

**立法會**  
**Legislative Council**

Ref : CB2/BC/3/09

LC Paper No. CB(2)934/10-11  
(These minutes have been seen  
by the Administration)

**Bills Committee on Matrimonial Proceedings  
and Property (Amendment) Bill 2010**

**Minutes of the fourth meeting  
held on Monday, 8 November 2010, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

**Members present** : Dr Hon Margaret NG (Chairman)  
Hon James TO Kun-sun  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Paul TSE Wai-chun

**Members absent** : Hon Albert HO Chun-yan  
Hon Cyd HO Sau-lan

**Public Officers attending** : Department of Justice  
  
Miss Michelle TSANG  
Senior Assistant Solicitor General  
  
Mr CHENG Kim-fung  
Senior Assistant Law Draftsman  
  
Ms Alice CHOY  
Senior Government Counsel  
  
Mr Alan CHONG  
Senior Government Counsel

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

**Staff in attendance** : Ms Clara TAM  
Assistant Legal Adviser 9

Ms Amy YU  
Senior Council Secretary (2)3

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(3)813/09-10, CB(2)2031/09-10(01), CB(2)2228/09-10(02), CB(2)2237/09-10(01), CB(2)195/10-11(01) and CB(2)202/10-11(01)]

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

2. The Bills Committee completed the clause-by-clause examination of the Bill.

3. The Bills Committee supported the Committee Stage amendments proposed by the Administration as set out in LC Paper No. CB(2)202/10-11(01).

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4. The Administration was requested to reconsider the drafting of the Chinese text of the proposed section 29AK(1) in the light of the views of members and the legal adviser to the Bills Committee and to revert to the Bills Committee.

Clerk

5. The Bills Committee agreed that the response to the drafting of the proposed section 29AK(1) to be provided by the Administration would be circulated to members for consideration. The Bills Committee also agreed that if there was no request for the Bills Committee to hold a further meeting to discuss the Administration's response, the Bills Committee would report to the House Committee on 19 November 2010 supporting the resumption of the Second Reading debate on the Bill at the Council meeting on 15 December 2010.

Action

**II. Any other business**

6. There being no other business, the meeting ended at 3:20 pm.

Council Business Division 2  
Legislative Council Secretariat  
28 January 2011

**Proceedings of the fourth meeting of the  
Bills Committee on Matrimonial Proceedings  
and Property (Amendment) Bill 2010  
on Monday, 8 November 2010, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000029 - 000234	Chairman ALA9	Opening remarks	
000235 - 000525	Chairman Administration	Briefing by the Administration on its response to issues raised by the Bills Committee at the last meeting on 5 October 2010 [LC Paper No. CB(2)195/10-11(01)] (paragraphs 2 to 4 and Annex 1).	
000526 - 001408	Ms Miriam LAU Chairman Administration Ms Audrey EU	<p>In response to Ms Miriam LAU's enquiry on the Administration's proposal to amend the Chinese rendition for the expression "substantial ground" ("充分理由") in the proposed section 29AC(2) to "實質理由", the Administration advised that -</p> <p>(a) both "充分理由" and "實質理由" had been used as the Chinese rendition for "substantial ground" in other Hong Kong legislation;</p> <p>(b) which expression should be used would depend on the context of the relevant legislation. If in a particular context "substantial" meant "solid", the Chinese rendition of "實質理由" would be used; on the other hand, where "substantial" carried the meaning of "sufficient", the Chinese rendition of "充分理由" would be used; and</p> <p>(c) the Administration proposed to replace "充分理由" with "實質理由" having regard to the comment of the United Kingdom ("UK") Supreme Court in the case of <i>Agbaje v Agbaje</i> [2009] that in the context of the threshold required for the granting of leave for applications made under Part III of the Matrimonial and Family Proceedings Act 1984 of UK, "substantial" meant "solid".</p>	

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		<p>Ms Miriam LAU was concerned whether "實質理由" would appear to be a higher threshold as compared with "充分理由". Her view that the Chinese rendition which denoted a lower threshold for granting leave should be used.</p> <p>The Chairman's view that "實質理由" was a better Chinese rendition for "substantial ground".</p> <p>Ms Audrey EU's concurrence with Ms Miriam LAU's view that the term denoting a lower threshold for granting leave should be used. Her view that "實質理由" was preferable to "充分理由" as "實質理由" denoted a lower threshold.</p> <p>Members agreed to the Administration's proposal to amend the Chinese rendition of "substantial ground" ("充分理由") in the proposed section 29AC(2) to "實質理由".</p>	
001409 - 001441	Chairman Administration	Briefing by the Administration on the use of the expression "substantial connection" in other local legislation [Annex 2 to LC Paper No. CB(2)195/10-11(01)].	
001442 - 001927	Administration Chairman	<p>Briefing by the Administration on paragraphs 5 to 14 of its paper [LC Paper No. CB(2)195/10-11(01)] relating to financial relief for children under the proposed section 29AG.</p> <p>Members noted the Administration's view that under the existing Matrimonial Proceedings and Property Ordinance (Cap. 192) ("MPPO"), Hong Kong courts did not seem to have the power to deal with applications for financial relief made by or on behalf of a child of the family after a foreign divorce.</p> <p>Members raised no query over the Administration's submission that it was not appropriate to remove references to section 5 of MPPO from the proposed section 29AG(1) and (2) as doing so would, in effect, prevent the new Part IIA of MPPO from applying to applications for financial relief for a child of the family in the case of a foreign divorce.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
001928 - 002041	Chairman Administration	<p>Briefing by the Administration on paragraphs 15 to 16 of its paper [LC Paper No. CB(2)195/10-11(01)] relating to the exclusion of periodical payment order from the proposed section 29AG(2).</p> <p>The Administration's advice that having considered the views of the legal adviser to the Bills Committee, the Administration would move amendments to the proposed section 29AG(2) to reflect the policy intent that section 6A(1) of MPPO in respect of the court's power to make an order for sale of property should also apply to a periodical payment order made under section 4(1)(a) or 5(2)(a) of MPPO.</p>	
002042 - 002255	Chairman Administration	<p><b><u>Clause-by-clause examination of the Bill</u></b></p> <p><u>Part 3 - Related and consequential amendments</u></p> <p><u>Division 1 - Rules of the High Court</u></p> <p><u>Clause 5 - Application</u></p>	
002256 - 002415	Chairman Administration	<p><u>Division 2 - Matrimonial Causes Ordinance</u></p> <p><u>Clause 6 - References to "country" substituted by "place"</u></p>	
002416 - 002452	Chairman Administration	<p><u>Clause 7 - Grounds for recognition</u></p>	
002453 - 002501	Chairman	<p><u>Clause 8 - Non-recognition of divorce by third country no bar to remarriage</u></p>	
002502 - 002511	Chairman	<p><u>Clause 9 - Interpretation and transitional provisions</u></p>	
002512 - 002609	Chairman Administration	<p><u>Division 3 - Matrimonial Causes Rules</u></p> <p><u>Clause 10 - Interpretation</u></p>	
002610 - 002625	Chairman Administration	<p><u>Clause 11 - Evidence of marriage outside Hong Kong</u></p>	

Time Marker	Speaker(s)	Subject(s)	Action required
002626 - 003127	Chairman Administration	<p><u>Clause 12 - Rules 103A - 103E added</u></p> <p>In response to the Chairman's enquiry, the Administration advised that the Judiciary had been consulted on the draft legislative proposals including the proposed amendments to the relevant rules of court.</p>	
003128 - 003139	Chairman	<p><u>Clause 13 - Service out of Hong Kong</u></p>	
003140 - 003210	Chairman	<p><u>Clause 14 - Forms</u></p>	
003211 - 003429	Chairman Administration	<p><u>Division 4 -Inheritance (Provision for Family and Dependents) Ordinance</u></p> <p><u>Clause 15 - Interpretation</u></p>	
003430 - 003433	Chairman ALA9	<p><u>Clause 16 - Section 17A added</u></p>	
003434 - 004019	Chairman ALA9 Ms Miriam LAU	<p>Discussion on the drafting of the Chinese text of the proposed section 29AK(1).</p> <p>The legal adviser to the Bills Committee's suggestion to place the supposition "如" before "覺得有下列情況" so that it read:"如法庭應婚姻的一方提出的要求作出第(2)款下的命令的申請，而如覺得有下列情況".</p> <p>The Chairman's suggestion to amend the text as follows: "如法庭應婚姻的一方提出的要求作出第(2)款下的命令的申請而覺得有下列情況".</p> <p>Ms Miriam LAU's suggestion to replace the word "而" with "時".</p> <p>The Administration was requested to reconsider the drafting of the Chinese text of the proposed section 29AK(1) in the light of the views of members and the legal adviser and to revert to the Bills Committee.</p>	<p><b>Admin</b> (para 4 of minutes)</p>
004020 - 004701	Chairman Administration ALA9 Ms Miriam LAU	<p>Briefing by the Administration on its paper setting out the draft Committee Stage amendments ("CSAs") proposed by the Administration [LC Paper No. CB(2)202/10-11(01)].</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		Members supported the CSAs proposed by the Administration.	
004702 - 005002	Chairman Administration	<p>Completion of the clause-by-clause examination of the Bill.</p> <p>The Bills Committee's agreement that the response to the drafting of the Chinese text of the proposed section 29AK(1) to be provided by the Administration would be circulated to members for consideration; and if there was no request for the Bills Committee to hold a further meeting to discuss the Administration's response, the Bills Committee would report to the House Committee on 19 November 2010 in support of the Bill.</p> <p>The Administration advised that it intended to resume the Second Reading debate on the Bill at the Council meeting on 15 December 2010.</p>	<b>Clerk</b> (para 5 of minutes)

Council Business Division 2  
Legislative Council Secretariat  
28 January 2011