

立法會
Legislative Council

LC Paper No. CB(1) 1852/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/05/2

**Bills Committee on
Hazardous Chemicals Control Bill**

**Minutes of the ninth meeting
held on Friday, 25 May 2007, at 11:00 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk, JP (Chairman)
Hon SIN Chung-kai, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public officers attending** : Environmental Protection Department

Mr Carlson K S CHAN
Deputy Director of Environmental Protection

Dr Stephanie MA
Senior Environmental Protection Officer

Department of Justice

Ms S K LEE
Acting Deputy Principal Government Counsel

Ms Frances HUI
Senior Government Counsel

Ms Phyllis POON
Government Counsel
- Clerk in attendance** : Miss Becky EU
Chief Assistant Secretary (1)1

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Assistant Secretary (1)2

I Confirmation of minutes

- (LC Paper No. CB(1) 1522/06-07 -- Minutes of the meeting held on 13 April 2007
- LC Paper No. CB(1) 1684/06-07 -- Minutes of the meeting held on 10 May 2007)

The minutes of the meetings held on 13 April and 10 May 2007 were confirmed.

II Meeting with the Administration

- (LC Paper No. CB(1) 1686/06-07(01) -- List of follow-up actions arising from the discussion on 10 May 2007
- LC Paper No. CB(1) 1686/06-07(02) -- Administration's response to LC Paper No. CB(1) 1686/06-07(01)
- LC Paper No. CB(1) 1719/06-07(01) -- Draft Committee Stage amendments proposed by the Administration)
- LC Paper No. CB(1) 1724/06-07(01) -- Administration's letter dated 23 May 2007 setting out its views on the Chairman's final remarks regarding reference to Convention requirements as recorded in the minutes of meeting on 13 April 2007)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).
3. The Administration was requested to -
 - (a) explain the policy intent of including an element of "honest belief" for exemption of civil liability for public officers while this was not required in the case of criminal liability;
 - (b) review the drafting of the proposed Committee Stage amendments (CSAs) to clauses 41 and 50A to ensure consistency between the phrases "any act done or conduct engaged in" and "any act done or omitted to be done"; and

- (c) reconsider the need for including the phrase "in the course of employment" in the proposed CSA to clause 41(3)(b) when this had already been set out in clause 41(1).

4. Members agreed to continue discussion at the next meeting scheduled for 12 June 2007 at 2:30 pm.

III Any other business

5. There being no other business, the meeting ended at 1:06 pm.

Council Business Division 1
Legislative Council Secretariat
11 June 2007

**Proceedings of the meeting of the
Bills Committee on Hazardous Chemicals Control Bill
Meeting on Friday, 25 May 2007, at 11:00 am
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|--|---|-----------------|
| 000000 - 002210 | Chairman Ms Audrey EU ALA7 Mr SIN Chung-kai | <p>Discussion on the Administration's letter dated 23 May 2007 setting out its views on the Chairman's final remarks as recorded in the minutes of meeting on 13 April 2007 regarding reference to Convention requirements (LC Paper No. CB(1) 1724/06-07)</p> <p>Chairman's views -</p> <p>(a) if the Director was allowed to make reference to Convention requirements other than those expressly set out in the Bill as enacted in performing his statutory functions, this would imply that any subsequent changes to Convention requirements would have the force of law in Hong Kong without the need for local adaptation; and</p> <p>(b) if the Administration insisted that the Director should be allowed to make reference to Convention requirements, it might be better to put back the general reference clause in the Bill</p> <p>Ms Audrey EU's views -</p> <p>(a) the Bills Committee would be seen to be making a retrogressive step if the general reference clause were to be re-incorporated in the Bill; and</p> <p>(b) even with the deletion of the general reference clause, it was likely that reference to the Conventions might still be required in case the power of the Director was being challenged, since the Bill was introduced</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>pursuant to the two Conventions.</p> <p>ALA7's views -</p> <p>(a) The Bill as enacted should be unambiguous and certain. All relevant Convention requirements should be clearly set out in the Bill and cross-referencing with the Conventions should not be required; and</p> <p>(b) The Bill as enacted should reflect clearly the legislative intent. It would be an undesirable law-making process to delete the general reference clause on the one hand and allow the Administration to state its understanding that future reference to be made to Convention requirements other than those expressly set out in the Bill as enacted</p> | |
| 002211 - 002900 | Chairman Administration | <p>Exchange of views with the Administration on its stance as set out in the letter circulated under LC Paper No. CB(1) 1724/06-07 on the need for the Director to make reference to Convention requirements when performing his statutory functions</p> <p>Chairman's views that if the Director was allowed to make reference to Convention requirements other than those expressly set out in the Bill as enacted in performing his statutory functions, this would imply that any subsequent changes to Convention requirements would have the force of law in Hong Kong without the need for local adaptation</p> <p>Administration's views -</p> <p>Agreed to Ms Audrey EU's views as set out in earlier meetings that even</p> | |

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| | | <p>if a general reference clause on Convention requirements was not included in the Bill, the Director would not be prevented from taking into consideration such and any other relevant factors when exercising his discretion. However, he could not act beyond the provisions of the Bill in performing his statutory functions</p> | |
| 002901- 004519 | Chairman Administration | <p>Administration's explanation on some of the cases which required reference to Convention requirements -</p> <p>(a) re-exporting hazardous chemicals to countries which were given time-limited exemptions; and</p> <p>(b) imposing conditions on permits to take account of latest developments on control of hazardous chemicals</p> <p>Chairman's concern that an applicant whose application for a permit was refused by the Director would need to incur large amount of resources in the appeal, as he/she might have to make reference to the vast and varied Convention requirements, instead of the provisions of the Bill</p> | |
| 004520 - 010149 | Mr SIN Chung-kai Chairman Administration | <p>Mr SIN Chung-kai's views -</p> <p>(a) the Bill sought to implement relevant Convention requirements on the control of hazardous chemicals and these should be clearly set out in the Bill;</p> <p>(b) amendments to local legislation should be introduced to reflect any subsequent changes to relevant Convention requirements and a mechanism should be worked out by the Administration to ensure that</p> | |

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| | | <p>these could be made expeditiously; and</p> <p>(c) the Director should not be allowed to directly apply changes in Convention requirements to Hong Kong without going through the local adaptation process</p> <p>Administration's response -</p> <p>(a) the Bill as drafted would provide a legislative framework for the control of hazardous chemicals in accordance with Convention requirements. However, not all requirements were set out in the Bill;</p> <p>(b) as the Director had been given the discretionary power in the issuance etc. of permits, he would need to make reference to relevant factors/requirements in performing his statutory functions, but in doing so, he could not act beyond the powers conferred upon him by the provisions of the Bill; and</p> <p>(c) if it was the Bills Committee's intention to restrict the discretionary power of the Director such that he was not allowed to make reference to relevant factors/requirements, including Convention requirements which were not set out in the Bill, then the Bill would need to be re-drafted to reflect this legislative intent</p> | |

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| 010150 - 011429 | Mr SIN Chung-kai Chairman Ms Audrey EU ALA7 Administration | <p>Discussion on the scope of power of the Director to impose conditions on permits under clause 11</p> <p>Mr SIN Chung-kai's views -</p> <p>While it was up to the Administration to decide on the relevant Convention requirements to be included in the Bill, there was a need to set out the scope of discretion to be exercised by the Director</p> <p>Ms Audrey EU's views -</p> <p>Clause 11 as drafted had given the Director extensive discretionary powers in imposing conditions on permits</p> <p>Administration's response -</p> <p>Agreed with the Bills Committee members that -</p> <p>(a) in exercising his discretion to impose conditions on permits, the Director would do so within the power conferred upon him by the provisions of the Bill; and</p> <p>(b) in making reference to Convention requirements, the Director could not act beyond the provisions of the Bill.</p> | |
| 011430 -011434 | Chairman | Confirmation of minutes of meeting on 23 April and 10 May 2007 | |
| 011435 - 011904 | Chairman Administration | Discussion on the Administration's response to the list of follow-up actions arising from the meeting on 10 May 2007 (LC Paper No. CB(1) 1686/06-07(02)) | |

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| 011905 - 012216 | Chairman Administration | Examination of Committee Stage amendments (CSAs) submitted by the Administration under LC Paper No. CB(1) 1719/06-07(01) | |
| 012217 - 020246 | Administration Chairman ALA7 Ms Audrey EU | Drafting of clauses 41 and 50A | <p>The Administration to -</p> <ul style="list-style-type: none"> (a) explain the policy intent of including an element of "honest belief" for exemption of civil liability for public officers while this was not required in the case of criminal liability; (b) review the drafting of the proposed CSAs to clauses 41 and 50A to ensure consistency between the phrases "any act done or conduct engaged in" and "any act done or omitted to be done"; and (c) reconsider the need for including the phrase "in the course of employment" in the proposed CSA to clause 41(3)(b) when this had already been set out in clause 41(1) |
| 020247 - 020325 | Chairman | Arrangements for next meeting | |