

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2305/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/12/09

**Bills Committee on Competition Bill**

**Minutes of twelfth meeting on  
Wednesday, 13 April 2011, at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)  
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon Fred LI Wah-ming, SBS, JP  
Dr Hon Margaret NG  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Kwok-hing, MH  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, BBS, JP  
Hon CHAN Hak-kan  
Hon Paul CHAN Mo-po, MH, JP  
Hon CHAN Kin-por, JP  
Hon CHEUNG Kwok-che  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Paul TSE Wai-chun

Hon LEUNG Kwok-hung  
Hon Tanya CHAN

**Members absent :** Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J.,  
JP Hon LEE Cheuk-yan  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon CHIM Pui-chung  
Dr Hon LEUNG Ka-lau  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Yuk-man

**Public Officers  
attending** : Agenda item II

Ms Linda LAI Wai-ming, JP  
Deputy Secretary for Commerce and Economic  
Development (Commerce and Industry)

Mr Raymond WU Wai-man  
Principal Assistant Secretary for Commerce &  
Economic Development (Commerce & Industry)

Mr Michael LAM Siu-chung  
Senior Assistant Law Draftsman  
Department of Justice

Ms Phyllis POON Hon-ying  
Senior Government Counsel  
Department of Justice

Mr David Alan GROVER  
Senior Government Counsel  
Department of Justice

**Clerk in attendance :** Ms Debbie YAU  
Chief Council Secretary (1)6

**Staff in attendance :** Mr Timothy TSO  
Assistant Legal Adviser 2

Miss Lilian MOK  
Council Secretary (1)7

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Action

**I Confirmation of minutes**

(LC Paper No. CB(1)1865/10-11 -- Minutes of meeting held on  
22 February 2011)

The minutes of the meeting held on 22 February 2011 were confirmed.

**II Meeting with the Administration**

Matters arising from last meeting

(LC Paper No. CB(1)1868/10-11(01) -- List of follow-up actions arising  
from the discussion at the  
meeting on 29 March 2011

LC Paper No. CB(1)1868/10-11(02) -- Administration's response to  
CB(1)1868/10-11(01))

Institutional arrangement

(LC Paper No. CB(1)1523/10-11(03) -- Administration's paper on  
institutional arrangement of the  
Bill (Chinese version only)

LC Paper No. CB(1)320/10-11(02) -- Administration's information  
paper on overview of major  
components of the Competition  
Bill (paragraphs 3 to 14 on  
institutional arrangement)

LC Paper No. CB(1)1355/10-11(03) -- Summary of views expressed by  
deputations on the institutional  
arrangement of the Bill, and the  
Administration's response

- LC Paper No. CB(1)1523/10-11(04) -- Supplementary summary of views expressed by deputations on the institutional arrangement of the Bill, and the Administration's response
- LC Paper No. CB(1)320/10-11(03) -- Assistant Legal Adviser's letter dated 26 October 2010 to the Administration (clause 143, Part 11 and Schedule 6)
- LC Paper No. CB(1)1034/10-11(05) -- Administration's response to CB(1)320/10-11(03))

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

3. The Bills Committee requested the Administration to provide written responses to the following concerns/requests –

- (a) consider whether it would be feasible for a provisional body with similar composition to the future Competition Commission (the Commission) or the existing Competition Policy Advisory Group to draw up a set of draft regulatory guidelines on the interpretation and implementation of the conduct rules for the reference of the Bills Committee;
- (b) provide information on the detailed implementation of the "de minimis" arrangements and the commitment mechanism which would help allay the concerns and worries of the Small and Medium Enterprises;
- (c) provide information on the impact of the enforcement of competition law on the public in other competition jurisdictions;
- (d) in relation to the proposed section 21 of Schedule 5 to the Bill concerning the funds of the Commission, advise whether the policy intention of the Government is to allow the Commission to receive donations in cash or in kind from individuals or commercial corporations; and if not, consider including an express provision in the section to make it clear that any form

of donations to the Commission will not be allowed;

- (e) in relation to the proposed section 28 of Schedule 5 to the Bill regarding the establishment of committees under the Commission, provide examples of other statutory bodies (with relevant legislative provisions) which are empowered to establish, discharge or re-constitute committees etc in a similar manner; and
- (f) in relation to the proposed section 29 of Schedule 5 to the Bill relating to the delegation by the Commission, advise the functions of the Commission that might be delegated to any person or committee established by the Commission.

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on 28 April 2011 from 2:30 pm to 6:30 pm.

### **III Any other business**

5. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1  
Legislative Council Secretariat  
30 May 2011

**Proceedings of the twelfth meeting of  
Bills Committee on Competition Bill  
on Wednesday, 13 April 2011, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000755 – 000845	Chairman	Opening remarks by the Chairman.  Confirmation of minutes of the meeting on 22 February 2011 (LC Paper No. CB(1)1865/10-11).	
000845 – 001734	Chairman Administration	The Administration outlined its response to members' views and concerns raised at the meeting of the Bills Committee on 29 March 2011 (LC Paper No. CB(1)1868/10-11(02)).	
001735 – 002337	Chairman Mr Jeffrey LAM Administration	<p>Mr Jeffery LAM considered that the Bill should facilitate business operation and bring benefits to consumers. Noting the Administration's claim that adopting the Canadian competition law model would dilute the deterrent effect of the Bill, Mr LAM questioned the suitability for Hong Kong to enact such a stringent law, in particular in view that Small and Medium Enterprises (SMEs) might engage in less serious anti-competitive acts. Mr LAM held the view that the Bill should target those large consortia engaging in "hard-core" anti-competitive conduct. However, given the proposed model in the Bill, it was expected that the Competition Commission (the Commission) would be burdened to deal with a large number of complaints about non-serious anti-competitive acts committed by the SMEs, and could not afford to pay attention to the large consortia and more serious anti-competitive conduct.</p> <p>The Administration advised that the Bill provided for a commitment mechanism which enabled the Commission to deal with the less serious infringements by accepting commitments from a person to discontinue the anti-competitive act or to take certain actions in exchange for cessation of investigation and/or proceedings against the person. Under the "de minimis" arrangements, the Commission would not have to deal with conduct which did not have an appreciable adverse effect on competition and could therefore concentrate on more serious infringement cases.</p> <p>Mr LAM was unconvinced and reiterated his grave concern about the Administration's arrangement that many important and sensitive issues would be left to the future Commission to decide while the appointment and functions of which were not yet confirmed.</p>	
002338 – 003049	Chairman Mr CHAN Kam-lam	Mr CHAN Kam-lam considered that any competition law, including the Canadian model, should not base on the	

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	Administration	<p>presumption that a certain conduct would have an "object" to prevent, restrict or distort competition in Hong Kong and should be prohibited as this would undermine the competitiveness of the SMEs which were already very vulnerable in a highly competitive environment like Hong Kong. Instead, the "effect" of the conduct in preventing, restricting or distorting local competition should be taken as the major criterion for prohibition, i.e. the Bill should only catch conduct which had an "appreciable adverse effect" on competition and let go less serious infringements, in particular in view of the uncertainty about the implementation of the commitment mechanism. Otherwise, SMEs would easily fall prey to committing anti-competitive acts unknowingly.</p> <p>The Administration clarified that the Canadian competition law model adopted a "per se" criminal prohibition for several types of hard-core anti-competitive conduct without having to, as currently provided under the Bill, prove that the conduct had an "object" or "effect" to adversely affect competition. The Bill followed the other major overseas competition regimes, such as those in the European Union and United Kingdom to catch conduct that had an "object" or "effect" to prevent, restrict or distort competition, so that the Commission or the Competition Tribunal (the Tribunal) could draw reference from the relevant case law when dealing with relevant cases. The Administration stressed that conduct with an intention to lessen competition in Hong Kong should not be tolerated even if it was not implemented successfully.</p>	
003050 – 003729	Chairman Ms Miriam LAU Administration	<p>Noting the claim of the Administration that the deterrent effect of the Bill would be diluted if the Canadian non-criminal review framework was to be adopted, Ms Miriam LAU believed that local trade associations in general did not object to the prohibition of hard-core anti-competitive conduct like price fixing and bid-rigging. However, they considered the "case-by-case review" approach for less serious infringements of the conduct rules adopted under the Canadian model more preferable. She agreed that there was no legal certainty about the implementation of the commitment mechanism if an undertaking might be caught a number of years later for breaching the competition rules.</p> <p>The Administration reiterated that the "de minimis" approach should address most of the worries and concerns of the SMEs. Moreover, the SMEs would have sufficient time to understand which conduct or agreements would be caught by the competition law before the coming into force of the prohibition provisions. For big enterprises, most operated internationally and would be familiar with the requirements of the competition laws in other jurisdictions. They also had the resources to review and seek legal</p>	

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		<p>advice as to whether their acts would contravene the competition law of Hong Kong. The Administration added that under the non-criminal review framework of the Canadian model, non hard-core agreements between competitors were allowed until and unless these agreements were reviewed by the competition authorities and established as anti-competitive. Compared with what was proposed in the Bill, such a review framework had relatively weak deterrent effect in correcting misbehaviour.</p>	
003730 – 004426	Chairman Prof Patrick LAU Administration	<p>Prof Patrick LAU advised that the Hong Kong Institution of Architects was given to understand that it would have to amend its guidelines in order to comply with the Bill. As the Commission was not yet established, enterprises could turn to nowhere for assistance on a review. Prof LAU urged the Administration to provide concrete examples of behaviours that would be considered to be in breach of the law for reference by the SMEs.</p> <p>The Administration responded that it would provide sample guidelines to the Bills Committee during the scrutiny of the major prohibition provisions in the Bill. It reassured members that the Commission would draw up a set of regulatory guidelines upon public consultation during the transitional period between the enactment of the Bill and the coming into force of the major prohibitions. On the basis of the regulatory guidelines, the Commission would also step up publicity and education with a view to helping SMEs in complying with the law.</p> <p>Prof LAU further expressed his concerns about Hong Kong's compliance with the WTO requirements and urged the Administration to look into the difficulties encountered by Hong Kong professionals in complying with the WTO requirements. Prof LAU's concerns were not within the scope of the Bill, the Chairman requested the Administration to follow up Prof LAU's concerns separately.</p>	
004427 – 005159	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE said that the business sector was worried about the lack of clarity in the Bill and of certainty in the operation of the Commission. She stressed that the public would support the Bill only if the business sector and consumers alike could benefit from markets in which competition was free and fair.</p> <p>Referring to the forthcoming rise in textbook prices in the next school year, Ms LEE commented that an oligopoly had existed in the textbook market where there were only few textbook traders fixing the prices. Ms LEE questioned whether the Bill, if enacted, could rectify such a situation and minimize damages to the consumers.</p> <p>The Administration highlighted that merely being the sole</p>	

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		<p>enterprise in a market would not constitute or lead to an infringement of the competition law. On the textbook case, the Administration said that there was insufficient information on hand to assess whether there was a contravention of any of the competition rules in the textbook market. In general, if there were only little providers of a commodity in a market and these providers engaged in concerted practices such as price fixing, or abused their substantial degree of market power to manipulate the supply of raw materials, these providers would be subject to allegation of distorting competition in the market and their behaviours would be prohibited under the Bill.</p> <p>Ms LEE was unconvinced and opined that it might not be easy to have reasonable cause or prima facie evidence to prove that a contravention of any of the competition rules had taken place. She echoed the views of Mr CHAN Kam-lam that the Bill should seek to prohibit conduct that had an "adverse effect" on the competition of the market concerned.</p> <p>The Administration agreed that it would be important that the competition law should be enforceable and as such, the Bill had empowered the Commission and Tribunal to investigate and sanction cases involving anti-competitive practices and to educate the public on the benefits of fair competition.</p>	
005200 – 010043	Chairman Mr Albert HO Administration	<p>Mr Albert HO reiterated his support for the Bill. In view of the problems arising from the implementation of the statutory minimum wage (SMW), Mr HO expressed concern about the implementation of the future competition law, and the promulgation of the regulatory guidelines, which would be taken up by the future Commission.</p> <p>Referring to his visit to the European Commission, Mr HO said that although regulatory guidelines were non-binding on the courts, law enforcement agencies would be constrained to act according to the guidelines. However, the general public followed the guidelines might fell foul of the legislation. As the European Commission maintained close connection with the relevant authorities in European countries, Mr HO was concerned about the interactions between the Administration and the future Commission.</p> <p>Highlighting that the Provisional Minimum Wage Commission had been established to advise on the initial SMW rate before the SMW came into force, Mr HO proposed that a provisional Competition Commission be set up to handle important issues and formulate the regulatory guidelines which serve as a blueprint for the</p>	

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		<p>reference of the future Commission. Future amendments of the regulatory guidelines could be made by way of subsidiary legislation subject to positive or negative vetting. He said that in absence of such guidelines, it was difficult for the SMEs and business sector to support the Bill.</p> <p>The Administration acknowledged that the regulatory guidelines would not be legally binding. However, the Commission, which would prepare the guidelines in consultation with the public and stakeholders, would act according to the guidelines to enforce the competition law. As such, flexibility should be allowed to facilitate modification and improvement to be done in response to changes in market landscape and in the light of operational experience.</p> <p>On the proposal of setting up a provisional Competition Commission, the Administration explained that the Commission would be a statutory body with significant power. As the establishment of the provisional Competition Commission was not provided under the Bill, its status as well as the guidelines drafted by it would not have any legal backing.</p> <p>Mr HO was unconvinced and considered that the Government could set up a consultative committee to serve the purpose. Sharing Mr HO's view, the Chairman remarked that the Government could set up such a provisional body through administrative means and recognize its work in the same way as the Provisional Minimum Wage Commission which also did not have a legal backing.</p>	
010044 – 010707	Chairman Administration	<p>Highlighting the Canadian model's "two-track approach" in tackling hard-core and non hard-core agreements between competitors, the Chairman urged the Administration to allay worries of the SMEs by focusing on combating hard-core anti-competitive conduct and stepping up public education in the initial years while delineating more clearly the commitment mechanism which was meant to deal with less serious infringements. In response, the Administration pointed out that the competition law in Canada had been introduced for quite a long period of time and the concept of fair competition had taken root in the community. As the Canadian approach had been developed over many years to take into account its own circumstances, the Administration did not consider such an approach suitable for Hong Kong. The Administration reassured members that it would further consider how the commitment mechanism and the "de minimis" approach might be used to address less serious infringements of the competition rules.</p>	

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		<p>While noting the Administration's advice that the Herfindahl-Hirschman Index (HHI) (which ranged from 1 (in the case of pure monopoly) to a number of approaching zero (in the case of market with numerous small players)) had no particular reference value for the future Commission in calculating the market share of an undertaking, the Chairman also considered HHI not useful in indicating market share, for instance, the HHI for retail of fuel was 0.026 in 2008 which did not reflect the real market situation.</p>	
010708 – 011008	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU expressed support for the Bill and hoped that it could be enacted within this term of the Legislative Council (LegCo). To expedite the process, she urged the Administration to provide the regulatory guidelines for further discussion by the Bills Committee. Ms LAU also shared the observations of the business sector that it was more desirable for Hong Kong to make reference to other similar competition jurisdictions in terms of market size and economic environment like Canada. In response, the Administration agreed to take into due consideration members' views.</p>	
011009 – 011509	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE cited that the airline industry had jointly engaged in certain practices that would affect the travel agents and consumers through an association. He enquired whether it would be feasible for the existing Competition Policy Advisory Group (COMPAG) to draw up the regulatory guidelines for the reference of the Bills Committee.</p> <p>The Administration responded that COMPAG had all along been dealing with complaints involving anti-competitive conduct. However, without the legal backing, it was difficult for COMPAG to carry out effective investigations and impose appropriate sanctions on anti-competitive conduct. Noting the repeated urge of the Bills Committee, the Administration would consider whether it would be possible to prepare some sample guidelines for the reference of the Bills Committee.</p>	The Administration to provide information as requested in paragraph 3(a) of the minutes.
011510 – 011757	Chairman Mr CHAN Kam-lam Administration	<p>Mr CHAN Kam-lam commented that the Bill had deviated from the original public expectation which was to guard against dominance by large consortia in the market in order to help the SMEs sustain viability and protect consumers. He doubted whether the enactment of the competition law could cease monopolies in some market sector. Mr CHAN urged the Administration to re-consider the concerns and worries of the business sector. He said that he would propose some Committee Stage amendments for consideration of the Administration and the Bills Committee when ready.</p>	
011758– 012351	Chairman Ms Starry LEE	<p>Ms Starry LEE noted the concerns of SMEs about the lack of clarity of the Bill and urged the Administration to</p>	The Administration to provide

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	Mr Jeffrey LAM Administration	<p>provide the draft regulatory guidelines without which Members might have difficulties to support the Bill. Ms LEE also remarked that the general consumers hoped to see that the new law could help deal with the problem of lack of competition in certain markets, including the textbook and air services markets.</p> <p>The Administration responded that references had been made to other competition jurisdictions. For example, the UK had conducted reviews to assess the impact of the enforcement of the competition law on the public and it was found that the law had helped enhance economic efficiency and consumers' savings. The Administration undertook to provide the relevant information for members' reference.</p> <p>In this connection, Mr Jeffrey LAM requested the Administration to provide, in addition to positive impact, the downside of the implementation of the law in jurisdictions like Singapore and EU.</p> <p>The Administration informed members that as far as it understood, the UK had conducted reviews and released the relevant report. To allay the concerns and worries of the SMEs, the Administration also undertook to provide its proposals on the "de minimis" arrangements and the commitment mechanism.</p>	information as requested in paragraphs 3(b) and (c) of the minutes.
012352 – 012423	Chairman Administration	Further to the list of definition of "shadow director" consolidated by the Administration (LC Paper No. CB(1)1759/10-11(01)), the Chairman requested the Administration to also explain the interpretation and usage of "shadow director" in other Hong Kong ordinances.	
012424 – 012550	Chairman Administration	<p><u>Continuation of clause-by-clause examination</u></p> <p><u>Schedule 5 – Proposed section 19 – Commission to submit estimates</u></p> <p><u>Schedule 5 – Proposed section 20 – Financial year</u></p> <p>Members did not raise any queries.</p>	
012551– 013339	Chairman Administration Assistant Legal Adviser (ALA) Ms Miriam LAU Ms Audrey EU	<p><u>Schedule 5 – Proposed section 21 – Funds of Commission</u></p> <p>In relation to the proposed section 21, the Chairman enquired whether the Commission could receive donation. Whilst some statutory bodies were allowed to receive donations, he considered it not appropriate for the Commission to do so to maintain independence.</p> <p>Noting the Administration's policy intent that the Commission would be fully funded by the Government and should not need to solicit donations, ALA opined that the</p>	The Administration to provide information as requested in paragraph 3(d) of the minutes.

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		<p>present drafting of the proposed section 21(b) had not explicitly excluded donation.</p> <p>Ms Miriam LAU shared ALA's observation. In reply to her enquiry, the Administration explained that "property" under the proposed section 21(b) referred to offices and equipment of the Commission.</p> <p>Ms Audrey EU requested the Administration to state its policy intention clearly as to whether the Commission would be allowed to receive donations (in cash or in kind) from other party (commercial corporations or individuals). The Administration advised that the operational cost of the Commission would be funded by the Government.</p> <p>In view of members' queries, the Chairman requested the Administration to advise whether the policy intention of the Government was to allow the Commission to receive donations in cash or in kind from individuals or commercial corporations and if not, to consider including an express provision in the section to make it clear that any form of donations to the Commission would not be allowed.</p>	
013400 – 013728	Chairman Administration Ms Audrey EU ALA	<p><u>Schedule 5 – Proposed section 22 – Commission is exempt from taxation</u></p> <p>In response to Ms Audrey EU's enquiry about the benefits paid out of the funds of the Commission to a member of the Commission as laid down in the proposed section 22(2), the Administration explained that the level of remuneration and appointment condition of members of the Commission would be decided by the Chief Executive (CE) and the current drafting would allow flexibility for CE to determine the terms.</p> <p>ALA advised that similar provisions were provided in other ordinances governing statutory bodies but the wordings might be the same (e.g. The Personal Data (Privacy) Ordinance (Cap. 486)) or slightly different (e.g. The Ombudsman Ordinance (Cap. 397)).</p>	
013729 – 013939	Chairman Administration	<p><u>Schedule 5 – Proposed section 23 – Accounts</u></p> <p>Members did not raise any queries.</p> <p><u>Schedule 5 – Proposed section 24 – Commission to appoint auditor</u></p> <p><u>Schedule 5 – Proposed section 25 – Annual report</u></p> <p>The Chairman enquired about the timeframe of appointing the auditor as late appointment might lead to late submission of annual report by the Commission.</p>	

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		<p>The Administration explained that according to the proposed section 25, the Commission must prepare a report dealing with its activities in the preceding financial year within 6 months after the end of each financial year.</p>	
013940 – 014206	<p>Chairman Ms Audrey EU ALA</p>	<p><u>Schedule 5 – Proposed section 26 – Annual report and audited accounts to be laid on table of legislative council</u></p> <p>Members did not raise any queries.</p> <p><u>Schedule 5 – Proposed section 27 – Director of Audit's examination</u></p> <p>Ms Audrey EU enquired whether the present drafting of the proposed section 27, especially 27(3), was in line with other ordinances. ALA advised that the drafting of the proposed section 27(2) was slightly different from other ordinances whereas the same provision as the proposed section 27(3) was provided in the Personal Data (Privacy) Ordinance (Cap. 486).</p> <p>Ms EU requested ALA to provide information on the provisions similar to the proposed section 27(2) in other ordinances governing statutory bodies.</p>	
014207 – 015430	<p>Chairman Administration Ms Miriam LAU Ms Cyd HO</p>	<p><u>Schedule 5 – Proposed section 28 – Commission may establish committees</u></p> <p>The Chairman asked about the Administration's response to the suggestion of the Real Estate Developers Association of Hong Kong to set up an independent Competition Advisory Committee and to the concern of PCCW Limited about the qualification of members to be appointed to committees established under the Commission.</p> <p>In response, the Administration highlighted that the Commission was an independent body with statutory powers and responsibilities conferred by the law which also provided adequate checks and balance in terms of management and funding of the Commission. The Administration considered the proposed institutional framework appropriate. On the requirements for persons to be appointed as committee members, the Administration considered it more flexible not to specify the eligibility and appointment criteria strictly in the Bill so that the Commission could appoint persons with relevant experience and expertise should circumstances so require.</p> <p>In relation to the proposed section 28(3), Ms Miriam LAU enquired whether the member to be appointed as the chairperson of a committee would necessarily be a member of the Commission. She also noticed that the quorum for committee meetings was not explicitly stated in the Bill.</p>	<p>The Administration to provide information as requested in paragraph 3(e) of the minutes.</p>

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		<p>The Administration reiterated that the Commission would supervise and control these committees which were set up to perform such functions delegated by the Commission. The Commission was also empowered to dispense the committees should circumstances so require.</p> <p>Ms LAU was unconvinced. She referred to the proposed section 28(1)(a), which stipulated that the committees could advise the Commission on matters as the Commission referred, and such advice might have a direct bearing on the decision of the Commission. The Administration explained that the Commission would have full discretion to decide whether or not to accept the advice of the committees. Also, with reference to the proposed section 28(1)(b), the committees would be the work units of the Commission which would oversee and ensure the performance of the committees.</p> <p>Ms Cyd HO observed that it was quite common for statutory body to delegate its power and responsibility to appointed committees which could hardly be supervised. She requested the Administration to state clearly in the Bill whether the committees would be standing or ad hoc committees and on what grounds these committees would be dispensed or recomposed. The Administration reiterated the importance to allow flexibility for the Commission to tap relevant experience and expertise from members the community in performing its statutory functions. The Administration advised that the same practice was adopted by other statutory bodies such as the Securities and Futures Commission.</p> <p>Noting the explanation of the Administration that there were similar provisions in other ordinances, Ms HO requested the Administration to provide examples of other statutory bodies (with relevant legislative provisions) which were empowered to establish, discharge, or re-constitute committees etc. in a similar manner.</p>	
015431 – 020100	Chairman Mr Paul TSE Ms Audrey EU Administration	<p><u>Schedule 5 - Proposed section 29 – Delegation by Commission</u></p> <p>Mr Paul TSE referred to Part 8 of Schedule 5 on delegation (proposed section 29) and sub-delegation (proposed section 30) which were related to the subject under discussion. He enquired about the functions of the Commission that might be delegated, and considered it necessary to draw up a framework of delegation and sub-delegation by the Commission.</p> <p>In reply, the Administration said that by listing some functions that might not be delegated by the Commission, such a framework had been set.</p>	The Administration to provide information as requested in paragraph 3(f) of the minutes.

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>Echoing the view of Mr TSE, Ms Audrey EU also enquired whether those functions that were not included in the proposed section 29(2) could be delegated by the Commission, for example clauses 9 and 15 relating to application for decision and block exemption orders respectively.</p> <p>At this point, the Chairman clarified that according to the proposed section 28(3), the member to be appointed as the chairperson of a committee would not necessarily be a member of the Commission. In consideration of members' concerns about the proposed sections 28 and 29, the Chairman requested the Administration to review the policy concerning delegation and subdelegation in these sections.</p>	
020101 – 020125	Chairman	Meeting arrangements	