

立法會
Legislative Council

Ref : CB2/BC/2/07

LC Paper No. CB(2)2079/07-08

(These minutes have been seen
by the Administration)

**Bills Committee on
Prevention and Control of Disease Bill**

**Minutes of the eighth meeting
held on Friday, 18 April 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Joseph LEE Kok-long, JP (Deputy Chairman)
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki
- Members absent** : Hon Vincent FANG Kang, JP (Chairman)
Hon Margaret NG
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon WONG Yung-kan, SBS, JP
- Public Officers attending** : Mr Patrick NIP, JP
Deputy Secretary for Food and Health(Health)1
- Mr Bruno LUK
Principal Assistant Secretary for Food and Health(Health)3
- Dr Thomas TSANG
Controller, Centre for Health Protection
Department of Health
- Dr Sarah CHOI
Principal Medical and Health Officer(4)
Department of Health

Dr Henry KONG
Chief Port Health Officer
Department of Health

Mr Paul TSANG
Senior Assistant Solicitor General
Department of Justice

Mr Allen LAI
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Janet SHUM
Senior Council Secretary (2)8

Ms Sandy HAU
Legislative Assistant (2)5

Action

I. Confirmation of minutes of meetings
(*LC Paper Nos. CB(2)1641/07-08 and CB(2)1642/07-08*)

The minutes of meetings held on 26 March and 8 April 2008 were confirmed.

II. Meeting with the Administration

2. The Bills Committee deliberated (index of proceedings **to follow**).

3. The Administration was requested to provide a response in writing to the following issues raised by members -

- (a) to explain the rationale for the words "and constitutes a separate household unit" in the definition of "residential premises" under clause C1(6) of the draft Prevention and Control of Disease Regulation (draft Regulation);

- (b) to draw up guidelines for implementing clause 5(2) of the Bill by persons other than a police officer; and
 - (c) to consider an alternative Chinese text of "operator" to avoid confusion as to who had the obligation to notify a health officer if a person died on a cross-boundary conveyance under clause F5 of the draft Regulation.
4. Members noted the Administration's plan to revise the following clauses of the draft Regulation -
- (a) clause A2 by changing the phrase "leaving Hong Kong" in the definitions of "cross-boundary conveyance" and "cross-boundary public vehicle" to "seeking to leave Hong Kong" for the sake of consistency;
 - (b) clause E1 by providing that where a health officer had reason to believe that a person was a contact of, or was infected with a specified infectious disease, the health officer might, by order in writing, place the person under quarantine or isolation respectively; and
 - (c) clause G3 by adding a provision to make it an offence for people who took water from a well which a health officer had ordered to be filled up, or before it had been cleansed or disinfected to his satisfaction.
5. Assistant Legal Adviser 4 (ALA4) advised that it would be desirable if the considerations for providing compensation, as had been done in some overseas jurisdictions, could be spelt out in clause 12 of the Bill and in the Public Health Emergency (PHE) Regulation to be made under clause 8 of the Bill.
6. Senior Assistant Solicitor General did not see the case for ALA4's suggestion for the following reasons -
- (a) there was already a constitutional requirement under Article 105 of the Basic Law (BL) for real value compensation to owners of deprived properties in deprivation cases. The measure of compensation would be guided by the principles of determining the "real value" as decided by local courts in the *Penny's Bay Investment Company Limited v Director of Lands* (LDMR23/1999 and LDMR 1/2005) case concerning compensation under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)) and in the *Director of Lands v Yin Chuen Enterprises Ltd* [2003] 2 HKLRD 399 case concerning the issues of whether compensation for land resumed

under the Lands Resumption Ordinance (Cap. 124) could include an element of speculation and whether the relevant provision under Cap. 124 which excluded such an element was consistent with BL 105. These principles were set out in paragraphs 11-13 of LC Paper No. CB(2)1170/07-08(02) prepared by the Administration;

- (b) for cases of interference with property rights falling short of deprivation, it was arguable that a "fair balance test" developed under the European jurisprudence would apply as an implicit requirement under BL 6 and 105, although there were not yet any local court decisions embracing this test in relation to such cases. Under this test, any interference with property rights would need to strike a fair balance between the demands of the general interests of the society and the requirements of the protection of the individual's rights;
- (c) in the light of (a) and (b) above and having regard to the varying circumstances of each claim for compensation, providing "just and equitable" compensation in clause 8 of the Bill and in the PHE Regulation was appropriate to embrace all types of claims for compensation and to provide flexibility in accommodating any future local court decisions on deprivation as well as non-deprivation cases;
- (d) there were precedents in Hong Kong's statute book which provided for just compensation by the Government without spelling out in details the considerations for determining the compensation to be provided; and
- (e) both the Hong Kong Bar Association and the Law Society of Hong Kong did not object to the use of "just and equitable" compensation formulation in the Bill.

III. Date of next meeting

7. The next meeting had been scheduled for 22 April 2008 at 10:45 am to continue scrutiny of the draft Regulation from Part I.

8. There being no other business, the meeting ended at 10:35 am.

**Proceedings of the meeting of
Bills Committee on Prevention and Control of Disease Bill
on Friday, 18 April 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000421	Deputy Chairman	Confirmation of minutes of meetings held on 26 March and 8 April 2008	
000422 - 002916	Deputy Chairman Admin Dr KWOK Ka-ki Ms Audrey EU ALA4	Briefing on the Administration's response to issues raised at the meeting on 11 April 2008 (LC Paper No. CB(2)1654/07-08 (01)) The Administration was requested to explain the rationale for the words "and constitutes a separate household unit" in the definition of "residential premises" under clause C1(6) of the draft Prevention and Control of Disease Regulation (draft Regulation)	✓ (Admin to provide a written response)
002917 - 005306	Deputy Chairman Admin Ms LI Fung-ying Mr Alan LEONG	Briefing on the Administration's paper entitled "Power of arrest under the Bill" (LC Paper No. CB(2)1654/07-08 (02)) The Administration was requested to draw up guidelines for implementing clause 5(2) of the Bill by persons other than a police officer	✓ (Admin to provide a written response)
005307 - 005537	Admin ALA4	Administration's response to issues raised by ALA4 concerning the draft Regulation (LC Paper Nos. CB(2)1654/07-08 (03) and (04))	
005538 - 005758	Admin	Briefing on the general framework of the Public Health Emergency Regulation (LC Paper No. CB(2)1668/07-08(01))	
005759 - 011535	Admin ALA4 Deputy Chairman Ms Audrey EU	Briefing on the Administration's paper entitled "Compensation under the Bill" (LC Paper No. CB(2)1668/07-08(02))	
011536 - 014200	Deputy Chairman Admin Ms LI Fung-ying ALA4 Ms Audrey EU	<u>Scrutiny of the draft Regulation</u> <i>Part C - Disease Prevention, Medical Surveillance, Examination and Test</i> <i>Part D – Vaccination and Prophylaxis</i> <i>Part E – Isolation and Quarantine</i>	
014201 - 014954	Admin Deputy Chairman Ms LI Fung-ying	<i>Part F – Exposure of Public to Infection</i> The Administration was requested to consider an alternative Chinese text for the definition of "operator" to avoid confusion as to who had the obligation to notify a health officer if a person died on a cross-boundary conveyance under clause F5 of the draft Regulation	✓ (Admin to provide a written response)
014955 - 015545	Admin	<i>Part G - Disease Control Measures</i> <i>Part H - Control of Laboratory's Handling of Scheduled Infectious Agents</i>	

Time marker	Speaker	Subject	Action required
015546 - 015642	Deputy Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
27 May 2008