

立法會
Legislative Council

LC Paper No. CB(2)2606/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/BC/5/10

**Bills Committee on
Enduring Powers of Attorney (Amendment) Bill 2011**

**Minutes of the second meeting
held on Monday, 4 July 2011, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members : Dr Hon Margaret NG (Chairman)
present Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon LEUNG Ka-lau
Dr Hon PAN Pey-chyou

Members : Hon LAU Kong-wah, JP
absent Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che

Public Officers : Item I
attending

Mr Peter WONG
Deputy Solicitor General (General)
Department of Justice

Mr W C SUEN
Senior Assistant Law Draftsman
Department of Justice

Mr LEE Tin-yan
Senior Government Counsel
Department of Justice

Mr Ken FUNG
Government Counsel
Department of Justice

Mr Jacky CHAN
Government Counsel
Department of Justice

Clerk in attendance : Ms Amy YU
Chief Council Secretary (2)6

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Miss Josephine SO
Senior Council Secretary (2)7

Action

I. Meeting with the Administration

[LP 699/00C XIII, LC Paper Nos. CB(2)2093/10-11(02) to (03), CB(2)2237/10-11(01) to (02), CB(2)2259/10-11(01), CB(3)745/10-11]

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

2 The Bills Committee expressed support in principle for the Administration's proposal to move Committee Stage amendments ("CSAs") to the Bill to -

- (a) add an express provision to provide that an instrument which was framed in the prescribed form of an enduring power of attorney ("EPA") signed by a registered medical practitioner but which had not yet been signed by a solicitor would not take effect either as an EPA or an ordinary power of attorney; and
- (b) expressly provide, for the purpose of commencement of EPAs under section 10(b) of the Enduring Power of Attorney Ordinance (Cap. 501), that the date of the execution of EPA was the date when it was signed by the donor in the presence of the solicitor under the new section 5(2)(a)(ii) proposed in the Bill.

Action

Admin The Administration was requested to provide the draft CSAs for members' consideration.

3 Members did not raise further queries on the policy aspects of the Bill and agreed that the Bills Committee would start clause-by-clause examination of the Bill at its next meeting to be held after the summer recess.

4 The meeting ended at 3:10 pm.

Council Business Division 2
Legislative Council Secretariat
9 September 2011

**Proceedings of the second meeting of the
Bills Committee on Enduring Powers of Attorney (Amendment) Bill 2011
on Monday, 4 July 2011, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000513 - 000704	Chairman	Opening remarks	
000705 - 001755	Admin Chairman	<p>Briefing by the Administration on its response to issues raised by members at the meeting on 17 June 2011 [LC Paper No. CB(2)2237/10-11(02)] -</p> <ul style="list-style-type: none"> (a) revocation of an enduring power of attorney ("EPA"); (b) circumstances under which an ordinary power of attorney would be revoked at common law as referred to in section 13(1)(g) of the Enduring Powers of Attorney Ordinance (Cap. 501) ("the EPA Ordinance"); and (c) unintended ordinary power of attorney and commencement of EPAs. <p>The Administration's indication that it was considering moving Committee Stage amendments ("CSAs") to the Bill, including corresponding amendments to the forms prescribed in the new Schedules 1 and 2 to the Enduring Powers of Attorney (Prescribed Form) Regulation (Cap. 501 sub. leg. A), to -</p> <ul style="list-style-type: none"> (a) add an express provision in the EPA Ordinance to provide that an instrument which was framed in the prescribed form of an EPA signed by a registered medical practitioner but which had not yet been signed by a solicitor would not take effect either as an EPA or an ordinary power of attorney; and (b) expressly provide, for the purpose of commencement of EPA under section 10(b) of the EPA Ordinance, that the date of the execution of EPA was the date when it was signed by the donor in the presence of the solicitor under the new section 5(2)(a)(ii) proposed in the Bill. 	
001756 - 002615	Ms Audrey EU Admin Chairman	Ms Audrey EU expressed concern about the proposed time limit of 28 days between the signing of the EPA by the donor before the registered medical practitioner and the same before the solicitor and enquired whether the Administration planned to consult the relevant parties should amendments be made to the proposed time limit.	

Time marker	Speaker	Subject(s)	Action Required
		<p>The Administration's clarification that-</p> <p>(a) it did not intend to propose amendments to the 28-day time limit; and</p> <p>(b) the CSAs proposed by the Administration only sought to remove any doubt as to whether an incompletely executed EPA could operate as an ordinary power of attorney.</p> <p>Section 3 of the EPA Ordinance concerning the characteristics of an EPA was discussed.</p>	
002616 - 002907	Dr PAN Pey-chyou Chairman	<p>Dr PAN Pey-chyou's expression of support for the Administration's proposal to clarify the grey area regarding the possible effect of an incompletely executed EPA operating as an ordinary power of attorney before the relevant formalities for EPAs had been completed.</p> <p>The Bills Committee's indication of support in principle for the CSAs proposed by the Administration as referred to in paragraph 13 of LC Paper No. CB(2)2237/10-11(02).</p>	<p>Admin to prepare draft CSAs (paragraph 2 of the minutes refers)</p>
002908 - 003850	Chairman Dr LEUNG Ka-lau Admin	<p>Submission from the Law Society of Hong Kong [LC Paper No. CB(2)2259/10-11(01)]</p> <p>Views and concerns of consultees on the proposed 28-day time limit; the Administration's explanation on the rationale for the proposed time limit.</p> <p>Members' view that while the proposed statutory time limit was 28 days, where the registered medical practitioner had grounds to believe that the mental capacity of the donor might deteriorate significantly within a short period of time, the registered medical practitioner should advise the donor and the solicitor to complete the formalities for the execution of the EPA as soon as possible to prevent any dispute on the validity of the EPA.</p>	
003851 - 004203	Chairman Admin Clerk	Scheduling of the next meeting	