

立法會
Legislative Council

LC Paper No. CB(1)888/99-00
(These minutes by 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 Monday, 10 January 2000, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, JP
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-yee, JP

Members absent : Hon James TO Kun-sun
Hon HUI Cheung-ching
Hon Andrew WONG Wang-fat, JP

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 : Mr Andy LAU, Chief Assistant Secretary (1)2

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

Miss Irene MAN, Senior Assistant Secretary (1)9

I Confirmation of minutes of previous meetings

(LC Paper No. CB(1)726/99-00 -- minutes of meeting on 7 July 1999; and
LC Paper No. CB(1)727/99-00 -- minutes of meeting on 2 September 1999)

The minutes of meetings on 7 July and 2 September 1999 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)1961/98-99 -- Draft Committee Stage amendments to
the Bill prepared by the Legal Service
Division; and

LC Paper No. CB(1)582/99-00(01) -- Draft Committee Stage amendments to
the Bill prepared by the Administration)

2. The Chairman drew members' attention that in view of the divergent views between the Administration and the Bills Committee, the Assistant Legal Adviser (ALA) had been requested to prepare a set of Committee Stage amendments (CSAs) for members' consideration. The CSAs was circulated to members vide LC Paper No. CB(1) 1961/98-99. The guiding principle behind the CSAs prepared by ALA was that a lesser scope of application was proposed for the concerned exemption and saving of powers provisions. Hence, references to the term "State" in the concerned provisions were proposed to be replaced by "Government" as appropriate. The Chairman then informed members of the results of the questionnaire as per LC Paper No. CB(1) 1961/98-99. Hon James TO, Hon HUI Cheung-ching, Hon Andrew WONG and Hon Mrs Miriam LAU indicated support to the proposed amendments as set out in the paper. They also agreed that the amendments should be moved by the Bills Committee. Hon LAU Kong-wah and Hon TSANG Yok-sing, however, objected to the proposed amendments.

3. The Administration was subsequently informed of the above majority view of the Bills Committee. In reply, the Administration advised that the proposed CSAs as suggested by the Bills Committee involved complex policy and legal implications and would be more appropriately tackled outside the context of the Bill. The Administration would therefore move CSAs to withdraw the relevant provisions from the Bill. To address the concern of members, the Administration undertook to conduct a review of the issues involved. Their intention was to address such issues in the context of the Omnibus Bill which would deal with deferred proposals under the Adaptation of Laws Programme.

Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) -
section 4(4)(a)

4. The Principal Assistant Secretary for Transport (PAS for T) advised that section 4(4)(a) of the Ordinance provided that section 4 (which obliged all vehicle users to take out third party insurance) should not apply to "any motor vehicle which was the property of Her Majesty or the Government upon any occasion upon which such vehicle was being used by a person authorized by Her Majesty or the Government to use the same on such occasion". The Administration proposed to adapt the two references to "Her Majesty or the Government" to "the State". Members of the Bills Committee requested the Administration to review the policy of not applying section 4 to State vehicles upon adaptation. The Administration's view was that as such review was beyond the scope of the Adaptation of Laws Programme, it should be dealt with in a separate exercise. The Administration therefore proposed to introduce a CSA to delete this item from the Bill. Meanwhile, they would review the subject matter and, if necessary, consult the relevant State organs on the proposed deletion of the exemption provision before addressing such issue in the context of the Omnibus Bill which would deal with deferred proposals under the Adaptation of Laws Programme.

5. Mrs Miriam LAU expressed concern about the possible difficulty faced by the general public in claiming and enforcing judgment against the State organs in traffic accidents involving motor vehicles owned by State organs. She, however, remarked that since vehicles owned by State organs in Hong Kong were currently all covered by third party insurance despite the exemption, she considered the Administration's proposal acceptable provided that the Administration would provide a concrete timetable on the review, the consultation exercise, and the subsequent legislative programme to her satisfaction.

Admin

6. The Chairman considered it not appropriate to deal with the deferred items in the form of an Omnibus Bill. She pointed out that as all technical amendments should have been dealt with under the present Adaptation of Laws Programme, the remaining items should involve complex policy issues, requiring the attention of individual Panels or Bills Committees in a separate manner. Mrs Miriam LAU and Mr TSANG Yok-sing also queried whether it was appropriate to tackle the deferred items under the Adaptation of Laws Programme in the context of an Omnibus Bill.

7. PAS for T advised that the Administration would take prompt action to conduct the review and the consultation. Given that the two issues involved policy changes, the concerned legislative proposals should more appropriately be tackled outside the context of the No. 9 Bill. The Administration intended to tackle the issues in the form of an Omnibus Bill but would be prepared to consider other avenues for addressing the issues in the light of Members' views.

8. The Chairman said that vehicles of State organs should not be exempted from taking out third party insurance for reasons stated in previous meetings. She also pointed out that if the concerned provision were not adapted in the current exercise, there might be a case whereby the court would be required to give its opinion on the interpretation of the concerned provision. Given the ambiguity of the concerned provision, she had reservation on the Administration's proposal to defer consideration of the subject matter, pending an overall review on the deferred items under the Adaptation of Laws Programme. She therefore indicated that she would move a corresponding CSA on her own if the Bills Committee was prepared to accept the Administration's proposal.

9. PAS for T responded that there was no question of ambiguity in respect of the concerned provision. Prior to Reunification, vehicles of the British Forces were exempted from third party insurance. The British Trade Commission was also not required to present third party insurance for the renewal of their vehicle licences. As the provision previously exempted both the UK Government and the Hong Kong Government from taking out third party insurance, the same exemption should be granted to the State after Reunification. Whilst appreciating members' concern on the subject matter, PAS for T advised that the proposed amendment as suggested by the Committee would involve a fundamental policy change and would be outside the scope of the Adaptation of Laws Programme.

10. Mr TSANG Yok-sing remarked that the exemption granted to vehicles owned by the State from taking out third party insurance was indeed not a kind of privilege as suggested by the Chairman. 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. They would have to pay for the compensation themselves if they were found to be liable. Notwithstanding the above, he understood that members had in previous meetings expressed concern about the possible difficulty in related proceedings against the State. In this regard, he agreed that the Administration should review the matter taking into account the views expressed by members.

11. The Chairman queried the need for consulting the State organs in this particular situation. She pointed out that the requirement for all users of motor vehicles, including those owned by the State organs, to be insured against third party risks should be well accepted by the community and was beyond doubt. Given that the general public had not been consulted on the requirement to take out third party insurance, there was no reason why the State organs be treated differently.

12. Mr TSANG Yok-sing, however, remarked that even though the State organs were consulted in the course of the legislative process, it did not mean that Members were bound by the results of the consultation. Should members consider a need to amend the legislation in consideration of public interest, members were at liberty to proceed with the necessary legislative process. As such, consultation itself did not

constitute a kind of privilege in one way or another. Mrs Miriam LAU also indicated that there was a need to consult the affected parties if the concerned provision would affect the existing rights enjoyed by the State organs granted by the law.

13. The Chairman remarked that State organs were new to the Hong Kong Special Administrative Region in the sense that no State organs existed prior to the enactment of the Basic Law and Section 66 of Cap. 1 which set out the definition of "State". As such, there was no question of depriving the rights of the State organs previously provided for by the law.

14. PAS for T clarified that the Administration had yet to consult the State organs on the subject matter. In the course of consultation, the Administration would outline the rights of the State organs under existing provisions (i.e. the exemption granted to vehicles of the State from taking out third party insurance). They would also highlight members' concern about the possible difficulties encountered by the general public in claiming and enforcing judgment against the State organs in traffic accidents involving motor vehicles owned by the State. Given the actual circumstances that vehicles owned by the State organs in Hong Kong were all covered by third party insurance despite the exemption, the Administration would seek their views on the possible cancellation of the concerned exemption provision before addressing the issue in detail.

15. In response to Mr TSANG Yok-sing, ALA advised that the proposed CSAs as contained in LC Paper No. CB(1) 1961/98-99 should fall within the scope of the Bill. Schedule 9 of Cap. 1 contained temporary provisions. Item 7(1) of the Schedule provided that where it was expressly provided in an Ordinance that the Ordinance affected or did not affect the right of, or was or was not binding on the Crown, then that reference to the Crown should be construed as a reference to the State. Item 7(1) of Schedule 9 was a temporary provision, which was of general application throughout the laws of Hong Kong. It was intended to clarify the meaning of such references in the context of the on-going Adaptation of Laws Programme for individual Ordinances. Against this background, it would be necessary when making adaptations of relevant provisions in individual Ordinance to decide on the specific formulation of the adaptation in the context in which it appeared. Accordingly, should members consider that "Her Majesty or the Government" in section 4(4)(a) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap.272) should be adapted to "Government" in the context of that section, they could propose such amendment.

Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg.) -
by-laws 4(1), 23 and 24

Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg.) - by-laws 4(1), 23 and 24

16. PAS for T advised that the Administration's proposal was to adapt all references to "Crown" in the above by-laws to "State". Members of the Bills Committee were concerned that such amendment would result in inconsistencies between by-laws 4(1),

23 and 24 and similar provisions in other new tunnel legislation such as the Western Harbour crossing By-law (Cap. 436 sub. leg). In the latter legislation, specific references were made to "vehicles or persons in the public service of the Government". PAS for T further said that if an overall review of similar provisions in tunnel related legislation had to be conducted with a view to achieving consistency among them, such exercise was beyond the scope of the Adaptation of Laws Programme and should be done separately. The Administration therefore proposed to delete the adaptation amendments to the concerned By-laws from the Bill.

17. Mrs Miriam LAU raised no objection to the Administration's proposal provided that a concrete timetable on the review and the subsequent legislative programme be given to her satisfaction. Mr TSANG Yok-sing shared the view of Mrs Miriam LAU. The Chairman also indicated that as the concerned provisions would not significantly affect public interest, she might find the Administration's proposal more acceptable than the previous one for third party insurance.

Other CSAs

18. Members went through other CSAs moved by the Administration and raised no further comments. Members noted that the Administration would propose further CSAs to adapt references to "Secretary for Lands and Works" in the concerned provisions to "Secretary for Planning and Lands".

19. The Chairman advised that the Bills Committee had completed deliberations of the Bill. In concluding deliberation, the Administration was requested to provide further information on the timetable of the review, the consultation and the subsequent legislative programme, and whether the deferred items could be dealt with in a separate Bill instead of an Omnibus Bill as suggested by the Administration. PAS for T undertook to provide the required information within two weeks. Pending the additional information to be provided by the Administration, the Chairman would determine whether there was a need to convene further meeting to discuss the Bill.

Admin

II Any other business

20. There being no other business, the meeting ended at 11:35 am.