

立法會
Legislative Council

LC Paper No. CB(1)727/99-00
(These minutes have been seen
by the Administration)

Ref: CB1/BC/12/98/2

**Bills Committee on
Adaptation of Laws (No. 9) Bill 1999**

**Minutes of meeting
held on Thursday, 2 September 1999, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon HUI Cheung-ching
Hon Jasper TSANG Yok-sing, JP
Hon LAU Kong-wah

Members absent : Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon Mrs Miriam LAU Kin-ye, JP

**Public officers
attending** : **Transport Bureau**

Mr Roy TANG, Principal Assistant Secretary for Transport

Department of Justice

Miss Shandy LIU, Senior Government Counsel

Mr Allen LAI, Government Counsel

Ms Vicki LEE, Government Counsel

Clerk in attendance : Ms LEUNG Siu-kum, Chief Assistant Secretary (1)2

Staff in attendance : Miss Connie FUNG, Assistant Legal Adviser 3

Mr Andy LAU, Senior Assistant Secretary (1)6

I Confirmation of minutes of meeting

(LC Paper No. CB(1) 1551/98-99 -- minutes of meeting on 26 April 1999)

The minutes of the meeting on 26 April 1999 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 1838/98-99(01) -- List of issues raised by members at the meeting on 7 July 1999; and

LC Paper No. CB(1) 1838/98-99(02) -- The Administration's response to LC Paper No. CB(1) 1838/98-99(01))

Other relevant papers

(LC Paper No. CB(1) 1180/98-99 --	Marked-up copy of the Bill;
LC Paper No. CB(1) 1440/98-99(01) --	The Administration's explanation regarding CSAs proposed by the Administration;
LC Paper No. LS 164/98-99 (Revised) --	Information paper prepared by the Legal Service Division;
LC Paper No. CB(1) 1661/98-99(01) --	List of issues raised by members at the meeting on 8 June 1999;
LC Paper No. CB(1) 1661/98-99(02) --	The Administration's response to LC Paper No. CB(1) 1661/98-99(01);
LC Paper No. CB(1) 1460/98-99(01) --	List of issues raised by members at the meeting on 26 April 1999;
LC Paper No. CB(1) 1460/98-99(02) --	The Administration's response to LC Paper No. CB(1) 1460/98-99(01);
LC Paper No. CB(1) 558/98-99(02) --	Adaptation of Laws Programme - Guiding Principles and Guidelines Glossary of Terms;
LC Paper No. CB(1) 1460/98-99 --	Schedules 8 and 9 of Cap. 1;
Ref: L/M(1) to TBCR 1/3231/91 Pt. III --	Legislative Council Brief; and
LC Paper No. LS 136/98-99 --	Legal Service Division Report)

2. In response to members' queries raised at the last meeting, the Administration had provided an information paper for members' reference. Members went through the paper (LegCo Paper No. CB(1) 1838/98-99(02)) in detail. The main deliberations

of the Bills Committee were summarized below.

Section 3 of Schedule 5 – Section 4(4) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap.272)

3. Some members raised concern about the proposed exemption granted to State organs from taking out third party insurance for their vehicles. They considered that it was in contravention of Article 22 of the Basic Law which provided that “All offices set up in the Hong Kong Special Administration Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region”.

4. Ms Vicki LEE advised that the laws of the Region include, inter alia, Ordinances and their subsidiary legislation. The provisions of such Ordinances and subsidiary legislation might, apart from imposing duties and obligations, confer rights and provide for exemptions. Depending on the purposes of the legislation, a particular piece of Ordinance or subsidiary legislation might provide that it applied or did not apply to a specified person or a specified class of persons, and this might include the State organs. Furthermore, Article 22 did not dictate whether a particular piece of Ordinance or subsidiary legislation applied to the State organs. There was nowhere in Article 22 which provided, explicitly or impliedly, that only duties and liabilities could be imposed but no rights or exemptions could be conferred on or provided to the State organs. In view of the above, the Administration did not agree that the proposed adaptation of the concerned provision would contravene Article 22 even though State organs were excluded from the application of the provision.

5. As to whether there would be a lack of legal remedy against a State organ in case the latter was involved in a traffic accident after adaptation, Ms Vicki LEE briefed members on the Administration’s stance as set out in the paper. She said that the purpose of the Ordinance was not to provide a channel to sue in the event of traffic accidents. This aspect was regulated by other laws. The Ordinance only aimed to ensure that once a person’s liability to pay compensation to third parties was established, that person had the means to satisfy the claim. The reason why section 4 of the Ordinance did not apply to those classes of persons set out in subsection (4) was that these persons had the ability to pay compensation to third parties in the event of traffic accidents. This was most obvious in the case of the Crown (or the State when adapted) and the Hong Kong Government. The fact that State organs were excluded from the application of the Ordinance did not mean that they were immune from tortious liabilities arising from traffic accidents. The consequence of their exclusion from the Ordinance was that if they were found to be liable, they would have to pay for the compensation themselves. Similarly, the Government’s liabilities under traffic accidents were not required to be insured. There was no question that the Government could escape such liabilities.

6. Referring to the concerned provisions in the Hong Kong Handsard (1951) which stated that the Ordinance was not applicable to certain types of vehicles which belonged to, inter alia, the Crown or to the Government, the Chairman remarked that she could not find sufficient evidence to justify that “the Crown” in this context meant to cover all elements of Her Majesty’s Government. She also commented that all persons and organs in Hong Kong should abide by the laws of Hong Kong and hence, no persons should enjoy any degree of privileges on grounds of their financial power to satisfy any judgement obtained against them. In fact, the spirit of Article 22 of the Basic Law was to ensure that all organs of the State or personnel of these offices should abide by the laws of Hong Kong and hence, any exemption granted to them from taking out third party insurance should not be accepted.

**Section 13 of Schedule 1 (By-law 4(1), Cross-Harbour Tunnel By-laws
(Cap. 203 sub. leg.))**

**Section 14 of Schedule 2 (By-law 4(1), Eastern Harbour Crossing Road
Tunnel By-laws (Cap. 215 sub. leg.))**

**Section 12 of Schedule 10 (By-law 4(1), Tate’s Cairn Tunnel By-laws
(Cap. 393 sub. leg.))**

7. Members noted that the Cross Harbour Tunnel Ordinance (Cap. 203) would be repealed by the Revenue Ordinance 1999 from 1 September 1999. As such, the Administration would move a Committee Stage amendment (CSA) to delete all proposed adaptation in Schedule 1 to this Bill in respect of that Ordinance and its subsidiary legislation.

8. Addressing members’ concern about the inconsistencies among tunnel legislation, Ms Vicki LEE advised that given that the legislature passed the relevant legislation with clear reference to the “Crown” and the “Government” under different tunnel legislation, there was no latitude, for the purpose of the adaptation exercise, for the Administration to attribute legislative intention to the legislature beyond the clear words of the law. Any such changes were policy changes which would have to be dealt with outside the Adaptation of Laws Programme.

9. The Chairman remarked that the same argument had been put forward by the Administration at earlier meetings and she had also explained her stance in detail. Under such circumstances, it would be a matter for members to judge whether the Administration’s proposal was acceptable. In this respect, she indicated that she would not support the Administration’s proposal to exempt vehicles in the public service of the State from the payment of tunnel tolls for reasons given at the previous meetings.

Change of titles

10. Members noted that the majority of titles to government agencies and post titles were changed upon reunification and had already been effected under the Declaration

of Change of Titles (General Adaptation) Notice 1997 (LN 362 of 1997) and that the looseleaf edition of the Laws of Hong Kong would incorporate those adaptations effected by that Notice. They also noted that the remaining ones would be dealt with separately in the Adaptation of Laws Programme.

References to “State”

11. As to the reason for adding a quotation mark before and after the Chinese version of State (ie. “國家”), Mr Allen LAI explained that the definition of “State” was provided for in the Interpretation and General Clauses Ordinance (Cap. 1). Given its specific meaning, some sort of differentiation must be provided for to distinguish between the general and specific meanings of the term. It was then decided that when the term, state, was used in a specific context as defined in Cap, 1, the term should begin with a capital letter “S” (ie. State). In Chinese, it would be embraced by quotation marks (ie. “國家”).

References to “Chief Executive in Council”

12. Mr HUI Cheung-ching considered that there was a need to improve the Chinese version of the term “Chief Executive in Council” (ie. 行政長官會同行政會議). He pointed out that “行政長官” and “行政會議” were essentially two different entities. The former referred to a person whereas the latter an organization. It was inappropriate to link the two words in the present manner. Mr Allen LAI replied that the term Chief Executive in Council meant the Chief Executive acting upon the advice of the Executive Council. The term had all along been used in the Laws of Hong Kong. At the request of the Chairman, the Administration was asked to review the subject matter to improve the drafting of the term.

Clause-by-clause examination

13. Members went through the Bill clause by clause. The major concerns of the Bills Committee were summarized below.

Schedule 1

14. Members noted that the Administration would move a CSA to delete all proposed adaptation in Schedule 1 to this Bill in respect of the Cross-Harbour Tunnel Ordinance (Cap. 203) and its subsidiary legislation as explained above.

Schedule 2, Section 6 (amending section 34(2) of the Eastern Harbour Crossing Ordinance (Cap. 215))

15. Members noted that the Administration proposed to introduce CSA to delete the adaptation amendment to this provision. The provision dealt with the diversion of utilities under the control of “the Government or any agency of the Crown” in order to permit the carrying out of the construction works. As the construction of the tunnel had long been completed, the reference to the “Crown” was historical and did not require adaptation.

Schedule 7 - Part III of the Road (Works, Use and Compensation) Ordinance (Cap. 370) - Rights to compensation and claims procedure

16. The Assistant Legal Adviser (ALA) advised members that the Administration had confirmed that an independent mechanism was already provided for in Part III of the Road (Works, Use and Compensation) Ordinance (Cap. 370) to enable affected parties to initiate claims against the Government under the various circumstances as defined in the Ordinance. As such, adaptation of the Ordinance could be proceeded with and there was no need to wait until the Crown Proceedings Ordinance (Cap. 300) had been adapted.

Schedule 8, sections 46 and 49 (amending regulation 11(3)(a) and (c)(i) and (iii) and (3A)(a), and the Fourth Schedule of the Road Traffic (Driving Licences Regulations) (Cap. 374 sub. leg.)

17. As to the justification for amending the heading of the Fourth Schedule from “LIST OF COUNTRIES FOR PURPOSES OF REGULATION 11(3)” to “LIST OF COUNTRIES OR PLACES FOR PURPOSES OF REGULATION 11(3)”, Miss Shandy LIU advised that the reference to “country” or “countries” were adapted to read “country or place” or “countries or places” throughout the entire Regulations. In order to maintain consistency, the heading of the Fourth Schedule was also proposed to be adapted in a similar manner. This would also provide the flexibility to include additional places in the Schedule in future for the purpose of regulation 11(3).

Outstanding issues

18. The Chairman advised that the Bills Committee had basically completed its work. However, there remained certain provisions which would require further deliberations by members before a decision could be made as to whether it was necessary for the Bills Committee to move amendments to the concerned provisions. Basically, it fell into three major types:

- (a) provisions relating to the granting of exemption to persons in the service of the State from the payment of toll when they performed duties in relation to the relevant tunnels (Section 14 of Schedule 2 and Section 12

of Schedule 10);

- (b) provisions saving and preserving the powers or duties the law had conferred or imposed on persons in the public service of the Crown which might be affected by the operation of the relevant legislation (Section 15 of Schedule 2, Section 4 of Schedule 6 and Section 13 of Schedule 10); and
- (c) provisions relating to the granting of exemption to vehicles owned by the State from taking out third party insurance (Section 3 of Schedule 5).

(Post meeting note: A circular was subsequently issued to members vide LC Paper No. CB(1) 1961/98-99 seeking members' views on whether it was necessary for the Bills Committee to move CSAs to the concerned provisions).

CSAs moved by the Administration

19. ALA briefed members on the Administration's paper under ref. LC Paper No. CB(1) 1440/98-99(01) setting out the draft CSAs to be moved by the Administration. She said that the amendments were basically technical in nature and were in order.

The Way Forward

20. The Chairman advised that the Bills Committee had completed deliberations of the Bill. Subject to members' view on the outstanding issues as highlighted in paragraph 18, a report could be made to the House Committee. Regarding the CSAs to be moved by the Administration, the Legal Adviser was requested to advise members of any discrepancies when the final version was presented to the Bills Committee. In view of the circumstances, members considered it not necessary to schedule a further meeting at this stage.

II Any other business

21. There being no other business, the meeting ended at 4:15 pm.