

立法會

Legislative Council

LC Paper No. CB(1)726/99-00

(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 Tuesday, 7 July 1999, at 10:45 am in Conference Room B of the Legislative Council Building

Members present : Hon Margaret NG (Chairman)
Hon HUI Cheung-ching
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-yee, JP

Member absent : Hon James TO Kun-sun

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

Ms Doris CHEUNG, 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 Meeting with the Administration

(LC Paper No. CB(1) 1661/98-99(01) -	List of issues raised by members at the meeting on 8 June 1999; and
LC Paper No. CB(1) 1661/98-99(02) -	The Administration's response to LC Paper No. CB(1) 1661/98-99(01))
<i>Other relevant papers</i>	
(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) 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)

In response to members' queries at the last meeting, the Administration had provided an information paper for members' reference. Members went through the paper (CB(1) 1661/98-99(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)

2. The Assistant Legal Adviser (ALA) advised members that a similar exemption provision was provided for in the Road Traffic Act 1988 of the United Kingdom. However, the application of the provisions was only confined to Government vehicles, vehicles of the armed forces, police vehicles and ambulances.

3. Ms Vicki LEE advised members that "Her Majesty" was sometimes used interchangeably with "the Crown" in the Laws of Hong Kong. In such cases, "Her Majesty" did not merely mean the Queen personally, but extended to mean all elements of her executive government. She then referred members to the two examples cited in the paper.

4. Notwithstanding the Administration's reply, the Chairman and Mrs Miriam LAU were not convinced that "Her Majesty" was used interchangeably with "the Crown" in the context of the present provision. Mrs LAU said that the expressions "Crown" and "Her Majesty" might bear the same meaning when reference was made to the armed forces. However, the same interpretation could not be applied in the present provision where reference was made to any motor vehicle which was the property of Her Majesty or the Government. In the concerned provision, "Her Majesty" might simply mean the Queen

personally.

5. To illustrate the Administration's stance, Ms Vicki LEE further advised that at the Second Reading of the Motor Vehicles Insurance (Third Party Risks) Bill 1951, there had been a discussion on the subject provision. Although the focus was then on the exemption given to Government vehicles, reference had been made to "His Majesty's Forces" (page 297 of the Hong Kong Hansard (1951)). This clearly showed that "Her Majesty" did not only infer the Queen personally in this context.

Legal remedy

6. Ms Doris CHEUNG explained that before reunification, claims arising from accidents involving military vehicles were normally settled through mediation.

7. Mrs Miriam LAU expressed concern that the scope of the State organs might be too wide for the purpose of the provision. She also raised concern that upon adaptation, there would be a lack of legal remedy against a State organ in case a vehicle of a State organ was involved in a traffic accident. She requested further information from the Administration to allay her concern in this regard.

Admin

Application

8. On the application of section 4(4)(a) before reunification, Ms Doris CHEUNG advised that prior to reunification, vehicles of the British Forces were exempted from taking out third party insurance. The British Trade Commission was also not required to present third party insurance policy for the renewal of their vehicle licences.

9. As to the exact categories of vehicles exempted under section 4(4)(a) after adaptation, Ms Vicki LEE advised that the definition of "State" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) was relevant. For a subordinate organ of the Central People's Government (CPG) or of the Central Authorities of the People's Republic of China to come within the definition of "State", it had to satisfy three tests:

- (a) it carried out executive functions of the CPG or functions for which the CPG had responsibility under the Basic Law;
- (b) it did not exercise commercial functions; and
- (c) it was acting within the scope of the authority and functions delegated to it by the CPG or the Central Authorities.

Currently, there were three "State" organs in Hong Kong which satisfied the above tests, namely:

- (a) Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region;

- (b) Hong Kong Garrison of the Chinese People's Liberation Army; and
- (c) Xinhua News Agency (Hong Kong Branch).

10. Ms Doris CHEUNG added that in case a vehicle of the Central Authorities could not satisfy the above tests, it had to take out third party insurance instead.

11. The Chairman remarked that this kind of exemption privilege granted to the United Kingdom Government before reunification should be abolished upon the enactment of the Basic Law. She queried that the proposed adaptation might be in contravention of Article 22 of the Basic Law which stated 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.". She added that she would have difficulties in giving a satisfactory account to the general public as to why vehicles owned by Xinhua News Agency (Hong Kong Branch) could be exempted from taking out third party insurance under the circumstances.

Admin 12. In view of members' reservation on the provision, the Chairman asked the Administration to review the subject clause and to provide additional information for members' information.

**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.))**

13. Noting the Administration's response that the proposed adaptations were in line with section 7 of Schedule 9 to the Interpretation and General Clauses Ordinance (Cap. 1), the Chairman queried that whether the concerned provisions which were merely about the payment of tolls for vehicles in the public service of the Crown fell within the scope of section 7 of Schedule 9 to Cap 1. She also stressed that it was of paramount importance that all organs of the State should abide by the laws of Hong Kong and that no privileges should be granted to them after the enactment of the Basic Law.

14. In response to the Chairman's question as to whether Schedule 9 to Cap. 1 should be applied mechanically, ALA explained that the Administration had previously advised that the various principles in Schedules 8 and 9 of Cap. 1 should not be applied mechanically if this would produce a result that did not make sense in the context of other adaptations or would lead to inconsistencies within the Ordinance concerned or with other Ordinances. Ms Vicki LEE added that the proposed amendments were in line with the above principles. She showed understanding of members' view that references to the "Crown" in the concerned provisions should all be amended to the "Government" to achieve consistency with other tunnel legislation. She, however, pointed out that the "inconsistency" did not arise from the proposed adaptation in the Bill as such. Apart from the fact that this involved policy changes and were beyond the scope of the Adaptation of Laws Programme, it might create inconsistency among the concerned

savings and application provisions. Ms Doris CHEUNG also added that the proposed adaptation was also intended to cater for all situations where persons in the public service of the State might be engaged on duty relating to the tunnel area, e.g. for national defence purposes.

15. ALA drew members' attention that in considering the categories of persons who would engage on duties relating to the tunnel area, it might be helpful to consider the circumstances under which the Government had to perform a role in the tunnel area. Under the existing provisions, tunnel companies were required to provide and operate adequate, efficient and safe facilities for the passage of motor vehicles through the tunnels. If they failed to do so, the Government had the right to take over the operation of the road tunnels or to request the operators to take the necessary remedial work. Judging from this perspective, the duties of persons in the public service involved in the tunnel area might only be related to the control and safety of motor vehicles in the tunnel areas.

16. The Chairman suggested amending the relevant exemption clauses in two stages. First, by replacing references to the "Crown" with the "Government" and secondly, by creating a new exemption in favour of vehicles which carried persons in assisting the Hong Kong Government to discharge public duties in the tunnel area.

17. Mr HUI Cheung-ching opined that in view of the limited scope of application of the concerned provisions and having regard to the fact that vehicles of all organs of the State would be required to pay tunnel tolls if they were not engaging on duty relating to the tunnel areas, he had no strong view on either way of the adaptation.

18. Mr Andrew WONG opined that in the adaptation exercise, some degree of flexibility should be adopted. Given that there was a clear sign of inconsistency, he would prefer to adapt the relevant provisions from "Crown" to "Government" instead of "State" as proposed by the Administration.

19. Mr TSANG Yok-sing pointed out that the provision should be wide enough to cover all situations where vehicles which carried persons in assisting the Hong Kong Government to discharge public duties in the tunnel areas should be exempted from the payment of tunnel tolls. In this regard, the Chairman remarked that the effect of the Administration's proposal was that persons in the public service of the State but not merely in the public service of the Government would be exempted from the payment of tolls while engaging on duty relating to the tunnel area. This was clearly a departure from the original legislative intent. She said that the word "Crown" had two meanings: Crown in right of the Hong Kong Government or Crown in right of Her Majesty's Government. For the purpose of the concerned provisions, it was clear that the original legislative intent was to grant exemption to vehicles which carried persons in the public service of the Hong Kong Government.

20. Ms Doris CHEUNG, however, advised that "Crown" in this context did not merely mean the Government of Hong Kong, but extended to mean all elements of Her Majesty's Government. The proposed amendment from "State" to "Government" would effectively reduce the scope of application of the concerned provisions.

Section 62 of Schedule 8 (Regulation 2(1), Road Traffic (Traffic Control) Regulations

(Cap. 374 sub. leg.)

Section 64 of Schedule 8 (Regulation 41(2)(a), Road Traffic (Traffic Control)

Regulations (Cap. 374 sub. leg.)

Section 65 of Schedule 8 (Regulation 62, Road Traffic (Traffic Control) Regulations

(Cap. 374 sub. leg.)

21. Mr Allen LAI advised that adapting the term “Crown” in the phrase “persons in the public service of the Crown” in section 2(1) of the Road Traffic (Traffic Control) Regulations (the “Regulations”) to “State” would not change the scope of the persons it referred to since it was a defined term in the Regulations and had its special meaning in the Regulations. The definition of “State” in the Interpretation and General Clauses Ordinance (Cap. 1) did not apply here. The Administration considered that it was appropriate to adapt the term “Crown” here to “State”.

Section 44 of Schedule 8, Road Traffic (Driving Licences) Regulations (Cap. 374, sub. leg.)

22. Miss Shandy LIU explained that matters relating to driving licences were regulated by the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.). By regulation 4(1), these Regulations applied to persons in the public service of the “Crown”. The Administration proposed to adopt “Crown” to the “State”. The Chairman requested the Administration to provide written explanation on whether there would be any problem if references to “persons in the public service of the Crown” was adapted to “persons in the public service of the Government”, having regard to the presumption in section 66 of Cap. 1.

Admin

Section 1 of Schedules 2, 10, 11 and 12 - Section 2(3) of Cap. 215, Cap. 393, Cap. 436 and Cap. 474

23. ALA advised that the existing provisions provided for a subjective test of “urgency” and according to which the then Governor could exercise similar power if “in his judgment” the matters were too urgent to be submitted to the ExCo for advice. Upon adaptation, an objective test was to be adopted when deciding the question of whether a matter was one of emergency so that the Chief Executive might exercise any function to be exercised by the Chief Executive in Council under the respective Ordinances. She further advised that the proposed adaptation was intended to bring the provisions in line with Article 56(2) of the Basic Law. At the request of the Chairman, the Administration was asked to provide further information in this regard.

Admin

24. The Chairman advised that all major concerns identified by the Bills Committee had been discussed in detail. Pending additional information to be provided by the Administration, the Bills Committee could start to examine the Bill clause by clause.

25. Members agreed that the next meeting would be held on 2 September 1999 at 2:30 pm.

II Any other business

26. There being no other business, the meeting ended at 12:25 pm.

Legislative Council Secretariat
5 January 2000