

立法會
Legislative Council

LC Paper No. CB(2) 1286/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 16th meeting
held in the Legislative Council Chamber
at 4:34 pm on Friday, 21 February 2003**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Chin-shek, JP
Hon LAU Kong-wah
Hon Miriam LAU Kin-ye, JP

Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members absent :

Hon Kenneth TING Woo-shou, JP
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Margaret NG
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon LAU Wong-fat, GBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee

Clerk in attendance :

Mrs Justina LAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP Secretary General
Mr Jimmy MA, JP Legal Adviser

Mr LAW Kam-sang, JP	Deputy Secretary General
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Connie FUNG	Assistant Legal Adviser 3
Mr KAU Kin-wah	Assistant Legal Adviser 6
Miss Monna LAI	Assistant Legal Adviser 7
Miss Betty MA	Senior Assistant Secretary (2)1

Action

I. Confirmation of the minutes of the 15th meeting held on 14 February 2003

(LC Paper No. CB(2) 1208/02-03)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration (CS)

Briefing the Legislative Council (LegCo) on important announcements and matters

2. The Chairman said that she had informed CS that Members welcomed the statement regarding the National Security (Legislative Provisions) Bill made by the Secretary for Security at the Council meeting on 12 February 2003. Members urged that the Administration should make the same arrangement as far as possible in future.

3. The Chairman further said that CS had remarked that he looked forward to enhanced cooperation with Panels, particularly considering the number of bills in the pipeline.

4. Mr LAU Chin-shek said that at the meeting of the Panel on Manpower held on 20 February 2003, members requested that as soon as the Executive Council (ExCo) had taken a decision on "population policy", CS should make a statement in Council on ExCo's decision, prior to briefing the media. Mr

Action

LAU added that the Panel would hold follow-up discussion on those issues relating to manpower and labour.

5. The Chairman said that she would convey the request to CS.

Attendance of CS at the special House Committee meeting on 28 February 2003

6. The Chairman informed Members that CS did not intend to propose any topic for the time being. He would be prepared to answer questions on any other topical issues raised by Members at the meeting, apart from the two topics proposed by Members.

III. Business arising from previous Council meetings

(a) **Legal Service Division reports on bills referred to the House Committee in accordance with Rule 54(4)**

(i) **Foreshore, Sea-bed and Roads (Amendment) Bill 2003**
(*LC Paper No. LS 53/02-03*)

7. The Legal Adviser said that the Bill sought to shorten the periods for lodging and resolving objections in respect of reclamation or works in relation to roads and sewerage proposed under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127), the Roads, (Works, Use and Compensation) Ordinance (Cap. 370) and the Water Pollution Control (Sewerage) Regulation (Cap. 358 sub.leg.).

8. The Legal Adviser said that the Panel on Planning, Lands and Works was consulted on the legislative proposal at its meetings on 16 May 2002 and 6 December 2002 and a number of concerns were raised. He further said that some Panel members did not support the legislative proposals, particularly that of shortening the period for the public to make objections.

9. The Chairman proposed that a Bills Committee be formed, in view of the concerns raised at the Panel meetings. Members agreed. The following Members agreed to join : Mrs Selina CHOW, Mr Andrew WONG, Ms Emily LAU, Dr LAW Chi-kwong and Mr IP Kwok-him.

10. The Chairman added that the Bills Committee would be placed on the waiting list until a vacant slot was available.

(ii) **Bills of Exchange (Amendment) Bill 2003**
(*LC Paper No. LS 52/02-03*)

Action

11. The Legal Adviser explained that the Bill sought to permit the presentment of cheques in the form of electronic records by banks inter se. The Legal Adviser further explained that although the Bill did not impose a ceiling on the value of the cheques, the electronic presentment was intended to apply to cheques of a value less than \$20,000 when it was launched, and the threshold value would be reviewed in the light of experience gained after implementation of the new system.

12. The Legal Adviser informed Members that the Panel on Financial Affairs was briefed on the legislative proposal on 2 December 2002, and the Administration had provided explanation to the queries raised by Panel members.

13. The Legal Adviser said that the amendments introduced by the Bill were mainly technical in nature. No difficulties had been observed in relation to the legal and drafting aspects of the Bill. He added that subject to Members' views, the Bill was ready for resumption of Second Reading debate.

14. Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(b) Legal Service Division report on subsidiary legislation gazetted on 14 and 15 February 2003 and tabled in Council on 19 February 2003

(LC Paper No. LS 62/02-03)

15. The Legal Adviser said that there were 11 items of subsidiary legislation gazetted on 14 and 15 February 2003 and tabled in Council on 19 February 2003.

16. The Legal Adviser explained that the Import and Export (General) (Amendment) Regulation 2003, the Import and Export (Registration) (Amendment) Regulation 2003, the Import and Export (Removal of Articles) (Amendment) Regulation 2003 and the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003 were made following the enactment of the Import and Export (Electronic Transactions) Ordinance 2002 in July 2002. The Ordinance provided for the use of an electronic service provided by a body specified in Schedule 2 to the Import and Export Ordinance (IEO) in the submission of cargo manifests by cargo carriers to the Government.

17. The Legal Adviser further said that Tradelink Electronic Commerce Limited was at present the only body specified in Schedule 2 to IEO. He

Action

added that the Ordinance had not been brought into operation pending the making of the above Regulations.

Action

18. The Legal Adviser informed Members that the Legal Service Division had sought clarification from the Administration on certain drafting matters in relation to the Import and Export (Removal of Articles) (Amendment) Regulation 2003 and the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003. The Legal Adviser further informed Members that the Administration had just responded that it would make amendments to these two Regulations by moving a motion at a future Council meeting. The Legal Service Division would provide a further report on these two items of subsidiary legislation after receiving the draft motion.

19. Ms Miriam LAU said that the Administration had previously agreed to provide transitional periods before electronic submission of manifests was made mandatory. She suggested that a subcommittee should be set up to study the Regulations and the Administration should be invited to explain the transitional arrangements.

20. The Legal Adviser said that these four Regulations would come into operation on 11 April 2003 to tie in with the commencement of the Import and Export (Electronic Transactions) Ordinance 2002. The Legal Adviser further said that the Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2003 and the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (Commencement) Notice 2003, which were reported under Part III of the report, respectively appointed 11 April 2003 as the day on which section 9 of the Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) and the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) would come into operation. As the two Commencement Notices were related to the four Regulations, he suggested that the subcommittee, if set up, should also examine these two Commencement Notices.

21. The Chairman proposed that a subcommittee be formed to study the above six items of subsidiary legislation. Members agreed. The following Members agreed to join : Mr HUI Cheung-ching, Mr CHAN Kam-lam and Ms Miriam LAU.

22. As regards the Electronic Transactions (Exclusion) (Amendment) Order 2003, the Legal Adviser explained that it was made under section 11(1) of the Electronic Transactions Ordinance (ETO) by the Secretary for Commerce, Industry and Technology to set out, among others, the specific statutory provisions (such as those relating to medical prescriptions under the Antibiotics Ordinance and the Pharmacy and Poisons Regulations) which were excluded from the application of sections 5, 6 and 8 of the ETO. The Order also allowed certain information or documents (including cargo

Action

manifests required to be submitted under the Import and Export Ordinance and applications for permits or licences relating to dutiable commodities under the Dutiable Commodities Regulations) to be given or submitted in form of electronic records.

23. The Legal Adviser added that no difficulties relating to the legal and drafting aspects of the Order had been identified.

24. Regarding the Import and Export (General) Regulations (Amendment of Seventh Schedule) (No. 2) Notice 2003, the Legal Adviser said that the Notice added five countries or places which were subject to the Kimberley Process Certification Scheme, to the Seventh Schedule to the principal Regulations.

25. The Legal Adviser explained that the Dutiable Commodities Ordinance (Amendment of Schedule 1B) Notice 2003 amended Schedule 1B to the Dutiable Commodities Ordinance by adding the "International Chamber of Commerce - Hong Kong, China Business Council" as a "specified eligible agent". The effect was that the new specified eligible agent could send information to the Commissioner of Customs and Excise under the Ordinance on behalf of any person using a recognized electronic service if the agent had obtained from the person an authorization in writing to do so.

26. The Legal Adviser further explained that the Pilotage (Dues) (Amendment) Order 2002 (L.N. 234 of 2002) (Commencement) Notice 2003 appointed 14 February 2003 as the day on which the Pilotage (Dues) (Amendment) Order 2002 (L.N. 234 of 2002) would come into operation.

27. Members did not raise any queries on the above items of subsidiary legislation.

28. The Legal Adviser said that the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation provided for the application for registration as electors, compilation and publication of provisional electoral registers, etc. in relation to village representative election. He further said that the Legal Service Division was still scrutinizing the legal and drafting aspects of the Regulation and would make a further report. The Legal Adviser added that the regulation providing for appeals and objections in relation to Village Representative election was gazetted on 21 February 2003. According to the Administration, a few more regulations relating to the Village Representative election would be gazetted shortly.

Action

29. Mr Andrew WONG suggested that a subcommittee be formed to study the Regulation.

30. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join : Mr Andrew WONG, Mr LAU Wong-fat (as advised by Mr James TIEN), Mr Andrew CHENG, Dr TANG Siu-tong and Mr IP Kwok-him.

31. The Chairman reminded Members that the deadline for amending these 11 items of subsidiary legislation was 19 March 2003, or 9 April 2003 if extended by resolution.

IV. Further business for the Council meeting on 26 February 2003

(a) Bills - First Reading and moving of Second Reading

Legislative Council (Amendment) Bill 2003

32. The Chairman said that the above Bill would be introduced into the Council on 26 February 2003 and considered by the House Committee on 28 February 2003.

(b) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

Inland Revenue (Amendment) (No. 2) Bill 2001

33. The Chairman said that the Bills Committee reported to the House Committee at the last meeting, and Members had not raised objection to the resumption of the Second Reading debate on the Bill.

(c) Members' Bills - First Reading and moving of Second Reading

Dao Heng Bank Limited (Merger) Bill

34. The Chairman said that Dr David LI had withdrawn his earlier notice to introduce the Bill into the Council on 19 February 2003, and had given a fresh notice to introduce the Bill into the Council on 26 February 2003 instead.

35. The Chairman further said that the Bill would be considered by the House Committee on 28 February 2003.

Action

V. Business for the Council meeting on 5 March 2003

Questions

(LC Paper No. CB(3) 391/02-03)

36. The Chairman said that 20 written questions had been scheduled for the Council meeting on 5 March 2003 as the Financial Secretary (FS) would deliver his Budget speech at the meeting.

VI. Report of Bills Committee and subcommittee

(a) Position report on Bills Committees/subcommittees

(LC Paper No. CB(2) 1221/02-03)

37. The Chairman said that there were 15 Bills Committees and eight Subcommittees in action as well as three Bills Committees, including the Bills Committee on Foreshore, Sea-bed and Roads (Amendment) Bill 2003 formed under agenda item III(a) above, on the waiting list.

38. Referring to List H of the position report, the Chairman said that the Industrial Training (Construction Industry) (Amendment) Bill 2001 was introduced into the Council on 14 March 2001 and considered by the House Committee on 16 March 2001. The Chairman explained that the Bill sought to empower the Construction Industry Training Authority to arrange for and cover the costs of the medical examination of persons employed in prescribed occupations in the construction industry involving exposure to hazardous substances.

39. The Chairman further said that at the House Committee meeting on 16 March 2001, Members agreed to defer a decision on the Bill pending the introduction of the related regulation to be made under the Factories and Industrial Undertakings Ordinance. The Chairman suggested that as almost two years had passed and the related regulation had still not been introduced, she would ask CS to expedite action. Members agreed.

(b) Report of the Subcommittee on Ocean Park Bylaw

40. Mr James TO, Chairman of the Subcommittee, reported that the Subcommittee had held a meeting with the Administration and representatives of the Ocean Park Corporation (the Corporation). Mr TO said that the Subcommittee had queried why the Bylaws made by the Corporation in 1988 (the 1988 Bylaws) had not been published in the Gazette or laid on the table of LegCo.

Action

41. Mr James TO informed Members that the Corporation had explained that according to its legal advice, the Corporation's bylaws were not subsidiary legislation and did not need to be tabled in LegCo. The Corporation was subsequently advised by the Administration in 1997 that the 1988 Bylaws were subsidiary legislation which were required to be published in the Gazette and subject to the scrutiny of LegCo. Since then, the Corporation had proceeded to update the 1988 Bylaws and arrange for the new set of Bylaw to go through the legislative procedure accordingly.

42. Mr James TO further informed Members that the Administration had explained that it wished to table the most up-to-date version of the Bylaws in a one-off exercise for LegCo's scrutiny. However, as new amusement games and facilities were installed in Ocean Park, it had taken a fairly long time to update the 1988 Bylaws.

43. Mr James TO said that given that the Administration and the Corporation were already aware in 1997 that the making of the 1988 Bylaws had not followed the proper legislative procedure, the Subcommittee considered that they should not have taken nearly six years to take remedial action.

44. Mr James TO further said that the Subcommittee therefore recommended that the Director of Administration should be asked to remind Policy Bureaux to ensure that the statutory organizations within their purview follow the proper legislative procedure in making bylaws and other legislative instruments, and to take immediate remedial action if any incident of non-compliance with the proper legislative procedure was discovered.

45. Mr James TO informed Members that the Subcommittee had also raised some concerns and queries about a number of provisions of the Ocean Park Bylaw made by the Corporation on 10 December 2002 (2002 Bylaw). The Corporation had agreed to consider members' views, but had pointed out that it would need time to consult its Board.

46. Mr James TO explained that the scrutiny period of the 2002 Bylaw had been extended by resolution of the Council to 5 March 2003. However, as FS would present the Budget at the Council meeting on 5 March 2003, ordinary Council business would not normally be transacted at that meeting. Any motion to amend the 2002 Bylaw would therefore have to be moved at the Council meeting on 26 February 2003, and the deadline for giving notice of amendments was 19 February 2003.

47. Mr James TO further said that as the Corporation needed time to consider the concerns and queries raised, the Subcommittee recommended that he should, on behalf of the Subcommittee, move a motion at the Council

Action

meeting on 26 February 2003, to repeal the 2002 Bylaw. The Subcommittee also recommended that the House Committee should form a subcommittee to study the new Bylaw to be gazetted after the 2002 Bylaw had been repealed.

48. Mr James TO added that the Subcommittee would like to stress that its recommendation to repeal the 2002 Bylaw was made purely on technical and procedural grounds, and not because the Bylaw was problematic.

VII. Proposal from Hon Emily LAU to amend Rule 28(2) of the Rules of Procedure

(Hon Emily LAU's letter dated 17 February 2003 to the Chairman of the House Committee (Chinese version only))

49. Referring to her letter, Ms Emily LAU said that Rule 28(2) of the Rules of Procedure should be amended to allow Members to ask short questions relating to the subject matter of a statement made by a designated public officer, and not just for the purpose of elucidating it. Ms LAU stressed that her proposed amendment to Rule 28(2) was not intended to give rise to a debate on the statement. Ms LAU further said that if the House Committee did not support her proposal, it would not be necessary for the proposal to be referred to the Committee on Rules of Procedure for further consideration.

50. Mr Andrew WONG said that Rule 28(2) of the Rules of Procedure was made to prevent the asking of questions on a statement from becoming a debate on the subject matter of the statement. He was of the view that if Members wished to debate on the subject matter, they should consider moving a motion for debate in Council instead.

51. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for Betterment of Hong Kong shared Mr Andrew WONG's view. If Members were allowed to ask short questions relating to the subject matter of a statement, the scope of such questions would possibly go beyond the content of the statement. He further said that the relevant Panel would usually hold follow-up discussion after the public officer concerned had made a statement in Council. He therefore did not see the need for Rule 28(2) of the Rules of Procedure to be amended. Mr IP added that as a statement was normally made by a designated public officer at a Council meeting at short notice, allowing Members to ask questions other than for elucidating it might unduly prolong the Council meeting and affect other business on the Agenda.

52. Mr James TIEN said that Members belonging to the Liberal Party did not consider it necessary to amend Rule 28(2) of the Rules of Procedure. However, Mr TIEN suggested that designated public officers should be asked

Action

to provide written copies of their statements to facilitate Members to ask short questions for elucidation purpose.

53. Mr NG Leung-sing expressed support for Mr TIEN's suggestion. Mr NG said that as Members wanted to encourage public officers to make statements at Council meetings to brief Members on important announcements or matters, he did not consider it appropriate to make changes to Rule 28(2) of the Rules of Procedure at the moment.

54. Ms Cyd HO expressed support for Ms Emily LAU's proposal. Ms HO pointed out that under the present Rule 28(2), questions could be asked only to elucidate the content of a statement. It was sometimes difficult for Members to phrase their questions in such a way. Ms HO suggested that the Administration could be consulted as to whether it saw any objection to expanding the scope of short questions to be made on statements made by public officers at Council meetings. She added that it was ultimately for the President to determine whether to put the short questions raised by Members to the public officer who made the statement.

55. The Chairman responded that Members should have a view on Ms LAU's proposal before the Administration was consulted.

56. Mr LEUNG Fu-wah said that it was often difficult for the President to strictly enforce that only "short questions" should be put to public officers making the statements, as sometimes Members spoke at length about their views before asking their questions.

57. The Chairman put Ms Emily LAU's proposal to vote. Eight Members voted in favour of the proposal and 14 Members voted against it. The Chairman said that Ms Emily LAU's proposal would not be pursued.

58. The Chairman further said that similar to the Administration providing draft replies to oral questions, she would convey to CS the request that when a public officer made a statement in Council, the public officer should provide a written copy of his or her statement to facilitate Members to raise short questions for the purpose of elucidating it. Members agreed.

VIII. Holding Council and committee meetings in English

(LC Paper No. CB(2) 1243/02-03)

59. The Chairman said that to follow up CS's suggestion of conducting Council and committee meetings in English once a month, she had requested the Secretariat to prepare a paper to facilitate Members' consideration.

Action

60. Mr James TIEN said that it should be for individual Members to decide whether they would speak in English at Council and committee meetings. Mr TIEN further said that as Panels held regular meetings once a month, to implement CS's suggestion would mean that all regular meetings of Panels would have to be conducted in English. Mr TIEN added that Members belonging to the Liberal Party did not agree that CS's suggestion should be implemented.

61. The Chairman responded that CS's suggestion only sought to establish a convention of holding Council or committee meetings, say, once a month, in English. The Chairman pointed out that there was no question of imposing a requirement on Members that they must speak in English at Council or committee meetings, as Rule 2 of the Rules of Procedure provided that a Member, including a Member in the chair, could address the Council in either Putonghua, Cantonese or English. It was therefore up to individual Members to decide which language to use.

62. Mr TSANG Yok-sing said that it was Government policy to promote bi-literacy and tri-lingualism. Mr TSANG further said that as a motion on "Promoting the use of Putonghua" was also passed by the Council in 2002, he asked whether CS had made any suggestion that meetings of LegCo and its committees should be conducted in Putonghua. The Chairman responded that CS had not made such a suggestion.

63. Mr CHEUNG Man-kwong said that Members belonging to the Democratic Party considered that individual Members should be free to choose to speak in English, Cantonese or Putonghua at Council and committee meetings, as provided for in Rule 2 of the Rules of Procedure.

64. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for Betterment of Hong Kong considered that it was not the responsibility of LegCo to promote the use of English in Hong Kong. Mr IP further said that it should be for Members to decide whether they would speak in English at meetings, and there was no need to change the existing practice.

65. Ms Audrey EU said that it would be appropriate only to encourage Members to speak in English at meetings, in the light of the policy to promote bi-literacy and tri-lingualism. She further said that it would be for the President and committee chairmen to decide whether a meeting should be conducted in Putonghua, Cantonese or English.

66. Mr Michael MAK said that it was inappropriate to require Members to speak in English at meetings. He considered that public officers could speak in English at Council and committee meetings to promote the use of English. Mr MAK further said that if certain committee meetings were to be conducted

Action

in English, it would be unfair to Cantonese-speaking deputations attending these meetings as they had to rely on the simultaneous interpretation service.

67. The Chairman stressed that CS's suggestion was not to make it a requirement for Council and committee meetings to be conducted in English, but only to establish a convention of holding Council and committee meetings in English. The Chairman said that she would convey to CS Members' view that given Rule 2 of the Rules of Procedure, it was appropriate only to encourage, and not require, Members to speak in English at meetings, and it would be for the President and committee chairmen to determine whether they would like to conduct meetings in English.

IX. Any other business

68. There being no further business, the meeting ended at 5:15 pm.

Council Business Division 2
Legislative Council Secretariat
26 February 2003