

LC: Speech by SJ in moving the committee stage amendments to the Domicile Bill
(Clauses 2, 4, 7, 8 and 13)

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, in moving the committee stage amendments to the Domicile Bill (Clauses 2, 4, 7, 8 and 13) in the Legislative Council today (February 20):

Madam Chairman,

I move that clauses 2, 4, 7, 8 and 13 be amended as set out in the paper circulated to Members.

Clause 2

I have explained the reasons for proposing Committee Stage amendment to clause 2 earlier this afternoon. The amendment to the definition of "parent" in clause 2 of the Bill makes 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 are regarded as the child's parents.

Furthermore, the definition of "parents" in clause 2 is amended to singular form in order to address the Bills Committee's concern that in determining a child's domicile, the child's parents could fall within different categories, for example, a natural parent and a step-parent.

Clause 4

Clause 4 relates to the determination of domicile of children. The amendment to the Chinese text of clause 4 and the deletion of subclause (2) of clause 4 are drafting improvements.

Clause 7

I turn now to the amendment to clause 7. That clause provides for the determination of domicile of an adult in a country or territory other than Hong Kong. Clause 7 is amended in order to clarify that although the lawfulness of an adult's presence in another jurisdiction is relevant to the question of acquiring a domicile there, he is not necessarily prevented from acquiring a domicile there simply because his presence there is unlawful.

Clause 8

Clause 8 relates to the domicile of adults under disability. The amendment to the Chinese text of clause 8 is a drafting improvement.

Clause 13

Clauses 12 and 13 relate to the determination of domicile before the commencement of the Bill and on or after the commencement of the Bill respectively. Clause 13(3) provides that, for the purposes of determining the domicile of a person on or after the commencement date, various common law rules are abolished.

The Bills Committee discussed the application of clauses 12 and 13 for determining a person's domicile on the commencement date of the Domicile Ordinance, if enacted, if the person becomes an adult on that commencement date. Since, under clause 5(1), an individual on becoming an adult retains the domicile he had immediately before he becomes an adult, it was questioned whether Clause 12 or 13 should apply in such case.

The Bills Committee also considered that it is necessary to allow for the possibility that some of the common law rules set out in clause 13(3) and proposed to be abolished might not be inconsistent with the Domicile Ordinance, if enacted.

Clause 13 is amended to address Members' concerns. Clause 13(1) now makes it clear that section 12 does not apply for determining the domicile of a person on or after the commencement date of the Domicile Ordinance, if enacted. Clause 13(3) now merely sets out the rules of common law in place of which the new statutory rules are intended to apply.

The Bills Committee has discussed and expressed support for the above amendments. I hope Members will endorse them.

Madam Chairman, I beg to move.

Ends/Wednesday, February 20, 2008