

立法會
Legislative Council

LC Paper No. CB(2) 1437/10-11

Ref : CB2/H/5/10

House Committee of the Legislative Council

**Minutes of the 18th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 1 April 2011**

Members present:

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH

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
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon Tanya CHAN
Hon WONG Yuk-man

Members absent :

Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon WONG Sing-chi
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip

Clerk in attendance :

Miss Odelia LEUNG Clerk to the House Committee

Staff in attendance :

Ms Pauline NG Secretary General

Mr Jimmy MA, JP	Legal Adviser
Miss Polly YEUNG	Acting Assistant Secretary General 1
Mrs Justina LAM	Assistant Secretary General 3
Mrs Percy MA	Assistant Secretary General 4
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mr KAU Kin-wah	Senior Assistant Legal Adviser 3
Mr Stephen LAM	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Ms Amy YU	Chief Council Secretary (2)6
Ms Wendy KAN	Assistant Legal Adviser 6
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Clara TAM	Assistant Legal Adviser 9
Miss Josephine SO	Senior Council Secretary (2)7
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

Action

I. Confirmation of the minutes of the 17th meeting held on 18 March 2011
(LC Paper No. CB(2) 1368/10-11)

The minutes were confirmed.

II. Matters arising

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

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

Formulation of policy concerning sick leave of Principal Officials and the work arrangements

3. Ms Emily LAU expressed concern that the Administration had not explained to the public the recent hospitalization of the Secretary for Commerce and Economic Development and the work arrangements during her sick leave. In her view, it was not a matter of privacy as the illness of Principal Officials might affect their discharge of duties. She considered it necessary for the Administration to formulate policy in this regard, and suggested that reference should be made to the practices adopted by other countries. She requested the Chairman to relay her concern to CS.

4. The Chairman undertook to relay Ms Emily LAU's concern to CS.

(b) **Inland Revenue (Amendment) (No.2) Bill 2011**

(Paragraphs 5 and 6 of the minutes of the 17th House Committee meeting on 18 March 2011)

(Letter dated 29 March 2011 from Hon Paul CHAN Mo-po to the Chairman of the House Committee (LC Paper No. CB(2) 1377/10-11(01))

[Previous papers:

LC Paper No. LS 37/10-11 issued vide LC Paper No. CB(2) 1248/10-11 dated 10 March 2011;

paragraphs 11 and 12 of the minutes of the 16th House Committee meeting on 11 March 2011 (LC Paper No. CB(2) 1277/10-11 issued vide LC Paper No. CB(2) 1287/10-11 dated 16 March 2011); and

LC Paper No. LS 42/10-11 issued vide LC Paper No. CB(2) 1296/10-11 dated 17 March 2011]

5. The Chairman said that the House Committee had considered the Bill at its meetings on 11 and 18 March 2011. Members did not consider it necessary to form a Bills Committee to study the Bill and raised no objection to the resumption of the Second Reading debate on the Bill. Members also noted that the Administration would propose Committee Stage amendments ("CSAs") to the Bill in response to the queries raised by the Legal Service Division. The Chairman further said that the Administration had yet to give notice to resume the Second Reading debate on the Bill.

6. At the invitation of the Chairman, Mr Paul CHAN said that he was out of town when the Bill was considered by the House Committee on 11 March 2011. Subsequently, he learnt of the concerns of the accounting profession about the Bill which were detailed in the letter from The Association of Chartered Certified Accountants in Hong Kong ("ACCA") addressed to him. He pointed out that the accounting profession was particularly concerned that the Bill in its present form might have problems similar to those of the existing section 39E of the Inland Revenue Ordinance (Cap. 112). He had therefore written to the Chairman seeking assistance in addressing those concerns.

7. The Chairman suggested that the ACCA's letter be sent to the Administration for a written response. Upon receipt of the Administration's response, Members would then consider the need to form a Bills Committee to study the Bill at the next House Committee meeting. Members agreed.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 25 March 2011

(LC Paper No. LS 44/10-11)

8. The Chairman said that a total of seven items of subsidiary legislation were gazetted on 25 March 2011. With the exception of four items of subsidiary legislation made under the United Nations Sanctions Ordinance which were not required to be tabled in the Council, the other three items of subsidiary legislation were tabled in the Council on 30 March 2011.

9. Regarding the Declaration of Constituencies (District Councils) Order 2011, the Chairman said that it sought to declare the respective constituencies of the 18 Districts by delineating their areas and giving names to the constituencies. The Order would come into operation on 23 May 2011 for the purpose only of enabling arrangements to be made for the holding of the District Council ordinary election in 2011.

10. Mr CHEUNG Man-kwong considered it necessary to form a subcommittee to study the Order.

11. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Mr CHEUNG Man-kwong, Ms Emily LAU and Mr IP Kwok-him.

12. As regards the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011, the Chairman said that it was to prohibit the use of trawling devices for fishing. The Amendment Notice would come into operation on 31 December 2012.

13. Mr KAM Nai-wai considered it necessary to form a subcommittee to study the Amendment Notice.

14. The Chairman proposed that a subcommittee be formed to study the Amendment Notice in detail. Members agreed. The following Members agreed to join: Mr Fred LI, Mr Tommy CHEUNG, Mr KAM Nai-wai, Ms Cyd HO and Mrs Regina IP.

15. Regarding the four Regulations made under the United Nations Sanctions Ordinance, the Chairman said that they were not subject to amendment by the Legislative Council ("LegCo"). She drew Members' attention to the United Nations Sanctions (Iran) (Amendment) Regulation

Action

2011 and pointed out that Members had earlier on expressed concern that the sanctions against Iran imposed by the United Nations Security Council in June 2010 had not been implemented in Hong Kong. The United Nations Sanctions (Iran) (Amendment) Regulation 2011 was to give effect to those sanctions.

16. As the four Regulations came within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions, the Chairman suggested that they be referred to the Subcommittee. Members agreed.

17. Members did not raise any queries on the Import and Export (General) (Amendment) Regulation 2011.

18. As the deadline for amending the Declaration of Constituencies (District Councils) Order 2011 and the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 was 13 April 2011, the Chairman proposed to move in her capacity as Chairman of the House Committee a motion at the Council meeting of 13 April 2011 to extend their scrutiny period to 18 May 2011. Members agreed.

IV. Legal Service Division report on an order made under section 78B of the Public Health and Municipal Services Ordinance gazetted on 24 March 2011

(LC Paper No. LS 43/10-11)

19. The Chairman drew Members' attention to the Order, which was made under section 78B(6) of the Public Health and Municipal Services Ordinance (Cap. 132) and was not subsidiary legislation. As such, it was not required to be tabled in the Council and was not subject to amendment by LegCo. This notwithstanding, Members could form a subcommittee to examine the Order if considered necessary.

20. The Chairman further said that the Order sought to prohibit all persons from importing into and supplying within Hong Kong the food specified in Annex A to the Order that was intended for human consumption for the period from 12:00 noon on 24 March 2011 until further notice. The food specified in Annex A related to food products originated from five prefectures in Japan, namely, Fukushima, Ibaraki, Tochigi, Gunma and Chiba and harvested, manufactured, processed or packed on or after 11 March 2011. These included all fruits and vegetables; all milk, milk beverages and dried milk; all chilled or frozen games, meat and poultry, poultry eggs; and all live, chilled or frozen aquatic products.

Action

21. Ms Emily LAU considered it necessary to form a subcommittee to study the Order.

22. The Chairman proposed that a subcommittee be formed to study the Order in detail. Members agreed. The following Members agreed to join: Mr Fred LI, Ms Emily LAU and Ms Cyd HO.

V. Business for the Council meeting of 6 and 7 April 2011

23. The Chairman said that Members would speak on the Appropriation Bill 2011 at the Council meeting. She reminded Members that the first day of the meeting would start at 11:00 am and the second day at 9:00 am.

(a) Tabling of papers

Report No. 18/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments
(LC Paper No. CB(2) 1370/10-11 issued vide LC Paper No. CB(3) 628/10-11 dated 31 March 2011)

24. The Chairman said that the report covered two items of subsidiary legislation, the period for amendment of which would expire on 6 April 2011. No Member had requested to speak on the subsidiary legislation.

25. Members noted the report.

(b) Questions

(LC Paper No. CB(3) 625/10-11)

26. The Chairman said that 20 written questions had been scheduled for the meeting.

(c) Bills - resumption of debate on Second Reading

Appropriation Bill 2011
(Members speak)

27. The Chairman reminded Members that each Member would have a speaking time limit of 15 minutes.

VI. Business for the Council meeting of 13 April 2011

(a) Questions

(LC Paper No. CB(3) 624/10-11)

28. The Chairman said that 20 written questions had been scheduled for the meeting.

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

(i) Dutiable Commodities (Amendment) Bill 2011

(ii) Motor Vehicles (First Registration Tax) (Amendment) Bill 2011

29. The Chairman said that the Administration had given notice to present the above two Bills to the Council. The House Committee would consider the Bills at its meeting on 15 April 2011.

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

Appropriation Bill 2011

(Response by the Administration)

30. The Chairman said that the Administration would respond to Members' comments on the Appropriation Bill 2011 and some Members had given notice to move CSAs to the Bill.

(d) Government motion

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

Arrangement for the Council meeting

32. Ms Emily LAU enquired about the arrangement if the business on the Agenda of the Council meeting of 13 April 2011 could not be finished on that day.

33. The Chairman said that as it was anticipated that the business on the Agenda of the Council meeting would unlikely be finished on 13 April, the President had directed that the Council would resume on the following day at 9:00 am for continuation of the unfinished business. As a LegCo Members' luncheon with Chairmen and Vice-Chairmen of

Action

the 18 District Councils had been scheduled for 14 April, the Council meeting would be suspended at 12:30 pm, and resume at 2:30 pm to deal with the unfinished business.

Report on study of subsidiary legislation

34. The Chairman invited Members to note the list of subsidiary legislation tabled at the meeting, the scrutiny period of which would expire on 13 April 2011, and reminded Members who wished to speak on the subsidiary legislation to notify the Clerk by 5:00 pm on Monday, 4 April 2011.

VII. Report of Bills Committees and subcommittees

Report of the Subcommittee on Securities and Futures Ordinance (Amendment of Schedule 5) Notice 2011 and Securities and Futures (Financial Resources) (Amendment) Rules 2011

35. Mr James TO, Chairman of the Subcommittee, reported that the Subcommittee had completed scrutiny of the Securities and Futures Ordinance (Amendment of Schedule 5) Notice 2011 ("the Amendment Notice") and the Securities and Futures (Financial Resources) (Amendment) Rules 2011 ("the Amendment Rules"). He then explained the background to the subsidiary legislation. He said that since the onset of the global financial crisis in 2007, concerns had been expressed by the market about the failure of credit rating agencies ("CRAs") to sufficiently consider the risks inherent in more complicated financial instruments. Following global agreement on the need to subject CRAs to regulation, the Administration considered that it would be in the public interest to establish a regulatory oversight regime in Hong Kong with a view to enhancing investor protection and fulfilling international obligations.

36. Mr James TO elaborated that the Amendment Notice and the Amendment Rules were to subject both corporate CRAs in Hong Kong and their individual rating analysts to the licensing regime under the Securities and Futures Ordinance (Cap. 571) ("SFO"), and hence all general licensing obligations. According to the Administration, the proposed regulatory regime met the requirements laid down by G20 and was generally consistent with the regulatory models that had been adopted or were being created in other jurisdictions including the United States, the European Union and Japan.

37. Mr James TO further reported that the Subcommittee was supportive of the policy objectives of the Amendment Notice and the

Action

Amendment Rules. In the course of scrutiny, the Subcommittee had requested the Administration to provide details of the proposed CRA regulatory regime, including eligibility criteria for licensing, sanctions against breach of statutory regulations, civil and/or criminal liabilities for false or misleading ratings and measures to prevent and avoid conflict of interests. The Subcommittee had also examined the following issues –

- (a) definition of the term "misconduct" under the current regulatory regime of SFO and rules or guidelines followed by the Securities and Futures Commission ("SFC") in taking disciplinary actions;
- (b) whether the proposed definition of "providing credit rating services" was clear and precise; and
- (c) whether the proposed capital requirement to be met by licensed CRA corporations was appropriate.

38. Mr James TO further said that with a view to safeguarding the interest of investors, the Subcommittee had requested the Administration to consider requiring CRAs to disclose all credit ratings that had been made on a financial product or an issuer under certain circumstances so as to prevent product issuers from hiding previous unfavourable credit ratings. SFC accepted the Subcommittee's suggestion and had incorporated relevant provisions in the draft Code of Conduct for Persons Providing Credit Rating Services ("CRA Code").

39. Mr James TO further reported that as the proposed CRA regulatory regime was not intended to regulate the activity of providing private ratings, the Subcommittee had requested the Administration to put in place appropriate measures to prevent abuse of such activities. SFC had taken on board the Subcommittee's suggestion and had revised the relevant provisions of the CRA Code to require CRAs to incorporate into their service agreements provisions prohibiting their clients from disseminating private ratings.

40. Mr James TO added that the Subcommittee supported the Amendment Notice and the Amendment Rules. The Subcommittee would provide a written report the following week.

41. The Chairman reminded Members that as the deadline for amending the subsidiary legislation was 13 April 2011, the deadline for giving notice of amendments, if any, was Wednesday, 6 April 2011.

VIII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 1369/10-11)

42. The Chairman said that there were 12 Bills Committees, 11 subcommittees under the House Committee (i.e. seven subcommittees on subsidiary legislation/other instruments, two subcommittees on policy issues and two subcommittees on other Council business) and eight subcommittees under Panels in action.

IX. Proposal for activation of Joint Subcommittee on Issues relating to Insurance Coverage for the Transport Sector

(LC Paper No. CB(1) 1750/10-11)

43. Mr CHAN Kam-lam, Chairman of the Panel on Financial Affairs, said that the Panel on Financial Affairs and the Panel on Transport had held a joint meeting on 28 February 2011 to discuss with deputations from the transport and insurance sectors and the Administration the difficulties faced by the transport trades in obtaining insurance coverage. The Panels noted that the transport sector had encountered great difficulties in taking out/renewing insurance policies owing to soaring insurance premiums, while the insurance sector had expressed grievances about organized frauds to deceive claims under motor vehicle insurance policies.

44. Mr CHAN Kam-lam highlighted that at the joint Panel meeting on 18 March 2011, members agreed to the appointment of a joint subcommittee under the two Panels to follow up the relevant issues in a focused manner and endorsed its proposed terms of reference. In considering the appointment of the Joint Subcommittee, the Panels noted that given the existing position on Bills Committees and subcommittees, the Joint Subcommittee would be placed on the waiting list. He noted the Secretariat's suggestion to defer the discussion on the activation of the Subcommittees on the waiting list to 8 April 2011.

45. Mr CHAN Kam-lam then took the opportunity to relay the great dissatisfaction of members of the two Panels with the non-attendance of officials of the relevant bureaux and departments at the joint meeting on 28 February. He pointed out that notwithstanding repeated invitations by the Panel Clerk, the Financial Services and the Treasury Bureau, the Transport and Housing Bureau, the Hong Kong Police Force, the Department of Justice and the Hospital Authority had declined to attend the meeting. The meeting had been attended only by an Assistant Commissioner from the Transport Department, an Acting Assistant

Action

Commissioner of Insurance from the Office of the Commissioner of Insurance and two other technical officials. Members considered that it was incumbent upon officials of the relevant bureaux to attend the meeting to discuss the relevant policy issues with them and listen to the views of the trades. He requested the Chairman to relay to CS the Panels' dissatisfaction and their request for officials of the relevant bureaux and departments to attend meetings to discuss the matter in future.

46. Mr James TO said that the matter involved two bureaux, each underpinned by an Under Secretary, a Political Assistant, Permanent Secretaries, Deputy Secretaries and Principal Assistant Secretaries. He considered it unacceptable that none of these bureau officials had attended the joint Panel meeting to discuss the relevant policy issues with members.

47. The Chairman said that she would relay the Panels' views and request to CS.

48. At the invitation of the Chairman, Secretary General said that during the discussion on the proposed activation of the Subcommittee on Registration of Proprietary Chinese Medicines at the House Committee meeting on 18 March 2011, she had undertaken to consult the Subcommittees on policy issues currently in operation on their present progress of work so as to assess whether any of the Subcommittees were likely to complete their work within a short time. The Secretariat had already started its consultation with the Subcommittees. It was her understanding that a few Subcommittees might be able to complete work within a short time, allowing three to four Subcommittees on the waiting list to be activated. She would provide a detailed report on the expected timing for the activation of Subcommittees on the waiting list at the next House Committee meeting.

49. Members agreed to the Secretariat's suggestion to defer discussion on the activation of the Subcommittees on the waiting list to the next House Committee meeting.

X. Any other business

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