

立法會

Legislative Council

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(These minutes have been
seen by the Administration)

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Panel on Administration of Justice and Legal Services

Minutes of special meeting held on Friday, 20 June 2003 at 10:45 am in the Chamber of the Legislative Council Building

- Members present** :
- Hon Margaret NG (Chairman)
 - Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon James TO Kun-sun
 - Hon CHAN Kam-lam, JP
 - Hon Miriam LAU Kin-yee, JP
 - Hon Mr Ambrose LAU Hon-chuen, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon TAM Yiu-chung, GBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
- Public officers attending** :
- Mr Bob ALLCOCK
Solicitor General

 - Mr James O'NEIL
Deputy Solicitor General

 - Mr Johann WONG
Principal Assistant Secretary for Security

 - Miss Adeline WAN
Senior Government Counsel

- Attendance by invitation** : Article 23 Concern Group
Mr Ronny K W TONG
Senior Counsel
Asian Human Rights Commission
Mr WONG Kai-shing
Programme Coordinator
Ms Elizabeth C H LEE
Researcher
Civil Human Rights Front
Mr TSOI Yiu-cheong
Convenor
Article 23 Working Group
Hong Kong Bar Association
Mr Philip DYKES
Senior Counsel
Hong Kong Human Rights Monitor
Mr LAW Yuk-kai
Director
Law Association, HKUSU
Mr LIU Kwun-wah, William
External Vice-Chairman
Ms CHEUNG Ka-yan, Joyce
Welfare Secretary
- Clerk in attendance** : Mrs Percy MA
Chief Assistant Secretary (2)3
- Staff in attendance** : Mr Jimmy MA, JP
Legal Adviser

Ms Bernice WONG
Assistant Legal Adviser 1

Mr Paul WOO
Senior Assistant Secretary (2)3

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- I. **To receive views on the Administration's revised proposals on the special procedures for appeal against proscription and arrangements for disposal of assets of a proscribed organization under the National Security (Legislative Provisions) Bill**
(LC Paper Nos. CB(2)2537/02-03(01); 2568/02-03(01) to (03); 2575/02-03; 2592/02-03; Submission nos. 168, 169, 174, 175, 177 to 179, 183 and 185 previously issued by the Bills Committee on National Security (Legislative Provisions) Bill)

The Chairman welcomed the deputations to attend the meeting. She informed members that the Panel had also received written submissions from three other organizations, i.e. Legal Aid Services Council, Amnesty International Hong Kong Section and Hong Kong Journalists Association. The submissions were circulated vide LC Paper Nos. CB(2)2537/02-03(04), (05) and (06) respectively.

2. The Chairman said that the meeting would focus on two specific issues, i.e. the Administration's revised proposals on the special procedures for appeal against proscription of an organization and arrangements for disposal of assets of a proscribed organization under the National Security (Legislative Provisions) Bill (the Bill). Ms Emily LAU explained to the deputations that the reason for inviting them to give views on the issues to the Panel was that the Bills Committee on National Security (Legislative Provisions) Bill had earlier decided that it would not hold further meetings to receive public views on the latest version of Committee Stage amendments to the Bill proposed by the Administration. Ms LAU said that she regretted the Bills Committee's decision because the proper forum to discuss the issues should be the Bills Committee.

3. At the invitation of the Chairman, the deputations made oral representations on their submissions. Their views were summarized below.

Article 23 Concern Group
(LC Paper No. CB(2)2537/02-03(02))

4. Mr Ronny TONG said that the Article 23 Concern Group (the Concern Group) did not accept that the special procedures for appeal against proscription of an organization and arrangements for disposal of assets of a

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proscribed organization were required by Article 23 of the Basic Law (BL 23), or compatible with the basic freedoms safeguarded by the BL. The Concern Group urged LegCo not to support these proposals. Subject to these views, the Concern Group had the following comments -

Appeal against proscription and rules for appeals (proposed sections 8D and 8F of the Societies Ordinance)

- (a) in the event of an appeal against proscription, the burden of proof for the Court of First Instance (CFI) to be satisfied about the decision of the Secretary for Security (S for S) on proscription should be "beyond reasonable doubt" or "more than a mere balance of probability";
- (b) in order to guard against admission of unreliable evidence, provisions in line with sections 47(1)(a) and (b) of the Evidence Ordinance on the admissibility of hearsay evidence, and section 49 of the same Ordinance on the court's discretion as to weight of hearsay evidence, should be introduced;
- (c) the proposal to limit further appeals to the Court of Appeal against the decision of CFI on grounds involving a question of law was unjust and should be removed;
- (d) the proposal to empower S for S, who was in effect the prosecutor, to make regulations for appeal against proscription, violated the notion of natural justice and the rule of law. The rules should be made by the Chief Executive (CE) in Council with the advice of an independent body;
- (e) the proposed procedure permitting an appeal hearing to be conducted in the absence of the appellant or his legal representatives, and the withholding of evidence from them, was contrary to the BL and natural justice. Moreover, the proposed system of appointment of a special advocate to represent the interests of an appellant was contrary to BL 35. Should the Government insist to implement the proposal, the special advocates should be barristers to be nominated by the Bar Association;

Disposal of assets of a proscribed organization

- (f) it was against the basic principle of law to seize or dispose of the assets of a proscribed organization unless the assets could be shown to be the proceeds of crime;

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- (g) the proposal to apply the procedures in Part XIII A of the Companies Ordinance for striking off and dissolving a proscribed organization before winding up was ill conceived because the procedure had never been invoked before. To protect the interests of third parties, winding up should precede dissolution so that their claims could be settled during the winding up process;
- (h) "other types of organizations" under section 3 in proposed new Schedule 2 of the Societies Ordinance might include a partnership. If so, by virtue of section 3(2) of that Schedule, a proscribed partnership might be wound up as an unregistered company under Part X of the Companies Ordinance, thereby evading the winding up provisions of the Partnership Ordinance; and
- (i) in any event, the mechanism of striking off should not commence until all legal challenges against proscription were exhausted.

Asian Human Rights Commission

(LC Paper No. CB(2)2537/02-03(03))

5. Mr WONG Kai-shing presented the views of the Asian Human Rights Commission as follows -

- (a) the proposed mechanism for the proscription of a local organization subordinate to a mainland organization which had been proscribed by the Central Authorities carried the implication that the meaning of "national security" would be determined by the Central Authorities;
- (b) Part 4 of the Bill on proscription of a local organization should be deleted;
- (c) the proposed power of S for S, who had the power to proscribe an organization, to make regulations for appeal against proscription, was an encroachment on the right to association;
- (d) the provision which enabled an appeal hearing to be conducted in the absence of the appellant or his legal representatives, and the system of appointment of a special advocate for the appellant, who was not of the appellant's own choosing, contravened the right to fair and public hearing. If the list of special advocates had to be approved by the Secretary for Justice (SJ), the

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independence of the special advocate to act in the interests of the appellant would be seriously in doubt; and

- (e) to allow CFI to admit evidence in an appeal hearing that would otherwise not be admissible in a court of law violated the principle of the law of evidence and due process of administration of justice.

Civil Human Rights Front

(LC Paper No. CB(2)2585/02-03(01))

6. Mr TSOI Yiu-cheong stated the views of the Civil Human Rights Front as follows -

- (a) the proposed proscription and appeal mechanism and the procedure for dealing with matters following proscription were far from justifiable. Insofar as the law of the People's Republic of China (PRC) on offences committed by organizations was concerned, there were no express provisions in both the Mainland criminal law and administrative law empowering the Central Authorities to proscribe a mainland organization on ground of protection of the security of PRC. Hence, the legal status of "an official announcement by means of an open proclamation made by the Central Authorities" that a mainland organization had been proscribed was questionable. The use of such a proclamation as the basis for proscribing a subordinate organization in Hong Kong would be contrary to the principles of the rule of law; and
- (b) the Administration had failed to take into account the views and concerns expressed on the Bill by all interested sectors in the community. The Bill, if passed, would cause disastrous damage to fundamental human rights such as freedom of expression and association. In the absence of full democratization of the constitutional system in Hong Kong, legislative amendments to implement BL 23 should be shelved.

Hong Kong Bar Association

(Submission No. 185 issued by Bills Committee on National Security (Legislative Provisions) Bill)

7. Mr Philip DYKES summarized the views of the Hong Kong Bar Association as follows -

- (a) the power of S for S under proposed section 8E of the Societies Ordinance to make regulations for appeal against proscription

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was in contravention of BL 35, which guaranteed access to the courts and legal representation in the courts;

- (b) the proposal to enable CFI to admit evidence in an appeal hearing which would not be admissible in a court of law was highly undesirable from the legal policy point of view;
- (c) the proposal to limit further appeals to the Court of Appeal on grounds involving a question of law was unjustified. This limitation should not apply to judicial review of the decision of S for S to proscribe an organization;
- (d) the criteria for the selection of a special advocate to represent the interests of an appellant as well as the compilation of a list of approved special advocates should be clearly explained. The Administration should address the concern as to how to ensure that the special advocates had sufficient professional expertise and would discharge their statutory duties with satisfactory professional standards. Moreover, since a normal client/lawyer relationship would not exist between the appellant and the special advocate, a proper mechanism for handling complaints against the special advocates should be devised; and
- (e) the proposed procedure under which a proscribed organization would be struck off, dissolved and then wound up was the reverse of the normal process. Dissolution before winding up under such procedure would deprive third party creditors of means to pursue their claims against the organization.

Hong Kong Human Rights Monitor

8. Mr LAW Yuk-kai presented the views of the Hong Kong Human Rights Monitor as follows -

- (a) the proposed proscription mechanism was contrary to provisions of international human right treaties, such as Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 87 of the International Labour Convention governing, among others, the protection of freedom of expression and association. Such rights were guaranteed under BL 39;
- (b) the burden of proof applied in respect of proscription of an organization fell short of the standard of proof beyond reasonable doubt. The standard used was not proportionate to the gravity of the offence; and

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- (c) the proposed appeal mechanism deprived an appellant and his legal representative the opportunity to appear before the court to defend the case and to hear evidence and cross-examine witnesses. It also deprived the appellant's right to choose his legal representative. The system was in violation of the right to a fair and public hearing guaranteed under BL 35.

Law Association, Hong Kong University Students Union (HKUSU)
(LC Paper No. CB(2)2585/02-03(02))

9. Mr William LIU Kwun-wah presented the views of Law Association, HKUSU as follows -

- (a) the proposed legislation providing for proscription of a local organization subordinate to an organization the operation of which had been prohibited in the Mainland was not mandated by BL 23;
- (b) the power of S for S to make regulations for appeals to enable CFI to hold proceedings in the absence of the appellant and the legal representative appointed by him was unjust; and
- (c) the regulations on appeals and selection of special advocates should be subject to the positive vetting procedure of the Legislative Council (LegCo).

Administration's responses to issues raised by the deputations

10. At the invitation of the Chairman, Solicitor General (SG) responded to the views expressed by the deputations. His comments were summarized as follows -

Appeal mechanism

- (a) concerning the view that CFI should be satisfied beyond reasonable doubt or on more than a mere balance of probability as to the necessity of the proscription, the Administration maintained the stance that it was sufficient to leave it to the court to apply the appropriate onus of proof having regard to the consequences of the decision to proscribe;
- (b) under section 47 of the Evidence Ordinance, hearsay evidence should not be excluded in civil proceedings unless certain specified conditions were satisfied, one of which was that the exclusion of the evidence was not prejudicial to the interests of justice. The Bill did not contain any express provisions on

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whether hearsay evidence should be admissible. It merely stated that in hearing an appeal, CFI might admit evidence which was not otherwise admissible. CFI would be able to decide whether certain hearsay evidence should be admitted in the interests of justice and the weight of such evidence;

- (c) only appeals to the Court of Appeal would be limited to grounds involving a question of law. Appeals to CFI could be brought on grounds of merits. The appeal procedure would not contravene the requirement of ICCPR in relation to an independent and impartial tribunal, and was consistent with the approach in the United Kingdom (UK);
- (d) regarding the regulations to be made by S for S on appeals, the Administration had agreed that such regulations should be enacted under the positive vetting procedure of LegCo;
- (e) there were enactments in both UK and Canada which allowed appeal hearings in the absence of the appellant or his legal representative. Such legislation also went beyond the scope of immigration and anti-terrorist activities;
- (f) how special advocates should be selected had yet to be decided. The Administration would consult the legal profession on such matters in preparing the relevant regulations;

Disposal of assets of a proscribed organization

- (g) it was not the intention of the Administration to propose confiscating the assets of a proscribed organization. The intention was to dispose of the assets according to the dissolution and winding up provisions under existing legislation;
- (h) in relation to a company registered under the Companies Ordinance being proscribed, the Administration envisaged that there might be situations in which it was appropriate to strike the name of that company off the register of companies even though an appeal was pending. The Administration regarded the discretion of the Registrar of Companies to defer taking action to strike off a registered company if he considered that the right to take legal action against the proscription had not been exhausted as a sufficient safeguard; and

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Definition of "national security"

- (i) the definition of "national security" proposed in the Bill was a "Hong Kong definition" which the Government and the courts of the Hong Kong Special Administrative Region would have to apply in relation to proscription of a local organization. The definition was not dictated by the Mainland law.

Administration's written response to issues raised by Mr Winston POON, QC
(LC Paper No. CB(2)2592/02-03)

11. The Chairman informed members that a paper prepared by the Administration in response to the comments made by Mr Winston POON on the dissolution and winding up procedures for a proscribed organization under the proposed Schedule 2 of the Societies Ordinance was tabled at the meeting.

12. At the invitation of the Chairman, SG briefed members on the Administration's responses which were detailed in the paper.

Papers prepared by the Legal Service Division
(LC Paper Nos. CB(2)2568/02-03(01) and 2575/02-03)

13. The Chairman informed members that the Legal Service Division had prepared two papers for the Bills Committee on National Security (Legislative Provisions) Bill which were relevant to the discussion of the Panel at this meeting.

14. At the invitation of the Chairman, Legal Adviser briefed members on the two papers. The first paper (LC Paper No. CB(2)2568/02-03(01)) highlighted some legal points of significance relating to the power to make rules and regulations for appeals under the proposed sections 8E and 8F of the Societies Ordinance. The second paper (LC Paper No. CB(2)2575/02-03) provided an analysis of the new Schedule 2 of the Societies Ordinance proposed in the Administration's Committee Stage amendments (2nd draft of 16 June 2003) relating to matters following proscription of an organization under proposed section 8A of the Ordinance.

Issues raised by members

Proscription and appeal mechanism

15. Ms Audrey EU pointed out that proposed section 8A(2)(c) of the Societies Ordinance provided for the proscription of a local organization subordinate to a mainland organization, where the operation of the latter had been prohibited by the Central Authorities on the ground of protecting the security of the PRC, and where the prohibition had been officially announced

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by means of an open proclamation. Under proposed section 8A(3), a certificate stating the prohibition given by or on behalf of the Central People's Government (CPG) would be conclusive evidence of the prohibition and might not be challenged. Moreover, there was no mention of whether an appellant would have any means to seek disclosure of information and documents relating to the prohibition of the operation of the mainland organization. Ms EU questioned whether under the proposed appeal procedure, the appellant would be able to challenge the decision of S for S to proscribe the organization when the certificate given by the CPG would be conclusive evidence.

16. The Chairman drew members' attention to paragraph 70 of the submission from the Bar of England and Wales (UK Bar) previously made to the Bills Committee (LC Paper No. CB(2)2568/02-03(02)). She said that in the view of the UK Bar, the appeal procedure in proposed sections 8C and 8D would only allow a review of or challenge against the decision of S for S to proscribe the local subordinate organization, but not the decision of the Central Authorities to prohibit the operation of the parent organization on the mainland.

17. Mr TSOI Yiu-cheong said that the proposed legislation provided no safeguard to ensure that the banning of a mainland organization would be under the law of the PRC and in accordance with formal legal procedures. In his view, an appellant stood little chance to successfully challenge the proscription of a local organization under the proposed appeal mechanism.

18. Mr Ronny TONG said that a certificate under proposed section 8A(3) stating the prohibition of a mainland organization was in some way equivalent to a foreign judgment. Under the principles of general law, the court could set aside a foreign judgment on grounds of fraud, illegality and serious impropriety etc. Having said that, it would be an extremely onerous task for an appellant to seek to resort to those grounds without the means of investigation or discovery of evidence. In his view, the proposed appeal mechanism was not workable. Mr TONG opined that provisions should be introduced in the legislation to require that the court in Hong Kong, in hearing an appeal against proscription, had to be satisfied that the certificate given by the Mainland authorities under proposed section 8A(3) was in accordance with the law and judicial process of the PRC.

19. On the proposed section 8A(2)(c) of the Societies Ordinance, Mr TONG said that he did not accept the Administration's proposal to substitute the phrase "as officially proclaimed by means of an open decree" with "as officially announced by means of an open proclamation", as the proposed change would create greater difficulty for an appellant to challenge the proscription.

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20. Mr LAW Yuk-kai added that the provision in section 8A(3)(a) that a certificate could be given "on behalf of the CPG" created confusion and uncertainty as to who would be the proper authority to give the certificate.

21. SG responded that a decision to proscribe a local organization under proposed section 8A could be subject to challenge. In the hearing of an appeal against proscription, the Administration would have to satisfy the court with concrete evidence that the local organization was a threat to national security and that the proscription was necessary and proportionate. The mere production of a certificate under proposed section 8A(3) would not be conclusive evidence to that effect. He added that the issue as to what documents would be made available to the appellant in pursuing an appeal, among other matters, would be dealt with in the relevant subsidiary legislation.

22. SG further assured that, in an appeal hearing, the question whether a local organization was subordinate to a mainland organization which had been prohibited by the Central Authorities would be determined in Hong Kong under Hong Kong law, not under the law of PRC. Nevertheless, it would not be possible for an appellant to challenge the prohibition of a mainland organization because, under "one country, two systems", it would be inappropriate for the courts of Hong Kong to determine the merits or legality of matters decided in the Mainland.

23. On the question of standard of proof to justify a decision to proscribe a local organization, Mr Martin LEE expressed the view that the law should set out the standard as clearly as possible. He said that it was unacceptable to defer the matter to the judgment of the court, in view of the gravity of the consequences of the decision. Mr Ronny TONG supported Mr LEE's views.

24. Mr Martin LEE asked whether a person who continued to act as an office-bearer or member of a proscribed organization would be prosecuted, and if so, whether the court would have to be satisfied that the proscription was proper and legally in order. SG responded that the person could be charged with an offence under proposed section 8C of the Societies Ordinance. The prosecution would have to first establish the fact that there had been a proscription of the organization. By virtue of the Interpretation and General Clauses Ordinance (Cap. 1) which provided that gazette notices were evidence of the fact that they stated, a notice in the Gazette of the proscription would be admissible as prima facie evidence of the proscription. SG added that if a defendant argued on the ground that the proscription was improper or void, it would be a matter for the court to rule.

25. Mr Martin LEE pointed out that the prosecution, in prosecuting someone as member of triad society under section 20 of the Societies Ordinance, had to satisfy the court beyond reasonable doubt that the society

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concerned was a triad society. He said that the same standard of proof was not adopted for proscription of a local organization.

26. SG responded that proscription of an organization endangering national security involved different considerations necessitating amendments to the Societies Ordinance. He explained that under section 8 of the Societies Ordinance, S for S had the general power to proscribe any society, with an appeal only to the CE in Council. Under proposed section 8A, the power of S for S to proscribe would apply only to the three types of local organizations specified in section 8A(2)(a), (b) and (c). The power of S for S under new section 8A was therefore more restricted than that under existing section 8 because a local organization not engaging in BL 23 offences would not be exposed to the risk of being proscribed under section 8A. Moreover, under the proposed appeal procedure, if the CFI was not satisfied of the necessity of the proscription, the proscription should be set aside.

27. The Chairman asked whether the Administration had consulted the business sectors on whether the proposed proscription mechanism would create undesirable impact on companies or foreign trading partners intending to do business in Hong Kong. SG responded that he did not see any reason why people should worry about the proscription mechanism any more than they worried about proscription of terrorist organizations. He said that it was most unlikely that ordinary business ventures would be involved in the kind of activities which would endanger national security and result in a proscription.

28. Mr Albert HO sought the deputations' views on whether a special advocate could properly discharge his statutory duty to represent the interests of an appellant, where proceedings took place in the absence of the appellant and without the appellant being given full particulars of the reasons for the proscription.

29. Mr Philip DYKES considered that the services provided by a special advocate to an appellant would be affected if the usual client/lawyer relationship did not exist, and the law imposed restrictions on the discharge of the function and duties of the special advocate. Mr Ronny TONG said that it would be difficult for a special advocate to take instructions from the appellant if a client/lawyer relationship was absent, and if both the appellant and the special advocate were deprived of access to information and evidence relevant to the appeal in question. He added that there was also the concern that if a special advocate was paid by the Administration, undue restrictions would be placed on the special advocate in discharging his duties, hence affecting the quality of the services provided by him.

30. In response, SG said that although the special advocate system was unusual, it was modelled on the relevant UK legislation which was devised to satisfy the requirements of the European Convention concerning human rights

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matters and to ensure the protection of national security. He reiterated that details relating to the special advocate system, including the selection and appointment of the special advocates and payment of fees etc, would be dealt with in the relevant subsidiary legislation. There would also be full consultation with the legal profession and interested parties to address the concerns raised on such matters.

31. The Chairman pointed out that the UK Bar had commented on the reliance placed upon similar UK practice for the special procedures set out in proposed section 8D of the Societies Ordinance on appeal against proscription and proposed section 8E on power of S for S to make regulations on appeals. She quoted the following views expressed by the UK Bar in its submission -

"We believe that it is important to bear in mind the limited context, and in relation to terrorism the urgent and exceptional circumstances, in which these procedures have been developed" (para. 27);

"...In brief, UK law and Strasbourg seems to have concluded that that this is a relevant and permissible procedure for reviewing decisions to detain alien terrorists facing removal on national security grounds, in circumstances of a national emergency caused by global terrorism" (para. 61); and

"(regarding an appellant not being provided with evidence)...[Lord Carlile] stated that : "the justification for this apparent inequality if there is justification could only be founded in overwhelming national security consistent with the emergency upon which the European Court of Human Rights derogation is founded"" (para. 64).

The Chairman said that in the views of the UK Bar, the special procedures were only justifiable under exceptional emergency situations and should not be easily invoked.

32. SG replied that the UK legislation which provided for similar special procedures was not limited to terrorism and immigration matters. For example, the following UK Acts made provisions for tribunal hearings to take place in the absence of an applicant and his representatives and ancillary matters -

- (a) Employment Relations Act 1999;
- (b) Race Relations (Amendment) Act 2000; and

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- (c) Regulation of Investigatory Powers Act 2000.

SG undertook to provide the above UK Acts for members' reference.

(Post-meeting note - Relevant provisions of the UK Acts were circulated vide LC Paper No. CB(2)2623/02-03(01) on 23 June 2003.)

33. Mr Martin LEE opined that the proposed system which allowed an appellant to select a special advocate from a panel of lawyers that had been approved by SJ would have unfair repercussions on legal practitioners not approved by SJ. Mr LEE added that as the restricted role of the special advocate would limit his ability to protect the interests of the appellant, chances were high that he could be sued by the appellant for failing to perform his statutory duties.

34. SG said that the fact that a legal practitioner was not included on the panel of lawyers would not reflect adversely on the practitioner's ability because he might have declined to be included in the first place. Under existing practice, the Department of Justice maintained a list of fiat counsel who were prepared to take up cases briefed out from the Department. The proposed system was therefore not unusual. SG added that the proposal that the appellant and the special advocate would not have the usual client/lawyer relationship would protect the special advocate from being sued by the appellant.

Matters following proscription of an organization

35. Ms Audrey EU and Mr Martin LEE noted that in a normal case, dissolution of a company usually followed the completion of a liquidation procedure, during which the company's assets were collected and disposed of. Under the proposed Schedule 2 of the Societies Ordinance, a proscribed organization which was a registered company would be wound up as if it were a company struck off the register and dissolved under section 360C of the Companies Ordinance. Section 360C provided that CE in Council might order a company engaging in undesirable activities to be struck off, and the company might become dissolved without going through a liquidation procedure. According to the Administration, the legal effect of this approach was to apply specific provisions in Part XIII A of the Companies Ordinance relating to prevention of evasion of the Societies Ordinance to a registered company that had been proscribed. Ms EU and Mr LEE asked whether there were precedent cases where Part XIII A of the Companies Ordinance had been invoked.

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36. SG undertook to check with the Registrar of Companies and respond to members.

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37. Mr Ronny TONG pointed out that under section 290 of the Companies Ordinance, a creditor could apply for a declaration that the dissolution of a company was void so as to enable the creditor to bring proceedings to recover a debt from the company within two years of the date of dissolution. However, this procedure was excluded by section 360D in Part XIII A of the Ordinance if a company was dissolved under section 360C. He was concerned that in the case of a proscribed organization, there would be no remedy for an innocent creditor, who had nothing to do with the activities of the proscribed organization, to recover his debts.

38. Mr Ronny TONG further said that under proposed section 8C of the Societies Ordinance, any person, among others, acting as an office-bearer or member of a proscribed organization was guilty of an offence. This raised the question as to whether and how such persons could in practice be allowed to deal with the disposal of assets of an organization after the proscription.

39. The Chairman asked whether the Administration had conducted detailed consultation among policy bureaux on the implications of the proposed Schedule 2 of the Societies Ordinance on matters following proscription of a local organization. Principal Assistant Secretary for Security replied that the Administration had consulted internally on the policy implications of the legislative proposals to implement BL 23, including the bureaux responsible for the policy portfolios of trade and finance. He further said that Schedule 2 had not sought to introduce any amendments to the Companies Ordinance, but merely enabled certain existing provisions of the Companies Ordinance to be applied in relation to handling of matters following the proscription of a local organization.

II. Any other business

The way forward

40. Ms Emily LAU asked whether it would be appropriate for other major issues, such as the impact of the Bill on Hong Kong's economy, protection of human rights and freedom of association and expression to be followed up by the relevant Panels.

41. The Chairman opined that it was appropriate for a Panel to discuss policy matters that fell within its terms of reference. It would be for the individual Panels to decide whether they should follow up on any of the issues referred to by Ms LAU.

42. Regarding follow-up action, the Chairman asked the Administration to revert to both the Panel and the Bills Committee with the requested information for members' consideration.

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43. There being no other business, the meeting ended at 1:40 pm.

Council Business Division 2
Legislative Council Secretariat
6 August 2003