

立法會
Legislative Council

LC Paper No. CB(2)1344/11-12
(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 fourth meeting
held on Thursday, 17 November 2011, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members : Dr Hon Margaret NG (Chairman)
present Hon LAU Kong-wah, JP
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 Cyd HO Sau-lan
absent 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 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

Miss Josephine SO
Senior Council Secretary (2)7

Miss Meisy KWOK
Legislative Assistant (2)6

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)300/11-12(01), CB(2)323/11-12(01) to (02), CB(3)745/10-11 and CB(2)2093/10-11(02)]

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

Admin

2. The Administration was requested to provide written responses to the following -

- (a) the underlying policy reason for the existing section 15(1) of the Enduring Powers of Attorney Ordinance (Cap. 501) ("the EPA Ordinance") which provided for the mandatory requirement for appointing attorneys to act jointly or to act jointly and severally; and

Action

- (b) whether more emphasis could be made in the presentation of the prescribed form to draw the attention of the donor to the legal consequence of a failure to specify whether the appointment of more than one attorney should act jointly or jointly and severally in paragraph 2 of Part A of Form 2 in the proposed Schedule 2 to the Enduring Powers of Attorney (Amendment) Bill 2011 ("the Bill").

Clerk

3. In the light of members' concern, the Administration had undertaken to review in future the need to amend section 15(1) of the EPA Ordinance in respect of the mandatory requirement for appointing attorneys to act jointly or to act jointly and severally. The Bills Committee agreed to refer the issue to the Panel on Administration of Justice and Legal Services for follow-up as appropriate.

4. Members noted the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting of 21 December 2011.

5. The Bills Committee agreed that the Administration's response to issues raised by members at the meeting (see paragraph 2 above) 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 its deliberations to the House Committee on 9 December 2011 supporting the resumption of the Second Reading debate on the Bill at the Council meeting of 21 December 2011.

6. There being no other business, the meeting ended at 5:10 pm.

Council Business Division 2
Legislative Council Secretariat
12 March 2012

**Proceedings of the fourth meeting of the
Bills Committee on Enduring Powers of Attorney (Amendment) Bill 2011
on Thursday, 17 November 2011, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000140 - 000242	Chairman	Opening remarks	
The Administration's response to issues raised by members at the meeting on 25 October 2011			
000243 - 000804	Admin	Briefing on the Administration's response to issues raised at the last meeting held on 25 October 2011 [LC Paper No. CB(2)300/11-12(01)]	
000805 - 000923	Chairman ALA4	ALA4's elaboration on her suggestion, which the Administration had agreed to adopt, to revise the wording and presentation of paragraph 2 of Part A of Form 2 in the proposed Schedule 2 to the Enduring Powers of Attorney (Amendment) Bill 2011 ("the Bill") to make it clear to the donor that he or she was required to make a choice expressly between the attorneys acting jointly and acting jointly and severally [LC Paper Nos. CB(2)323/11-12(01)&(02)].	
000924- 001417	Chairman Ms Audrey EU Admin	Ms Audrey EU's enquiry on whether an instrument which could not create a valid enduring power of attorney ("EPA"), owing to the donor's failure to specify whether the attorneys were appointed to act jointly or to act jointly and severally, could take effect as an ordinary power of attorney. The Administration's explanation that section 15(3)(a) of the Enduring Powers of Attorney Ordinance (Cap. 501) ("the EPA Ordinance") provided that the failure of an instrument to comply with the requirements for the creation of an EPA operated to prevent the instrument from creating such a power but the instrument might still take effect as an ordinary power of attorney [Paragraphs 4 to 7 of LC Paper No. CB(2)300/11-12(01)].	
001418 - 002117	Chairman Ms Miriam LAU Admin	Ms Miriam LAU's enquiry on the underlying policy reason for the existing section 15(1) of the EPA Ordinance which provided for the mandatory requirement for appointing attorneys to act jointly or to act jointly and severally; and whether the Administration would review and amend the mandatory requirement, non-compliance of which might render an EPA invalid. Ms LAU was concerned that by the time the donor had become mentally incapacitated and it was then found out that the EPA was invalid by virtue of	Admin to provide a written response (paragraph 2(a) of the minutes refers)

Time marker	Speaker	Subject(s)	Action Required
		<p>section 15(1), nothing could be done to remedy the situation. She suggested that section 15(1) be amended to provide that if the donor failed to specify in the instrument whether joint attorneys or joint and several attorneys were appointed, the attorneys should be joint attorneys by operation of the law.</p> <p>The Administration's response that:</p> <p>(a) section 15 (1) of the EPA Ordinance was similar to section 11(1) of the Enduring Powers of Attorney Act 1985 of the United Kingdom;</p> <p>(b) there was an essential difference between acting as joint attorneys and acting as joint and several attorneys. In the case of the former, all attorneys must together join in a transaction; while in the latter case, each attorney might act by himself or herself, with the same effect as if all the attorneys had joined in the transaction. Given the crucial difference between these two types of appointment, the EPA Ordinance contained a number of special provisions dealing with these appointments, such as section 15(2) and (3); and</p> <p>(c) the Administration acknowledged members' concern about the rigid mandatory requirement provided in section 15(1) of the EPA Ordinance, and undertook to review in future whether there was a need to amend section 15(1) of the EPA Ordinance.</p> <p>The Chairman suggested and members agreed that the issue should be referred to the Panel on Administration of Justice and Legal Services for follow-up as appropriate</p>	<p>Clerk (paragraph 3 of the minutes refers)</p>
002118 - 002333	Chairman Ms Audrey EU Admin	Possible situations under which a document intending to create an EPA but failed to do so because of its non-compliance with the requirements for the creation of an EPA would take effect as an ordinary power of attorney	
<p>Consideration of the Administration's proposed Committee Stage amendments ("CSAs") to the Bill [LC Paper No. CB(2)354/11-12(01)]</p>			
002334 - 002453	Chairman	The Administration's proposal to amend its CSAs concerning the new paragraph 4A of Part A of Form 1 in the proposed Schedule 1 to the Bill	
002454 - 003650	Chairman Ms Miriam LAU Admin Ms Audrey EU	The Administration's proposed CSAs to the wording and presentation of paragraph 2 of Part A of Form 2 in the proposed Schedule 2 to the Bill to make it clear to the donor that he or she was required to	

Time marker	Speaker	Subject(s)	Action Required
		<p>make a choice expressly between the attorneys acting jointly and acting jointly and severally</p> <p>Ms Miriam LAU's enquiry on whether more emphasis could be made to the presentation of paragraph 2 of Part A of Form 2 in the proposed Schedule 2, to draw the attention of the donor to the legal consequence of a failure to specify whether the appointment of more than one attorney should act jointly or jointly and severally.</p> <p>Members' suggestions to amend "如你沒有刪去(a)或(b)，你的持久授權書將不會有效" in paragraph 2 of Part A of Form 2 to "如你沒有刪去(a)或(b)否則，你的持久授權書將不會有無效"</p> <p>The Administration agreed to consider members' suggestions.</p>	<p>Admin to provide a written response (paragraph 2(b) of the minutes refers)</p>
003651 - 003742	Chairman	The Administration's proposal to amend its CSAs concerning the new paragraph 5A of Part A of Form 2 in the proposed Schedule 2 to the Bill	
003743 - 004035	Chairman Admin Ms Miriam LAU	Legislative timetable - date of reporting to the House Committee, resumption of Second Reading debate on the Bill and deadline for giving notice of amendments	