

**立法會**  
**Legislative Council**

Ref : CB2/BC/2/08

LC Paper No. CB(2)1163/08-09  
(These minutes have been seen  
by the Administration)

**Bills Committee on Adaptation of Laws Bill 2009**

**Minutes of meeting**  
**held on Wednesday, 4 March 2009, at 8:30 am**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon WONG Ting-kwong, BBS (Chairman)  
Hon IP Wai-ming, MH (Deputy Chairman)  
Dr Hon Margaret NG  
Hon James TO Kun-sun  
Dr Hon Philip WONG Yu-hong, GBS  
Dr Hon Priscilla LEUNG Mei-fun  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Paul TSE Wai-chun

**Members absent** : Hon Miriam LAU Kin-yee, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon LEUNG Kwok-hung

**Public Officers attending** : Item II

The Administration

Mr Joshua LAW Chi-kong  
Permanent Secretary for Constitutional and Mainland Affairs

Mr Gary POON Wai-wing  
Principal Assistant Secretary for Constitutional and Mainland  
Affairs

Mr Benedict LAI Ying-sie  
Law Officer (Civil Law), Department of Justice

Mr Gilbert MO Sik-keung  
Deputy Law Draftsman (Bilingual Drafting & Administration),  
Department of Justice

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)3

**Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5  
  
Ms Amy YU  
Senior Council Secretary (2)3  
  
Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Election of Chairman**

Mr WONG Ting-kwong and Mr IP Wai-ming were elected Chairman and Deputy Chairman of the Bills Committee respectively.

**II. Meeting with the Administration**

[LC Paper Nos. CB(3)317/08-09, CB(2)999/08-09(02) and (03), CMAB B24/1 and LS39/08-09]

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

3. The Administration was requested to provide a written response on -

- (a) whether it would subscribe to the view that the formulation of the Bill had no direct legal relationship with section 66(1) of Cap.1, and whether conceptually there could be State organs which were not among the three offices set up by the Central People's Government (CPG offices) listed in the Bill but came within the definition of "State" in section 3 of Cap.1, hence they and their personnel would be exempted from the application of the relevant Ordinances which were expressly stated to apply to the three CPG offices; and
- (b) how the integrity of Hong Kong's legal system would be affected if such a loophole did exist.

4. The Bills Committee completed the clause-by-clause examination of the Chinese version of the Bill. The legal adviser to the Bills Committee confirmed that the English version of the Bill was also in order from the drafting point of view.

Admin

Action

**III. Any other business**

5. The Bills Committee agreed that it would not be necessary to schedule a further meeting for the time being and that the Administration's written response on the issues raised at the meeting would be circulated to members for consideration upon receipt.

Clerk

6. The meeting ended at 10:03 am.

Council Business Division 2  
Legislative Council Secretariat  
24 March 2009

**Proceedings of the meeting of the  
Bills Committee on Adaptation of Laws Bill 2009  
on Wednesday, 4 March 2009, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000304 - 000420	Dr Margaret NG Mr IP Kwok-him Dr Philip WONG Mr WONG Ting-kwong	Election of Chairman	
000421 - 000543	Chairman Mr WONG Kwok-kin Dr Philip WONG Mr IP Wai-ming	Election of Deputy Chairman	
000544 - 000625	Chairman	Opening remarks	
000626 - 000925	Administration	Briefing by the Administration on the Bill [LegCo Brief on the Bill (Ref: CMAB B24/1)]	
000926 - 001929	Mr James TO Administration Chairman	<p>Mr James TO's concern that under the Bill the applicability of Hong Kong Special Administrative Region (HKSAR) laws was confined only to the three offices set up by the Central People's Government (CPG) in HKSAR (CPG offices) and did not cover other State organs (such as the Public Security Bureau and the State Security Bureau) and their personnel which had not set up offices in HKSAR.</p> <p>The Administration's responses that</p> <ul style="list-style-type: none"> <li>- the present adaptation exercise was concerned with the extension of the applicability of certain ordinances specifically to the CPG offices set up in HKSAR; and</li> <li>- it was a fundamental principle of Hong Kong's legal system that everyone was subject to the law. All individuals in Hong Kong had the obligation to abide by the laws in HKSAR.</li> </ul>	
001930 - 002322	Dr Priscilla LEUNG Administration	The Administration's advice that offices set up in HKSAR by provinces, autonomous regions or municipalities would generally be outside the definition of "State" under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), hence the statutory presumption of exclusion under section 66(1) of Cap. 1 did not apply to them.	

Time Marker	Speaker(s)	Subject(s)	Action required
002323 - 003029	Dr Margaret NG Administration ALA5	<p>Dr Margaret NG sought confirmation on the following</p> <ul style="list-style-type: none"> <li>- that the Bill had no legal effect other than adding a definition of ‘Offices set up by CPG in HKSAR’ to Cap. 1 and making the provisions of the four specified Ordinances applicable to the CPG offices so defined; and</li> <li>- that the Bill had no direct bearing on section 66(1) of Cap. 1 as the term “Offices set up by CPG in HKSAR” in clause 2 of the Bill was found neither in the section nor in the definition of “State” in section 3 of Cap. 1.</li> </ul> <p>The Administration’s responses that</p> <ul style="list-style-type: none"> <li>- pursuant to section 66(1) of Cap.1, an ordinance would not bind the State (including the CPG offices) unless it was expressly provided therein or appeared by necessary implication that it was so intended. In view of the presumption of exclusion under section 66(1) and the policy intention of the four Ordinances, it was appropriate to introduce the legislative amendments proposed in the Bill to make the four Ordinances applicable to the CPG offices; and</li> <li>- the fact that the term “Offices set up by CPG in HKSAR” was not expressly included in the definition of “State” in Cap. 1 did not mean that the CPG offices did not come within the definition of “State”. The criteria for determining whether a State organ fell within the definition of “State” had been clearly stated in Cap. 1.</li> </ul> <p>The legal adviser to the Bills Committee shared the view of Dr NG that the Bill had no direct legal relationship with section 66(1) of Cap. 1.</p> <p>Dr Margaret NG’s enquiry on whether the Administration had any plan to amend the formulation of section 66(1) and the definition of “State” in Cap.1.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's response that the three CPG offices fell within the definition of "State" in Cap. 1 and that it did not see the need to amend the formulation of section 66(1) or the definition of "State" in Cap. 1, and had no plan to do so.</p>	
003030 - 003431	Dr Margaret NG Administration Chairman	<p>Dr Margaret NG sought clarification on whether the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) was applicable to the Liaison Office of CPG in HKSAR (the Liaison Office).</p> <p>The Administration's responses that</p> <ul style="list-style-type: none"> <li>- under section 66(1) of Cap. 1, no ordinance should be binding on the State unless it was therein expressly provided or unless it appeared by necessary implication that the State was bound thereby; and</li> <li>- PDPO expressly bound the Government but was silent on its applicability to CPG offices in HKSAR. The Administration was studying whether to include any express provision on the applicability of PDPO to the CPG offices in HKSAR and would advise Members on the outcome of the review as soon as it was able to so do.</li> </ul> <p>Dr Margaret NG's view that it was unacceptable that the Administration was not able to state categorically whether an ordinance applied to a certain office/organization, and such uncertainty was not compatible with the rule of law.</p>	
003432 - 003645	Mr IP Kwok-him Administration	<p>The Administration's confirmation of Mr IP Kwok-him's understanding that the object of the Bill was to amend the four specified Ordinances to expressly provide that, aside from being applicable to the Government, they would also apply to the three CPG Offices in HKSAR which fell within the definition of "State" in Cap. 1.</p>	
003646 - 003743	Mr IP Kwok-him Administration	<p>Mr IP Kwok-him's comment that the Liaison Office had various departments each of which was responsible for different matters such as economic affairs and national security, and that the personnel working in different departments were all personnel of the Liaison Office. The</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		Administration's confirmation of Mr IP's understanding.	
003744 - 004142	Mr IP Kwok-him Administration	<p>Mr IP Kwok-him's query on why it took so long to introduce legislative amendments to make the four Ordinances also applicable to the CPG offices, considering that the four Ordinances did not involve complex issues.</p> <p>The Administration's response that the reunification had necessitated the adaptation of legislative provisions to bring the laws of Hong Kong into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China. As a related matter, the Administration undertook to review 17 Ordinances which expressly applied to the Government but were silent on their applicability to the CPG offices, to see if their application should be extended. The Administration had been studying and discussing with the relevant authorities of CPG on whether and how these Ordinances could be applicable to the CPG offices in HKSAR. As reported to the Panel on Administration of Justice and Legal Services in March and April 2008, in accordance with the consensus reached, as a start, legislative amendments would be introduced to the four Ordinances in the 2008-2009 legislative session to make them also applicable to the CPG offices. These four Ordinances were related to protection of ownership rights and operation of statutory body.</p>	
004143 - 004439	Chairman Dr Priscilla LEUNG Administration	<p>Dr Priscilla LEUNG's comment that the principle that legislation did not bind acts of state, with the exception of commercial functions, was commonly adopted in many common law jurisdictions.</p> <p>Dr Priscilla LEUNG's view that the Administration should make it clear that other than the four Ordinances specified in the Bill, other HKSAR laws were not applicable to the CPG offices.</p> <p>The Administration's reiteration that it was clear that pursuant to section 66(1) of Cap. 1 and the definition of "State" in section 3 of Cap. 1, an ordinance did not bind the CPG offices unless it expressly said so or it appeared by necessary implication that this was so intended.</p>	

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004440 - 004624	Dr Philip WONG Administration	<p>Dr Philip WONG sought confirmation on whether the Administration adopted an inclusive (as opposed to exclusive) approach to the applicability of HKSAR Ordinances to CPG offices, i.e. an ordinance did not apply to the CPG offices unless it included an express provision to that effect.</p> <p>The Administration's confirmation and further elaboration that</p> <ul style="list-style-type: none"> <li>- pursuant to Cap. 1, an ordinance did not bind the State unless it expressly said so or it appeared by necessary implication that this was so intended;</li> <li>- although Article 22(3) of the Basic Law made it clear that the CPG offices and their personnel must abide by the laws of HKSAR, it should not be taken to mean that all Ordinances should apply to these offices; and</li> <li>- in so far as the adaptation programme on the applicability of Ordinances to CPG offices was concerned, the Administration's approach was to review certain ordinances which expressly applied to the Government but were silent on their applicability to the CPG offices.</li> </ul>	
004625 - 005915	Mr James TO Administration Chairman	<p>Mr James TO reiteration of his concern about the existence of a loophole in the Bill in that personnel of State organs which had not set up offices in HKSAR but who were nonetheless exercising executive functions of CPG coming within the definition of "State" in Cap. 1 would not be bound by the relevant Ordinances which applied only to the three CPG offices.</p> <p>The Administration's responses that</p> <ul style="list-style-type: none"> <li>- the three CPG offices would be bound by the relevant Ordinances which expressly applied to these offices; and</li> <li>- on the level of individuals, all individuals in Hong Kong had to abide by the laws of HKSAR.</li> </ul>	

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005916 - 010120	Mr IP Wai-ming Administration	<p>In response to Mr IP Wai-ming, the Administration's reiteration that</p> <ul style="list-style-type: none"> <li>- for State organs: pursuant to section 66(1) of Cap. 1 and the definition of "State" in section 3 of Cap. 1, HKSAR laws did not apply to State organs unless the legislation expressly said so or it appeared by necessary implication that this was so intended. Section 66(1) did not operate on the basis on individual persons, but on the basis of State organs; and</li> <li>- as for individuals: pursuant to Article 42 of the Basic Law, all Hong Kong residents and other persons in Hong Kong had the obligation to abide by HKSAR laws.</li> </ul>	
010121 - 010933	Dr Margaret NG Administration Dr Philip WONG Mr James TO	<p>Dr Margaret NG's expression of agreement with the approach adopted in the Bill for implementing Article 22 of the Basic Law, i.e. the application formula.</p> <p>Dr NG's reservation about the drafting of the definition of CPG offices, i.e. the use of the word "means".</p> <p>The Administration was requested to provide a written response on</p> <ul style="list-style-type: none"> <li>(a) whether it would subscribe to the view that the formulation of the Bill had no direct legal relationship with section 66(1) of Cap.1, and whether conceptually there could be State organs which were not among the three CPG offices listed in the Bill but came within the definition of "State" in section 3 of Cap.1, hence they and their personnel would be exempted from the application of the relevant Ordinances which were expressly stated to apply to the three CPG offices; and</li> <li>(b) how the integrity of Hong Kong's legal system would be affected if such a loophole did exist.</li> </ul>	<p><b>Admin to provide a written response</b> (para 3 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
010934 - 011242	Dr Margaret NG	Dr Margaret NG's view that while as a matter of principle the 17 Ordinances which expressly bound the Government should also apply to the CPG offices, this did not mean that the review on the applicability of HKSAR laws to CPG offices should be confined only to the 17 Ordinances.	
011243 - 011506	Chairman Mr YIP Kwok-him Administration	<u>Clause-by-clause examination of the Bill</u> (Chinese version)  <i>The long title</i>	
011507 - 011510	Administration	<i>Clause 1 - Short title of the Bill</i>	
011511 - 012417	Administration Chairman Mr Paul TSE Dr Philip WONG	<p><i>Clause 2 - Briefing by the Administration on the proposed amendments to section 3 of Cap. 1 to introduce a single definition for "Offices set up by CPG in HKSAR".</i></p> <p>In response to the Chairman, the Administration's advice that should another CPG office be set up in HKSAR in future pursuant to Article 22 of the Basic Law, amendments would be made to section 3 of Cap. 1 accordingly to reflect such change.</p> <p>Mr Paul TSE's suggestion of adding a general proviso to the proposed amendments to section 3 of Cap. 1 to the effect that it would not be necessary to amend the section every time a new CPG office was set up. The Administration's responses that -</p> <ul style="list-style-type: none"> <li>- the current approach of listing out exhaustively all the offices set up by CPG in HKSAR would provide clarity in law, albeit the need for legislative amendments when a new CPG office was set up; and</li> <li>- since the reunification, only three CPG offices had been set up in HKSAR pursuant to Article 22 of the Basic Law. A gazette notice was published in January 2000 to inform the public of the setting up of the three CPG offices. For the time being, it was not envisaged that another CPG office would be set up in HKSAR.</li> </ul>	

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
012418 - 012649	Administration Chairman	<i>Clause 3</i> - Briefing by the Administration on the proposed amendments to The LegCo Commission Ordinance (Cap. 443).	
012650 - 012845	Administration Chairman	<i>Clauses 4 and 5</i> - Briefing by the Administration on the proposed amendments to the Plant Varieties Protection Ordinance (Cap. 490).	
012846 - 013011	Administration Chairman	<i>Clause 6</i> - Briefing by the Administration on the proposed amendments to the Patents Ordinance (Cap. 514).	
013012 - 013144	Administration	<i>Clause 7</i> - Briefing by the Administration on the proposed amendments to the Registered Designs Ordinance (Cap.522).	
013145- 013319	Administration Chairman Mr YIP Kwok-him ALA5	The legal adviser to the Bills Committee's confirmation that the English version of the Bill was in order from the drafting point of view.	
013320 - 013334	Chairman	The Bills Committee agreed that it would not be necessary to schedule a further meeting for the time being and that the Administration's written response on the issues raised at the meeting would be circulated to members upon receipt.	