

立法會
Legislative Council

LC Paper No. CB(2)2348/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/BC/24/00

Legislative Council
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

Minutes of the seventh meeting
held on Thursday, 9 May 2002 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Member Absent : Hon Cyd HO Sau-lan
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Jasper TSANG Yok-sing, JP

Public Officers Attending : Mr Michael SCOTT
Senior Assistant Solicitor General

Miss Doris LO
Acting Senior Government Counsel
Legal Policy Division

Clerk in Attendance : Mr Paul WOO
Chief Assistant Secretary (2)6

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Miss Lolita SHEK
Senior Assistant Secretary (2)7

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1812/01-02)

The minutes of the meeting held on 18 April 2002 were confirmed.

II. Meeting with the Administration

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

Matters arising from the meeting on 18 April 2002 relating to Parts I, III, IV, V, VI and XIV of the Bill

(LC Paper No. CB(2)1796/01-02(01))

3. Members noted the Administration's letter dated 30 April 2002 (LC Paper No. CB(2)1796/01-02(01)) which was in response to the issues raised at the meeting on 18 April 2002.

Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)

4. The Chairman and Ms Audrey EU expressed the view that the proposed section 9A(1B)(a), (b) and (c) in clause 108 of the Bill did not safely preclude offences involving dishonesty from being disposed of by way of the fixed penalty system under the proposed section 9AB in clause 109. They considered that the drafting should be revised with a view to removing the uncertainty.

5. The Chairman pointed out that the offences that would be dealt with by way of fixed penalty would be expressly provided for in the subsidiary rules to be made by the Council of the Law Society, and would be subject to the negative vetting of the Legislative Council. She said that it should be put down on record that it was the view of the Committee that any breach committed by solicitors involving dishonesty should not be dealt with by way of fixed penalty, and that this view should be taken into account by the Subcommittee which would be examining the relevant rules to be made by the Council of the Law Society in due course.

Matters arising from the meeting on 2 May 2002 relating to Part XV of the Bill
(Miscellaneous Amendments)

(LC Paper No. CB(2)1842/01-02(02))

6. Members noted the Administration's letter dated 8 May 2002 (LC Paper No. CB(2)1842/01-02(02)) which was in response to the issues raised at the meeting on 2 May 2002.

7. On clause 131 of the Bill, members noted the Administration's explanation in its letter that "Secretary" as defined in section 2 of the Land Drainage Ordinance (Cap. 446) had policy responsibility for flood prevention at the time the Ordinance was enacted. However, the policy responsibility for flood prevention was transferred to the Secretary for Works with effect from 15 August 1998. Amendment was therefore required to reflect the change of policy responsibility. The Administration held the view that retrospective operation of the proposed amendment was not required as the Secretary for Works had not exercised any statutory function as the "Secretary" under the Land Drainage Ordinance to date, and it was not expected that there would be any need for the Secretary for Works to exercise such functions until the effective date of the amendment.

8. As regards the proposals to amend section 21(3) of the Eastern Harbour Crossing Ordinance and section 16(3) of the Tate's Cairn Tunnel Ordinance, the Administration advised that the relevant provisions would have to be revised if the proposed accountability system for principal officials was implemented.

Part VII of the Bill (Power of Court to Order Repayment of Deposit)
(LC Paper Nos. CB(2)1797/01-02(01); 1842/01-02(03) and (04))

9. Members noted the Bar Association's written reply (LC Paper No. CB(2)1842/01-02(03)) in response to the Committee's request for its comments on whether there were merits in amending the Conveyancing and Property Ordinance (CPO) along the lines of section 55(1) of the New South Wales Conveyancing Act 1919 (NSW Act). The Bar Association was not in favour of having any statutory provision like section 55(1) of the NSW Act on the ground that it was an unnecessary fetter to the principle of freedom of contract.

10. Ms Audrey EU said that section 55(1) of the NSW Act limited the power of the court to order return of deposit to a purchaser to cases where there was a defect in the vendor's title. She pointed out that where there was a defect in title, the purchaser should be entitled to refuse performance of the contract by reason of the defect, and the situation of a forfeiture of the purchaser's deposit should not arise. However, section 55(1) had no application where there was no defect in the vendor's title. It did not help in the context of Part VII of the Bill, whose legislative intent was to enable the court to do justice to a purchaser in breach of contract, by ordering repayment of the deposit in circumstances where the court saw fit.

11. Ms Audrey EU reiterated that she was in support of limiting the court's discretion to order the return of deposit to the purchaser to cases where there was a genuine dispute on title but the court subsequently found that there was no defect in title.

12. Ms Sophie LEUNG said that she was in support of Ms Audrey EU's view. However, she cautioned that necessary safeguards should be introduced to avoid encouraging purchasers who wanted to rescind because of other hidden reasons (e.g. a fallen price of the property) to litigate with a view to recovering the deposit.

13. Ms Audrey EU said that legislation providing for a discretion of the court to order repayment of deposit, if eventually considered to be necessary, had to be carefully drafted, and there should also be clear guidelines on the proper exercise of the discretion for the judges.

14. Senior Assistant Solicitor General explained the Administration's stance as set out in his written response (LC Paper No. CB(2)1842/01-02(04)) to Ms Audrey EU's earlier letter to the Chairman of the Committee (LC Paper No. CB(2)1797/01-02(01)). He said that the primary purpose of Part VII of the Bill was to fill a gap in the present law to allow the court to do justice to both parties, in circumstances where the court considered that it would be fair to order the return of a deposit to the purchaser. The Administration considered that it would not be desirable to limit the discretion of the court to cases where a transaction had fallen through because of a dispute on title.

15. Ms Audrey EU said that she was not in support of giving the court an unlimited discretion to order a return of deposit to the purchaser. She said that whilst a contract should bind both parties to its terms, the proposed amendment to section 12 of the CPO had the effect of moving the "goal-post" in favour of the purchaser, without offering the same relaxation to the vendor. She maintained her view that the proposed discretion of the court should be restricted.

16. The Chairman said that in deciding whether or not it was fair to order repayment of deposit to the purchaser, the court was expected to take into consideration all the facts and circumstances of the case. For example, it was not expected that the court would necessarily order a return of deposit, simply because the purchaser was only a few minutes' late in tendering the closing funds, if both the vendor and the purchaser knew that time was of real essence in completing the transaction.

17. The Chairman and Ms Emily LAU said that they tended to support the amendment to section 12 of the CPO as proposed under Part VII of the Bill.

18. The Bills Committee completed examination of Part VII clause by clause.

19. In the light of the issues raised at the meeting, the Administration was requested –

Part I of the Bill (Commencement)

Clause 2

- (a) to consider introducing a Committee Stage amendment to provide for Part X of the Bill to take effect from 1 July 1997;

Part IV of the Bill (Power of Court of Appeal and Appeal Committee to Award Costs)

Clause 9

- (b) to advise whether, in the case of the appeal brought under section 84 of the District Court Ordinance and dismissed in 1999, costs had not been awarded to the defendant because of the absence of legislative provision like the proposed section 9A of the Costs in Criminal Cases Ordinance;

Part VII of the Bill (Power of Court to Order Repayment of Deposit)

- (c) to advise on the application of the proposed amendment to section 12 of the Conveyancing and Property Ordinance, and reconsider the need for a transitional provision in relation to current applications made to the court under section 12 prior to the commencement of the amendment; and

Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)

Clause 108

- (d) to revise the drafting of the proposed section 9A(1B) of the Legal Practitioners Ordinance by providing expressly that offences involving dishonesty would not be dealt with by way of fixed penalty under the proposed section 9AB.

20. The Administration was also requested to provide the draft Committee Stage amendments relating to Part V of the Bill on marital rape for discussion at the next meeting.

III. Date of next meeting

21. The next meeting would be held on 16 May 2002 at 8:30 am.
22. There being no other business, the meeting ended at 9:55 am.

(Post-meeting note – The meeting on 16 May 2002 was subsequently cancelled and re-scheduled for 23 May 2002.)

Council Business Division 2
Legislative Council Secretariat
20 June 2002

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

**Meeting on Thursday, 9 May 2002 at 8:30 am.
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000503	Chairman	Confirmation of minutes of meeting on 18 April 2002 Date of next meeting	
000503 - 000514	Ms Audrey EU Yuet-mee	Ditto	
000514 - 000523	Mrs Sophie LEUNG LAU Yau-fun	Ditto	
000523 - 000535	Chairman	Ditto	
000535 - 000543	Mrs Sophie LEUNG LAU Yau-fun	Ditto	
000543 - 000803	Chairman	Administration's response to issues raised at the meeting on 18 April 2002 relating to Parts I, III, IV, V, VI and XIV of the Bill (LC Paper No. CB(2)1796/01-02(01))	
000803 - 000847	Administration	Part I of the Bill (Commencement) Clause 2 Administration's explanation why the amendments in Part X of the Bill should not take effect from 1 July 1997, and how the word "Crown" in the relevant Ordinances should be construed on and after 1 July 1997	
000847 - 000911	Chairman	Ditto	
000911 - 000921	Administration	Ditto	

000921 - 001128	Chairman	Ditto Part III of the Bill (Enforcement of Compensation Order) Clause 7 Justifications for clause 7 to take retrospective effect from 17 January 1997	Adm (para. 19(a))
001128 - 001142	Administration	Ditto	
001142 - 001508	Chairman	Part IV of the Bill (Power of Court of Appeal and Appeal Committee to Award Costs) Clause 9 The case of appeal brought under section 84 of the District Court Ordinance and dismissed by the Court of Appeal in 1999	
001508 - 001518	Ms Emily LAU Wai-hing	Ditto	
001518 - 001537	Chairman	Ditto	
001537 - 001606	Administration	Ditto	
001606 - 001635	Chairman	Ditto	Adm (para. 19(b))
001635 - 001639	Ms Emily LAU Wai-hing	Ditto	
001639 - 001655	Chairman	Part VI of the Bill (Consideration of Bail Applications) Clause 18 Revision to the drafting of Clause 18 proposed by the Committee	
001655 - 001717	Administration	Ditto	

001717 - 001813	Chairman	Part XIV of the Bill (Amendments to Legal Practitioners Ordinance) Clause 108 Administration to consider revising the drafting of the proposed section 9A(1B) of the Legal Practitioners Ordinance so as to safely preclude offences involving dishonesty from being disposed of by way of fixed penalty	
001813 - 001831	Administration	Ditto	
001831 - 001857	Chairman	Ditto	
001857 - 001957	ALA	Ditto	
001957 - 002116	Chairman	Ditto	
002116 - 002151	Ms Audrey EU Yuet-mee	Ditto	
002151 - 002203	Chairman	Ditto	
002203 - 002239	Ms Audrey EU Yuet-mee	Ditto	
002239 - 002243	Chairman	Ditto	
002243 - 002343	Ms Audrey EU Yuet-mee	Ditto	
002343 - 002408	Chairman	Ditto	
002408 - 002421	Ms Audrey EU Yuet-mee	Ditto	
002421 - 002506	Chairman	Ditto	
002506 - 002518	Administration	Ditto	
002518 - 002536	Chairman	Ditto	
002536 - 002608	Ms Audrey EU Yuet-mee	Ditto	
002608 - 003117	Chairman	Ditto	
003117 - 003134	Ms Audrey EU Yuet-mee	Ditto	

003134 - 003147	Chairman	Ditto Administration's response to the issues raised at the meeting on 2 May 2002 relating to Part XV of the Bill (LC Paper No. CB(2)1842/01-02(02))	Adm (para. 19(d))
003147 - 003656	Administration	Ditto	
003656 - 003821	Chairman	The letter from Ms Audrey EU and paper from the Hong Kong Bar Association on Part VII of the Bill (LC Paper Nos. CB(2)1797/01-02(01) and CB(2)1842/01-02(03)) and Administration's response to the former (LC Paper No. CB(2)1842/01-02(04))	
003821 - 004138	Ms Audrey EU Yuet-mee	Ditto	
004138 - 004200	Administration	Ditto	
004200 - 004342	Chairman	Ditto	
004342 - 004414	Ms Audrey EU Yuet-mee	Ditto	
004414 - 004440	Chairman	Ditto	
004440 - 004531	Mrs Sophie LEUNG LAU Yau-fun	Ditto	
004531 - 004607	Chairman	Ditto	
004607 - 004621	Mrs Sophie LEUNG LAU Yau-fun	Ditto	
004621 - 004632	Chairman	Ditto	
004632 - 004834	Administration	Ditto	
004834 - 004841	Chairman	Ditto	
004841 - 005027	Ms Audrey EU Yuet-mee	Ditto	
005027 - 005132	Mrs Sophie LEUNG LAU Yau-fun	Ditto	
005132 - 005330	Chairman	Ditto	
005330 - 005453	Mrs Sophie LEUNG LAU Yau-fun	Ditto	
005453 - 005503	Chairman	Ditto	

005503 - 005522	Ms Audrey EU Yuet-mee	Ditto	
005522 - 005549	Chairman	Ditto	
005549 - 010025	Ms Audrey EU Yuet-mee	Ditto	
010025 - 010222	Chairman	Ditto	
010222 - 010411	Ms Audrey EU Yuet-mee	Ditto	
010411 - 010555	Administration	Ditto	
010555 - 010923	Ms Audrey EU Yuet-mee	Ditto	
010923 - 011033	Administration	Ditto	
011033 - 011316	Chairman	Ditto	
011316 - 011326	Ms Audrey EU Yuet-mee	Ditto	
011326 - 011333	Mrs Sophie LEUNG LAU Yau- fun	Ditto	
011333 - 011349	Chairman	Ditto	
011349 - 011400	Mr James TO Kun-sun	Ditto	
011400 - 011703	Chairman	Clause by clause examination of Part VII of the Bill (Power of Court to Order Repayment of Deposit) Clause 19	
011703 - 011712	Administration	Ditto	
011712 - 011739	Chairman	Ditto	
011739 - 011816	Administration	Ditto	
011816 - 011831	Chairman	Ditto	
011831 - 011909	ALA	Ditto	
011909 - 011921	Chairman	Ditto	
011921 - 011945	Administration	Ditto	
011945 - 012005	Chairman	Ditto	

012005 - 012028	ALA	Ditto	
012028 - 012322	Chairman	Outstanding issues to be discussed at the next meeting on 23 May 2002	Adm (para. 19(c) and para. 20)

Note: The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 2
Legislative Council Secretariat
20 June 2002