

立法會
Legislative Council

Ref : CB4/BC/2/16

LC Paper No. CB(4)1589/16-17
(These minutes have been seen
by the Administration)

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2017

Minutes of the first meeting
held on Tuesday, 11 July 2017, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon Dennis KWOK Wing-hang (Chairman)
Hon Kenneth LEUNG (Deputy Chairman)
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP

Members absent : Dr Hon Elizabeth QUAT, BBS, JP

Public officers attending : Item II

Department of Justice

Ms Adeline WAN
Senior Assistant Solicitor General (Policy Affairs)

Mr Paul HO
Senior Assistant Director of Public Prosecutions (Office
of the Director of Public Prosecutions)

Miss Emma WONG
Senior Government Counsel

Mr Manuel NG
Senior Government Counsel

Miss Janice KWAN
Senior Government Counsel (Acting)

Miss Christine WONG
Government Counsel

Judiciary Administration

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)1

Mr David LAU
Assistant Judiciary Administrator (Development)2

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Miss Joyce CHING
Senior Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Election of Chairman and Deputy Chairman

Mr WU Chi-wai, the member who had the highest precedence among members present at the meeting, presided over the election of the Chairman. He invited nominations for the chairmanship of the Bills Committee.

2. Mr Charles MOK nominated Mr Dennis KWOK and the nomination was seconded by Mr Kenneth LEUNG. Mr Dennis KWOK accepted the

nomination. There being no other nomination, Mr Dennis KWOK was declared Chairman of the Bills Committee.

3. The Chairman called for nominations for the deputy chairmanship of the Bills Committee.

4. Mr Charles MOK nominated Mr Kenneth LEUNG and the nomination was seconded by Mr Alvin YEUNG. Mr Kenneth LEUNG accepted the nomination. There being no other nomination, Mr Kenneth LEUNG was declared Deputy Chairman of the Bills Committee.

II. Meeting with the Administration and the Judiciary Administration

File Ref.: LP 3/00/14C	--	Legislative Council ("LegCo") Brief
LC Paper No. CB(3)629/16-17	--	The Bill
LC Paper No. LS79/16-17	--	Legal Service Division Report
LC Paper No. CB(4)1376/16-17(01)	--	Letter from the Assistant Legal Adviser to the Department of Justice dated 6 July 2017
LC Paper No. CB(4)1376/16-17(02)	--	Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
LC Paper No. CB(4)1376/16-17(03)	--	Background brief on the Statute Law (Miscellaneous Provisions) Bill 2017 prepared by the LegCo Secretariat
LC Paper No. CB(4)1394/16-17(01)	--	Letter from the Department of Justice dated 10 July 2017 in response to the letter dated 6 July 2017 from the

Assistant Legal Adviser of
the Legislative Council
Secretariat

Discussion

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

Completion of scrutiny of the Bill

6. The Bills Committee completed the scrutiny of the Bill and would not propose any amendment to the Bill.

Legislative Timetable

7. Members noted the Administration's intention to resume the Second Reading debate on the Bill at a Council meeting as early as possible in October 2017 after the summer recess. No members raised any objection. The Deputy Chairman, acting as Chairman in the absence of Mr Dennis KWOK who had to attend to urgent businesses, advised members that the Bills Committee would report its deliberations to the House Committee in early Oct 2017.

II. Any other business

8. There being no other business, the meeting ended at 10:40 am.

Council Business Division 4
Legislative Council Secretariat
18 September 2017

**Proceedings of the first meeting of the
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2017
held on Tuesday, 11 July 2017, at 8:30am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Election of Chairman			
000509-000619	Mr WU Chi-wai Mr Charles MOK Mr Dennis KWOK	Election of Chairman	
000619-000740	Chairman Mr Charles MOK Mr Alvin YEUNG Mr Kenneth LEUNG	Election of Deputy Chairman	
Meeting with the Administration and the Judiciary Administration			
000740-001414	Chairman Administration	Briefing by the Administration on the content of the Statute Law (Miscellaneous Provisions) Bill 2017 ("the Bill")	
001414-001642	Chairman Deputy Chairman Administration	The Deputy Chairman sought clarification on whether all the amendments under Part 9 were textual amendments which did not involve policy matters. The Administration responded in the affirmative.	
001642-002244	Chairman Dr Helena WONG Administration Judiciary Administration	<u>Discussion on Part 2</u> <u>Protection to Sexual Offence Complainants</u> Dr Helena WONG sought clarification on the categories of persons to be covered under the proposed new provision to section 79B of the Criminal Procedure Ordinance (Cap. 221).	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration advised that the proposed amendments to Cap. 221 and the Live Television Link and Video Recorded Evidence Rules (Cap. 221J) sought to confer on the court a discretion, on its own motion or upon application, to permit a complainant of specified sexual offences to give evidence in proceedings by way of a live television link. The Administration further advised that such permission was not automatic upon application but subject to the court's discretion.</p> <p>The Judiciary Administration also broadly outlined the possible key perspectives for consideration in exercising the judicial discretion on whether to permit a witness or complainant to give evidence in proceedings by way of a live television link.</p> <p>Dr Helena WONG enquired on the approval rate of applications for witnesses or complainants to give evidence in proceedings by way of a live television link in the past. The Administration advised that almost all the applications were approved. The Judiciary Administration would consider providing the approval rate of previous applications, if readily available.</p>	
002244-002743	Chairman Administration	<p>The Chairman pointed out that relatives, social workers and teachers were often "disallowed" to act as "support persons". He then requested the Administration to review the arrangement in relation to "support person" for vulnerable persons at trial.</p> <p>The Administration advised that arrangement in relation to "support persons" was governed by Cap. 221J and the Practice Direction 9.5 issued by the Judiciary. Procedural fairness of the relevant court proceedings and whether the support person had the ability and relevant</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>knowledge to provide emotional support for the witness during the trial were some of the important considerations in assessing the above said matter.</p>	
<i>Clause-by-clause examination</i>			
<p>002743-003606</p>	<p>Chairman Dr Helena WONG Administration Judiciary Administration</p>	<p><u>Protection to Sexual Offence Complainants</u></p> <p><u>Examination of Part 2 - clause 3</u></p> <p>In response to the Chairman's enquiry, the Administration explained the difference between "在恐懼中的證人" and "惶恐證人" and advised that the proposed amendment was a language improvement.</p> <p>In response to Dr Helena WONG's enquiry on the reason for repealing "在恐懼中的" and substituting it with "惶恐" under Clause 3 of Part 2, the Administration advised that the proposed amendment sought to follow the plain language drafting practice. It also served as an indication that “惶恐證人” is a defined term.</p> <p>The Chairman sought clarification on whether "惶恐證人" in the Bill and "受驚人士" in Practice Direction 9.5 had the same meaning. If so, he suggested to use the same wordings to maintain consistency. The Judiciary Administration responded that this should be the case and advised that the Judiciary would consider amending the term in the relevant Practice Direction(s) accordingly to tie in with the enactment of the Bill.</p> <p>Referring to the proposed new section 79B(4A) of Cap. 221, the Chairman asked what are the "conditions" which would be considered by the court.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration advised that "conditions" in the proposed new section 79B(4A) was used in a broad sense and thus the court could impose any conditions which it deemed appropriate based on the circumstances of individual cases.</p>	
003606-003758	<p>Chairman Mr Holden CHOW Administration</p>	<p><u>Examination of Part 2 - clauses 3 to 4</u></p> <p>Mr Holden CHOW asked whether the Administration would consider widening the definition of "witness in fear" to address the psychological need of witnesses.</p> <p>The Administration advised that the proposed new sections 79B(4A) and 83V(13A) of Cap. 221 sought to offer greater protection for complainants of specified sexual offence during court proceedings.</p>	
003758-004120	<p>Chairman Deputy Chairman Judiciary Administration</p>	<p>In response to the Deputy Chairman's enquiry on whether other measures would be available for protection of witnesses/ victims during court proceedings, the Judiciary Administration responded that other measures subject to the judge's discretionary approval were available. These included provision of protective screens which would prevent the accused and/or the public from seeing the witnesses.</p>	
004120-005038	<p>Chairman Dr Fernando CHEUNG Judiciary Administration</p>	<p>Dr Fernando CHEUNG pointed out that the company of a relative or a person whom the witness knew previously was normally not allowed when the witness was giving evidence via a live television link. Dr CHEUNG then requested the Administration to explore the feasibility of making arrangement for more familiar "support persons" in the above situation.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Judiciary Administration advised that upholding the principle of fairness was of paramount importance from the perspective of the Judiciary. A balance had to be sought between addressing the need of witnesses in fear/complainants and ensuring the defendants' right to a fair hearing etc.</p>	
005038-005422	<p>Chairman Mr Holden CHOW Administration</p>	<p>Mr Holden CHOW enquired about the kind of protection available for witness of sexual offence (other than the complainant and who did not fall under the definition of "witness in fear") who felt embarrassed to see the accused when giving evidence in court proceedings.</p> <p>The Administration advised that other measures, such as protective screen, might be arranged subject to the court's discretionary approval to prevent the witness from seeing the accused.</p>	
005422-005814	<p>Chairman Mr Alvin YEUNG Judiciary Administration</p>	<p>Mr Alvin YEUNG suggested the Judiciary Administration to enhance courtroom facilities and/or work out necessary technical arrangement so as to allow the presence of familiar support persons thereby addressing the concern raised by Dr Fernando CHEUNG while giving due regard to the defendant's right to a fair hearing. The Judiciary Administration agreed to consider the suggestion as a matter of principle first.</p>	
005814-010119	<p>Chairman Administration</p>	<p>The Administration explained the drafting policy adopted for the proposed new section 79B(4A) of Cap. 221 under clause 3(4) of the Bill, details of which was set out in LC Paper No. CB(4)1394/16-17(01).</p>	
010119-010426	<p>Chairman Dr Fernando CHEUNG Judiciary</p>	<p>Dr Fernando CHEUNG urged the Administration to work on the technical issues so as to facilitate the arrangement of familiar "support persons" especially for situation</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
	Administration	where a child or a mentally incapacitated person was to give evidence via live television link. The Judiciary Administration reiterated the importance of the principles of procedural fairness etc., but agreed to see if the suggestion could be considered further as a matter of principle first.	
010426-010529	Chairman Deputy Chairman Administration	The Deputy Chairman agreed to Mr Alvin YEUNG's suggestion.	
010529-010606	Chairman Administration	<u>Examination of Part 2 – clause 5</u>	
010606-010736	Chairman Administration	<u>Powers and Duties of Temporary Registrars of Various Ranks</u> <u>Examination of Part 3</u>	
010736-011049	Deputy Chairman Administration	<p>The Deputy Chairman presided over the meeting in the absence of the Chairman who had to attend to urgent businesses. Referring to the proposed new section 37AB(2A) of the High Court Ordinance (Cap. 4) under clause 6 of the Bill, the Deputy Chairman asked whether words and expressions importing the masculine gender could include the feminine and neuter genders in all other provisions and suggested to use "he" instead of "he or she".</p> <p>The Administration advised that according to the Interpretation and General Clauses Ordinance (Cap. 1), words and expressions importing the masculine gender include the feminine and neuter genders. Also, a gender-neutral drafting policy had been adopted in recent years and thus "he or she" was used. This practice had also been adopted by other common law jurisdictions.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
011049-011200	Deputy Chairman Administration	<u>Examination of Part 3 – clauses 6 to 11</u>	
011200-011421	Deputy Chairman Judiciary Administration	<p>Referring to the proposed amendments in Part 3 of the Bill which specified more clearly the powers and duties of temporary registrars of various ranks, the Deputy Chairman enquired whether the Administration had reviewed all the relevant provisions in other Ordinances to see if a similar provision had to be added as appropriate.</p> <p>The Judiciary Administration pointed out that the proposed amendments in Part 3 of the Bill were drafted to the effect that whenever there was a reference in any law to the relevant registrar, the corresponding temporary registrar would have all the jurisdiction, privileges, powers and duties conferred or imposed on the registrar concerned. As such, a review on all the relevant provisions in the other Ordinances was not necessary.</p>	
011421-011611	Deputy Chairman ALA2 Holden CHOW Judiciary Administration	<p><u>Amendments to Cap. 336 relating to Composition of District Court Rules Committee ("DCRC")</u></p> <p><u>Examination of Part 4 – clause 12</u></p> <p>In response to the enquiry of the Deputy Chairman, the Judiciary Administration clarified that upon the proposed addition of a representative to be appointed by the Secretary for Justice ("SJ"), there would be a total of eight members on the DCRC and hence the quorum for any meeting of the DCRC was proposed to be changed from three to four. The Chairman of DCRC was the Chief Judge of the High Court.</p> <p>The Judiciary Administration also explained the difference between the formulation of the</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>appointment by SJ in the proposed section 17(1A)(f) of Cap. 336 and that for the Court of Final Appeal Rules Committee under the Hong Kong Court of Final Appeal Ordinance (Cap. 484). Details of the explanation was set out in LC Paper No. CB(4)1394/16-17(01).</p> <p>In response to Mr Holden CHOW's enquiry, the Judiciary Administration advised that currently the Registrar was the secretary of DCRC. The proposed section 17(1B) of Cap. 336 served to set out the existing arrangement explicitly for broad alignment with the similar legislative provision for the High Court Rules Committee.</p>	
011835-012005	Deputy Chairman Administration	<p><u>Residency Requirements for Admission as Solicitor in Hong Kong</u></p> <p><u>Examination of Part 5 – clauses 13 to 14</u></p>	
012005-012638	Deputy Chairman ALA2 Administration	<p><u>Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597)</u></p> <p><u>Examination of Part 6 – clauses 15 to 20</u></p> <p>In response to the enquiry made by the Legal Advisor to the Bills Committee, the Administration explained the rationale for commencing Part 6 on a different date, as highlighted in LC Paper No. CB(4)1394/16-17(01).</p> <p>In reply to the Deputy Chairman, the Administration explained that "recognized Primary People's Court" meant any primary people's court that was specified in a list published in the Gazette under section 25(1) of Cap. 597 from time to time.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
012305-012939	Deputy Chairman Dr Junius HO Administration	<p><u>Provisions Relating to Laws Compilation and Editorial Amendments</u></p> <p><u>Examination of Part 7 – clauses 21 to 22</u></p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that under the loose-leaf edition regime, the 5 Ordinances listed in the proposed section 4(1)(a) of the Legislation Publication Ordinance (Cap. 614) under clause 22 of the Bill were not assigned with Chapter numbers and they were put under Volume 1 of the loose-leaf edition which contained mainly constitutional instruments.</p> <p>Dr Junius HO suggested assigning "special" Chapter number, say Chapter 1.1 or 1A, to those 5 Ordinances. The Administration responded that assignment of Chapter numbers to those five Ordinances might not be appropriate having regard to the nature of those Ordinances. In addition, Chapter numbers with letters were assigned to subsidiary legislation under the existing arrangement. Nevertheless, the Administration could study further.</p>	
012939-013304	Deputy Chairman Administration	The Administration explained the current arrangement of legislation published in loose-leaf edition.	
013304-013700	Deputy Chairman Administration	<u>Examination of Part 7 – clauses 23 to 29</u>	
013700-013900	Deputy Chairman Judiciary Administration	<p><u>Amendment to District Court Ordinance (Cap. 336) Relating to Jurisdiction Limits of Costs-only Proceedings</u></p> <p><u>Examination of Part 8 – clause 30</u></p> <p>The Judiciary Administration explained the meaning of costs-only proceedings.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
013900-015043	Deputy Chairman Administration	<u>Miscellaneous Amendments</u> <u>Examination of Part 9 – clauses 31 to 82</u>	
015043-015301	Deputy Chairman Mr Holden CHOW Administration	<u>Examination of Part 9 - clause 83</u> Mr Holden CHOW asked whether the stakeholders in the fishery industry had been consulted on the proposed amendments to section 10 of the Oil Pollution (Land Use and Requisition) Ordinance (Cap. 247) as the proposed amendments seemed to involve a policy change. The Administration advised that the proposed amendments which sought to amend the Chinese text to make it consistent with the English version did not involve any changes to policy. The Administration had already consulted the relevant policy bureau and the Marine Department and it was confirmed that the English version of this clause had accurately reflected the policy intent of this matter.	
015301-015726	Deputy Chairman Administration	<u>Examination of Part 9 – clauses 84 to 118</u>	
015726-015858	Deputy Chairman Mr Holden CHOW Administration	In response to Mr Holden CHOW's enquiry on the definition of "ship", the Administration advised that the definition of "ship" varied in different Ordinances to suit different purposes.	
015858-015948	Deputy Chairman Administration	In response to the Deputy Chairman's enquiry, the Administration advised that the English rendition for "固定式或浮式平台" was "fixed or floating platform". <i>(The Chairman announced that the meeting would be extended for 15 minutes.)</i>	

Time Marker	Speaker(s)	Subject(s)	Action required
015948-020112	Deputy Chairman Administration	<u>Examination of Part 9 – clauses 119 to 124</u>	
020112-020216	Deputy Chairman Administration	<p><u>Examination of Part 9 – clause 125</u></p> <p>In response to the Deputy Chairman's enquiry on whether the Airport Authority Hong Kong had been consulted on the proposed amendments to the Airport Authority Bylaw (Cap. 483A), the Administration responded in the affirmative.</p>	
020216-020520	Deputy Chairman Administration	<u>Examination of Part 9 – clauses 126 to 143</u>	
020520-020653	Deputy Chairman Mr Holden CHOW Administration	In response to Mr Holden CHOW's enquiry on whether the word "的" should be removed from the proposed addition of the phrase "的核數師" to section 408(2)(b) of the Companies Ordinance (Cap. 622) under clause 140 of the Bill, the Administration confirmed that the word "的" in the proposed additional phrase was necessary and that this phrase was consistent with the one referred to in the same section i.e. section 408 (2)(a)(ii) of Cap. 622.	
020653-021248	Deputy Chairman Administration	Examination of the clauses under Part 9 (Clauses 33, 36(1), 39, 45(4), 50 to 55, 96, 118, 126(1), 127, 129, 133 to 136, 141 and 142) which only involved amendments in the English version.	
021248-021344	Deputy Chairman Administration	<p>Completion of clause-by-clause examination of the Bill. Members noted the Administration's intention to resume the Second Reading debate on the Bill at a Council meeting as early as possible after the summer recess and did not have any objections.</p> <p>Legislative Timetable</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
Any other business			
021344- 021352	Chairman	Closing remarks	

Council Business Division 4
Legislative Council Secretariat
18 September 2017