

立法會
Legislative Council

LC Paper No. CB(2) 1736/07-08

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House Committee of the Legislative Council

**Minutes of the 20th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 25 April 2008**

Members present :

Hon Miriam LAU Kin-yee, GBS, JP (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 LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, SBS, JP
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
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP

Ms Miranda HON	Acting Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Pandora CHAN	Acting Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Colin CHUI	Chief Council Secretary (3)1
Mr Timothy TSO	Assistant Legal Adviser 2
Ms Connie FUNG	Assistant Legal Adviser 3
Miss Kitty CHENG	Assistant Legal Adviser 5
Ms Winnie LO	Assistant Legal Adviser 7
Ms Amy YU	Senior Council Secretary (2)3
Mr Arthur KAN	Legislative Assistant (2)7

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I. Confirmation of the minutes of the 19th meeting held on 18 April 2008
(*LC Paper No. CB(2) 1682/07-08*)

The minutes were confirmed.

II. Matters arising

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

Attendance of the Financial Secretary (FS) at the Legislative Council (LegCo) meeting on Resumption of the Second Reading debate on the Appropriation Bill 2008

2. The Chairman said that she had conveyed to CS the views and concerns of the President and Members regarding the attendance of FS at the Council meeting of 16 and 17 April 2008 during the resumption of the Second Reading debate on the Appropriation Bill 2008. She had also written to CS on the matter.

3. The Chairman said that during her meeting with him, CS had stated that the Administration attached a great deal of importance to its relationship with LegCo. There was no change in the Administration's policy and arrangements regarding attendance of government officials at debates on bills and motions. For the two-day debate on the Second Reading of the Appropriation Bill 2008 on 16 and 17 April 2008, the Administration had arranged for each segment of the debate to be attended by three Principal Officials. CS assured Members that the Administration was fully aware of all the views expressed by Members

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during the debate. CS had also stated that he would relay the concerns of the President and Members to FS. The Chairman said that CS had reiterated these points in his written reply dated 23 April 2008.

4. Ms Emily LAU was dissatisfied that CS had not clarified in his reply whether it was the Administration's policy for FS to sit through the Council meetings during the resumption of the Second Reading debate on Appropriation Bills, and whether the approach taken by the incumbent FS had deviated from such a policy. CS merely stated in his reply that government officials were present during the various periods of the meeting to listen to Members' speeches.

5. The Chairman said that CS had indicated both during their meeting and in his written reply that there was no change in the Administration's policy regarding attendance of government officials at debates on bills and motions. He had not responded on whether FS should stay through the Council meetings during the resumption of the Second Reading debate on Appropriation Bills.

6. Ms Emily LAU said that as it was extraordinary for FS not to have sat through the debate on the Appropriation Bill 2008, Members had sought clarification on whether the Administration had changed its policy regarding the attendance of FS at debates on Appropriation Bills. Members were not asking whether there had been a change to the Administration's policy regarding the attendance of government officials at such debates. She did not consider that CS's reply had addressed Members' concern.

7. Mr Martin LEE said that it was rare for a public officer in charge of a bill not to sit through the Second Reading debate of a bill, let alone such an important bill as the Appropriation Bill. He considered FS's prolonged absence during the Second Reading debate on the Appropriation Bill 2008 unacceptable, and was dissatisfied that FS had not accounted for his absence. He pointed out that the question was not whether the Executive Authority attached importance to its relationship with the Legislature but how the public would perceive the importance attached by Principal Officials to the bills of which they were the public officers in charge. He added that even for Members' motions without legislative effect, the mover of the motion would stay through the debate to listen to other Members' views. In his view, this was a basic requirement.

8. Mr LEE Cheuk-yan was concerned about the impact of FS's prolonged absence during the debate on other government officials. He said that FS had not shown any respect for LegCo and had set a bad example to other officials. Such a disrespectful attitude on the part of the Administration would affect the operation of LegCo and had to be rectified. He considered that the only remedy was for FS to apologize for his disrespectful act.

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9. Mr Albert CHAN said that FS was not the only senior official who had failed to set a good example to other officials. CS was selective in listening to Members' views, and was not in the Chamber on previous occasions when he and Mr LEUNG Kwok-hung spoke on motions. He said that Members had long expressed concern about the attendance of Principal Officials during debates on important issues. He considered it futile to correspond in writing with the Administration on the matter. The reply from CS was a case in point. CS had not responded to Members' question as to whether the Principal Officials had acted in compliance with the established practice. Mr CHAN was strongly of the view that to resolve Members' long-standing concern, LegCo should have a stance regarding the attendance of Principal Officials at debates on important issues. Members should set a requirement on the minimum attendance rate of Principal Officials of say 60%, 70%, or 80% of the duration of the debates. Should the Principal Officials concerned fail to meet the requirement, the Council meeting should be adjourned until after the Principal Officials concerned had returned to the Chamber. He added that unless such an approach was taken, no improvement would ever be made.

10. The Chairman said that as CS's reply had not addressed Members' concern, she suggested writing to him again to reiterate Members' view that it was incumbent upon Principal Officials to sit through the Council meeting to listen to Members' views on bills introduced by them. She also suggested asking CS whether the Administration had such a policy, and requesting the Administration to give an undertaking to follow the policy.

11. Mr Ronny TONG considered it unnecessary to ask the Administration whether it had such a policy. He said that the Administration should be reminded that Principal Officials had a constitutional obligation to sit through the Council meeting to listen to Members' views on bills introduced by them.

12. The Chairman noted Mr Ronny TONG's view, and said that she had already pointed out to CS during their meeting and in her letter that FS had a constitutional obligation to sit through the debate on Appropriation Bills.

13. Dr KWOK Ka-ki said that CS had stressed in his reply that the Administration had not changed its policy regarding the attendance of Principal Officials at debates on bills. However, as the approach taken by the incumbent FS deviated from such a policy and was at variance with that of his predecessors, clarification should be sought as to how such an approach was in compliance with the policy.

14. Mr LEE Cheuk-yan reiterated that FS should be requested to apologize for his disrespectful act.

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15. The Chairman said that she would write to CS to convey Members' views and requests. Members agreed.

16. As regards Mr Albert CHAN's proposal for setting a requirement on the minimum attendance rate of Principal Officials at Council meetings, she sought Members' view on whether the House Committee should discuss this at the meeting or after receipt of CS's reply to her letter.

17. Mr Albert CHAN suggested that Members could study his proposal from the procedural perspective, for example, whether an agenda item for a Council meeting could be deferred procedurally should the Principal Official concerned be away from the Chamber, and another agenda item for which the relevant officials were present be dealt with first.

18. The Chairman said that the Committee on Rules of Procedure (CRoP) should be involved in contemplating any course of action involving the proceedings of Council meetings, to ensure compliance with the Rules of Procedure.

19. Mr LAU Kong-wah said that Members should first deal with the case of FS's prolonged absence during the debate on the Appropriation Bill 2008. His observation was that it was a rare occurrence. While not objecting to referring Mr Albert CHAN's proposal to CRoP for detailed study, he considered the proposal complicated and technical. In his view, it was a question of mutual respect between the Executive Authority and the Legislature. Given that similar incidents seldom happened in the past, he did not consider it necessary to contemplate such a move.

20. The Chairman suggested awaiting CS's reply first. She said that should Members remain dissatisfied with the reply, Members could decide whether Mr Albert CHAN's proposal should be referred to CRoP for detailed study and for making recommendations to the House Committee for consideration. Members agreed.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 18 April 2008 and tabled in Council on 23 April 2008

(LC Paper No. LS 76/07-08)

21. The Chairman said that a total of 14 items of subsidiary legislation, including three Commencement Notices, were gazetted on 18 April 2008 and tabled in the Council on 23 April 2008.

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22. Regarding the Fugitive Offenders (Transnational Organized Crime) Order, the Chairman said that it sought to apply as between Hong Kong and the places outside Hong Kong to which the United Nations Convention against Transnational Organized Crime related the procedures for surrender of fugitive offenders set out in the Fugitive Offenders Ordinance. The Panel on Security had been consulted on the legislative proposal at its meeting on 5 December 2006. She further said that the Legal Service Division was seeking clarification from the Administration on a drafting matter, and would submit a further report if necessary.

23. Ms Margaret NG sought confirmation as to whether subcommittees were formed normally, at the suggestion of Mr James TO, to study items of subsidiary legislation of a similar nature.

24. At the invitation of the Chairman, Legal Adviser (LA) replied in the affirmative.

25. Ms Margaret NG suggested that a decision on this item of subsidiary legislation be deferred pending receipt of the Administration's reply.

26. The Chairman said that as the matters to be clarified related to drafting aspects only, she did not consider it necessary to defer a decision on the Order. Should a subcommittee be formed, the Legal Service Division could report the Administration's reply to the subcommittee.

27. Ms Margaret NG noted the Chairman's advice, and considered it necessary to form a subcommittee to study the Order.

28. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Ms Margaret NG, Mr James TO (as advised by Dr YEUNG Sum) and Mr LEUNG Kwok-hung.

29. As regards the six items of subsidiary legislation relating to trade descriptions, the Chairman said that they sought to strengthen the existing regulatory regime for the protection of consumers against malpractices in retail business. In view of the complexity of the subsidiary legislation, the Legal Service Division recommended the formation of a subcommittee to study the six items of subsidiary legislation in detail.

30. At the invitation of the Chairman, LA referred Members to paragraph 30 of the Legal Service Division Report, and pointed out that the Division was seeking clarification from the Administration on some technical issues and operational matters relating to the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order, including whether there would be

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compliance difficulties for certain retailers of the electronic products concerned. He further said that certain issues involved were related to concerns raised by the Bills Committee on Trade Descriptions (Amendment) Bill 2007 in the course of scrutiny. As such, the Legal Service Division recommended the formation of a subcommittee to study the six items of subsidiary legislation.

31. Mr Ronny TONG agreed with the recommendation to form a subcommittee to study the subsidiary legislation.

32. The Chairman proposed that a subcommittee be formed to study the six items of subsidiary legislation in detail. Members agreed. The following Members agreed to join: Mr CHAN Kam-lam, Ms Audrey EU, Mr Vincent FANG and Mr Ronny TONG.

33. Regarding the Preservatives in Food (Amendment) Regulation 2008, the Chairman said that the Regulation sought to bring the use of food additives (preservatives and antioxidants) in line with the current standards prescribed by the Codex Alimentarius Commission established by the United Nations Food and Agriculture Organization and World Health Organization. The Regulation would come into operation on 1 July 2008. The Panel on Food Safety and Environmental Hygiene had been consulted on the legislative proposals at its meetings held on 14 November 2006, and 10 April and 13 November 2007.

34. Mr Tommy CHEUNG said that it was not necessary to form a subcommittee to study the Regulation as both the trade and the Panel on Food Safety and Environmental Hygiene did not object to the legislative proposals. Members agreed.

35. In respect of the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income) (Second Protocol) Order (the Second Protocol Order) and the Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation on Income) (Revocation) Order, the Chairman said that the Orders were to give effect to the double taxation relief arrangements specified in the Second Protocol to the Comprehensive Double Taxation Agreement between the Mainland of China and the Hong Kong Special Administrative Region (HKSAR) (CDTA), and to revoke two obsolete orders pertaining to the avoidance of double taxation arrangements.

36. In response to Mr Ronny TONG, the Chairman invited LA to brief Members further on the two Orders. LA explained that the Second Protocol Order sought to provide greater certainty in the interpretation of certain provisions of CDTA. For instance, it provided for a reference period for assessing whether the gains derived by a Hong Kong resident from the alienation of shares in a company might be taxed in the Mainland of China, and

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the use of "183 days" instead of the previous "6 months" as the basis for deciding whether HKSAR enterprises would be considered as having a permanent establishment in the Mainland of China and be chargeable to tax. He further said that the Orders would impact on many people because of the growing number of people working in both places. He added that the Legal Service Division had focused its study on the technical aspects of the Orders only. He referred Members to the LegCo Brief for further information on the Orders.

37. The Chairman said that the two Orders were to implement the double taxation relief arrangements agreed between the HKSAR and the Mainland of China, and the details could not be amended.

38. At the invitation of the Chairman, LA confirmed her understanding. He supplemented that as the two Orders were items of subsidiary legislation, LegCo could repeal them. He further pointed out that there were existing arrangements governing the avoidance of double taxation, and the two Orders only sought to clarify the existing arrangements and did not involve changes in policy.

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

40. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 21 May 2008.

IV. Further business for the Council meeting on 30 April 2008

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

Statute Law (Miscellaneous Provisions) Bill 2007

41. The Chairman said that the Bills Committee on the above Bill had presented its report to the House Committee at the last meeting, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(b) Members' motions

Proposed resolution to be moved by Hon Albert HO Chun-yan under section 34(2) of the Interpretation and General Clauses Ordinance relating to the Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 537/07-08 dated 21 April 2008.)

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42. The Chairman said that the Subcommittee on Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008 had presented its report to the House Committee at the last meeting, and Members noted that Mr Albert HO would move a motion at the Council meeting to repeal the Order.

V. Business for the Council meeting on 7 May 2008

(a) **Questions**

(LC Paper No. CB(3) 546/07-08)

43. 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**

(i) **Dutiable Commodities (Amendment) Bill 2008**

(ii) **Dutiable Commodities (Amendment) (No. 2) Bill 2008**

(iii) **Revenue Bill 2008**

44. The Chairman said that the Administration had given notice to present the above three Bills to the Council on 7 May 2008. The House Committee would consider these Bills at its meeting on 9 May 2008.

(c) **Government motions**

(i) **Proposed resolution to be moved by the Secretary for Security under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 536/07-08 dated 18 April 2008.)

(LC Paper No. LS 75/07-08)

45. The Chairman said that the motion was for seeking the approval of LegCo of the above Order to implement the relevant requirements under the United Nations Convention against Transnational Organized Crime.

46. As a subcommittee had been formed to study the Fugitive Offenders (Transnational Organized Crime) Order under agenda item III above, the Chairman invited Members' view on whether the Subcommittee should also

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study the above proposed resolution, which was a related piece of subsidiary legislation. Members agreed.

47. The Chairman said that the Administration would be requested to withdraw its notice for moving the proposed resolution.

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

- **the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2008; and**
- **the Poisons List (Amendment) (No. 2) Regulation 2008**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 535/07-08 dated 18 April 2008.)

(LC Paper No. LS 74/07-08)

48. The Chairman said that the motion was for seeking LegCo's approval of the two Amendment Regulations to add one substance to Division A of the First and Third Schedules to the Pharmacy and Poisons Regulations and Division A in Part I of the Schedule to the Poisons List Regulations, so that pharmaceutical products containing the substance must be sold on registered premises of an authorized seller of poisons by a registered pharmacist or in his presence and under his supervision, with the support of prescriptions given by a registered medical practitioner, registered dentist or registered veterinary surgeon.

49. Members did not raise objection to the Administration moving the proposed resolution at the Council meeting.

(d) Members' motions

(i) Proposed resolution to be moved by Hon Bernard CHAN under section 34(4) of the Interpretation and General Clauses Ordinance relating to the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 552/07-08 dated 23 April 2008.)

50. The Chairman said that Mr Bernard CHAN, Chairman of the Subcommittee on Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008, would move a motion at the Council meeting to extend the scrutiny period of the Regulation to 28 May 2008.

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(ii) **Motion on "Strengthening the prevention of communicable diseases for children and the elderly"**

(Wording of the motion issued vide LC Paper No. CB(3) 553/07-08 dated 23 April 2008.)

(iii) **Motion on "Implementing co-location of immigration and customs facilities"**

(Wording of the motion issued vide LC Paper No. CB(3) 549/07-08 dated 23 April 2008.)

51. The Chairman said that the above motions would be moved by Mr Andrew CHENG and Mr WONG Ting-kwong respectively, and the wording of the motions had been issued to Members.

52. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 29 April 2008.

VI. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 1683/07-08)

53. The Chairman said that there were 14 Bills Committees, nine subcommittees under the House Committee and five subcommittees under Panels in action. She added that there was one subcommittee on policy issue on the waiting list.

VII. Any other business

54. There being no other business, the meeting ended at 2:59 pm.