

立法會
Legislative Council

LC Paper No. CB(2)1378/10-11
(These minutes have been cleared
with the Chairman)

Ref : CB2/HS/1/10

**Subcommittee to Study Issues Relating to the Power of the
Legislative Council to Amend Subsidiary Legislation**

**Minutes of meeting
held on Tuesday, 22 February 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan
Hon IP Kwok-him, GBS, JP
Hon Tanya CHAN

Members absent : Hon LAU Kong-wah, JP
Dr Hon Priscilla LEUNG Mei-fun

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Ms Mina CHAN
Council Secretary (2) 7

Miss Michelle LEE
Legislative Assistant (2) 7

Ms Camy YOONG
Clerical Assistant (2) 7

I. Election of Chairman

Dr Margaret NG was elected Chairman of the Subcommittee.

II. Terms of reference and work plan of the Subcommittee

(LC Paper Nos. CB(2)852/10-11, CB(2)893/10-11, CB(2)1077/10-11(02) and (03))

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. The Chairman pointed out that the dispute between the Legislative Council ("LegCo") and the Administration on the repeal of the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("the Amendment Order") had been concluded. The Subcommittee would not revisit the arguments raised therein, and the case regarding the repeal of the Amendment Order would serve the purpose of illustration only in the Subcommittee's study.

4. Members agreed that a study of the respective roles of the Legislature and the Executive Authorities under the Basic Law in the legislative process should be included in the proposed terms of reference ("TOR") of the Subcommittee.

5. Members also agreed that the following should be included in the areas of study of the Subcommittee -

(a) proposals on the procedures and practices to be followed where LegCo and the Administration took different views on the interpretation of provisions impinging on LegCo's jurisdiction to amend an item of subsidiary legislation; and

(b) principles and policies for delegating legislative powers by way of empowering an Executive Authority to make subsidiary legislation.

6. The Chairman asked the Clerk to revise the proposed TOR and work plan of the Subcommittee accordingly and circulate the revised versions to members for their endorsement. The Chairman advised that TOR proposed by the Subcommittee would be submitted to the House Committee for its endorsement.

(*Post-meeting note*: The revised TOR and work plan of the Subcommittee were circulated to members vide LC Paper No. CB(2)1159/10-11 on 25 February 2011.)

7. The Subcommittee agreed that the Hong Kong Bar Association, The Law Society of Hong Kong and legal academics be invited to the next meeting to give views on the areas of study as set out in the proposed work plan.

8. The Subcommittee agreed to invite the Administration to the next meeting. The Administration was requested to provide its views on the legal principles enshrined in the past cases quoted in the background information paper entitled "Appointment of a subcommittee to study issues relating to the power of the Legislative Council to amend subsidiary legislation" prepared by the LegCo Secretariat.

9. The Subcommittee also requested a paper on the Administration's principles and policies for delegating legislative powers by way of empowering an Executive Authority to make subsidiary legislation and the relevant practices in other jurisdictions.

10. The Chairman said that proposal to invite views of the public would be considered at a later stage. Members agreed.

11. The Subcommittee requested Senior Assistant Legal Adviser 3 to advise in writing -

- (a) whether the Administration could seek judicial review of LegCo's decisions/resolutions (with precedent cases provided), and the necessary procedures for the Administration to do so; and
- (b) the circumstances under which the Administration could obtain judicial declaration.

12. In response to Ms Cyd HO, the Chairman said that the judgment in the court case regarding the application from Mr CHENG Kar-shun and Mr LEUNG Chi Kin of New World China Land Limited for judicial review of the power of a select committee of LegCo to summon witnesses (*i.e. CHENG Kar-shun and Another v. Hon LI Fung-ying, BBS, JP and Others*) might shed light on the relationship between the Legislature and the Executive Authorities and that between the Legislature and the Judiciary. She advised that members might study the relevant parts of the judgment.

III. Any other business

Date of next meeting

13. The Chairman said that the date of next meeting would be confirmed subject to the availability of the information requested by the Subcommittee in paragraphs 8, 10 and 11 above.

(Post-meeting note: With the concurrence of the Chairman, the next meeting of the Subcommittee would be held on 20 April 2011 at 2:30 pm.)

14. There being no other business, the meeting ended at 12:08 pm.

Council Business Division 2
Legislative Council Secretariat
30 March 2011

**Proceedings of meeting of the
Subcommittee to Study Issues Relating to the Power of the
Legislative Council to Amend Subsidiary Legislation
held on Tuesday, 22 February 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000254	Ir Dr Hon Raymond HO Dr Hon Philip WONG Hon Cyd HO Hon Margaret NG	Election of Chairman	
000255 - 000303	Chairman	Opening remarks	
000304 - 003131	Chairman Clerk Dr Hon Philip WONG SALA3 Hon Cyd HO Hon IP Kwok-him Hon Emily LAU Ir Dr Hon Raymond HO	The proposed terms of reference ("TOR") and work plan of the Subcommittee (LC Paper No. CB(2)1077/10-11(02)) Invitation of views from the legal professional bodies, legal academics and the public	The Clerk to revise TOR and work plan of the Subcommittee for circulation to members The Subcommittee requested a paper on the Administration's principles and policies for delegating legislative powers by way of empowering an Executive Authority to make subsidiary legislation and the relevant practices in other jurisdictions
003132 - 010037	Chairman SALA3 Hon Emily LAU Ir Dr Hon Raymond HO Hon Cyd HO Hon IP Kwok-him	Legal issues arising from the repeal of the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("the Amendment Order") (LC Paper Nos. CB(2)852/10-11) Dispute between the Legislative Council ("LegCo") and the Administration ("Admin") on the repeal of the Amendment Order	
010038 - 011915	Ir Dr Raymond HO Chairman SALA3 Hon IP Kwok-him Hon Cyd HO	Seeking of judicial review of LegCo's decisions/resolutions by Admin	SALA3 to provide advice on (a) whether Admin could seek judicial review of the LegCo's decisions/resolutions and the necessary procedures for Admin to do so, and (b) the circumstances under

Time marker	Speaker	Subject(s)	Action Required
			which Admin could obtain judicial declaration
011916 - 012218	Hon Cyd HO Chairman SALA3	Relationship between the Legislature and the Executive Authorities and that between the Legislature and the Judiciary	
012219 - 012535	Chairman SALA3	Date of next meeting Timing for inviting views of the public	The Clerk to invite the Hong Kong Bar Association, The Law Society of Hong Kong and legal academics as well as Admin to the next meeting

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30 March 2011