

立法會
Legislative Council

LC Paper No. CB(2)633/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

**Minutes of special meeting
held on Wednesday, 7 November 2001
at 10:45 am in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Member attending : Hon SIN Chung-kai

Members absent : Hon Albert HO Chun-yan
Hon CHEUNG Man-kwong
Hon Howard YOUNG, JP

Public Officers attending : Item I
Mrs Regina IP, JP
Secretary for Security

Mr Michael WONG
Deputy Secretary for Security 3

Ms Linda K P SO
Principal Assistant Secretary for Security C

Mr Ian WINGFIELD, JP
Law Officer (Civil Law)
Department of Justice

Mr Gilbert MO
Deputy Law Draftsman
Department of Justice

Mr C T LAI
Assistant Director of Immigration

Item II

Mr Michael WONG
Deputy Secretary for Security 3

Mr Alan K M CHU
Principal Assistant Secretary for Security D

Miss May CHAN
Assistant Secretary for Security D

Mr T P WONG
Deputy Director of Immigration

Mr Raymond W M WONG
Principal Immigration Officer
Immigration Department

Mr TSOI Hon-kuen
Principal Immigration Officer
Immigration Department

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Immigration (Amendment) Bill 2001
(LegCo Brief Ref. : SBCR 2/2071/99)

At the invitation of the Chairman, Secretary for Security (S for S) briefed Members on the proposal in the Immigration (Amendment) Bill 2001 (the Bill) to exclude Mainland officials from being treated as ordinarily resident in Hong Kong during any period for which they worked in Hong Kong in their official capacity.

2. Miss Margaret NG asked about the number of Mainland officials who had acquired permanent resident status after having worked in Hong Kong for more than seven years. She expressed concern that there seemed to be another kind of exit permit besides the One-way Permit and Two-way Permit by which Mainland residents could enter Hong Kong. She asked about the types of Mainland persons eligible for such exit permit.

3. S for S responded that there was no change in the types of permits for Mainland residents who entered Hong Kong. For Mainland residents who entered Hong Kong for private purposes, there were only two types of permits, namely, the One-way Permit and Two-way Permit. The Mainland officials entered Hong Kong for the purpose of work but not settlement. She said that there were about 1 300 Mainland officials who had become permanent residents of Hong Kong after having worked in Hong Kong for more than seven years. After a recent review and clarification with the Mainland authorities on the duties of Mainland officials, the Administration decided that those who were posted to Hong Kong under the directive of the State in their official capacity should not be treated as ordinarily resident in Hong Kong.

4. S for S added that there were not many Mainland officials working in the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region and the Office of the Ministry of Foreign Affairs in Hong Kong. However, there was a large number of Mainland officials from state organisations and enterprises who were working in Hong Kong, although the total number had decreased from about 10 000 persons before reunification to the current level of about 7 000 persons.

5. Miss Margaret NG asked about the criteria adopted by state organisations and enterprises in sending Mainland officials to work in Hong Kong and the general rank of these officials. S for S responded that many chief executives officers of state organisations and enterprises were senior officials of the Central People's Government at ministerial level. Applications for deploying officials to work in Hong Kong were processed by the State Council in accordance with stringent criteria. After reunification, the number of Mainland officials allowed to work in Hong Kong were kept under stringent control by the Hong Kong and Macau Affairs Office of the State Council.

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6. Miss Margaret NG requested the Administration to provide a breakdown in respect of the type of enterprises of the 1 300 Mainland officials who had become permanent residents after having worked in Hong Kong for more than seven years.

(Post-meeting note : The information provided by the Administration was issued to members vide LC Paper No. CB(2) 382/01-02 on 14 November 2001.)

7. The Chairman said that if it was a Mainland policy that officials directed to work in Hong Kong should not be entitled to permanent resident status in Hong Kong, the Mainland authorities should not have allowed the 1 300 Mainland officials to work in Hong Kong for more than seven years. He further said that the problem of Mainland officials acquiring permanent resident status might be addressed if Mainland authorities avoided sending Mainland officials to work in Hong Kong for seven years or more.

8. S for S responded that while she was not in a position to reply on behalf of the Mainland authorities, there were some cases where operational needs necessitated a Mainland official to work in Hong Kong for more than seven years. The proposed legislative amendments would provide Mainland authorities and state enterprises with greater flexibility in the deployment of officials to work in Hong Kong.

9. Ms Audrey EU asked whether all persons other than those referred to in paragraph 3(a) to (h) of the Legislative Council (LegCo) Brief were treated as ordinarily resident while in Hong Kong. She also asked whether Mainland residents studying or doing business in Hong Kong would be regarded as ordinarily resident in Hong Kong.

10. Law Officer (Civil Law) (LO(CL)) responded that the list of persons referred to in paragraph 3(a) to (h) of the LegCo Brief was not an exhaustive list of persons treated as not ordinarily resident while in Hong Kong. He said that a businessman who visited Hong Kong very frequently but stayed at hotels in Hong Kong and whose family was outside Hong Kong might not be regarded as ordinarily resident in Hong Kong. Although students were generally regarded as ordinarily resident in their place of study, it would be necessary to examine their respective links with Hong Kong and other places in determining whether they would be regarded as ordinarily resident in Hong Kong.

11. The Chairman asked about the types of visits where the special endorsement referred to in paragraph 7 of the LegCo Brief was not stamped on the Chinese Travel Permits (CTPs) of the Mainland officials concerned. He also asked whether Mainland officials holding such kinds of permits would be entitled to permanent resident status after remaining in Hong Kong for seven years.

12. S for S responded that there was only one type of CTP after reunification. However, there were different types of exit endorsement, including exit endorsements

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for official visit, training, education and contract work. Official visits, training and education were of a short-term nature and not subject to the Bill. She said that endorsements valid for a long period of time were not granted for official visits, training or education. Besides the issue of an exit permit by the Mainland authorities, an entry permit was also issued by the Immigration Department (ImmD). Even where an exit permit granted by the Mainland authorities was valid for a long period, ImmD would not issue an entry permit valid for a long period.

13. Assistant Director of Immigration added that an entry permit for official visit would not normally exceed 30 days, while an entry permit for training would not normally exceed 12 months. An entry permit for education could be granted for up to four years to persons who studied at the eight UGC-granted tertiary institutions. CTP holders who worked in Hong Kong under the importation of labour scheme fell under paragraph 3(e) of the LegCo Brief and therefore were not regarded as ordinarily resident while in Hong Kong.

14. Miss Margaret NG expressed doubt about whether the proposed legislative amendments would have the effect of excluding Mainland officials directed to work in Hong Kong in their official capacity from being treated as ordinarily resident in Hong Kong. She opined that the Administration was imposing restrictions on the meaning of "ordinarily resident" in BL 24 through amendment of local legislation. She asked whether the 1 300 Mainland officials who had become permanent residents of Hong Kong were within the daily quota of 150 Mainland residents allowed to enter Hong Kong for settlement. She expressed concern that there seemed to be another category of persons besides the daily quota of 150 persons.

15. S for S responded that there was no change to the daily quota of 150 Mainland residents allowed to enter Hong Kong for settlement. The Mainland officials were not among the daily quota because they came to Hong Kong for the purpose of work but not settlement.

16. LO(CL) added that the Bill sought to clarify that Mainland officials who worked in Hong Kong were not to be treated as being ordinarily resident in Hong Kong for the purposes of BL 24. The Court of Final Appeal (CFA) had, in the case of Fateh Muhammad v. Commissioner of Registration, upheld the provision of section 2(4) of the Immigration Ordinance (IO) which excluded a person from being treated as ordinarily resident during the period when the person was imprisoned or detained. As the CFA had recognised, the term ordinarily resident was a term that meant different things in different places. Thus, it was necessary to look at the context, and interpret the term in accordance with its purpose in the context of BL 24. He said that the term "ordinarily resident" as CFA had recognised should be looked at in its particular context. The Administration considered that the Bill was consistent with the meaning of the term "ordinarily resident" in the context of BL 24. As regards the 1 300 Mainland officials who had obtained permanent resident status in Hong Kong, the meaning of the term "ordinarily resident" was not certain at that time and therefore it had been construed in their favour.

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17. Miss Margaret NG considered that the Bill was seeking to limit BL through the amendment of local legislation. Her view was shared by Ms Audrey EU. Ms EU said that the proposed legislative amendment would be unfair to Mainland officials who had worked in Hong Kong for more than six years but less than seven years when the legislative amendments came into force.

18. LO(CL) responded that CFA had recognised that the term "ordinarily resident" had different meanings in different contexts. The interpretation might change over time as the court adopted different interpretations over time in different contexts. CFA had said that that one had to look at a term in the context of the legislation and of BL in order to ascertain its meaning.

19. LO(CL) added that the CFA judgment referred in paragraph 15 had to some extent suggested that the previous interpretation of the term "ordinarily resident" had been too narrow. For the 1 300 people who had already become permanent residents, he considered it wrong to change their permanent resident status.

Adm 20. Ms Audrey EU requested the Administration to provide information on the number of Mainland officials who had worked in Hong Kong for over six years but less than seven years. S for S agreed. She informed Members that there were a few hundred Mainland officials who had worked in Hong Kong for over seven years but had not applied for permanent resident status. She added that the later passage of the Bill would result in more Mainland officials being entitled to permanent resident status.

(Post-meeting note : The information provided by the Administration was issued to members vide LC Paper No. CB(2) 382/01-02 on 14 November 2001.)

21. Miss Margaret NG said that she had suggested on many occasions that the Administration should carry out a comprehensive review on IO, including reviews on persons who entered Hong Kong under the Admission of Mainland Professionals Scheme and Mainland residents who invested and resided in Hong Kong. She considered that the Administration should not address the issues related to IO in a piecemeal manner.

22. S for S responded that the Administration had no plan to allow Mainland residents to invest and reside in Hong Kong as there was still foreign exchange control in the Mainland. The Administration would carry out a review on its immigration policy on persons from the Mainland, a motion on which had been passed by LegCo a few months ago. However, there would not be substantial amendment to IO in the short term.

II. Hong Kong Special Administrative Region Identity Card Project : Progress Report

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(LC Paper Nos. CB(2) 243/01-02(01) and (02))

23. At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) and Deputy Director of Immigration (DD of Imm) briefed Members on the progress of the Hong Kong Special Administrative Region Identity Card Project (the Project) as detailed in the paper provided by the Administration.

24. Miss Margaret NG asked whether legislative amendments for the Project would be introduced collectively under one bill or separately. She considered that all legislative amendments should be introduced together under one bill rather than separately in a piecemeal manner.

25. DD of Imm responded that legislative amendments relating to the Registration of Persons (ROP) legislation would be grouped under one bill to be introduced in January 2002. While the Administration hoped that all legislative amendments relating to the Project could be introduced at one time, some other policy bureaux and departments were still working on the legislative amendments relevant to their respective policy areas. Amendments to other legislation might be necessary, if it was decided that non-immigration applications were to be included in the new smart identity (ID) card. For example, the Road Traffic Ordinance might have to be amended if a decision is taken to incorporate a driving licence in a smart ID card. The Administration would propose to set out in a schedule to the ROP Ordinance the immigration-related and non-immigration related data to be printed on the surface of a smart ID card as well as the items to be stored in the chip.

26. Miss Margaret NG considered that the Administration should coordinate with the relevant policy bureaux and provide a full list of all legislative amendments to be introduced under the Project.

27. DS for S3 responded that it was not possible to provide a full list of legislative amendments at this stage as the applications to be included in the smart ID card might develop with time. Non-immigration related applications, such as the incorporation of a library card, driving licence and digital certificate might be added at a future stage.

28. The Chairman said that the Administration should at least provide a full list of legislative amendments to be introduced in the next one or two years.

29. DD of Imm responded that the Administration had already undertaken to consult LegCo before adding new applications to smart ID cards. There would also be a schedule to the ROP Ordinance setting out the data to be printed on the surface of a smart ID card as well as the items to be stored in the chip of a smart ID card. He undertook to convey members' request for a full list of legislative amendments to the Information Technology and Broadcasting Bureau for consideration.

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30. Mr LAU Kong-wah pointed out that at the Panel meeting on 1 November 2001, he had requested the Administration to advance the introduction of automated

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immigration clearance systems under the updated Information Systems Strategy (ISS-2) of ImmD. He asked whether the Administration had plans to advance the introduction of automated vehicle clearance system to tie in with the introduction of the smart ID card.

31. DS for S3 responded that the Administration was working on an updated implementation plan for ISS-2 having regard to the views expressed by Members at the Panel meeting on 1 November 2001. The Administration would brief members on its updated plan at the next Panel meeting on 6 December 2001. DD of Imm added that the tender document had already contained detailed specifications on smart card and thumbprint identification technologies so as to provide a platform for automated passenger and vehicle clearance at immigration control points. It was not necessary to amend the tender document for the purpose of advancing the introduction of automated clearance systems.

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32. To expedite the introduction of automated vehicle clearance system, Dr LUI Ming-wah considered that legislative amendments relevant to the introduction of such a system should be introduced with priority before other legislative amendments were introduced. DS for S3 took note of the suggestion.

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33. Mr IP Kwok-him requested the Administration to provide the tender document to facilitate their understanding of the specifications and requirements for the Project. The Chairman said that in view of the bulkiness of the tender document, the Administration could provide a few copies of the tender document to the LegCo Secretariat for perusal by interested members.

(Post-meeting note : The Administration subsequently provided the LegCo Secretariat with some hardcopies as well as CD-ROMs containing the softcopy of the tender document for perusal by interested members. A circular informing members of the arrangements was issued vide LC Paper No. CB(2) 345/01-02 on 14 November 2001.)

34. The Chairman said that there were reports that the former Privacy Commissioner for Personal Data (the former Privacy Commissioner), Mr K M LAU, had joined a company that had lodged tender for the smart ID card system under the Project. Being the former Privacy Commissioner, Mr LAU had been a major adviser on privacy aspects of the Project, some of the views given by Mr LAU might have an effect on the criteria adopted in the tender evaluation process. He asked whether the Administration had assessed whether there was any impact on the fairness of the tendering exercise and whether any amendment to the tender document was necessary.

35. DS for S3 responded that the Administration had examined the matter and come to the conclusion that the fairness of the tendering exercise had not been affected. He added that all privacy-related issues that might have an effect on tendering had already been set out in the tender document.

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36. The Chairman asked whether the Independent Commission Against Corruption (ICAC) had taken part in the assessment referred to in paragraph 34.

37. DD of Imm responded that ICAC had been consulted on the tendering procedures and the tender document at an early stage. However, ICAC had not taken part in the recent assessment of the tendering exercise as there was no evidence indicating that anyone had tried to influence the tendering exercise. He added that all information supplied to the Privacy Commissioner had been provided to LegCo Members or included in the tender documents. While the Administration had sought the views of the Privacy Commissioner in preparing the tender document, both the Privacy Commissioner's views and the criteria to be adopted in tender evaluation had been set out in the tender documents.

38. The Chairman stressed that his concerns did not arise from the belief that anyone had tried to influence the tendering exercise. However, he considered it important for the tendering exercise to be a fair one.

39. In response to Dr LUI Ming-wah's question about the addition of new applications to smart ID cards, DD of Imm said that such addition would not necessitate a replacement of smart ID cards.

40. Dr LUI Ming-wah asked about the memory size of a smart ID card. DD of Imm responded that different memory sizes, including 16K, 32K and 64K, had been proposed by tenderers for the chip of a smart ID card. The difference might be due to the different amount of programme stored in the smart card.

41. In response to the Chairman's question about the period of retention of the old records referred to in paragraph 3 of the LegCo Brief, DD of Imm said that the old records would not occupy much space and therefore would be kept for a long time.

42. The Chairman requested the Administration to provide members with the bill as early as practicable. DS for S3 agreed to consider.

43. The Chairman asked the Administration to provide Members with information on new privacy measures, if any, that had been developed since the Panel's meeting on the subject on 14 February 2001. He hoped that the Administration would introduce further safeguards on the matching of records.

44. DS for S3 said that in essence, the legislative amendments to be proposed would prohibit unauthorised access, storage, use and disclosure of personal data held by the Commissioner of Registration.

45. The meeting ended at 12:20 pm.

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Council Business Division 2
Legislative Council Secretariat
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