

律政司
法律政策科
香港金鐘道66號
金鐘道政府合署高座1樓
圖文傳真：852-2180 9928
網址：www.doj.gov.hk



DEPARTMENT OF JUSTICE
Legal Policy Division
1/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong
Fax : 852-2180 9928
Web Site : www.doj.gov.hk

本司檔號 Our Ref.: LP 5019/9C VI
來函檔號 Your Ref.: CB2/BC/4/06
電話號碼 Tel. No.: 2867 4226

BY FAX: 2509 9055

4 December 2007

Mrs Percy Ma
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

via Mr Michael Scott, SASG/GLP

Dear Mrs Ma,

Bills Committee on Domicile Bill

I refer to the Bills Committee meeting held on 28 June 2007 and 16 October 2007 respectively. In the meetings, the Administration was requested to follow up on the following points raised by members.

Clause 7

In the Bills Committee meeting held on 28 June 2007, members raised the question –

- (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 that 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

.../P.2

- (b) whether it was more appropriate to replace the phrase "shall be considered" with "may be considered".

In order to reflect the Administration's intention that a person is not necessarily prevented from obtaining a domicile in another jurisdiction simply because his presence there is unlawful, we have revised the drafting of clause 7 by way of draft Committee Stage Amendments ("CSA") as attached.

Clause 10

Clause 10 relates to the determination of domicile in a country comprising 2 or more territories.

In the meeting held on 16 October 2007, members expressed the view that the court should take into account all relevant factors including the intention of the person, as in the case of determining the domicile of children under clause 4(2), and such a requirement should be incorporated in the Bill as a general provision. In response to members' suggestion, we propose a CSA in the form of a newly added clause 10A(a)(i) and (b) to reflect this intention.

Clause 10A

In the Bills Committee meeting held on 16 October 2007, members considered that in determining the domicile of an adult lacking the capacity to form the intention necessary for acquiring a domicile, the court should take into account all relevant factors including the intention of the adult concerned immediately before losing his or her capacity. This is similar to the case where the court should take into account the preference of a child in determining his or her domicile.

We agree to members' view and now propose a CSA to add clause 10A(b)(ii) to reflect the intention.

Clauses 12 and 13

Clauses 12 and 13 relate to the determination of the domicile of an individual before, on or after the commencement date of the Domicile Ordinance. Members suggested that the application of clause 12 should be subject to clause 13(1) in order to remove doubt as to whether clause 12 or 13 should apply in the event that a child became an adult on the commencement date of the Domicile Ordinance.

In response to members' suggestion, we propose to revise the drafting of clause 13 by way of a CSA to clarify any doubt that may arise under the situation.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Kitty Fung', written in a cursive style. The signature is positioned above the printed name and title.

(Ms Kitty Fung)
Senior Government Counsel
Legal Policy Division

Encl.

#337710

DOMICILE BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

Clause

Amendment Proposed

4 By deleting subclause (2).

7 By deleting the clause and substituting –

“7. Acquiring a domicile in another country or territory

In determining for the purposes of section 5(2) whether an adult has acquired a domicile in a country or territory other than Hong Kong, the fact that his presence in that country or territory is unlawful by the law of that country or territory –

(a) may be taken into account; but

(b) does not preclude a determination that he has acquired a domicile in that country or territory.”.

New By adding –

“10A. Closest connection

In determining for the purposes of section 4, 8 or 10 the country or territory with which an individual is for the time being most closely connected, account may be taken of any relevant matter but account shall be taken of –

(a) if the individual is a child who has a preference as to the country or territory in which to have his home, that preference; and

(b) if the individual is an adult who lacks the capacity to form the intention necessary for acquiring a domicile but who, immediately before losing that

capacity, was an adult intending to make a home in a particular country or territory for an indefinite period, that intention,

and each relevant matter may be given such weight as may be appropriate in all the circumstances of the case.”.

- 13(1) By adding “(except section 12)” after “as if this Ordinance”.
- 13(2) By adding “(except section 12)” after “this Ordinance” where it twice appears.
- 13(3) By deleting “this Ordinance abolishes the following rules of common law” and substituting “the following rules of common law are abolished”.