

立法會
Legislative Council

Ref : CB2/BC/12/06

LC Paper No. CB(2)2639/07-08
(These minutes have been seen by
the Administration)

**Bills Committee on
Prevention of Bribery (Amendment) Bill 2007**

**Minutes of the 9th meeting
held on Friday, 30 May 2008, at 3:00 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Jasper TSANG Yok-sing, GBS, JP (Chairman)
Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon KWONG Chi-kin
- Members attending** : Hon LEUNG Kwok-hung
Hon TAM Heung-man
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Kwok-ying, MH, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Albert Jinghan CHENG, JP
Hon Mrs Anson CHAN, GMB, JP

Public Officers : Item I
attending

Miss Jennifer MAK
Director of Administration
Administration Wing, Chief Secretary for Administration's Office

Miss Shirley YUNG
Deputy Director of Administration
Administration Wing, Chief Secretary for Administration's Office

Mr Ian McWalters
Deputy Director of Public Prosecutions
Department of Justice

Mr Llewellyn MUI
Senior Government Counsel
Department of Justice

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Clerk in : Miss Mary SO
attendance Chief Council Secretary (2) 5

Staff in : Mr Arthur CHEUNG
attendance Senior Assistant Legal Adviser 2

Ms Amy YU
Senior Council Secretary (2) 3

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration
(LC Paper No. CB(2)2114/07-08(01))

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

Proposed revised Committee Stage amendments (CSAs) to be moved by the Administration

Action

2. Ms Margaret NG expressed objection to the introduction of the proposed revised new section 31AB to the Bill to allow disclosure of information contained in the referral of the Secretary for Justice (SJ) by staff members of the Legislative Council (LegCo) Secretariat before the initiation of the motion by one-fourth of all LegCo Members under Article 73(9) of the Basic Law (BL). Ms NG pointed out that how LegCo should handle the information contained in SJ's referral was a matter for LegCo to decide according to its Rules of Procedure.

3. Ms Emily LAU said that there was a need to explicitly provide in the Bill that LegCo Members might disclose information contained in SJ's referral to LegCo staff if such disclosure was necessary for the purpose of taking action under BL 73(9). Ms LAU however expressed dissatisfaction that the proposed revised new section 31AB did not allow LegCo Members to disclose information contained in SJ's referral to the political groups they were affiliated with, as LegCo Members would need to consult with their political groups before deciding whether or not to initiate a motion under BL 73(9) to charge CE with serious breach of law or dereliction of duty. The Administration responded that as the power to take action under BL 73(9) was only given to LegCo, information subject to the restriction of section 30(1) of the Prevention of Bribery Ordinance (Cap. 201) (POBO) contained in SJ's referral would only be disclosed to LegCo Members.

4. Dr YEUNG Sum said that he had no objection to the proposed revised new section 31AB, so long as the new provision would not lay down any threshold for LegCo Members to disclose information contained in SJ's referral to the Secretary General under new section 31AB(1). The Administration pointed out that applying the "reasonably necessary" requirement for disclosure of information in subsection (1), as in the case of subsections (2) and (3), was made at the request of the Bills Committee at the last meeting held on 19 May 2008. The Administration had no problem in removing such a requirement from subsection (1) of new section 31AB if members so wished on review.

5. Ms Margaret NG said that the concerns raised by members in paragraphs 3 and 4 above would never arise if the handling of information contained in SJ's referral was left to the device of LegCo and no one else. Ms NG requested the Administration to check with SJ on the appropriateness of the executive authorities interfering with the operation of LegCo under the proposed revised new section 31AB. The Administration undertook to convey Ms NG's concern to SJ and revert with SJ's response in writing.

Admin

6. Ms Margaret NG queried whether replacing "LegCo" with "LegCo Members" in the proposed new section 31AA(2) of the Bill would have the effect of allowing SJ to refer a corruption complaint against CE selectively to individual LegCo Members. Senior Assistant Legal Adviser 2 (SALA2) said that he would raise this point at the meeting to be held by LegCo Secretariat on 3 June 2008 to discuss the proposed revised new section 31AB.

LegCo
Secretariat

Action

Proposed CSAs to be moved by members

7. Ms Margaret NG informed that she intended to move amendment to delete the proposed new section 31AA, as criminal proceedings should not be mingled with political proceedings. It was for SJ to decide whether and, if so, when to institute criminal proceedings against CE on the basis of the evidence available, and for LegCo to decide whether and, if so, when to invoke BL 73(9) in appropriate circumstances. Ms NG further said that she could not see how SJ could be prevented from providing corruption complaints against CE and the findings of Independent Commission Against Corruption (ICAC) to LegCo upon request, as to do so was within the meaning of lawful authority or reasonable excuse under section 30(1) of POBO. Ms NG further informed that she would also move an amendment to extend the application of section 8 of POBO to CE.

Admin

8. SALA2 advised that he had written to the Administration on 21 May 2008 to seek an elaboration on the legal basis for the Administration's position that disclosing the subject or details of investigation in respect of an offence under POBO for the purpose of invoking the impeachment procedures under BL73(9) was within the meaning of lawful authority or reasonable excuse under section 30(1) of POBO.

Admin

9. Dr YEUNG Sum said that he might move an amendment to set up an independent ad hoc committee chaired by a retired judge and staffed by officers seconded from ICAC to conduct the investigation of a corruption complaint against CE, as suggested by the two legal professional bodies, should the Administration refuse to do so.

Declaration of assets under BL 47(2)

Admin

10. Ms Emily LAU asked whether the assets disclosed by CE to the Chief Justice of the Court of Final Appeal (CJ) under BL 47(2) were different from those CE declared to the public in his capacity as the President of the Executive Council. The Administration replied that it was not in a position to answer the question, as the declaration of assets by CE under BL 47(2) was only required to be made to CJ. At the request of the Bills Committee, the Administration undertook to provide information on the types of registrable interests disclosed by CE in his capacity as President of the Executive Council.

II. Any other business

11. Subject to the satisfactory responses from SJ and LegCo Secretariat on the proposed revised new section 31AB, the Chairman said that the Bills Committee would report to the House Committee on 13 June 2008 recommending the resumption of Second Reading debate on the Bill at the Council meeting on 25

Action

June 2008. Members agreed.

12. There being no other business, the meeting ended at 4:20 pm.

Council Business Division 2
Legislative Council Secretariat
17 July 2008

**Proceedings of the ninth meeting of the
Bills Committee on Prevention of Bribery (Amendment) Bill 2007
on Friday, 30 May 2008, at 3:00 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000257	Chairman	Opening remarks	
000258 - 000427	Chairman Dr YEUNG Sum Ms Margaret NG	Dr YEUNG Sum indicated that he might move a Committee Stage amendment (CSA) to set up an independent ad hoc committee chaired by a retired judge and staffed by officers seconded from the Independent Commission Against Corruption to conduct the investigation of a corruption complaint against the Chief Executive (CE), as suggested by the two legal professional bodies, should the Administration refuse to do so	✓ (Admin to provide a written response)
000428 - 000821	Admin Chairman	The Administration's proposed revised CSAs to new sections 31AA and 31AB [LC Paper No. CB(2)2114/07-08(01) - Part A]	
000822 - 002036	Ms Margaret NG Chairman SALA2 Admin	Query raised by Ms Margaret NG on the proposal to replace "Legislative Council" (LegCo) with "LegCo Members" in the proposed new section 31AA(2) of the Bill	
002037 - 002823	Dr YEUNG Sum Admin SALA2 Chairman	Dr YEUNG Sum's objection to laying down any threshold for LegCo Members to disclose information contained in the Secretary for Justice (SJ)'s referral to the Secretary General under new section 31AB(1)	
002824 - 003623	Ms Emily LAU Chairman Admin	Ms Emily LAU's dissatisfaction that the proposed revised new section 31AB did not allow LegCo Members to disclose information contained in SJ's referral to the political groups they were affiliated with	
003624 - 004035	Mr LEUNG Kwok-hung Admin Chairman	Threshold for LegCo Members to disclose information in SJ's referral to the Secretary General under the new section 31AB(1)	
004036 - 005600	Ms Margaret NG Chairman Admin SALA2 Dr YEUNG Sum	Ms Margaret NG's view that the handling of information contained in SJ's referral should be left to the device of LegCo and no one else	
005601 - 005712	Ms Emily LAU	Considered that there was a need to explicitly provide in the Bill that LegCo Members might disclose information contained in SJ's referral to LegCo staff if such disclosure was necessary for the purpose of taking action under Article 73(9) of the Basic Law (BL)	
005713 - 010538	Ms Margaret NG Chairman Dr YEUNG Sum SALA2 Admin	Whether disclosing the subject or details of investigation in respect of an alleged corruption offence for the purpose of invoking the impeachment procedures under BL 73(9) was within the meaning of reasonable excuse under section 30(1) of the Prevention of Bribery Ordinance (Cap. 201)	

Time marker	Speaker	Subject	Action required
010539 - 010831	Ms Margaret NG Admin Chairman Dr YEUNG Sum	The Administration was requested to check with SJ on the appropriateness of the executive authorities interfering with the operation of LegCo under the proposed revised new section 31AB	✓ (Admin to provide a written response)
010832 - 011238	Chairman Admin	The Administration's responses to issues concerning the register of gifts to CE and the declaration of assets under BL 47(2) [LC Paper No. CB(2)2114/07-08(01) - Parts B and C]	
011239 - 011659	Ms Emily LAU Admin Mr Howard YOUNG Ms Margaret NG Chairman	Whether the assets disclosed by CE to the Chief Justice of the Court of Final Appeal (CJ) under BL 47(2) were different from those CE declared to the public in his capacity as the President of the Executive Council The Administration undertook to provide information on the types of registrable interests disclosed by CE in his capacity as President of the Executive Council.	✓ (Admin to provide a written response)
011700 - 012333	Chairman Ms Margaret NG Admin Ms Emily LAU	Legislative timetable Proposed CSAs to be moved by Ms Margaret NG	