

立法會
Legislative Council

Ref : CB2/BC/4/06

LC Paper No. CB(2)2448/06-07

These minutes have been seen
by the Administration)

Bills Committee on Domicile Bill

**Minutes of the third meeting
held on Thursday, 28 June 2007 at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Martin LEE Chu-ming, SC, JP
Hon Jasper TSANG Yok-sing, GBS, JP
- Public Officers attending** : Item III
Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Kitty FUNG
Senior Government Counsel

Miss Betty CHEUNG
Senior Government Counsel

Mr Byron LEUNG
Senior Government Counsel
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)2277/06-07 – Minutes of meeting on 30 April 2007)

The minutes of the meeting held on 30 April 2007 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(3)335/06-07 – The Bill)

LC Paper No. CB(2)1314/06-07(03) - Marked-up copy of clauses 14 and 15 of the Bill

LC Paper No. CB(2)1707/06-07(01) - Mr YIP Ming's written submission dated 13 February 2007

LC Paper No. CB(2)2279/06-07(01) - Administration's response to Mr YIP Ming's written submission

LS69/06-07 - List of legal and drafting issues on the Domicile Bill provided by Senior Assistant Legal Adviser

LC Paper No. CB(2)2279/06-07(02) - Administration's response to issues raised by Senior Assistant Legal Adviser at LS69/06-07 at the meeting on 30 April 2007)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to review the drafting of clause 7.

III. Any other business

4. The Bills Committee would fix the date of next meeting after consulting members of the Bills Committee.

(Post-meeting note : With the concurrence of the Chairman, the next meeting will be held on 13 July 2007 at 4:30 pm.)

5. The meeting ended at 10:17 am.

**Proceedings of the third meeting of the
Bills Committee on Domicile Bill
on Thursday, 28 June 2007 at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000510	Chairman	Confirmation of minutes of meeting on 30 April 2007	
000511 - 002232	Chairman SALA2 Administration Ms Miriam LAU	Response of the Administration to issues raised by SALA2 at the meeting on 30 April 2007 (LC Paper Nos. LS 69/06-07 and CB(2)2279/06-07(02)) Discussion on whether time spent during imprisonment by a person who had unlawfully landed or breached any conditions of stay under the Immigration Ordinance (Cap 115) would be regarded as lawful presence under the Bill and whether a definition on "lawful presence" should be provided in clause 6 of the Bill (paragraphs 1-6 of LC Paper No. CB(2)2279/06-07(02))	
002233 - 004519	Chairman Ms Miriam LAU Ms Audrey EU SALA2	Pros and cons of having a definition on "lawful presence" in clause 6	
004520 - 005200	Chairman Administration SALA2 Ms Audrey EU	Reference to paragraphs 4.90 to 4.101 of the Law Reform Commission Report on Rules for Determining Domicile Effect of clause 6 - (a) clause 6(1) was in line with the common law rules on domicile prior to <i>Mark v Mark [2005] UKHL42</i> , i.e. lawful residence in a place; and (b) having regard to <i>Mark v Mark [2005] UKHL42</i> , clause 6(3) allowed the court to have discretion in exceptional circumstances where strict adherence to clause 6(1) would result in injustice	
005201 - 005237	Chairman Ms Audrey EU	View of Ms Audrey EU that given the complicated concept of domicile and the lack of a definition on "lawful presence" at present, it would be inappropriate for the Bill to adopt a definition on "lawful presence"	

Time Marker	Speaker(s)	Subject(s)	Action required
005238 - 005739	Ms Miriam LAU Chairman Ms Audrey EU Administration	<p>Practical problems arising from the absence of a definition on "lawful presence" in the Bill</p> <p>Response of the Administration that -</p> <p>(a) a will was treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, the testator was domiciled or had his habitual residence, or was a national;</p> <p>(b) the above illustrated that, apart from domicile, there could be other factors that connected a person with a system of law for the purposes of determining a range of matters relating to his status, property, etc.; and</p> <p>(c) domicile as a connecting factor was diminishing in importance</p>	
005740 - 010351	Chairman Ms Miriam LAU Ms Audrey EU Administration	<p>Conclusion of the Bills Committee on the need to have a definition on "lawful presence" in the Bill -</p> <p>(a) the Bills Committee was aware that in the absence of a definition on "lawful presence", there was uncertainty in deciding the domicile of a prisoner who had unlawfully landed or breached any conditions of stay under Cap 115; and</p> <p>(b) the Bills Committee agreed that it was too complicated to define "lawful presence", as any definition might give rise to even greater uncertainty</p>	
010352 - 012457	Chairman SALA2 Ms Audrey EU Administration	<p>Discussion on whether the presence of an illegal immigrant during imprisonment in Hong Kong could be regarded as lawful as the imprisonment was based on a lawful order of the court</p> <p>View of the Administration that a court order of imprisoning an illegal immigrant would not necessarily turn the presence of the illegal immigrant or his imprisonment according to a court order into lawful presence for the purpose of acquiring a Hong Kong domicile under the Bill</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
012458 - 014437	Chairman SALA2 Administration Ms Audrey EU	Views of members on the Administration's reply concerning clause 7 (paragraph 6 of LC Paper No. CB(2)2279/06-07(02))) - (a) whether the drafting of clause 7 (i.e. one of the factors that shall be considered ...) was misleading and should be reviewed as according to the Administration's reply, no other additional factors (other than lawful presence) were required to be considered in deciding an adult's domicile in a country other than Hong Kong; and (b) whether it was more appropriate to replace the phrase "shall be considered" with "may be considered".	Admin to follow up