

**立法會**  
***Legislative Council***

Ref : CB2/BC/5/02

LC Paper No. CB(2)2287/02-03  
(These minutes have been seen by  
the Administration)

**Bills Committee on  
National Security (Legislative Provisions) Bill**

**Minutes of meeting  
held on Saturday, 17 May 2003 at 9:00 am  
in the Chamber of the Legislative Council Building**

**Members present** : Hon IP Kwok-him, JP (Chairman)  
Hon Ambrose LAU Hon-chuen, GBS, JP (Deputy Chairman)  
Hon Kenneth TING Woo-shou, JP  
Dr Hon David CHU Yu-lin, JP  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Hon Eric LI Ka-cheung, JP  
Hon Fred LI Wah-ming, JP  
Dr Hon LUI Ming-wah, JP  
Hon NG Leung-sing, JP  
Hon Margaret NG  
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon CHAN Kwok-keung  
Hon Bernard CHAN, JP  
Hon CHAN Kam-lam, JP  
Hon SIN Chung-kai  
Dr Hon Philip WONG Yu-hong  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, JP  
Hon YEUNG Yiu-chung, BBS  
Hon LAU Kong-wah  
Hon Miriam LAU Kin-yee, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk

Hon Andrew CHENG Kar-foo  
Hon SZETO Wah  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Michael MAK Kwok-fung  
Hon LEUNG Fu-wah, MH, JP  
Dr Hon LO Wing-lok  
Hon LAU Ping-cheung  
Hon Audrey EU Yuet-mee, SC, JP  
Hon MA Fung-kwok, JP

**Members  
absent** : Hon Cyd HO Sau-lan  
Hon James TO Kun-sun  
Hon LEUNG Yiu-chung  
Hon Andrew WONG Wang-fat, JP  
Hon WONG Yung-kan  
Hon LAU Chin-shek, JP  
Hon LAU Wong-fat, GBS, JP  
Dr Hon LAW Chi-kwong, JP  
Dr Hon TANG Siu-tong, JP  
Hon Henry WU King-cheong, BBS, JP  
Hon WONG Sing-chi

**Public Officers  
attending** : Mrs Regina IP, GBS, JP  
Secretary for Security  
  
Mr Timothy TONG, JP  
Permanent Secretary for Security (Acting)

Mr Bob ALLCOCK, BBS, JP  
Solicitor General

Mr Gilbert MO  
Deputy Law Draftsman

Mr James O'NEIL  
Deputy Solicitor General

Ms Winnie NG  
Administrative Assistant to Secretary for Security

Mr Johann WONG  
Principal Assistant Secretary for Security

Miss Adeline WAN  
Senior Government Counsel

Ms Francoise LAM  
Senior Government Counsel

Mr Hubert LAW  
Assistant Secretary for Security

**Clerk in attendance** : Mrs Sharon TONG  
Chief Assistant Secretary (2)1

**Staff in attendance** : Mr Jimmy MA, JP  
Legal Adviser

Mr Raymond LAM  
Senior Assistant Secretary (2)5

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## **I. Meeting with the Administration**

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

2. The Bills Committee requested the Administration to provide a written response to the following issues raised and information sought by members -

### Enforcement to be consistent with the Basic Law

- (a) in relation to the provisions on enforcement to be consistent with the Basic Law (BL) (proposed section 18A of the Crimes Ordinance, proposed section 12A of the Official Secrets Ordinance (OSO) and proposed section 2A of the Societies Ordinance)-
  - (i) to explain the legal effect of an express provision requiring enforcement to be consistent with BL39;
  - (ii) to explain the legal effect of an express provision requiring enforcement to be consistent with Chapter III of BL;

- (iii) to consider deleting the expression "Article 39 of the Basic Law" and substituting "Chapter III of the Basic Law";

Chinese Nationality and Hong Kong Special Administrative Region Permanent Resident Status

- (b) in relation to the Administration's paper entitled "Chinese nationality and Hong Kong Special Administrative Region permanent residency status" (Paper No. 25), to explain -
  - (i) the legal effect of the "Explanations of Some Questions by the Standing Committee of the National People's Congress concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region" adopted on 15 May 1996 (NPCSC's Explanations);
  - (ii) whether the NPCSC's Explanations or Article 9 of the Nationality Law of the PRC would prevail, when there was a conflict between the two;
  - (iii) the legal basis for the loss of Hong Kong Special Administrative Region permanent resident status under the circumstances referred to in paragraph 11 of the paper;

Subversion

- (c) in relation to the definition of "serious criminal means" in the proposed section 2A(4)(b), to consider incorporating an exclusion provision similar to the one provided in the definition for "terrorist act" in section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance;

Protection of information related to affairs concerning the Hong Kong Special Administrative Region that were within the responsibility of the Central Authorities under the Basic Law and unauthorized disclosure of protected information

- (d) to provide a response to the points raised in the submission from Professor Johannes CHAN (Submission No. 155); and

Others

- (e) to provide a response to the points raised in the joint submission from the Association of the Bar City of New York and the Joseph R Crowley Program in International Human Rights at Fordham Law School in New York City (Submission No. 150).

**II. Any other business**

3. The Bills Committee agreed that the issues raised by Hon Emily LAU and Hon LEE Cheuk-yan on the categorization of submissions on the Consultation Document on Proposals to implement BL23 be referred to the Panel on Security and Panel on Administration of Justice and Legal Services for follow-up.

4. The meeting ended at 12:35 pm.

Council Business Division 2  
Legislative Council Secretariat  
2 June 2003

**Proceedings of the meeting of the Bills Committee on  
National Security (Legislative Provisions) Bill  
on Saturday, 17 May 2003 at 9:00 am  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 – 000124	Chairman	Opening remarks	
000125 – 001259	Hon Audrey EU Admin	Legal effect of an express provision requiring enforcement to be consistent with Article 39 of the Basic Law (BL39); deleting the expression "Article 39 of the Basic Law" and substituting "Chapter III of the Basic Law" in the provisions on enforcement to be consistent with BL	<b>Admin to consider deleting the expression "Article 39 of the Basic Law" and substituting "Chapter III of the Basic Law" in the provisions on enforcement to be consistent with BL</b>
001300 – 003059	Hon Albert HO Admin	Circumstances under which a Chinese national would lose his Chinese nationality; legal basis for the loss of Hong Kong Special Administrative Region (HKSAR) permanent resident status	
003100 – 004101	Hon LAU Kong-wah Admin Chairman	Whether a definition of "state secret" should be provided in the Bill; whether the disclosure of information relating to the appointment of the Chief Executive or the outbreak of Severe Acute Respiratory Syndrome (SARS) in the Mainland would be caught by the proposed section 16A of the Official Secrets Ordinance (OSO)	
004102 – 004710	Hon CHEUNG Man-kwong Admin	Whether the "Explanations of Some Questions by the Standing Committee of the National People's Congress concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region" adopted on 15 May 1996 (NPCSC's Explanations) or Article 9 of the	

Time marker	Speaker	Subject(s)	Action Required
		Nationality Law of the PRC would prevail in respect of the loss of Chinese nationality of a Chinese HKSAR permanent resident	
004711 – 005210	Hon Howard YOUNG Admin	Whether the amendments proposed in the Bill to OSO was consistent with the requirements of BL23 to enact laws to prohibit theft of state secrets; whether a definition of "state secret" should be provided in the Bill	
005211 – 005409	Hon Kenneth TING Admin LA	Whether there was a definition of protected information in the Mainland	
005410 – 011359	Hon Margaret NG Admin	Administration's response to the points raised in the submission from Professor Johannes CHAN (Submission No. 155); legal effect of the NPCSC's Explanations; whether the NPCSC's Explanations or Article 9 of the Nationality Law of the PRC would prevail, when there was a conflict between the two; legal basis for the loss of HKSAR permanent resident status under the circumstances referred to in paragraph 11 of Paper No. 25	<b>Admin to provide a response</b>
011400 – 011959	Hon Martin LEE Admin	Whether Article 9 of the Nationality Law of the PRC was not applied in the HKSAR and whether Annex III to BL should be amended; judgment on the case of <i>TSE Yiu-hon Patrick v HKSAR Passports Appeal Board &amp; Anor</i>	
012000 – 012419	Hon YEUNG Yiu-chung Admin	Proposed amendments to section 12(1)(b) and repeal of section 12(1)(c) of OSO	
012420 – 012936	Hon CHAN Kam-lam Admin	Why section 3 of OSO had no extra-territorial effect; meaning of the provision in section 23 of OSO	

Time marker	Speaker	Subject(s)	Action Required
012937 – 013359	Hon NG Leung-sing Admin Chairman	Meaning of the expression "government contractor" in the proposed section 16A(1) of OSO	
013400 – 015324	Hon Emily LAU Admin LA Chairman	Legal effect of an express provision requiring enforcement to be consistent with BL39; legal effect of an express provision requiring enforcement to be consistent with Chapter III of BL; whether the proposals in the Bill on investigation power were consistent with BL29; letter dated 14 May 2003 from the Legal Service Division to the Administration regarding Paper No. 16	<b>Admin to explain the legal effects</b>
[Break]			
020554 – 021102	Hon Emily LAU LA	Whether the proposals in the Bill on investigation power were consistent with BL29	
021103 – 021846	Hon LAU Kong-wah Admin	Whether illegal access to information in the Mainland would be caught by the proposed section 18(2)(d) of OSO; whether a defence provision similar to that in section 30(3) of the Prevention of Bribery Ordinance should be provided in the provisions relating to unauthorized disclosure of protected information	
021847 - 022827	Hon LEE Cheuk-yan Chairman Admin	How to determine whether an act would seriously endanger the stability of the PRC; incorporating in the definition of "serious criminal means" in the proposed section 2A(4)(b) an exclusion provision similar to the one provided in the definition for "terrorist act" in section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance; Administration's response to the	<b>Admin to consider incorporating in the definition of "serious criminal means" an exclusion provision similar to the one provided in the definition for "terrorist act" in section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance; to provide a response to the points raised in Submission No.</b>



Time marker	Speaker	Subject(s)	Action Required
		points raised in the joint submission from the Association of the Bar City of New York and the Joseph R Crowley Program in International Human Rights at Fordham Law School in New York City (Submission No. 150)	<b>150</b>
022828 – 024135	Hon Audrey EU Admin	Whether the scope of the proposed section 16A(1)(a) of OSO was too wide	
024136 – 025549	Hon Margaret NG Admin	Relationship between BL23 and BL39; whether the Administration would not seek NPCSC's interpretation of the relationship between BL23 and BL39	
025550 – 030852	Hon Martin LEE Admin	Whether the provisions on unauthorized disclosure of protected information in the Bill were beyond the requirement of BL23 to enact laws to prohibit theft of state secrets; whether the disclosure of information relating to the outbreak of SARS in the Mainland would be caught by section 16 of OSO	
030853 – 032207	Hon Albert HO Admin	Whether the scope of the proposed section 16A(1)(a) of OSO should be narrowed to information relating to defence and foreign affairs; whether a public interest defence and a prior disclosure defence should be provided for unauthorized disclosure; incorporating in the proposed section 16A(3) of OSO a defence provision for a person who believed that he was authorized to disclose the information concerned	

032208- 033209	Chairman Hon Emily LAU Hon LAU Kong-wah Hon LEE Cheuk-yan Hon TAM Yiu-chung Hon Margaret NG Admin Clerk	Issues raised by Hon Emily LAU and Hon LEE Cheuk-yan on the categorization of submissions on the Consultation Document on Proposals to implement BL23	
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Council Business Division 2  
Legislative Council Secretariat  
2 June 2003