

立法會
Legislative Council

Ref : CB2/BC/4/06

LC Paper No. CB(2)1705/06-07

(These minutes have been seen
by the Administration)

Bills Committee on Domicile Bill

**Minutes of the first meeting
held on Thursday, 15 March 2007 at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Hon Jasper TSANG Yok-sing, GBS, JP
- Public Officers attending** : Item II
Mr Ian Wingfield
Solicitor General
Mr Michael SCOTT
Senior Assistant Solicitor General
Ms Kitty FUNG
Senior Government Counsel
Miss Betty CHEUNG
Senior Government Counsel
Mr Byron LEUNG
Senior Government Counsel
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2
Miss Vivien POON
Council Secretary (2)3

Action

I. Election of Chairman

Mr James TO Kun-sun was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)335/06-07 – The Bill

LP 5019/9C IV – The Legislative Council Brief on the Bill

LS36/06-07 – The Legal Service Division Report

LC Paper No. CB(2)1314/06-07(02) – Background Brief prepared by the Legislative Council Secretariat

LC Paper No. CB(2)1314/06-07(03) – Marked-up copy of clauses 14 and 15 of the Bill)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) clarify whether a person who was not lawfully present in Hong Kong at the time he was sentenced to a long period of imprisonment would be regarded as "lawfully present" in Hong Kong during his imprisonment;
 - (b) clarify whether a person who was not lawfully present in Hong Kong at the commencement of his imprisonment would be denied the opportunity to acquire a domicile in Hong Kong after being discharged from prison by common law rules or clause 6(1) of the Bill;
 - (c) consider the need for a provision to define the meaning of "lawfully present" in clause 6(1) of the Bill; and
 - (d) advise what other factors would be considered by the court in determining whether an adult acquired a domicile in a country or territory other than Hong Kong in clause 7.

III. Date of next meeting

4. The Clerk would consult the Chairman and liaise with the Administration on the date of the next meeting after the meeting.

Action

(Post-meeting note : The next meeting will be held on 30 April 2007 at 8:30 am.)

5. The meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
27 April 2007

**Proceedings of the first meeting of the
Bills Committee on Domicile Bill
on Thursday, 15 March 2007 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000055	Mr James TO Ms Miriam LAU	Election of Chairman	
000056 - 000315	Chairman	Opening remarks	
000316 - 000535	Admin	Briefing by the Administration on the Bill	
000536 - 001154	Chairman Ms Audrey EU Clerk Ms Miriam LAU Admin	Invitation for views on the Bill Confirmation by the Administration that the content of the Bill was basically the same as the draft Bill on which a number of parties including the Hong Kong Bar Association was consulted in 2006 Members' agreement that it was unnecessary for the Bills Committee to invite further views on the Bill	
001155 - 002245	Chairman Admin	Basis for the Law Reform Commission (LRC) to formulate its options for reforming the existing rules for determining domicile Comparison table of rules for determining a person's domicile in Hong Kong and other jurisdictions (Annex 2 to the LRC Report on "Rules for Determining Domicile") Guiding principle in adopting the rules for determining a person's domicile in the Bill	
002246 - 002839	Chairman Admin	Options available for adopting the rules for determining domicile of children - (a) maintain status quo; or (b) supplement the existing common law rules with statutory provisions; or (c) replace major common law rules with statutory provisions Adoption of option (c) in the Bill because it would simplify the ascertainment of children's domicile by -	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(a) replacing the existing concepts of domicile of origin and domicile of dependency of children by a single test which tied a child's domicile to the jurisdiction with which he was most closely connected;</p> <p>(b) introducing two rebuttable presumptions to assist in the determination of the country or territory of closest connection; and</p> <p>(c) making no differentiation between legitimate and illegitimate children in determining their domicile</p>	
002840 - 010611	<p>Chairman Ms Miriam LAU Admin Ms Audrey EU SALA 2</p>	<p>Differentiation between legitimate and illegitimate children in respect of their domicile under the existing rules and no such differentiation under the proposed rules</p> <p>Views of the Chairman - The proposed rule to apply the same treatment for legitimate and illegitimate children in respect of their domicile might undermine the marriage institution</p> <p>Views of Ms Miriam LAU and Ms Audrey EU - The enactment of the Parent and Child Ordinance (Cap. 429) had removed most of the legal disabilities associated with illegitimacy of children. While they supported the marriage institution, the existing rule was discriminatory because a child's domicile depended on the marital status of his parents. The proposed rule which tied a child's domicile to the jurisdiction with which he was most closely connected took account of the interest of the child</p> <p>Areas of law where the concept of domicile would apply (paragraph 32 of the LegCo Brief)</p> <p>Recommendation of LRC relating to the domicile of children sought to reflect modern realities (paragraph 5 of LegCo Brief)</p>	
010612 - 010907	Admin	Briefing by the Administration on the existing and proposed rules for determining the domicile of adults, married women and the mentally incapacitated	

Time Marker	Speaker(s)	Subject(s)	Action required
010908 - 012546	Chairman Ms Miriam LAU Admin Ms Audrey EU	Need for separate provisions to guard against possible manipulation of the proposed rules (i.e. closest connection test) in determining the domicile of the mentally incapacitated for the benefit of another person and LRC's view as set out in paragraph 4.152 of the LRC Report	
012547 - 013605	Chairman Admin Ms Audrey EU	<p>Concern raised by the Bar Association on the different approaches adopted for determining domicile in Hong Kong and other jurisdictions (clauses 6 and 7 of the Bill)</p> <p>The Administration's advice that -</p> <ul style="list-style-type: none"> (a) LRC's recommendation on acquiring a domicile in a jurisdiction other than Hong Kong was based on Dicey and Morris on the Conflict of Laws (13th Edition); (b) clause 6 required lawful presence for acquiring a domicile in Hong Kong, whereas under clause 7, lawful presence was one of the factors to be considered by the Hong Kong courts in deciding whether a person acquired a domicile in a country other than Hong Kong; (c) as a general rule, lawful presence in Hong Kong should be required to acquire a domicile in Hong Kong, but in exceptional circumstances, where strict adherence to the rule would lead to injustice, the court should have the discretion to depart from the rule; and a person's presence should be presumed to be lawful, unless and until the contrary was established 	
013606 - 014129	Chairman Admin	<p>Advice of the Administration that under common law, a prisoner would normally retain during his imprisonment the domicile he had at the commencement of his imprisonment</p> <p>The Administration was requested to -</p> <ul style="list-style-type: none"> (a) clarify whether a person who was not lawfully present in Hong Kong at the time he was sentenced to a long period of imprisonment would be regarded as "lawfully present" in Hong Kong during his imprisonment; 	Admin to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(b) clarify whether a person who was not lawfully present in Hong Kong at the commencement of his imprisonment would be denied the opportunity to acquire a domicile in Hong Kong after being discharged from prison by common law rules or clause 6(1) of the Bill; and</p> <p>(c) consider the need for a provision to define the meaning of "lawfully present" in clause 6(1) of the Bill</p>	
014130 - 015231	Chairman Admin Ms Audrey EU SALA2	<p>Conditions for an adult to acquire a new domicile as set out in clause 5(2) -</p> <p>(a) an adult was present in a particular country or territory; and</p> <p>(b) the adult intended to make a home there for an indefinite period</p> <p>Discussion on the need to introduce provisions to guard against possible manipulation, such as an example cited by the Chairman (where a wife, deserted by her husband, spent a long time in a foreign place to look for her missing husband or simply just for sentimental reasons, while everything was being manipulated by the husband behind the scene)</p>	
015232 - 015611	Chairman Admin SALA2	<p>Clarification by the Administration that other than those that were inconsistent with the Bill, the common law rules for determining domicile should be preserved (clause 13(4))</p> <p>In relation to clause 7, the Administration was requested to advise what other factors would be considered by the court in determining whether an adult acquired a domicile in a country or territory other than Hong Kong</p>	<p>Admin to follow up</p>
015612 - 020020	Ms Audrey EU Chairman Admin	<p>Views of Ms EU and the Administration -</p> <p>(a) clauses 6 required lawful presence of a person for acquiring a domicile in Hong Kong. Clause 7 was not free standing and should be read in conjunction with clause 5(2); and</p> <p>(b) under clause 5(2), a person could acquire a new domicile in a country or territory if he met two tests, i.e. his "presence" there and his</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		"intention" to make a home there for an indefinite period	
020021 - 020102	Chairman	Date of next meeting to be decided after the meeting	

Council Business Division 2
Legislative Council Secretariat
27 April 2007