

**立法會**  
**Legislative Council**

Ref : CB2/BC/4/06

LC Paper No. CB(2)2620/06-07

These minutes have been seen  
by the Administration)

**Bills Committee on Domicile Bill**

**Minutes of the fourth meeting  
held on Friday, 13 July 2007 at 4:30 pm  
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  
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)2448/06-07 – Minutes of meeting on 28 June 2007)

The minutes of the meeting held on 28 June 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

Law Reform Commission's Report on "Rules for Determining Domicile" published in April 2005

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**).

**III. Any other business**

3. The Chairman instructed that the next meeting would be held in mid-September 2007. The date would be fixed after consulting the Administration and members of the Bills Committee nearer the time.

4. The meeting ended at 6:05 pm.

Council Business Division 2  
Legislative Council Secretariat  
14 August 2007

**Proceedings of the fourth meeting of the  
Bills Committee on Domicile Bill  
on Friday, 13 July 2007 at 4:30 pm  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000524	Chairman	Confirmation of minutes of meeting	
000525 - 000737	Chairman Administration	Continued discussion on the Administration's response to the issues raised by SALA2 at the meeting on 30 April 2007 (LC Paper Nos. LS69/06-07 and CB(2)2279/06-07(02))	
000738 - 004108	Ms Miriam LAU Administration Chairman SALA2	<p><u>Clauses 3 and 4</u> (paragraph 7 of LC Paper No. CB(2)2279/06-07(02))</p> <p>Concerns raised by members and SALA2 -</p> <p>(a) whether clause 3(2) allowed an individual to have more than one domicile at the same time for different purposes;</p> <p>(b) according to footnote 17 of paragraph 1.7 of the Report of the Law Reform Commission on "Rules for determining domicile" (the LRC Report), <i>Dicey and Morris on the Conflict of Law</i> considered that a person could have different domiciles for different purposes would raise many problems which were as yet unresolved. It recognized that to a limited extent, a person could be domiciled in two different countries for different purposes at the same time;</p> <p>(c) in relation to (b) above, what were the unresolved problems and whether the Bill had addressed such problems;</p> <p>(d) since clause 4(1) provided that a child was domiciled in the country or place with which the child was most closely connected and clause 4(3) and (4) provided that, under certain circumstances, a child would be presumed to be most closely connected with the country or place in which a parent of his was</p>	

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		<p>domiciled, and clause 3(2) allowed a parent to have more than one domicile at the same time for different purposes, how would this impact on the child's domicile; and</p> <p>(e) whether that parent could acquire a different domicile for the purpose of clause 4 irrespective of his other domicile(s) at the same time for other different purposes</p> <p>Response of the Administration that -</p> <p>(a) under clause 3(1), the general rule was that every individual had a domicile;</p> <p>(b) clause 3(2) was worded in the negative; it did not give any individual any additional domicile which the individual did not otherwise have. However, a person was allowed to have two domiciles for different purposes at the same time under clause 3(2), e.g. a person might, by virtue of a statutory provision for a particular purpose, be domiciled in a federal or composite State itself for that purpose, and be domiciled in one particular jurisdiction within the State for other purposes;</p> <p>(c) under clause 6(3), a person might acquire a domicile in Hong Kong in exceptional circumstances even though he did not meet the requirement of being lawfully present in Hong Kong in clause 6(1);</p> <p>(d) the main test for determining a child's domicile was the jurisdiction with which he had the closest connection as stipulated in clause 4(1); and</p> <p>(e) in the event that a parent had obtained two domiciles at the same time for different purposes, there could be difficulties in applying the presumptions in clause 4(3) and (4) for determining a child's domicile and the main test of closest connection in clause 4(1) would decide the issue</p>	

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004109 - 011255	Ms Miriam LAU Chairman Administration SALA2 Ms Audrey EU	<p>Response of the Administration to members' questions on clause 4(2) -</p> <p>(a) the factors to be considered by the court in determining a country with which a child was most closely connected were not stipulated in the Bill. The court had to consider all the circumstances of the case, e.g. the child's age, his maturity to decide which place he intended to have his home in, etc. (paras 4.42 and 4.43 of the LRC Report);</p> <p>(b) the Bar Association had stressed that a child's intention should not be ignored in applying the closest connection test and the Administration subscribed to that view;</p> <p>(c) the closest connection test was the basis for determining a child's domicile. The phrase "all relevant factors" in clause 4(2) referred to all factors relevant to that test;</p> <p>(d) some common law jurisdictions still retained different rules for determining the domicile of a legitimate child and an illegitimate child respectively and domicile of origin and domicile of dependency. The closest connection test was only adopted in South Africa (Annex 2 of the LRC Report refers); and</p> <p>(e) the closest connection test was recommended by the English and Scottish Law Commissions in their joint report on the law of domicile. However, UK had not implemented the recommendation because of the taxation concerns lobbied by the foreign business community in the UK</p>	
011256 - 012014	Chairman SALA2 Administration	<p>Clarification by the Administration that -</p> <p>(a) the unresolved problem referred by <i>Dicey and Morris on the Conflict of Laws</i> (2000 edition) related to what the position would have been had an immigrant not yet decided in which law-district of a federal or composite State he would settle: must he</p>	

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		<p>establish a domicile in a law-district within the State before he could be domiciled in the State? (this would not be a problem for Hong Kong because of clause 10); and</p> <p>(b) unlike Australia and the UK, there was no “PRC domicile” applicable to all the people in the Mainland, HK and Macau. Hence, a person could not have both a Hong Kong domicile and a PRC domicile at the same time</p>	
012015 - 013322	SALA2 Chairman Administration Ms Audrey EU Ms Miriam LAU	<p>Response of the Administration to members' questions on additional domicile -</p> <p>(a) clause 3(1) required that every individual should have a domicile;</p> <p>(b) clause 3(2) stipulated that an individual should not have more than one domicile at the same time and for the same purpose. However, it was silent on whether a person could have more than one domicile at different times or at the same time for different purposes; and</p> <p>(c) the intention of clause 6(3) was not to give an additional domicile to an individual, even though that might be the result. It sought to provide the court with the flexibility to address the issue of injustice under exceptional circumstances</p>	