

LC: Speech by SJ in resuming the second reading debate of the Domicile Bill

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, in resuming the second reading debate of the Domicile Bill in the Legislative Council today (February 20):

Madam President,

When I introduced the Domicile Bill into this Council in February 2007, I have explained that the common law rules for determining a person's domicile are indeed complex and confusing. Just now, members have already mentioned that these rules have become outdated due to changes in time, including the fact that the world has become globalised. The Bill proposes to simplify these rules and to make it easier to ascertain a person's domicile. Just now, the Chairman of the Bills Committee, the Hon James To, has briefly reported on this Bill. I will not repeat what has already been mentioned. Like what the Hon James To has just said, the Bill seeks to implement recommendations in a report of the Law Reform Commission (the Commission) entitled "Rules for Determining Domicile" (the Report), which was published in April 2005. The Hon Audrey Eu also mentioned that a lot of work has been done when she was the Chairman of the Sub-committee. I would particularly like to thank her for this. Just now, the Hon Miriam Lau stressed that domicile is in fact unconnected with, and distinct from concepts such as nationality, right of abode and citizenship. Domicile is relevant to the question as to which system of law is to govern issues relating to a person's legal status and property, such as a person's legal capacity to marry or to make a will or which set of law is to be adopted to determine succession to certain property.

Since the introduction of this Bill, seven meetings were held by the Bills Committee. The Chairman of the Bills Committee the Hon James To, and all members have thoroughly examined the clauses. As what the Hon Audrey Eu has mentioned, the Chairman, the Hon James To, has many suggestions and views, which were in fact very useful, and have resulted in today's proposed amendments. I am most grateful to the Hon James To and the other participating members. The Administration agreed that some amendments be made to the Bill in accordance with the suggestions of the Bills Committee. As a result, I will be moving a number of Committee Stage amendments later this afternoon. I will now give a brief outline of the more important amendments.

I will first deal with the domicile of children. In place of the existing common law rules of domicile of origin and domicile of dependency, the Commission recommends, and the Bill provides for a single test, and, that is, the child's domicile should be the jurisdiction with which he is most closely connected. The Bill further introduces two rebuttable presumptions to assist in the determination of the country or territory of closest connection by reference to the domicile of a parent with whom the child has his home. These meet with the Bills Committee's approval. The Bills Committee raised a question on whether in applying the closest connection test in determining the domicile of children, any one category of parents would have priority

over the other categories. Members specifically focused on the case of a parent by adoption.

After thorough consideration, the Administration agreed that the definition should be revised in line with the approach under the law of adoption. The amendments will make it clear that in the case of an adopted child, only the adopter or adopters is or are regarded as the child's parent or parents. In the case of a child adopted by a person married to a natural parent of the child, only the adopter and that natural parent is or are regarded as the child's parent or parents.

Clause 8 relates to the domicile of adults under disability. The Bill proposes that a mentally incapacitated adult should be domiciled in the country or territory with which he is most closely connected. On recovery of his capacity, he should retain the domicile which he last held before his recovery, and he may then acquire a domicile of his choice.

The Bills Committee suggested that in determining the domicile of a mentally incapacitated adult, account should be taken of any intention that he might have immediately before losing his mental capacity, as to the country and territory in which to make a home for an indefinite period. This is similar to the case, as already provided in the Bill, for determining the domicile of a child whereby account is taken of any preference that the child may have when applying the closest connection test.

After considering the issue, it was agreed that a Committee Stage amendment be moved to address members' concern.

In respect of clauses 12 and 13, technical issues were raised by the Bills Committee on the extent to which the common law rules still apply. More specifically, an issue was raised as to whether the old common law rules or the new statutory rules will apply to a child who becomes an adult on the commencement date of the Domicile Ordinance (if enacted). Another issue was raised as to whether there may be common law rules that are not inconsistent with the new statutory rules and should continue to apply. The Administration will propose amendments to address these issues.

Apart from the above more major amendments, the Administration will also be moving other Committee Stage Amendments to deal with minor and technical issues. I have already mentioned them.

The House Committee has considered the Committee Stage Amendments that I propose to move and has indicated that it has no objection to them.

Madam President, with these remarks and subject to the Committee Stage amendments proposed by the Administration, I commend the Bill to Honourable Members. Thank you.

Ends/Wednesday, February 20, 2008