

立法會
Legislative Council

LC Paper No. CB(2) 267/07-08

Ref : CB2/H/5/07

House Committee of the Legislative Council

**Minutes of the 2nd meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 2 November 2007**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Dr Hon YEUNG Sum, JP
Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP

Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH, JP
Dr Hon Joseph LEE Kok-long, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG, JP
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent :

Hon CHAN Yuen-han, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP

Clerk in attendance :

Mrs Vivian KAM Clerk to the House Committee

Staff in attendance :

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| Mr Ricky C C FUNG, JP | Secretary General |
| Mr Jimmy MA, JP | Legal Adviser |
| Ms Pauline NG | Assistant Secretary General 1 |
| Mrs Justina LAM | Assistant Secretary General 3 |
| Mr LEE Yu-sung | Senior Assistant Legal Adviser 1 |
| Mrs Anna LO | Principal Council Secretary (Administration) |

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| Mrs Constance LI | Principal Council Secretary (Complaints) |
| Mr Simon WONG | Chief Public Information Officer |
| Miss Erin TSANG | Chief Council Secretary (1)3 |
| Ms Connie SZETO | Chief Council Secretary (1)6 |
| Miss Odelia LEUNG | Chief Council Secretary (2)6 |
| Mr Kelvin LEE | Assistant Legal Adviser 1 |
| Mr Timothy TSO | Assistant Legal Adviser 2 |
| Ms Connie FUNG | Assistant Legal Adviser 3 |
| Mr Stephen LAM | Assistant Legal Adviser 4 |
| Miss Monna LAI | Assistant Legal Adviser 7 |
| Ms Alice LEUNG | Senior Council Secretary (2)1 |
| Ms Amy YU | Senior Council Secretary (2)3 |
| Mr Arthur KAN | Legislative Assistant (2)7 |

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I. Confirmation of minutes of meetings

(a) **Special meeting held on 12 October 2007**

(LC Paper No. CB(2) 190/07-08)

(b) **1st meeting held on 12 October 2007**

(LC Paper No. CB(2) 191/07-08)

The two sets of minutes were confirmed.

II. Matters arising

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

2. The Chairman said that there was nothing special to report.

III. Business arising from previous Council meetings

(a) **Legal Service Division report on subsidiary legislation gazetted on 12 October 2007 and tabled in Council on 17 October 2007**

(LC Paper No. LS 2/07-08)

3. The Chairman said that only one Commencement Notice, i.e. the Bankruptcy (Amendment) Ordinance 2005 (Commencement) Notice, was gazetted on 12 October 2007 and tabled in Council on 17 October 2007.

4. Members did not raise any queries on this item of subsidiary legislation.

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5. The Chairman reminded Members that the deadline for amending this item of subsidiary legislation was 14 November 2007.

(b) Legal Service Division report on subsidiary legislation gazetted on 18 October 2007 and tabled in Council on 24 October 2007

(LC Paper No. LS 5/07-08)

6. The Chairman said that a total of five items of subsidiary legislation, including four Commencement Notices, were gazetted on 18 October 2007 and tabled in Council on 24 October 2007.

7. Members did not raise any queries on these five items of subsidiary legislation.

8. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 21 November 2007.

(c) Legal Service Division report on subsidiary legislation gazetted on 26 October 2007 and tabled in Council on 31 October 2007

(LC Paper No. LS 7/07-08)

9. The Chairman said that a total of 10 items of subsidiary legislation, including four Commencement Notices, were gazetted on 26 October 2007 and tabled in Council on 31 October 2007.

10. Regarding the Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) (No. 2) Rules 2007, the Chairman said that the Amendment Rules sought to introduce a new category of authorization that might be granted by the Securities and Futures Commission (SFC) to authorize the holding of a specified contract in excess of the prescribed limit up to the specified percentage. The specified contract and specified percentage were to be specified by SFC by notice published in the Gazette. The Legal Service Division was seeking clarification from SFC on why the notice concerned was not subsidiary legislation and on some drafting matters.

11. The Legal Adviser said that the SFC's reply had been received the day before, and a further report would be made by the Legal Service Division.

12. The Chairman suggested that a decision on this item of subsidiary legislation be deferred to the next meeting of the House Committee pending receipt of the further report. Members agreed.

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13. Regarding the Rail Merger Ordinance (Commencement) Notice, the Chairman said that the Notice appointed 2 December 2007 as the day on which the Rail Merger Ordinance would come into operation. The eight items of subsidiary legislation relating to the rail merger would also come into operation on the same date.

14. Mr Albert HO considered that a subcommittee should be formed to study the Notice.

15. The Chairman proposed that a subcommittee be formed to study the Notice in detail. Members agreed. The following Members agreed to join: Mr Albert HO, Ms Miriam LAU, Mr Andrew CHENG (as advised by Mr James TO), Ms LI Fung-ying and Mr Ronny TONG.

16. As regards the Unsolicited Electronic Messages Regulation (Commencement) Notice, the Chairman said that the Notice appointed 22 December 2007 as the day on which the Regulation would come into operation.

17. Mr SIN Chung-kai considered that a subcommittee should be formed to study the Notice.

18. The Chairman proposed that a subcommittee be formed to study the Notice in detail. Members agreed. The following Members agreed to join: Mr SIN Chung-kai, Mr WONG Ting-kwong and Mr Ronny TONG.

19. Members did not raise any queries on the other seven items of subsidiary legislation.

20. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 28 November 2007.

IV. Business for the Council meeting on 7 November 2007

(a) **Questions**
(*LC Paper No. CB(3) 86/07-08*)

21. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

(b) **Bills - First Reading and moving of Second Reading**

22. The Chairman said that no notice had been received yet.

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(c) **Government motion**

Proposed resolution to be moved by the Secretary for Food and Health under the Pharmacy and Poisons Ordinance relating to:

- (i) **the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2007; and**
- (ii) **the Poisons List (Amendment) (No. 4) Regulation 2007**

*(Wording of the proposed resolution issued vide LC Paper No. CB(3) 61/07-08 dated 18 October 2007.)
(LC Paper No. LS 6/07-08)*

23. The Chairman said that the proposed resolution was for seeking Legislative Council's approval of the two Amendment Regulations to –

- (a) add five drugs/medicines to Division A of the First and Third Schedules to the Pharmacy and Poisons Regulations, and Division A of Part I of the Schedule to the Poisons List Regulations, so that pharmaceutical products containing any of these five substances must be sold in pharmacies by a registered pharmacist or in his presence and under his supervision, with the support of prescriptions; and
- (b) relax the control of two substances.

24. Members did not raise objection to the Secretary for Food and Health moving the proposed resolution at the Council meeting.

(d) **Members' motions**

- (i) **Motion on "Enhancing co-operation with Macao in developing the tourism industry"**
(Wording of the motion issued vide LC Paper No. CB(3) 71/07-08 dated 25 October 2007.)
- (ii) **Motion on "Strengthening support for Tin Shui Wai"**
(Wording of the motion issued vide LC Paper No. CB(3) 69/07-08 dated 25 October 2007.)

25. The Chairman said that the above motions would be moved by Mr James TIEN and Mrs Selina CHOW respectively, and the wording of the motions had been issued to Members.

V. Business for the Council meeting on 14 November 2007

(a) Questions

(LC Paper No. CB(3) 87/07-08)

26. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

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

27. The Chairman said that no notice had been received yet.

(c) Government motion

Proposed resolution to be moved by the Secretary for the Environment under the Dutiable Commodities Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 74/07-08 dated 25 October 2007.)

(LC Paper No. LS 8/07-08)

28. The Chairman said that the proposed resolution sought to amend Part III of Schedule 1 to the Dutiable Commodities Ordinance by -

- (a) reducing the duty on light diesel oil which complied with the Euro V Standard (Euro V diesel) from \$1.1 per litre to a concessionary rate of \$0.56 per litre from 1 December 2007 to 30 November 2009; and
- (b) including the technical specifications of Euro V diesel.

29. The Chairman added that the Panel on Environmental Affairs (EA Panel) was briefed on the proposal at its meeting on 22 October 2007. Members had raised various issues of concern, including the import price difference between ultra-low sulphur diesel and Euro V diesel, the measures which the Administration would take to ensure that the concession would benefit the drivers direct, and whether there would be sufficient supply of Euro V diesel for the market. At members' request, the Administration provided supplementary information after the meeting, which showed that the import price difference between ultra-low sulphur diesel and Euro V diesel was \$0.1.

30. The Chairman further said that should a subcommittee be formed to study the resolution, the Administration would be requested to withdraw its notice for moving the proposed resolution, which might result in deferred implementation of the concessionary rate for Euro V diesel. In order to follow

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up the issues raised by the EA Panel, Ms Audrey EU, Chairman of the Panel, had agreed to convene a special meeting to meet with the relevant trades and the Administration to further study the measures to promote the use of more environmental-friendly fuels, with particular reference to the promotion of the use of Euro V diesel.

31. Ms Audrey EU supplemented that the special meeting would be held on Friday, 9 November 2007, at 3:15 pm after the House Committee meeting. Ms EU invited non-Panel Members interested in the subject to attend the meeting.

32. Members did not raise objection to the Secretary for the Environment moving the proposed resolution at the Council meeting.

(d) **Members' motions**

(i) **Motion on "Rates relief"**

(Wording of the motion issued vide LC Paper No. CB(3) 94/07-08 dated 31 October 2007.)

33. The Chairman said that the above motion would be moved by Mr CHEUNG Hok-ming and the wording of the motion had been issued to Members.

(ii) **Motion to be moved by Hon WONG Kwok-hing**

(Wording of the motion issued vide LC Paper No. CB(3) 98/07-08 dated 1 November 2007.)

34. The Chairman said that the subject of the motion to be moved by Mr WONG Kwok-hing was "Developing diversified hawking and bazaar economic activities".

35. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 7 November 2007.

VI. Report of Bills Committees and subcommittees

(a) **Report of the Bills Committee on Patents (Amendment) Bill 2007**

(LC Paper No. CB(1) 154/07-08)

36. Mr SIN Chung-kai, Chairman of the Bills Committee, referred Members to the Bills Committee's report for details of its deliberations.

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37. Mr SIN explained that the Bill sought to amend the Patents Ordinance to implement the Protocol Amending the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (WTO) to be ratified by WTO Members. The Protocol was meant for helping WTO Members, in particular the developing and least-developed economies, to gain access to generic versions of patented drugs to deal with public health problems.

38. Mr SIN reported that the Bills Committee supported the policy intent of the Bill and considered it appropriate to amend the Patents Ordinance to allow Hong Kong to discharge its role as a responsible member of the WTO in concert with the international community. He highlighted the various issues of concern raised by members during the scrutiny of the Bill, including express reference to the decision of the General Council of the WTO, declaration of extreme urgency, granting of import/export compulsory licences, termination of licences, handling of disputes regarding import/export compulsory licences by the court, the 28-day period for seeking court review, remuneration for the proprietor of the patent and disposal of the remaining stocks of imported pharmaceutical products. The Administration had taken on board members' views and would move Committee Stage amendments (CSAs) accordingly.

39. Mr SIN further said that the Bills Committee supported the resumption of the Second Reading debate on the Bill on 21 November 2007.

40. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 12 November 2007.

(b) Report of the Bills Committee on Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007

(LC Paper No. CB(2) 193/07-08)

41. Miss CHOY So-yuk, Chairman of the Bills Committee, said that the Bills Committee had held four meetings and completed scrutiny of the Bill.

42. Miss CHOY referred Members to the Bills Committee's report, and highlighted the focus of the deliberations of the Bills Committee on the issues of the scope of "income source", arrangements for the existing attachment of income orders issued to the Government and validation of attachment of income orders issued before the commencement of the Amendment Ordinance. The Administration had taken on board members' suggestions and would propose CSAs accordingly to amend the validation provision and add a transitional provision.

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43. Miss CHOY further said that the Bills Committee supported the resumption of the Second Reading debate on the Bill on 14 November 2007 and the CSAs to be moved by the Administration.

44. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 5 November 2007.

(c) **Report of the Subcommittee on Building Management (Third Party Risks Insurance) Regulation**
(LC Paper No. CB(2) 207/07-08)

45. Mr James TO, Chairman of the Subcommittee, said that the object of the Regulation was to implement the new provision in the Building Management Ordinance, as introduced by the Building Management (Amendment) Ordinance 2000, requiring all owners' corporations (OCs) to procure a policy of third party risks insurance in relation to the common parts of a building.

46. Mr TO reported that the Subcommittee had held four meetings and met with representatives of the Hong Kong Federation of Insurers and the Hong Kong Association of Property Management Companies Limited. The Subcommittee had also received written views from professional and property management-related bodies. The issues discussed by the Subcommittee included the proposed statutory minimum insurance coverage of \$10 million, insurance coverage of unauthorised building works, obligation to procure insurance, anti-avoidance provision and penalty for failure to display a notice of insurance.

47. Mr TO highlighted a number of issues of particular concern to the Subcommittee. Members had expressed concern about the financial burden of the insurance premium on owners of buildings with a small number of units. In view of members' concern, the Administration had agreed to consider deferring the target implementation date of the new requirement of mandatory third party risks insurance on 1 January 2009, if it was anticipated that the owners of these buildings had great difficulties in complying with the mandatory requirement.

48. Mr TO further said that members had also expressed concern about section 6(3) and (4) of the Regulation under which an insurance company could refuse to pay compensation to third parties under the mandatory insurance policy of an OC on the ground that the OC concerned had not exercised reasonable diligence to keep the building concerned in good condition and maintenance, which might result in delay for third parties to receive judgment compensation. To address members' concern, the Administration had agreed to repeal the relevant provisions with the effect that an insurance company would be required to settle the judgment compensation to the injured third

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party under all circumstances up to the policy amount, and might recover the amount so paid from the OC afterwards in cases where the OC had not exercised reasonable diligence.

49. Mr TO also said that another issue of concern to the Subcommittee was the proposed level of fine for failure to display a notice of insurance in a prominent place in the building to which the insurance policy related. Having considered members' views, the Administration had agreed to move an amendment to lower the level of the fine from \$5,000 to \$2,000.

50. Mr TO added that as the deadline for giving notice of amendment to the Regulation was 31 October 2007, he had given notice to move a motion to repeal the Regulation so as to safeguard Members' right to raise objection to the Regulation. Should Members raise no objection to the Regulation and the proposed amendments to be moved by the Administration, he would withdraw the notice.

51. As Members did not raise any objection to the Regulation, Mr TO said that he would withdraw the notice.

(d) Report of the Subcommittee on Merchant Shipping (Prevention of Air Pollution) Regulation

(LC Paper No. CB(1) 153/07-08)

52. The Chairman, in her capacity as Chairman of the Subcommittee, said that the purpose of the Regulation was to implement the requirements of Annex VI to the MARPOL Convention adopted by the International Maritime Organization to bring vessel emission standards in Hong Kong on par with international standards.

53. The Chairman reported that the Subcommittee supported the Regulation in principle. During the scrutiny of the Regulation, members had urged the Administration to examine the feasibility of tightening the emission standards on sulphur oxide for local vessels in the long run having regard to local circumstances. As members had identified a number of issues relating to the policies and measures for improving the overall air quality in Hong Kong, the Subcommittee considered it advisable for these issues to be followed up by the EA Panel as appropriate.

54. The Chairman further said that the Subcommittee raised no objection to the Regulation. Some members had indicated that they would address the Council on the Regulation at the Council meeting on 7 November 2007.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 192/07-08)

55. The Chairman said that there were 11 Bills Committees and eight subcommittees under the House Committee in action.

VIII. Election of Members of The Legislative Council Commission

(LC Paper No. AS 46/07-08)

56. The Chairman said that The Legislative Council Commission Ordinance (Cap. 443) provided that the membership of the Commission included the President of LegCo, the Chairman and the Deputy Chairman of the House Committee, and not more than 10 other members elected by and from amongst LegCo Members.

57. The Chairman further said that eight nominations for election to The Legislative Council Commission had been received by the deadline of 27 October 2007. The Chairman asked whether there were any further nominations.

58. Ms Emily LAU nominated Mr LEE Cheuk-yan and the nomination was seconded by Ms LI Fung-ying. Mr LEE accepted the nomination.

59. There being no other nomination, the Chairman declared that the following nine Members were elected members of The Legislative Council Commission –

Mr James TIEN
Mr LEE Cheuk-yan
Ms Margaret NG
Mr CHEUNG Man-kwong
Mr Jasper TSANG
Ms Emily LAU
Mr WONG Ting-kwong
Prof Patrick LAU
Mr Albert CHENG

IX. Any other business

60. There being no other business, the meeting ended at 2:56 pm.