

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2550/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/9/10

**Bills Committee on Immigration (Amendment) Bill 2011**

**Minutes of meeting**  
**held on Monday, 16 April 2012, at 10:45 am**  
**in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon LAU Kong-wah, JP (Chairman)  
Dr Hon Margaret NG  
Hon James TO Kun-sun  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Cyd HO Sau-lan  
Hon CHAN Hak-kan  
Hon WONG Kwok-kin, BBS  
Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun, JP

**Member absent** : Hon Abraham SHEK Lai-him, SBS, JP

**Public Officers attending** : Item I  
Mr NGAI Wing-chit  
Deputy Secretary for Security 3  
  
Mr CHOW Wing-hang  
Principal Assistant Secretary for Security D  
  
Mr LEUNG Kwok-hung, IMSM  
Assistant Director (Enforcement and Torture Claim Assessment)  
Immigration Department

Ms Fanny IP  
Senior Assistant Law Draftsman  
Department of Justice

Mr Henry CHAN  
Government Counsel  
Department of Justice

Mr Billy WOO  
Assistant Secretary for Security D1

Mr FUNG Ming-keung  
Principal Immigration Officer (Torture Claim Assessment)  
Immigration Department

**Clerk in attendance** : Mrs Sharon TONG  
Principal Council Secretary (2)

**Staff in attendance** : Ms Connie FUNG  
Senior Assistant Legal Adviser 1

Ms Rita LAI  
Senior Council Secretary (2) 1

Ms Michelle LEE  
Legislative Assistant (2) 7

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

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

2. The Administration was requested -

- (a) to specify clearly in the administrative measures the provision of interpretation by qualified court interpreters to torture claimants as necessary so as to facilitate the handling and hearing of torture claims;
- (b) to consider whether or not the term "a bundle" in the proposed section 14(1) of Schedule 1A relating to the Torture Claims Appeal Board ("Appeal Board") should be used;

- (c) to consider replacing the term "是非曲直" with "理據" as the Chinese text for "merits" in the proposed section 18(1) of Schedule 1A;
- (d) to specify in the procedures for handling appeal cases by the Appeal Board that non-refoulement protection would be provided for the following two kinds of claimants -
  - (i) mentally incapacitated persons; and
  - (ii) persons who had difficulties in communication and needed to be provided with sufficient legal assistance; and
- (e) to provide a copy of the judgment of a court case based on which the new section 37ZV(2) providing for permission to take employment where exceptional circumstances existed was proposed.

## **II. Date of next meeting**

3. Members noted that the next meeting had been scheduled for 30 April 2012 at 10:45 am.
4. The meeting ended at 12:45 pm.

Council Business Division 2  
Legislative Council Secretariat  
9 July 2012

**Proceedings of meeting of the  
Bills Committee on Immigration (Amendment) Bill 2011  
held on Monday, 16 April 2012, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000246 - 000735	Chairman Admin Dr Margaret NG Ms Emily LAU	Opening remarks;  Request for outstanding information from the Administration, including whether arrangement for an interview would be made for torture claimants and the protection to be provided to them if an interview would not be arranged; and  Administration's response to the concerns of members - Committee Stage amendments to be proposed and explanations to be provided if amendments were not to be proposed	
000736 - 000832	Chairman Admin	Continuation of clause-by-clause examination of the Bill  <u>Proposed Schedule 1A on Torture Claims Appeal Board ("Appeal Board")</u>  Briefing on the proposed section 10 (Hearing to be in private)	
000833 - 001505	Admin Ms Emily LAU Chairman	Briefing on the proposed section 11 (Language of proceedings); and  Concern about the provision of interpretation by qualified court interpreters to torture claimants and its impact on the conduct of hearing	The Administration to specify clearly in the administrative measures the provision of interpretation by qualified court interpreters to torture claimants as necessary so as to facilitate the handling and hearing of torture claims
001506 - 001546	Chairman Admin	Briefing on the proposed section 12 (Determination of appeal without a hearing)	
001547 - 001800	Chairman Admin Ms Emily LAU	Briefing on the proposed section 13 (Notice of hearing);	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Whether 28 days would be sufficient for making preparation for hearing; and</p> <p>Concern about the availability of venue with proper set-up and facilities for conducting hearings</p>	
001801 - 002126	Chairman Admin Ms Emily LAU	<p>Briefing on the proposed section 14 (Documents to be served on Appeal Board before hearing);</p> <p>Clarification on the timing of the delivery of relevant documents to the Appeal Board as provided in subsection (1); and</p> <p>Query about the use of the term "a bundle" in subsection (1)</p>	The Administration to consider whether or not the term "a bundle" in the proposed section 14(1) of Schedule 1A the Appeal Board should be used
002127 - 002338	Chairman Admin	Briefing on the proposed section 15 (Hearing in a party's absence)	
002339 - 003138	Ms Emily LAU Chairman Admin	<p>Concern about reasons for absence at a hearing (in particular those without reasonable cause) and the present situation;</p> <p>Percentage and number of appeal cases, and number of hearings conducted;</p> <p>Plugging the loophole of delaying the process by not attending the hearing for cases with slim chance of substantiation; and</p> <p>Whether the notice of hearing could reach the torture claimants</p>	
003139 - 003354	Chairman Mr WONG Yung-kan Admin	Number of cases where appeals were heard and determined in the absence of the torture claimants	
003355 - 003445	Ms Emily LAU Admin	Whether torture claimants were assisted by legal representative in the appeal process (to whom the notice of hearing could be served if the Appeal Board failed in contacting the torture claimants)	

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003446 - 003833	Chairman Mr Paul TSE Admin	Clarification on the proposed section 15(4) of Schedule 1A	
003834 - 004024	Mr Paul TSE Chairman Admin	Circumstances under which a hearing was to be held in private or in public	
004025 - 004336	Chairman Dr PAN Pey-chyou Admin	<p>Handling of cases of torture claimants who were mentally incapacitated person and not able to attend hearings;</p> <p>Whether the above-mentioned cases would be handled in accordance with the proposed section 12 of Schedule 1A; and</p> <p>The proposed section under which the above-mentioned cases would be handled</p>	
004337 - 004506	Chairman Ms Emily LAU Admin	<p>Whether venue suitable for conducting hearings in public would be available; and</p> <p>Whether requests for public hearings had been raised by torture claimants in the past, and whether requests for public hearings could be entertained before the passage of the Bill</p>	
004507 - 004609	Mr Paul TSE Admin	Further clarification on the proposed section 15(4) of Schedule 1A	
004610 - 004800	Chairman Admin	<p>Briefing on the proposed sections 16 (Chairperson may give directions) and 17 (Appeal Board may determine own procedure); and</p> <p>Whether procedures for hearing an appeal were currently in place, and whether the procedures for hearing an appeal would be laid down after the passage of the Bill</p>	

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004801 - 005433	Chairman Admin Mr James TO Mr Paul TSE	Briefing on the proposed section 18 (Evidence considered by Appeal Board); and  Use of term "是非曲直" as the Chinese text for "merits"	The Administration to consider replacing the term "是非曲直" with "理據" as the Chinese text for "merits" in the proposed section 18(1) of Schedule 1A
005434 - 005525	Chairman Admin	Briefing on the proposed section 19 (Notice of new evidence)	
005526 - 005715	Chairman Admin	Briefing on the proposed section 20 (Witness etc.)	
005716 - 010318	Chairman Mr Paul TSE Admin SALA1	Difference between subsections (2) and (3) of the proposed section 20;  Circumstances under which the proposed section 20(2) would apply; and  Clarification on the use of the term "指示" in the Chinese text in the proposed section 20(1)	
010319 - 011610	Chairman Dr PAN Pey-chyou Admin	Handling of cases of torture claimants suffering from trauma in a fair manner at the appeal stage	The Administration to specify in the procedures for handling appeal cases by the Appeal Board that non-refoulement protection would be provided to the following two kinds of claimants -  (a) mentally incapacitated persons; and  (b) persons who had difficulties in communication and needed to be provided with sufficient legal assistance
011611 - 012000	Chairman Mr Paul TSE Admin	Whether the protection for torture claimants under the proposed section 15 could be bypassed by the proposed section 12; and whether the proposed section 12 as presently drafted could guarantee the	

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		protection under the proposed section 15	
012001 - 012018	Chairman Dr Margaret NG Admin	Whether decisions of the Appeal Board would be subject to judicial review	
012019 - 012231	Chairman Admin	Briefing on the proposed section 21 (Appeal Board's decision); and  Final decision of the Appeal Board subject to judicial review	
012232 - 012325	Chairman Admin	Briefing on the proposed section 22 (Record of proceedings); and  Clarification on keeping "a record or summary of proceedings"	
012326 - 012345	Chairman Admin	Briefing on the proposed section 23 (Correction of errors)	
012346 - 012436	Chairman Admin	Briefing on the proposed section 24 (Privileges and immunities of members and witness);	
012437 - 012541	Chairman Mr Paul TSE Admin	Difference between the privileges and immunities enjoyed by a judge of the Court of First Instance in civil proceedings and those in criminal proceedings;  Reasons for adopting civil proceedings in the proposed section 24; and  Whether it was necessary to specify civil proceedings in the proposed section 24	
012542 - 013044	Chairman Admin Mr James TO	<u>Division 4 - Miscellaneous</u>  Briefing on the proposed section 37ZT (Notices) and the proposed section 37ZU (Regulations)	
013045 - 013439	Chairman Admin	Briefing on the proposed section 37ZV (Claimant of substantiated claim may apply for permission to take employment etc.); and	



Time marker	Speaker(s)	Subject(s)	Action Required
		Administration's response to the views of deputations on the proposed section, including whether the exceptional circumstances could be more specific and the impact on labour workforce	
013440 - 014138	Chairman Dr Margaret NG Admin	How a balance between protection of local labour workforce and human rights of torture claimants could be struck;  Whether torture claimants would be allowed to take up voluntary work; and  Meaning of exceptional circumstances in the proposed section 37ZV(2) and reference to a court case	The Administration to provide a copy of the judgment of a court case based on which the new section 37ZV(2) was proposed
014139 - 014936	Chairman Dr PAN Pey-chyou Ms Emily LAU Admin	Whether torture claimants whose claims were substantiated could stay in Hong Kong;  Whether the discretionary power of the Director of Immigration to permit a torture claimant whose case was substantiated to take employment was too wide; and  Whether such torture claimant would be regarded as a local worker or a foreign worker and the duration of employment	
014937 - 015056	Chairman Admin	Briefing on the proposed section 37ZW (Claimant not ordinarily resident in Hong Kong)	
015057 - 015547	Chairman Ms Emily LAU Admin	Whether the torture claimants whose cases were substantiated could stay in Hong Kong until they could go to a third place or country; and  Whether the treatment of such claimants would be the same as that in other countries	

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015548 - 015732	Chairman Mr Paul TSE Admin	Given the existing section 2(4) of the Immigration Ordinance (Cap. 115) on the types of persons who would not be treated as ordinarily resident in Hong Kong, rationale for the proposed section 37ZW	
015733 - 020043	Chairman Dr PAN Pey-chyou Admin	Whether a mechanism was in place allowing torture claimants with substantiated claims and having been stranded in Hong Kong to apply for the status of permanent residents of Hong Kong; and  Status of minors born in Hong Kong and whose parents were torture claimants with their claims substantiated; and those with one of their parents as Hong Kong residents	
020044 - 020125	Chairman Ms Emily LAU	Date of next meeting and closing remarks	