

立法會
Legislative Council

LC Paper No. CB(2)2316/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/BC/4/04

**Bills Committee on Statute Law
(Miscellaneous Provisions) Bill 2005**

**Minutes of the fourth meeting
held on Tuesday, 24 May 2005 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon KWONG Chi-kin

Public Officers attending : Mr Stephen Kai-yi WONG
Deputy Solicitor General
Department of Justice

Mr Michael SCOTT
Senior Assistant Solicitor General
Department of Justice

Mr Michael LAM
Senior Government Counsel
Law Drafting Division
Department of Justice

Ms Vicki LEE
Senior Government Counsel
Law Drafting Division
Department of Justice

Ms Stella CHAN
Government Counsel
Legal Policy Division
Department of Justice

Ms Sally WONG
Deputy Judiciary Administrator (Development)

Miss Vega WONG
Assistant Judiciary Administrator (Development)

Miss Florence HO
Assistant Judiciary Administrator (Corporate Services)

Mr Sidney CHAN
Assistant Director
Administration Wing

Mr Mike BISHOP
Principal Investigator/Special Duties
Independent Commission Against Corruption

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Paul WOO
Senior Council Secretary (2)3

Action

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1600/04-05 – Minutes of meeting on 26 April 2005)

The minutes of the meeting held on 26 April 2005 were confirmed.

II. Meeting with the Administration
(LC Paper No. CB(2)1638/04-05(01) – Letter dated 20 May 2005 from the Administration in response to issues raised at the meeting on 9 May 2005)

LC Paper No. CB(2)1638/04-05(02) – Submission dated 18 May 2005 from the Hong Kong Bar Association

LC Paper No. CB(2)1163/04-05(02) – Background Brief prepared by the Legislative Council Secretariat

LC Paper No. CB(3)379/04-05 – The Bill

LC Paper No. CB(2)1162/04-05(01) – Marked up copy of the Bill)

Action

2. Members noted a paper provided by the Judiciary Administration on proposed Committee Stage Amendments which were of the same type and purpose as, and directly relevant to clauses 8 – 15 of the Bill and two letters dated 20 May 2005 and 24 May 2005 from the Law Society of Hong Kong on the Bill. The papers were tabled at the meeting and issued to the Bills Committee after the meeting vide LC Paper Nos. CB(2)1666/04-05(01); 1666/04-05(02) and (03) respectively.

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

Proposed amendments to the Prevention of Bribery Ordinance (POBO) to prohibit a person who is required to surrender his travel document from leaving Hong Kong (Clauses 35 and 36 of the Bill)

4. The Administration informed members that having regard to the views of the Bills Committee, it was considering further amendments to enable a person to whom a written notice under section 17A(1) of POBO was addressed to seek permission to leave Hong Kong.

5. In relation to the Dangerous Drugs Ordinance (DDO) which contained provisions similar to sections 17A and 17B of POBO, members agreed to invite representatives from the Security Bureau to attend the next meeting of the Bills Committee to discuss whether a loophole similar to that identified in the provisions of POBO also existed in DDO and if so, whether amendments to DDO should be included in the Bill by way of Committee Stage amendments.

Submission of annual report by the Legal Aid Services Council (LASC)
(Clause 29 of the Bill)

Admin 6. The Administration informed members that the Home Affairs Bureau was undertaking a review of advisory and statutory bodies. It would take into account the Bills Committee's request to conduct a review of the time limit for submission of annual reports by statutory bodies in the overall review.

Saving provisions in respect of rules made under the Matrimonial Causes Ordinance
(Clause 15 of the Bill)

7. Referring to clause 15(2) of the Bill, the Judiciary Administration informed members that as no rules had been made under section 18B of the Matrimonial Causes Ordinance, a Committee Stage amendment would be introduced to remove clause 15(2) from the Bill.

8. The Bills Committee requested the Administration to respond in writing to the issues raised at the meeting –

Proposed amendment to transfer to the Chief Judge of the High Court from the Chief Justice the chairmanship of the Criminal Procedure Rules Committee
(Clause 9 of the Bill)

- (a) to advise on the scope of the rules made by the Criminal Procedure Rules Committee (CPRC). Members had pointed out that the rules and orders made by CPRC under the Criminal Procedure Ordinance (CPO) differed in nature from the Rules of the High Court and the Rules of the District Court, in that the former covered wide-ranging matters relating to criminal proceedings at different levels of court;
- (b) to reconsider the justification for the proposed amendment having regard to the view of the Hong Kong Bar Association;
- (c) to review the drafting of section 9(3) of CPO in the light of the adaptation of laws principles, as the section specifically referred to the practice and procedure being in force for cases in England; and

Proposed amendments to empower the Court of Appeal and Court of First Instance to award costs to the defendant and the prosecutor on the other party's unsuccessful application for a certificate under the Court of Final Appeal Ordinance
(Clauses 37 – 38 of the Bill)

- (d) to consider introducing a “without merit” criterion in proposed sections 9B and 13B of the Costs in Criminal Cases Ordinance, in line with section 13 of the same Ordinance. Members had reservation about making an award of costs solely on the basis that an application for a certificate under section 32(2) of the Court of Final Appeal Ordinance was unsuccessful.

(Post-meeting note : The Administration's written responses to the issues raised together with the proposed amendments to the Bill were issued to the Bills Committee on 6 June 2005 vide LC Paper Nos. CB(2)1806/04-05(04), (05) and (06).)

9. The Bills Committee also requested the Administration to give a written response to the Bar Association and the Law Society concerning their submissions and provide a copy of the replies to the Bills Committee for reference.

(Post-meeting note : The Administration's written responses to the legal professional bodies were issued to the Bills Committee on 6 June 2005 vide LC Paper Nos. CB(2)1806/04-05(01), (02) and (03).)

III. Date of next meeting

10. The fifth meeting of the Bills Committee would be held on 7 June 2005 at 8:30 am.

11. The meeting ended at 4:10 pm.

Council Business Division 2
Legislative Council Secretariat
18 July 2005

**Proceedings of the fourth meeting of the Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2005
on Tuesday, 24 May 2005 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 – 000738	Chairman Admin	Confirmation of minutes of the meeting held on 26 April 2005. Admin's written response to issues raised at the meeting on 9 May 2005.	
000739 – 001211	Chairman Admin	The Judiciary Administration's proposed Committee Stage Amendments (CSAs) to rationalise the rule-making and related powers of the Chief Justice (CJ) in the various Ordinances by transferring such powers to the Chief Judge of the High Court (CJHC).	Admin to provide the CSAs for the Bills Committee's consideration.
001212 – 002123	Chairman Admin ALA5 Ms Audrey EU	Clause by clause examination of the Bill Clauses 8 and 9 of the Bill Proposed amendment to transfer the chairmanship of the Criminal Procedure Rules Committee (CPRC) from CJ to CJHC. Review of the justification for the proposed transfer of chairmanship of the CPRC in view of the scope and nature of the rules made by the CPRC under the Criminal Procedure Ordinance (CPO).	Admin to respond to the issues raised (paragraphs 8(a) – (b) of the minutes refer).
002124 – 002257	Chairman Admin	Review of drafting of section 9(3) of CPO in the light of adaptation of laws principles.	Admin to respond (paragraph 8(c) of the minutes refers).
002258 – 002336	Chairman Admin	Clauses 10 – 14	

Time Marker	Speaker(s)	Subject(s)	Action required
002337 – 002545	Chairman Admin	Clause 15 CSA to be moved by the Admin to remove clause 15(2) from the Bill.	Admin to provide the CSA.
002546 – 004854	Chairman Admin Ms Audrey EU Ms Miriam LAU	Clauses 37 – 38 of the Bill. Proposed amendment to empower the Court of Appeal and Court of First Instance to award costs to the defendant and the prosecutor on the other party’s unsuccessful application for a certificate under the Court of Final Appeal Ordinance Proposal of the Bills Committee to introduce an additional “without merit” criterion for the award of costs, along the line of section 13 of the Costs in Criminal Cases Ordinance.	Admin to respond to the proposal of the Bills Committee (paragraph 8(d) of the minutes refers) and the submissions of the legal professional bodies.
004855 – 005052	Chairman Admin	Clause 122 of the Bill.	
005053 – 005539	Chairman Admin Ms Audrey EU Mr KWONG Chi-kin	Clause 123 of the Bill. Distinction between members of the Lands Tribunal in full-time service of the Government and temporary members of the Tribunal	
005540 – 010019	Chairman Ms Audrey EU Admin Ms Miriam LAU	Clause 124 of the Bill. Clarification of the meaning of barrister, solicitor and advocate in the context of professional qualification of judicial officers in the High Court Ordinance.	
010020 – 010239	Chairman Admin	Clauses 125 – 129 of the Bill.	
010240 – 010659	Chairman Ms Miriam LAU Admin	Clauses 130 – 133 of the Bill.	

Time Marker	Speaker(s)	Subject(s)	Action required
010700 – 011131	Chairman Admin	Clauses 134 – 143 of the Bill.	
011132 – 011839	Chairman Ms Miriam LAU Admin	Clauses 144 – 149 of the Bill.	
011840 – 012533	Chairman Ms Miriam LAU Admin	Clauses 150 – 176 of the Bill.	
012534 – 013542	Chairman Admin Ms Miriam LAU Ms Audrey EU	<p>Clauses 35 – 36 of the Bill.</p> <p>Law Society’s view on power of arrest conferred on officers of the Independent Commission Against Corruption under section 10 of the Independent Commission Against Corruption Ordinance.</p> <p>Proposal of the Bills Committee to introduce similar amendments to the Dangerous Drugs Ordinance to prohibit a person who is the subject of a notice issued under section 53A(1) of the Ordinance from leaving Hong Kong.</p>	<p>Admin to respond to the Law Society.</p> <p>Representatives from the Security Bureau to attend the next meeting to discuss the issue.</p>
013543 – 013738	Admin Chairman	Clauses 177 – 178 of the Bill.	