

立法會
Legislative Council

Ref: CB1/BC/16/98/2

LC Paper No. CB(1)999/99-00
(These minutes have been
seen by the Administration)

Bills Committee on Adaptation of Laws (No. 5) Bill 1999

**Minutes of second meeting held on
Wednesday, 29 September 1999, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Margaret NG
Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon Mrs Miriam LAU Kin-ye, JP

Members absent : Hon David CHU Yu-lin
Hon Jasper TSANG Yok-sing, JP

Public officers attending : Mr Gary YEUNG
Principal Assistant Secretary for Planning,
Environment & Lands (Lands)

Mr Anthony LI
Assistant Secretary for Planning,
Environment & Lands (Lands)

Mr T E BERRY
Deputy Director of Lands/Legal

Mr W B MADDAFORD
Senior Assistant Law Draftsman 1

Mr K F CHENG
Senior Assistant Law Draftsman 2

Ms Carmen CHU
Senior Government Counsel

Miss Frances HUI
Government Counsel

Clerk in attendance : Miss Odelia LEUNG, Chief Assistant Secretary (1)1

Staff in attendance : Ms Bernice WONG, Assistant Legal Adviser 1

Mrs Mary TANG, Senior Assistant Secretary (1)2

I Confirmation of minutes of meeting
(LC Paper No. CB(1)1885/98-99)

The minutes of meeting held on 13 July 1999 were confirmed.

II Meeting with the Administration
(LC Paper No. CB(1)1942/98-99)

2. At the invitation of the Chairman, the Principal Assistant Secretary for Planning, Environment and Lands (Lands) (PAS/PEL(L)) took members through the Administration's response which was circulated vide LC Paper No. CB(1)1942/98-99.

Proposed amendments to the Demolished Buildings (Redevelopment of Sites) Ordinance, Cap 337

3. Referring to paragraph (c) of the paper regarding the Demolished Buildings (Redevelopment of Sites) Ordinance, Cap. 337, Mrs Miriam LAU queried whether it was a conscious decision of not substituting the reference to the United Kingdom Law of Property Act 1925 (LPA) by the Conveyancing and Property Ordinance, Cap. 219 (CPO) after the enactment of the latter in 1984. PAS/PEL(L) said that there appeared no compelling legal reason for replacing the reference to LPA by CPO in Cap. 337 before the change of sovereignty in July 1997.

4. On Mrs Miriam LAU's concern over the differences in power conferred to the chargee under CPO and LPA, the Deputy Director of Lands/Legal (DDL/L) made the following points -

- (a) The only chargee under section 12 of Cap. 337 was the Financial Secretary Incorporated and as such the only party

who would be prejudiced by any differences between powers of the chargee under LPA and CPO would be the Government itself and not any other private party;

- (b) Although LPA was a more detailed piece of legislation, its major provisions and those of CPO mirrored each other substantially; and
- (c) As Cap. 337 had not been in active use in the past 10 or 15 years, there was no real urgency to have it amended before the change of sovereignty.

5. Mrs Miriam LAU was of the view that CPO was more favourable to the person holding the charge. She pointed out for example that the mortgagor had three months to comply with a notice calling in the mortgage under LPA but only one month under CPO. Nevertheless, she was prepared to accept the proposed amendment for the purpose of law adaptation.

6. DDL/L advised in response to Mrs Miriam LAU that depending on context, not all references to LPA in local laws would be changed to CPO.

Retention of the Aliens (Rights of Property) Ordinance, Cap 185

7. Referring to paragraph (a) of the Administration's paper regarding the Aliens (Rights of Property) Ordinance, Cap185, the Assistant Legal Adviser 1 (ALA 1) said that the two cases quoted by the Administration were decided in the 16th Century and were only of persuasive authority to Hong Kong. Besides, as there was no authority as to how far the common law principle was applicable to the circumstances in Hong Kong, the extent it was in force in Hong Kong was doubtful. Since the enactment of the Aliens (Rights of Property) Ordinance in 1853, there was no record of any relevant case regarding the rights or otherwise of aliens to hold property in Hong Kong.

8. Mrs Miriam LAU considered it necessary to retain the Ordinance from a conveyancing point of view on the ground that the repeal of the Ordinance might give rise to doubts about the right of aliens to hold property after the change of sovereignty. Her view was shared by Mr Ronald ARCULLI who opined that the retention of the Ordinance would allay any worries aliens might have over their continued right to hold and transfer immovable property in the Hong Kong Special Administration Region. Mr ARCULLI also pointed out that under the Basic Law, the reversion of Hong Kong to the Mainland did not change property rights and interests.

9. Miss Margaret NG said that she found it repulsive that at this day and age, there should be any doubt about the right of aliens to own property in Hong Kong. She further pointed out that section 23 of the Interpretation and

General Clauses Ordinance, Cap. 1 provided that the repeal of an ordinance would not revive anything which was not in force or existing at the time before the repeal took effect. She thus had reservation about the retention of the Ordinance. She enquired about the frequency of queries raised by conveyancing solicitors' clients about the rights of aliens to hold property in Hong Kong.

10. Mrs Miriam LAU said that these queries were brought up now and then. Mr ARCULLI added that when dealing with legal advisers of multinational companies, it would be more convenient to have an ordinance which made clear provisions for an alien's right to hold property in Hong Kong. Miss Margaret NG said that she would be prepared to accept the retention of Cap. 185 if this would provide convenience to the users.

Conclusion

11. Summing up the discussion, the Chairman said that -
- (a) the majority of members considered it necessary to retain the Aliens (Rights of Property) Ordinance, Cap. 185; and
 - (b) the Bills Committee supported the proposed amendments referred to in paragraphs (b) and (c) of the Administration's paper regarding the amendment of the Chinese rendition of "alien" to "外籍人士" under Aliens (Rights of Property) Ordinance, Cap. 185 in line with the Interpretation and General Clauses Ordinance, Cap. 1 and the proposed amendment to replace references to LPA by CPO in the Demolished Buildings (Re-development of Sites) Ordinance, Cap. 337.
12. Members agreed that a report on the deliberation of the Bills Committee be submitted to the House Committee at its meeting on 15 October 1999 to recommend the resumption of the Second Reading debate on the Bill on 27 October 1999. Members noted that the deadline for giving notice of Committee Stage amendments was 16 October 1999.

III Any other business

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

Action