

立法會
Legislative Council

LC Paper No. CB(2)1343/11-12
(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 third meeting
held on Tuesday, 25 October 2011, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members : Dr Hon Margaret NG (Chairman)
present Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Cyd HO Sau-lan
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che

Members : Hon LAU Kong-wah, JP
absent Dr Hon PAN Pey-chyou

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 Peter SZE
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

Ms Judy TING
Council Secretary (2)6

Miss Meisy KWOK
Legislative Assistant (2)6

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)2093/10-11(02) to (03), CB(2)2237/10-11(01), CB(3)745/10-11, CB(2)103/11-12(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 agreed to the Committee Stage amendments to the Bill proposed by the Administration as set out in its paper [LC Paper No. CB(2)103/11-12(01)].

Action

4 The Administration was requested to -

Admin

- (a) conduct an overall review of the use of modal verbs (e.g. "must" and "should") in the proposed new forms with a view to clarifying the legal consequences of the failure on the part of the donor to comply with the requirements specified in the forms;
- (b) consider members' suggestion of alerting donors in the relevant form of the serious legal consequence of failing to specify the appointment of more than one attorney to act jointly or to act jointly and severally; and
- (c) clarify, with reference to relevant statutory provisions, whether an instrument which failed to comply with the requirements for creating a valid enduring power of attorney might take effect as an ordinary power of attorney.

5 The meeting ended at 12:23 pm.

Council Business Division 2
Legislative Council Secretariat
12 March 2012

**Proceedings of the third meeting of the
Bills Committee on Enduring Powers of Attorney (Amendment) Bill 2011
on Tuesday, 25 October 2011, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000019 - 000427	Chairman	Opening remarks	
Clause-by-clause examination of the Bill			
000428 - 000542	Chairman Admin	Long title Clauses 1 to 4 The Administration's proposed Committee Stage amendments ("CSAs") to add Clause 3A to the Bill to clarify that an enduring power of attorney ("EPA") would not take effect as an ordinary power of attorney before all the execution requirements for an EPA had been complied with.	
000543 - 001055	Chairman Ms Miriam LAU	Clauses 5 to 8	
001056 - 001240	Chairman Admin	Clause 9 The Administration's proposed CSAs to replace "donor becoming mentally incapable" with "donor's mental incapacity" in the proposed section 4(2) of the Bill in response to the view of the legal adviser to the Bills Committee.	
001241 - 001308	Chairman Admin	Clause 10 The Administration's proposed CSAs to the Chinese text of the proposed section 5(2A) of the Bill to rectify a typographical error.	
001309 - 001339	Chairman	Clause 11	
001340 - 001827	Chairman Admin	Clause 12 Schedule 1 – Form 1 The Administration's proposed CSAs to add paragraph 13 under the heading "Information you must read" and paragraph 4A to Part A of Form 1 in the proposed Schedule 1 to alert donors of the timing of commencement of EPAs and their legal effect upon execution.	
001828 - 003525	Ms Miriam LAU Chairman Admin Ms Audrey EU ALA4	Ms Miriam LAU's enquiry on the legal consequences of the failure on the part of the donor to comply with the instruction of deleting paragraph 3 of Part A of Form 1.	

Time marker	Speaker	Subject(s)	Action Required
		<p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) according to section 3(2)(b) of the Enduring Powers of Attorney Ordinance (Cap 501) ("EPA Ordinance"), if an instrument differed in an immaterial respect in form or mode of expression from the prescribed form, the instrument should be treated as being in the prescribed form; and (b) whether deviations from the prescribed EPA forms would invalidate the EPA and whether any other legal consequences would arise should be assessed in the light of the circumstances of each particular case. <p>The Administration was requested to conduct an overall review of the use of modal verbs (e.g. "must", "should") in the proposed new EPA forms with a view to clarifying the legal consequences of the failure on the part of the donor to comply with the requirements specified in the forms.</p>	<p>Admin to provide a written response (paragraph 4(a) of the minutes refers)</p>
003526 - 003924	Ms Audrey EU Chairman Admin	Requirement for registration of an EPA under section 4 of the EPA Ordinance.	
003925 - 004657	Ms Miriam LAU Admin Chairman Ms Audrey EU	<p>Ms Miriam LAU sought clarification on whether an attorney could apply for registration of the EPA before the onset of the donor's mental incapacity. Ms Miriam LAU's view that it would be in the interest of donors, in particular the elderly, to do so as it would be difficult to know when they would become mentally incapable.</p> <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) while section 4(2) of the EPA Ordinance provided that an attorney must apply for registration as soon as practicable if the attorney had reason to believe that the donor was or was becoming mentally incapable, the EPA Ordinance did not contain any provision which prohibited the registration of an EPA before the onset of the donor's mental incapacity; (b) under section 9(5) of the EPA Ordinance, a register of EPAs registered under the Ordinance was kept by the Registrar and the register as well as the EPAs were open to public inspection. Some donors might have concern about the loss of privacy associated with placing the EPA on a public register; 	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) section 13(2) of the EPA Ordinance provided that where an EPA was registered, its revocation would require confirmation of the court on application made by or on behalf of the donor;</p> <p>(d) in deciding the timing of registration of the EPA, a donor should take into account his or her own circumstances and the effects of registration under sections 9(5) and 13(2) of the EPA Ordinance; and</p> <p>(e) the Administration would consider including information on the timing and effects of registration of EPAs in the promotional pamphlets.</p>	
004658 - 010257	Chairman Ms Miriam LAU Admin	The Administration's proposed CSAs to add paragraph 4A to Part A of Form 1 in the proposed Schedule 1.	
010258 - 011643	Chairman Admin Ms Audrey EU Ms Miriam LAU	<p>Clause 13</p> <p>Schedule 2 – Form 2</p> <p>In response to Ms Audrey EU, the Administration advised that where more than one attorney was appointed, failure on the part of the donor to specify the appointment of more than one attorney to act jointly or to act jointly and severally would render the EPA invalid by virtue of section 15(1) of the EPA Ordinance. Ms Audrey EU and Ms Miriam LAU were of the view that donors should be alerted in the form of the serious legal consequence of failing to comply with this requirement.</p>	Admin to consider members' suggestion (paragraph 4(b) of the minutes refers)
011644 - 012757	Ms Audrey EU Admin Chairman	<p>Ms Audrey EU sought clarification on whether an instrument could take effect as an ordinary power of attorney if the donor had not specified in the relevant form whether the attorneys were appointed to act jointly or to act jointly and severally.</p> <p>The Administration was requested to clarify, with reference to relevant statutory provisions, whether an instrument which failed to comply with the requirements for creating a valid EPA might take effect as an ordinary power of attorney.</p>	Admin to provide a written response (paragraph 4(c) of the minutes refers)

Time marker	Speaker	Subject(s)	Action Required
012758 - 013220	Chairman Admin	The Administration's proposed CSAs to add paragraph 14 under the heading "Information you must read" and paragraph 5A to Part A of Form 2 of the proposed Schedule 2.	
013221 - 013639	Chairman ALA4 Admin	The legal adviser to the Bills Committee's enquiry on the Chinese rendition for "can" and "cannot" in paragraph 3 under the heading "Information you must read" in Form 2 of the proposed Schedule 2. Completion of clause-by-clause examination of the Bill.	
013640 - 013800	Chairman Admin	Next meeting to be scheduled.	

Council Business Division 2
Legislative Council Secretariat
12 March 2012