>	<p>Adm to comment on the proposed amendment</p>
011034-011833	<p>Chairman Ms Emily LAU Adm</p>	<p>(i) The Bar Association's view that the scope of the meaning of "Government" in BL 59 was narrower than that expressed in previous laws in force; (paragraphs 12 and 13 of LC Paper No. CB(2)2774/01-02(02))</p> <p>(ii) Whether CE and the principal officials specified in BL 48(5) would be covered by the proposed definition of "prescribed officer"; and</p> <p>(iii) The Bar Association's proposal that principal officials should be separately categorised under the definition of "prescribed officer" (paragraph 19 of LC Paper No. CB(2)2774/01-02(02))</p>	<p>Adm to respond to the issues raised</p>
011834-012046	<p>Chairman</p>	<p>Date of next meeting</p>	

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

