

立法會
Legislative Council

Ref : CB2/BC/1/09

LC Paper No. CB(2)384/10-11
(These minutes have been seen
by the Administration)

Bills Committee on Food Safety Bill

Minutes of meeting
held on Monday, 1 November 2010, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
- Members absent** : Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
- Public Officers attending** : Item I

Mr Philip CHAN Kwan-ye, JP
Deputy Secretary for Food and Health (Food)2

Mr Kevin YEUNG Yun-hung
Principal Assistant Secretary for Food and Health (Food)1

Dr Constance CHAN, JP
Controller, Centre for Food Safety
Food and Environmental Hygiene Department

Dr LEE Siu-yuen
Assistant Director (Food Surveillance & Control)
Centre for Food Safety
Food and Environmental Hygiene Department

Mr Paul John O'BRIEN
Senior Assistant Law Draftsman
Department of Justice

Ms Angie LI Sau-lee
Government Counsel
Department of Justice

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

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Priscilla LAU
Council Secretary (2) 5

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Meeting with the Administration
[LC Paper No. CB(2)138/10-11(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Administration was requested to provide responses in writing to the following issues raised by the Chairman -

- (a) to ascertain whether the transaction record form used by the Fish Market Organization ("FMO") could meet the record-keeping requirements stipulated in clause 23 of the Bill; and
- (b) to allow fishermen to use numbers referred to the annotated fishing map provided by the Administration to indicate the catch areas in the FMO's transaction record form.

Clause-by-clause examination of the Bill

Clause 2 - Interpretation

3. Assistant Legal Adviser 8 ("ALA8") advised that to improve the Chinese version of the definition of "drink" and to make clear that the definition of "drink" did not include water other those specified in clause 2 of

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the Bill, he suggested to amend the drafting of the opening sentence of the definition as follows -

"飲品" (drink) 不包括下列類別以外的水".

The Administration agreed to consider and revert to members before the next meeting.

Clause 3 - Food not intended for human consumption

4. In response to the question raised by ALA8 as to whether the presumption provided under clause 3 of the Bill (against the defendants) would be contrary to the presumption of innocence guaranteed by Article 11(1) of the Hong Kong Bill of Rights ("BoR") and Article 87(2) of the Basic Law, the Administration clarified that clause 3(2) only imposed an evidential burden on the defendant to point to or adduce evidence to raise a reasonable doubt as to whether the food or substance in question was intended for human consumption, and the prosecution continued to bear the persuasive burden throughout. The Administration considered that imposition of the evidential burden on the defendant would not be contrary to the presumption of innocence. For prosecuting those offences under the Bill, in practice, the prosecution would first have to prove that the subject matter was food commonly used for human consumption or a substance capable of being used in the composition or preparation of any food commonly used for human consumption. The defendant would then have to come up with evidence to raise an issue that the food or substance in question was not intended for human consumption. If the defendant was able to provide any such evidence, the burden of proof remained with the prosecution. The Administration further said that imposing an evidential burden on the defendant under the Bill was a lower threshold than the burden currently imposed on the defendant in Part V of the Public Health and Municipal Services Ordinance (Cap. 132) whereby a persuasive burden, i.e. "until the contrary is proved", was imposed on the defendant. ALA8 supplemented that the Court of Final Appeal had held in two cases that imposing only an evidential burden on the defendant was consistent with the presumption of innocence guaranteed by BoR and the Basic Law.

5. ALA8 asked why clause 3(2) only covered any substance capable of being used in the composition or preparation of any food commonly used for human consumption that was found on "any premises or in any vessel", and did not cover other types of vehicles such as airplane, train and trucks, where that food was prepared. The Administration responded that the clause was considered adequate in light of their enforcement experience.

6. ALA8 further asked about the reason for adding clause 3(3) to exclude live aquatic products kept in captivity for propagation or promotion of growth

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from the Bill, because those live aquatic products kept in captivity would be fit for human consumption sooner or later. The Administration explained that this was because live aquatic products kept in captivity for propagation or promotion of growth, such as fish fry and oyster spat, were at the time not yet intended for human consumption and hence yet to enter the food chain. Under clause 2 of the Bill, the definition of "supply" provided that "supply" in relation to food, meant (a) to sell the food; (b) to offer, keep or exhibit the food for sale; (c) to exchange or dispose of the food for consideration; or (d) for commercial purposes, to give the food as a prize or to make a gift of the food. However, these producers would be required to comply with the registration and record-keeping requirements under the Bill if, say, they intended to sell live fish, grown from the fish fry, for human consumption. The Administration further said that as the definition of "food" in the Bill would include live aquatic products as well as ice intended for human consumption, corresponding amendments would also be made to the definition of "food" in Cap. 132. Without the exemption clause of clause 3(3), enforcement action might need to be taken under the Harmful Substances in Food Regulations (Cap.132 sub. leg. AF) against producers of live aquatic products kept in captivity for propagation or promotion of growth if certain veterinary drugs with specified maximum residue concentration in food, were found contained in those live aquatic products, though they were not intended for human consumption for the time being. There would be similar problem when enforcing the regulation related to metallic contamination in food.

II. Dates of next meetings

7. The next two meetings would be held on the following dates -
 - (a) 16 November 2010 at 4:30 pm; and
 - (b) 3 December 2010 at 8:30 am.
8. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
24 November 2010

**Proceedings of the meeting of the
Bills Committee on Food Safety Bill
on Monday, 1 November 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000204	Chairman	Opening remarks	
000205 - 000644	Admin	Briefing by the Administration on its response to issues raised by members at the meeting on 18 October 2010 [LC Paper No. CB(2)138/10-11(01)]	
000645 - 003137	Chairman Mr WONG Yung-kan Admin	The Administration was requested to provide responses in writing to the following issues raised by the Chairman - (a) to ascertain whether the transaction record form used by the Fish Market Organization ("FMO") could meet the record-keeping requirements stipulated in clause 23 of the Bill; and (b) to allow fishermen to use numbers referred to the annotated fishing map provided by the Administration to indicate the catch areas in the FMO's transaction record form.	Admin (para. 2 of the minutes refers)
003138 - 004044	Mr WONG Ting-kwong Chairman Admin Ms Audrey EU ALA8	<u>Clause-by-clause examination of the Bill</u> <i>Clause 2 - Interpretation</i> The Administration agreed to consider amending the drafting of the opening sentence of the definition of "飲品".	Admin (para. 3 of the minutes refers)
004045 - 004728	Mr WONG Yung-kan Chairman Admin Mr WONG Ting-kwong	The Administration's view that traders who sold toys containing food, such as candy, were required to comply with the registration and record-keeping requirements under the Bill	
004729 - 015516	ALA8 Chairman Admin Ms Audrey EU Mr WONG Yung-kan Mr WONG Ting-kwong Mr Tommy CHEUNG	<i>Clause 3 - Food not intended for human consumption</i>	
015517 - 015733	Chairman	Dates of next meetings	