

立法會
Legislative Council

LC Paper No. CB(2)1132/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/10

Bills Committee on Legislation Publication Bill

Minutes of meeting
held on Friday, 7 January 2011, at 10:45 am
in Conference Room B of the Legislative Council Building

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Cyd HO Sau-lan

Members absent : Hon LAU Kong-wah, JP
Dr Hon Samson TAM Wai-ho, JP

Public Officers attending : Item II

Department of Justice

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting &
Administration)

Mr W C SUEN
Senior Assistant Law Draftsman (Professional
Development)

Ms Mabel CHEUNG
Senior Government Counsel

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Mr Peter SZE
Government Counsel

Attendance by invitation : Item II

Hong Kong Bar Association

Ms Liza Jane CRUDEN

Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (2) 2

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

Ms Alice LEUNG
Senior Council Secretary (2) 2

Miss Monique TSEUNG
Legislative Assistant (2) 2 (Acting)

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I. Confirmation of minutes
[LC Paper No. CB(2)730/10-11]

The minutes of the meeting on 22 November 2010 were confirmed.

II. Meeting with deputations and the Administration
[LC Paper Nos. CB(2)740/10-11(01) to (03)]

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

3. The Bills Committee received an oral representation from the Hong Kong Bar Association and a written submission from The Law Society of Hong Kong on the Legislation Publication Bill ("the Bill") [LC Paper No. CB(2)740/10-11(02)]. The Legal Service Division ("LSD") of the

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Legislative Council ("LegCo") Secretariat also provided its views on the Bill at LC Paper No. CB(2)740/10-11(03).

4. The Chairman advised that the Judiciary Administration had been invited to attend the meeting to give views on the Bill, but it had replied in writing that it did not have any comments on it.

5. Members noted the Administration's written response to issues raised by members on the Bill at the meeting on 22 November 2010 [LC Paper No. CB(2)740/10-11(01)].

6. Members also noted that the Administration had tabled at the meeting an extract of section 161 of the Crimes Ordinance (Cap. 200) on access to computer with criminal or dishonest intent.

(Post-meeting note: The extract of section 161 of the Crimes Ordinance (Cap. 200) on access to computer with criminal or dishonest intent was circulated to members vide LC Paper No. CB(2)772/10-11(01) on 10 January 2011.)

Admin

7. The Administration was requested to respond in writing to the following concerns raised by members on the Bill -

- (a) detailed information on specific security measures/steps to be taken by the Administration to protect the integrity of the proposed electronic database of legislation ("the Database"), including:
 - (i) the deployment of manpower to verify the data in the Database against the hardcopy legislation;
 - (ii) safeguards against hacking and fake legislation websites modelled on the Database;
 - (iii) the Administration's specific security requirements for the Database service provider;
 - (iv) safeguards that the Database service provider must provide to meet the Administration's requirements;
 - (v) the Administration's remedial and contingency measures formulated in response to possible security

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threats against the Database; and

- (vi) the relevant experiences of overseas jurisdictions, including Australia, New Zealand and Ireland, in the handling of possible security threats against similar electronic legislation database systems (especially in the initial implementation stage);
- (b) whether procedures would be put in place for users of the Database to seek redress in case they were misled by false information published in the Database or a fake legislation website;
- (c) the commencement date of the existing on-line Bilingual Laws Information System;
- (d) the estimated cost and manpower to be incurred for the inclusion of the historical versions of any statutory provisions repealed or amended before 1 July 1997 in the Database; and the estimated cost to be saved from the retirement of the Loose-leaf Edition of the Laws of Hong Kong ("Loose-leaf Edition");
- (e) whether the positive vetting procedure or the negative vetting procedure would be adopted for scrutinizing provisions relating to the retirement of the Loose-leaf Edition under the Bill; and
- (f) whether there would be an emphasis in the Bill that the commencement date for provisions relating to the retirement of the Loose-leaf Edition was different from that for other provisions.

III. Any other business

Date of next meeting

8. Members and the Administration agreed that the next meeting be scheduled before the Lunar New Year holiday in 2011.

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(Post-meeting note: The next meeting of the Bills Committee was scheduled for Monday, 24 January 2011, at 8:30 am.)

9. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 2
Legislative Council Secretariat
22 February 2011

**Proceedings of the meeting of the
Bills Committee on Legislation Publication Bill
on Friday, 7 January 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000150	Chairman	Confirmation of minutes.	
000151 - 001150	Chairman Admin Hong Kong Bar Association ("HKBA")	<p>The Chairman's opening remarks.</p> <p>The Chairman's report that the Judiciary Administration did not have any comment on the Legislation Publication Bill ("the Bill").</p> <p><u>Presentation of HKBA's views</u></p> <p>HKBA's support for -</p> <ul style="list-style-type: none"> (a) the Administration's initiatives to improve the drafting and accessibility of legislation; (b) the establishment of the electronic database of legislation ("the Database") under the Bill, as it would be an enhanced version of the existing on-line Bilingual Laws Information System (BLIS); and (c) the conferment of powers on the Secretary for Justice ("SJ") in principle to make editorial amendments to Ordinances. <p>HKBA had no objection to the existing drafting of the Bill, as it appeared to contain ample provisions to deal with the possibility of the misuse of SJ's editorial powers.</p> <p>HKBA's request for the Administration to -</p> <ul style="list-style-type: none"> (a) continue to consult the stakeholders at various stages of the Database project, as it would be a long exercise involving massive tasks; and (b) provide progress reports on the project to avoid slippage. 	

Time marker	Speaker	Subject	Action required
		<p>HKBA's concurrence with the Chairman's suggestion to provide its views on the Bill in writing.</p> <p>The Chairman's support for HKBA's view that it might need to set up a special committee to keep track of the progress of the Database project.</p> <p>The Chairman's concern about the conferment of wide powers on SJ under clause 12(1)(c) of the Bill to renumber the provisions of Ordinances, as such renumbering might create difficulties to users of the Database in accessing the provisions.</p>	
001151 - 001834	Legal Service Division ("LSD") of the Legislative Council ("LegCo") Secretariat	<p><u>Presentation of LSD's views</u> [LC Paper No. CB(2)740/10-11(03))</p> <p>An extract of section 161 of the Crimes Ordinance (Cap. 200) on access to computer with criminal or dishonest intent was tabled by the Administration.</p>	
001835 - 004029	Chairman Admin Ms Cyd HO	<p>Ms Cyd HO's worry about the lack of specific measures/steps to be taken by the Administration to protect the Database's integrity, particularly in respect of -</p> <ul style="list-style-type: none"> (a) the deployment of manpower to verify the data in the Database against the hardcopy legislation; and (b) safeguards against hacking and fake legislation websites modelled on the Database, including how to safeguard the interest of a person who acted wrongly on the basis of false information obtained from a fake legislation website in a court proceeding. <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) it was not aware of any fake legislation websites in other jurisdictions; (b) the motive to make a fake legislation website, which would require substantial resources, should be driven by economic gains, but it appeared that such a website would not generate significant economic gains, as compared to other types of internet fraud such as fake bank websites, and therefore the possibility of the appearance of such websites in Hong Kong should be low; 	Admin (para. 7 of the minutes)

Time marker	Speaker	Subject	Action required
		<p>(c) while total prevention of the appearance of fake legislation websites would be impossible, it would take appropriate action (such as issuing a public warning) as soon as possible after receiving any complaints or information about them;</p> <p>(d) any unauthorized amendment made to Ordinances published in the Database would not have any legal effect and would not change the text of Ordinances;</p> <p>(e) advanced security technologies available would be employed to protect the Database and all information in it would have off-line backups stored in permanent form (such as discs) periodically, so that the Database, if damaged or destroyed, could be reconstructed efficiently; and</p> <p>(f) the Department of Justice was working with the Government's information technology specialists to prepare the tender exercise for the Database project under which the security requirements would comply with the Government's internal security standards.</p> <p>Ms Cyd HO's view that -</p> <p>(a) hacking the Database might involve commercial interests. For example, altering certain provisions relating to land sale in the Database might create market instability from which profits might be made; and</p> <p>(b) instead of being driven by economic benefits, hacking might also be used to vent dissatisfaction with the government.</p> <p>Ms Cyd HO's enquiry on whether the Administration could disclose the relevant tender requirements for security measures for the Database.</p> <p>The Administration's response that -</p> <p>(a) security measures, including round-the-clock monitoring, audits, firewalls, separate servers at different locations and periodical off-line storage of data as described, would be put in place for the Database; and</p>	

Time marker	Speaker	Subject	Action required
		<p>(b) any unlawful alterations to the Database would be detected swiftly and would not change the legal effect of Ordinances published in it.</p> <p>The Administration's concurrence with the Chairman's request for providing a paper to detail the security measures for the Database, including -</p> <ul style="list-style-type: none"> (a) safeguards against hacking and fake legislation websites; (b) the Administration's specific security requirements for the Database service provider; (c) safeguards which the Database service provider had to provide to meet the Administration's requirements; (d) the Administration's remedial and contingency measures formulated in response to possible security threats against the Database; (e) whether procedures would be put in place for users of the Database to seek redress in case they were misled by false information (e.g. the expiry date of a period during which an application for leave to appeal had been unlawfully altered) published in the Database or a fake legislation website; and (f) the relevant experiences of overseas jurisdictions, including Australia, New Zealand and Ireland, in the handling of possible security threats against similar electronic legislation database systems (especially in the initial implementation stage). <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the problems highlighted by members might not be exclusive to the Database. For example, the contents of the Government's other websites could also be tampered with, and users of the Loose-leaf Edition of the Laws of Hong Kong ("Loose-leaf Edition") might also come up with fake loose-leaf versions and be misled; (b) it was difficult to foresee circumstances under which a user might be misled by the Database and what losses might be incurred, and therefore to predict whether the Administration should bear a legal 	<p>Admin (para. 7 of the minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>liability;</p> <p>(c) general legal principles had been put in place stating the circumstances under which a person should bear civil liability; and</p> <p>(d) it was impossible to fully prevent the appearance of fake legislation websites, but the Administration would try its best to minimize such appearance.</p>	
004130 - 005846	Mr Albert HO Chairman Admin	<p>As the Database would be the sole approved website carrying on-line legislation presumed to be an authenticated version after the retirement of the Loose-leaf Edition, Mr Albert HO and the Chairman expressed concern about the difficulty in accessing the authenticated version of legislation if the Database was forced to shut down owing to, for example, hacking.</p> <p>The Administration's response that -</p> <p>(a) the duration of the shutdown, if any, should be very short, as the contents of the Database, which remained intact in various servers, would be uploaded again swiftly, and therefore the possibility of users being misled by fake legislation websites should be low;</p> <p>(b) during the shutdown period, a public announcement would be issued as soon as possible to alert users of the Database; and</p> <p>(c) in view of members' grave concern about the possible shutdown of the Database caused by hacking, the need to set up an alternative website would be considered.</p> <p>The Chairman's view that whether sufficient safeguards would be put in place to protect the Database's integrity was members' key consideration of whether to support the Bill.</p> <p>Mr Albert HO's view that the Loose-leaf Edition and the Database should co-exist, as legislation users would still be able to access the former in case the latter was shut down.</p> <p>The Administration's response that -</p> <p>(a) despite the gradual retirement of the Loose-leaf</p>	

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		<p>Edition, an authenticated copy of an Ordinance originating from the Database would be published in the form of a booklet and for sale to the public, and such a copy would also have legal status as did the Loose-leaf Edition;</p> <p>(b) instead of the current half-yearly issue of Loose-leaf replacement pages, the Database would facilitate more timely updating by legislation users of their own copies, as they could choose to print the version of an Ordinance as at a particular date;</p> <p>(c) after the implementation of the Database, users could save the cost of acquiring the whole set of Loose-leaf Edition and Loose-leaf replacement issues; and</p> <p>(d) the Database would enable users to check conveniently whether a particular Ordinance had been amended during a specified period, and remind them of whether amendments had been effective or had been passed but not yet effective. To facilitate tracking by users, all changes made to an Ordinance would be recorded (by date or by provision) in the Database.</p> <p>The Chairman's suggestions that –</p> <p>(a) the Loose-leaf Edition, if co-existent with the Database, might be published in the form of a disc to save papers; and</p> <p>(b) an authenticated copy of an Ordinance printed or downloaded from the Database should bear the time and date of printing/downloading.</p>	
005847 - 010036	Chairman Admin HKBA	<p>HKBA's view that efforts should be made to limit unlawful interference with the Database but it could not be totally foolproof.</p> <p>HKBA's suggestion to consider -</p> <p>(a) whether it would be sufficient to rely on the relevant provisions of the Crimes Ordinance (Cap. 200) to deal with hacking against the Database or whether consideration of a strict liability offence should come into play; and</p> <p>(b) whether a user misled by a fake legislation website</p>	

Time marker	Speaker	Subject	Action required
		<p>could seek remedy under the law of tort against any person putting up the fake website, and whether statutory penalty should be specifically imposed on persons involved in this unlawful act.</p>	
010037-011112	Mr Albert HO Chairman Admin	<p>Referring to clause 5 of the Bill which stated that "a copy of an Ordinance is an authenticated copy of the Ordinance as at a particular time on a particular date if the copy is published on an approved website; and certified by the Law Draftsman to be the consolidated version of the Ordinance as at that time on that date", Mr Albert HO's enquiry on whether the copy of an Ordinance certified by the Law Draftsman might also refer to the copy of an Ordinance published in the form of a booklet under section 9 of the Bill.</p> <p>The Chairman noted that by virtue of section 98(1) of the Interpretation and General Clauses Ordinance (Cap. 1) and in accordance with paragraph 3 of the Administration's paper, a copy of an Ordinance, if signed by the Chief Executive ("CE") and published in the Gazette, was deemed to be an authentic copy of that Ordinance as at the date of such publication.</p> <p>Given section 98(1) of Cap. 1, the Chairman expressed concern about clause 5 of the Bill on the status of authenticated copies of Ordinances in that -</p> <p>(a) the authentic version of an Ordinance defined under section 98(1) of Cap. 1 was conceptually different from that under clause 5 of the Bill, which appeared to suggest that CE's signature would not be required for authentication of a copy of an Ordinance; and</p> <p>(b) it was difficult to ascertain the authenticity of a copy of an Ordinance in the Database, as the Law Draftsman's certification of a copy of an Ordinance as an authenticated copy as at a particular time on a particular date would only be valid as at that time on that date.</p> <p>The Administration's response that -</p> <p>(a) an authentic copy (under section 98(1) of Cap. 1) and an authenticated copy (under clause 5(2) of the Bill) of an Ordinance are indeed conceptually different. Section 98(1) of Cap.1 dealt with a copy of an Ordinance as originally enacted by LegCo and published in the Gazette. Clause 5(2) of the Bill, on</p>	

Time marker	Speaker	Subject	Action required
		<p>the other hand, would deal with a copy of a consolidated version of an Ordinance as published in the Database.</p> <p>(b) a copy of an Ordinance in the Database certified by the Law Draftsman as a consolidated version of an Ordinance as at a particular time on a particular date was an authenticated copy of the Ordinance as at that time on that date. It was presumed, unless the contrary was proved, to correctly state the Ordinance as at that time on that date; and</p> <p>(c) the Database would have a feature showing whether any changes had been made to an Ordinance.</p> <p>Mr Albert HO's and the Chairman's concern that while the Bill assumed that the authentic version of an Ordinance published in the Database was originated from the version signed by CE and published in the Gazette, this assumption was not expressly stated in the Bill.</p> <p>The Administration's response -</p> <p>(a) in accordance with section 98(1) of Cap. 1, the version of an Ordinance promulgated in the Gazette in printed form would serve as the basis on which a copy of an Ordinance published in the Database was to be authenticated; and</p> <p>(b) at this stage it had no plan to publish the Gazette with a legal status in the Database.</p>	
011113-011655	Chairman Admin	<p>The Chairman's concern about whether the gazetted version of an Ordinance would have any legal status after the implementation of the Database, as clause 5 of the Bill appeared to require an authenticated copy of an Ordinance to be certified by the Law Draftsman only and did not require it to be gazetted.</p> <p>The Administration's response that -</p> <p>(a) section 98(1) of Cap. 1 would continue to have effect after the enactment of the Bill, and the gazetted version of an Ordinance would be the authentic version of the Ordinance as originally enacted by LegCo; and</p>	

Time marker	Speaker	Subject	Action required
		<p>(b) under clause 5(2) of the Bill, an authenticated copy of an Ordinance published in the Database as at a particular time on a particular date was presumed to correctly state the Ordinance as at that time on that date, unless the contrary was proved by reference to the gazetted version.</p> <p>Referring to clause 2 of the Bill which defined "consolidated version" as "a version of an Ordinance that has incorporated all permitted amendments in force as at a particular time on a particular date", the Chairman was of the view that this section did not reflect the existing practice that a Bill passed by LegCo had to be signed by CE and promulgated in the Gazette. The Chairman suggested adding "as published in the Gazette" after "consolidated version" to ascertain the gazetted version of an Ordinance to be the basis on which a copy of the Ordinance published in the Database could be presumed to be authenticated.</p>	
011656-012431	Admin Chairman	<p>In response to members' enquiry on whether the Database would facilitate users to retrieve the historical versions of any statutory provisions repealed or amended before 1 July 1997, the Administration advised that owing to limited resources, such historical versions would not be included in the Database but would be provided after the entire migration of the Loose-leaf Edition to the Database in 2019-2020.</p>	
012432-013309	Chairman SALA2 Admin HKBA	<p>The Chairman's concern that in view of the retirement of the Loose-leaf Edition and the absence of such historical versions before 1 July 1997 in the Database, legislation users would have difficulty in tracking the changes to Ordinances before and after that date.</p> <p>The Administration's response that -</p> <p>(a) the historical versions of any statutory provisions repealed or amended on or after 1 July 1997 could be conveniently retrieved from the Database;</p> <p>(b) changes to Ordinances before 1 July 1997 could be traced from the Loose-leaf Edition and the Gazette and relevant legal notices, albeit not so conveniently; and</p> <p>(c) given the immense resources to be involved and the relatively few research needs for the historical versions of statutory provisions repealed or amended</p>	

Time marker	Speaker	Subject	Action required
		<p>before 1 July 1997, providing such historical versions was not the Administration's current priority.</p> <p>Referring to paragraph 14 of the Administration's paper, the Legal Adviser expressed concern about why only the historical versions of Ordinances stored in BLIS from 1 July 1997 onwards would be migrated to the Database, as BLIS should have commenced operation before 1 July 1997 and therefore contained the historical versions of Ordinances before that date.</p> <p>The Legal Adviser's enquiry on the commencement date of BLIS, and the Administration's undertaking to provide the information.</p> <p>The Administration's response that BLIS adopted 1 July 1997 as the reference date. It contained versions of Ordinances in force immediately before that date, and versions in force on or after that date, but it did not contain any earlier historical versions.</p> <p>The Chairman's support for the Legal Adviser's view that it should not be too onerous for the Administration to include the historical versions of statutory provisions repealed or amended at midnight of 1 July 1997 in the Database, as the provisions and resources involved should be limited.</p>	
013310 - 014607	Ms Cyd HO Chairman Admin	<p>Ms Cyd HO's request for the Administration to provide -</p> <ul style="list-style-type: none"> (a) the estimated cost and manpower to be involved for the inclusion of the historical versions of any statutory provisions repealed or amended before 1 July 1997 in the Database; (b) the cost of the proposed Database project; and (c) the estimated cost to be saved from the retirement of the Loose-leaf Edition. <p>Ms Cyd HO's grave concern about the uncertainties created by the retirement of the Loose-leaf Edition and the absence of such historical versions in the Database to the operation of the legal system in Hong Kong.</p> <p>The Administration's response that the inclusion of such historical versions in the Database would be costly and manpower-intensive. The Chairman's suggestion that</p>	Admin (para. 7 of the minutes)

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		<p>such work might be contracted out to universities or private legal practitioners.</p> <p>On the Chairman's enquiry on whether it would be more difficult for legal researchers to study such historical versions after the retirement of the Loose-leaf Edition, the Administration responded in the negative and reiterated that -</p> <p>(a) all information, including the enactment history of Ordinances and records of amendments, currently provided by the Loose-leaf Edition would be retained in the Database; and</p> <p>(b) the Loose-leaf Edition would not be as convenient as the Database in terms of retrieval of the historical versions of statutory provisions repealed or amended after 1 July 1997, as the Loose-leaf Edition subscribers might not retain the out-dated loose-leaf replacement issues.</p> <p>The Chairman's supplementary information that the cost of the proposed Database project had been provided in the Administration's paper [FCR(2010-11)12] submitted to LegCo's Finance Committee.</p>	
014608-014939	Chairman SALA2 Admin	<p>Given the importance of the Loose-leaf Edition, the Chairman's request for the Administration to consider -</p> <p>(a) whether the positive vetting procedure instead of the negative vetting procedure would be adopted for scrutinizing provisions relating to the retirement of the Loose-leaf Edition under the Bill, as LegCo might need to consult the stakeholders (including the legal profession, Judiciary Administration and universities) on the performance of the Database (including its trial runs); and</p> <p>(b) whether the Bill would emphasize that the commencement date for provisions relating to the retirement of the Loose-leaf Edition was different from that for other provisions.</p> <p>The Administration's response that there would be different commencement dates for different parts of the Bill, especially those relating to the retirement of the Loose-leaf Edition.</p>	

Time marker	Speaker	Subject	Action required
014940 - 015530	Chairman Admin Ms Cyd HO Mr Albert HO	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
22 February 2011