

立法會
Legislative Council

LC Paper No. CB(1) 2147/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/07/2

Bills Committee on Product Eco-responsibility Bill

**Minutes of the ninth meeting
held on Thursday, 29 May 2008, at 1:00 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk, JP (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Yuen-han, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Member attending** : Hon Jeffrey LAM Kin-fung, SBS, JP
- Members absent** : Hon SIN Chung-kai, SBS, JP
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS
- Public officers attending** : Environmental Protection Department

Mr Albert LAM, JP
Deputy Director of Environmental Protection

Mr Alfred LEE
Assistant Director (Waste Management Policy)

Mr TE Chi-wang
Senior Administrative Officer (Waste Management
Policy Division)

Mr Patrick LIU
Senior Environmental Protection Officer (Regional
South)

Department of Justice

Miss Shandy LIU
Senior Government Counsel
Law Drafting Division

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)2

I Meeting with the Administration

(LC Paper No. CB(1) 1691/07-08(01) -- List of follow-up actions arising from the discussion on 27 May 2008)

Clause-by-clause examination

(LC Paper No. CB(3) 251/07-08 -- The Bill
Ref: EP 381/11/03 -- The Legislative Council Brief
LC Paper No. CB(1) 657/07-08(02) -- Assistant Legal Adviser's letter dated 15 January 2008 to the Administration
LC Paper No. CB(1) 657/07-08(03) -- Administration's response to CB(1) 657/07-08(02)
LC Paper No. CB(1) 1032/07-08(01) -- Assistant Legal Adviser's letter dated 3 March 2008 to the Administration
LC Paper No. CB(1) 1032/07-08(02) -- Administration's response to CB(1) 1032/07-08(01)
LC Paper No. CB(1) 1032/07-08(03) -- Summary of deputations' views on individual clauses of the Bill
LC Paper No. CB(1) 1117/07-08(03) -- Assistant Legal Adviser's letter dated 17 March 2008 to the Administration
LC Paper No. CB(1) 1223/07-08(01) -- Administration's response to LC Paper No. CB(1) 1117/07-08(03)
LC Paper No. CB(1) 1254/07-08(01) -- Assistant Legal Adviser's letter dated 11 April 2008 to the Administration
LC Paper No. CB(1) 1254/07-08(02) -- Administration's response to LC Paper No. CB(1) 1254/07-08(01)

LC Paper No. CB(1) 1489/07-08(04) -- Examples of overseas legislative provisions prepared by the Legal Service Division for reference of the Bills Committee)

2. The Bills Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration was requested to -
 - (a) amend the Chinese rendition of the term “director” under clause 11. To also consider deleting the reference to negligence in clause 11(b) or confine it to wilful negligence;
 - (b) generalize clause 13(2)(d) such that the Appeal Board could deal with appeals against all decisions made by the Director under the Bill;
 - (c) advise the ordinances on which provisions under clause 15 were modeled. To also advise whether appellants could be legally represented in an appeal under the Bill, and whether they could appeal against maladministration of the Appeal Board and if so, the channel through which they could lodge their appeals;
 - (d) review clause 15, particularly the power of the Chairman of the Appeal Board to decide the number of panel members to be appointed for an appeal, which might affect the decision of the Appeal Board especially in the event of an equality of votes when the Chairman had a casting vote;
 - (e) advise how the hearing of an appeal could continue upon resignation of a panel member. To also ensure that the drafting of clauses 16(5) and (6) could reflect the policy intent in this respect; and
 - (f) provide the first batch of Committee Stage amendments to the Bill as soon as practicable before the next meeting on 5 June 2008.
4. Owing to a lack of quorum for the next meeting to be held on Friday, 30 May 2008, from 1:00 pm to 2:30 pm, members decided to cancel the meeting. The next meeting would be held on Thursday, 5 June 2008, from 1:00 pm to 2:30 pm.

II Any other business

5. There being no other business, the meeting ended at 2:30 pm.

**Proceedings of the
Bills Committee on Product Eco-responsibility Bill
Meeting on Thursday, 29 May 2008, at 1:00 pm
in Conference Room A of the Legislative Council Building**

| Time Marker | Speaker | Subject(s) | Action Required |
|--------------------|--|--|--|
| 000000 - 000434 | Chairman | Meeting arrangement | |
| 000435 - 000732 | Chairman Administration ALA5 Ms Emily LAU | Continuation of clause-by-clause examination of the Bill (LC Paper No. CB(1) 1223/07-08(01)) Clause 10 -Obstructing authorized officers | |
| 000733 - 001241 | Chairman Administration Ms Emily LAU ALA5 | Clause 11- Offences by body corporate | The Administration to amend the Chinese rendition of the term "director" under clause 11 |
| 001242 - 001915 | Ms Miriam LAU Administration Chairman | Ms Miriam LAU's concern about clause 11 (b) on the liability of a director for an offence committed by a body corporate and its directors/persons concerned in the management that was attributable to the director's neglect Administration's explanation - (a) similar provisions were provided under all environmental legislation; and (b) defence of due diligence would be made available for an offence committed by the body corporate under clause 9 | |
| 001916 - 002343 | Ms Audrey EU Administration Chairman | Ms Audrey EU's enquiry on - (a) the circumstances under which an offence attributable to negligence by a director or a person concerned in the management of a body corporate would result in imprisonment; and (b) whether the reference should be confined to wilful negligence Administration's explanation - (a) it would be up to the courts to decide on the penalty, having regard to the | |

| Time Marker | Speaker | Subject(s) | Action Required |
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| | | <p>circumstances of individual cases; and</p> <p>(b) “negligence” was a common term found in this type of offence</p> | |
| 002344 - 002656 | <p>Mr Vincent FANG Chairman Ms Audrey EU Administration</p> | <p>Discussion on the liability of a body corporate in different legislation, including the Copyright Ordinance and the Energy Efficiency (Labelling of Products) Ordinance</p> | |
| 002657 - 004132 | <p>Mrs Selina CHOW Administration Chairman Ms Miriam LAU Mr Vincent FANG Ms Audrey EU</p> | <p>Members' concerns -</p> <p>(a) it would be overly harsh to hold a director of a body corporate and its directors/persons concerned in the management liable for neglect under clause 11(b), particularly when the offence was just related to the environmental levy on plastic shopping bags (PSBs) only;</p> <p>(b) reference should appropriately be confined to wilful negligence;</p> <p>(c) the Bill might not be comparable to other legislation; and</p> <p>(d) the general provisions in Part 2 of the Bill, while applicable to all other products, might not be appropriate for PSBs</p> | <p>The Administration to consider deleting the reference to negligence in clause 11(b) or confine it to wilful negligence</p> |
| 004133 - 004203 | <p>Chairman Administration</p> | <p>Division 5 - Appeals Clause 12 - Interpretation of Division 5 of Part 2</p> | |
| 004204 - 004508 | <p>Chairman Administration ALA5</p> | <p>Clause 13 - Appeals</p> <p>ALA5's enquiry on the legal remedy available to an aggrieved person if the decision of a public officer fell outside the four matters specified for appeal under clause 13</p> <p>Administration's explanation that an aggrieved person might seek public law remedies through judicial review</p> | |
| 004509 - 005850 | <p>Mrs Selina CHOW Chairman Administration ALA5 Ms Audrey EU</p> | <p>Mrs Selina CHOW's concern about the injustice of clause 13 because it only allowed for appeal against the matters as specified</p> | <p>The Administration to consider generalizing clause 13(2)(d) such that the Appeal Board</p> |

| Time Marker | Speaker | Subject(s) | Action Required |
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| | | Administration's explanation that the matters that were subject to appeal were specified in the relevant legislation to provide legal certainty and facilitate operation | could deal with all against all decisions made by the Director appeals under the Bill. To also advise the ordinances from which provisions under clause 15 were modeled |
| 005851 -010340 | Chairman Administration Ms Miriam LAU Mrs Selina CHOW ALA5 | Discussion on clause 14 - Constitution of the Appeal Board | |
| 010341 -010929 | Chairman Administration Ms Miriam LAU | <p>Clause 15 - Exercise of Appeal Board's jurisdiction</p> <p>Ms Miriam LAU's concern about the power of the Chairman of the Appeal Board to decide on the number of panel members to be appointed for an appeal, as this might affect the decision of the Appeal Board especially in the event of an equality of votes when the Chairman had a casting vote</p> | The Administration to review clause 15, particularly the power of the Chairman of the Appeal Board to decide the number of panel members to be appointed for an appeal, which might affect the decision of the Appeal Board especially in the event of an equality of votes when the Chairman had a casting vote |
| 010930 - 011255 | Chairman Administration | <p>Chairman's enquiry on whether appellants could be legally represented in an appeal, and whether they could appeal against maladministration of the Appeal Board</p> <p>Administration's explanation that matters concerning legal representation might be determined by the Chairman of the Appeal Board under clause 15(8) and maladministration of the Appeal Board would be subject to judicial review</p> | The Administration to advise whether appellants could be legally represented in an appeal under the Bill, and whether they could appeal against maladministration of the Appeal Board and if so, the channel through which they could lodge their appeals |

| Time Marker | Speaker | Subject(s) | Action Required |
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| 011256 - 012113 | Miss CHAN Yuen-han Chairman Ms Miriam LAU Administration | Members' request for sufficient time to scrutinize amendments to and regulations to be made under the Bill | The Administration to provide the first batch of Committee Stage amendments to the Bill as soon as practicable before the next meeting on 5 June 2008 |
| 012114 -012754 | Chairman Administration Ms Miriam LAU | Clause 16 - Supplementary provisions as to Appeal Board Ms Miriam LAU's concern about how the hearing of an appeal could continue upon resignation of a panel member Administration's explanation that under clause 16(5), the hearing of an appeal might be continued notwithstanding any changes in the membership of the Appeal Board | The Administration to advise how the hearing of an appeal could continue upon resignation of a panel member. To also ensure that the drafting of clauses 16(5) and (6) could reflect the policy intent in this respect |