

立法會
Legislative Council

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LC Paper No. CB(2)661/10-11
(These minutes have been seen
by the Administration)

**Subcommittee on
Human Organ Transplant (Amendment) Regulation 2010 and
Human Organ Transplant (Appeal Board) Regulation**

**Minutes of second meeting
held on Friday, 26 November 2010, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon CHEUNG Man-kwong
Hon Audrey EU Yuet-mee, SC, JP
Hon CHAN Hak-kan
Dr Hon LEUNG Ka-lau

Public Officers attending : Item I

Mr Thomas CHAN Chung-ching, JP
Deputy Secretary for Food & Health (Health)2

Mr Jackson SIN Hey-long
Assistant Secretary for Food & Health (Health) 7

Dr Heston KWONG Kwok-wai
Assistant Director of Health (Special Health Services)

Dr Jaime SIN Tan
Principal Medical & Health Officer (3)
Department of Health

Miss Betty CHEUNG Yuet-wah
Senior Assistant Law Draftsman
Department of Justice

Dr Beatrice CHENG
Advisor, Hospital Authority Transplant Services

Attendance by invitation : Item I

Hong Kong Academy of Medicine

Prof Raymond LIANG
President

The College of Surgeons of Hong Kong

Dr CHAN See-ching
Representative

Dr YIU Ming-kwong
Representative

Clerk in attendance : Ms Elyssa WONG
Chief Council Secretary (2)5 (Des)

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Maisie LAM
Senior Council Secretary (2)6

Ms Sandy HAU
Legislative Assistant (2)5

Action

- I. Meeting with deputations and the Administration**
(LC Paper No. CB(2)391/10-11(01), File Ref : HWF CR 1/3231/98, L.N. 143 of 2010 and L.N. 144 of 2010, LC Paper Nos.LS5/10-11 and CB(2)280/10-11(02) and (03))

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

2. The Subcommittee received oral representations from the Hong Kong Academy of Medicine and The College of Surgeons of Hong Kong on the provisions of the Human Organ Transplant (Amendment) Ordinance 2004 (29 of 2004) ("the Amendment Ordinance") that had not yet come into operation; the Human Organ Transplant (Amendment) Regulation 2010 ("HOT(A)R"); and the Human Organ Transplant (Appeal Board) Regulation ("HOT(AB)R").
3. The Subcommittee noted the Administration's response to issues raised by members at the meeting on 16 November 2010 (LC Paper No. CB(2)391/10-10101)).

Domino transplantation

4. Members referred to the example of domino transplantation as cited by the Hong Kong Academy of Medicine and sought clarification from the Administration as to whether such cases of transplantation would be regarded as commercial dealings in organs under the Human Organ Transplant Ordinance (Cap. 465) ("HOTO").
5. The Administration advised that cases of all transplantations involving living persons would be treated as organ transplants between living persons under HOTO, including the consequential transplant involving the living person. If the patients involved were neither genetically related nor spouses whose marriage had subsisted for not less than three years, applications had to be made to the Human Organ Transplant Board ("the Board") for approval of such transplants. The Board might give its approval if it was satisfied that conditions set out under section 5(4) of HOTO had been met (including the conditions that the donor has given his consent to removal of the organ without coercion or the offer of inducement and has not subsequently withdrawn his consent; and that no payment prohibited by HOTO has been, or is intended to be, made). The Administration further advised that according to section 5(5) of HOTO, before giving its approval, the Board would ensure that the donor and the recipient had each been interviewed separately by a person whom the Board considered to be suitably qualified to conduct such an interview. The person had to report to the Board on the donor's and recipient's understanding of the procedure; the risk involved; and their entitlement to withdraw consent at any time; and that the donor had given his consent to the removal of the organ without coercion or the offer of inducement and had not subsequently withdrawn his consent. The scenario of domino transplantation as cited by the Hong Kong Academy of Medicine would similarly need to comply with the requirement under HOTO.

Definition of "payment"

6. In the light of the views made by deputations regarding the surgery fee for transplantation and the payment for administrative cost incidental to the removal, transportation or preservation of an imported organ, members enquired whether there was any mechanism in place to regulate the surgery and the administrative fee level, otherwise a high surgery fee might actually cover payment for the supply of the organ.

7. As to the deputations' views, the Administration advised that the definition of "payment" under section 2 of HOTO had been revised so that it excluded payment for defraying or reimbursing -

- "(a) the cost of removing, transporting or preserving the organ to be supplied;
- (aa) administrative cost incidental to the removal, transportation or preservation of the organ to be supplied; or
- (b) any expenses or loss of earnings incurred by a person and attributable to his supplying an organ from his body."

(The new paragraph (aa) was to be added by the Amendment Ordinance.)

As to the concern over high surgery fee covering payment for the supply of the organ, the Administration advised that it would be an offence against HOTO if a registered medical practitioner charged a high surgery fee from the recipient of the organ and paid the donor for the supply of the organ.

8. The Chairman and Mr CHEUNG Man-kwong expressed concern about how the Administration could ensure that in the case of imported organs, the donors had given their consent to the removal of the organs without coercion or the offer of inducement. In particular, Mr CHEUNG Man-kwong was concerned about the trustworthiness or accuracy of the documents accompanying the imported organs given that there were large variations in the legal, social and economic circumstances of different overseas jurisdictions.

9. The Administration advised that under sections 7(1) and 7(2) of HOTO as amended by the Amendment Ordinance, no person shall in Hong Kong transplant an imported organ into a recipient unless that organ, when imported into Hong Kong, was accompanied by a certificate which was signed in the specified place by a person who was acceptable to the Board and contained, among other things, a statement that, in obtaining the organ, all applicable laws of the specified place were complied with; and a statement that no person in the specified place had made or received a payment for supplying the organ. This certificate had to be supplied to

the Board by either the registered medical practitioner performing the transplant or a person acceptable to the Board. Failure to submit the certificate would constitute an offence. Since the certificate had to be signed by a person acceptable to the Board, this gave the Board the power to assess whether or not the certificate should be accepted.

10. In response to members' enquiry on the number and types of organs imported into Hong Kong for transplant purpose for the past 10 years, the Administration advised that the Board had received four certificates concerning the importation of nine corneas from Florida of the United States in 2001; another six corneas from the United States in 2002; one certificate concerning skin from the Netherlands in 2004; one pulmonary heart valve from the United Kingdom in 2008, and four pulmonary heart valves from the United Kingdom each in 2009 and in the period of January to September 2010.

Prohibition of commercial dealings in human organs

11. Noting the policy intent of section 4 of HOTO as set out in paragraph 10 of the Administration's paper (LC Paper No. CB(2)391/10-10101)), the Chairman sought confirmation on whether a person would contravene HOTO if he committed in any part of the whole process of commercial dealing in human organ in Hong Kong, regardless of his nationality. The Administration replied in the affirmative.

Clause-by-clause examination of HOT(A)R

Clause 1 - Commencement

Admin

12. The Administration advised that, in response to members' request made at the last meeting on 16 November 2010, it would try to advance the timetable for those provisions of the Amendment Ordinance concerning regulated products that had not yet come into operation and in turn HOT(A)R and HOT(AB)R from the 4th quarter to the 3rd quarter of 2011.

Clause-by-clause examination of HOT(AB)R

Clause 10 - Hearings to be in public except in special circumstances

13. The Chairman enquired whether the administrative guidelines for the operation of the Appeal Board would provide that information concerning the date, time and venue of the hearing of each appeal would be made available by the Appeal Board for public information.

14. The Administration replied in the positive, and added that in drawing up the administrative guidelines referred to in clause 15 of HOT(AB)R, the Appeal Board would consider the platform for publishing such information. An option under consideration was the Internet.

Clause 15 - Appeal Board to regulate own procedure

Admin

15. At the request of the Chairman, the Administration undertook to provide a copy of the administrative guidelines of the Appeal Board to the Panel on Health Services for information when it became available.

Clause 16 - Record of proceedings

Clause 17 - Decisions of Appeal Board

Admin

16. Given that subject to proposed sections 10(2), 10(3) and 10(4), all hearings before the Appeal Board must be held in public, the Chairman held the view that the administrative guidelines for the operation of the Appeal Board should provide that the record of proceedings, as well as the decision of the Appeal Board, in respect of every appeal determined by the Appeal Board should be made available to the public as a norm. The Administration agreed to provide a response in writing.

Legislative timetable

17. The Chairman concluded that the Subcommittee had completed its scrutiny of HOT(A)R and HOT(AB)R and a report of the Subcommittee would be submitted to the House Committee on 17 December 2010. Members noted the deadline for giving notice to move amendments to HOT(A)R and HOT(AB)R would be 28 December 2010. The deadline for members to indicate their intention to speak on the two Regulations at the Council meeting on 5 January 2011 would be 24 December 2010.

18. There being no other business, the meeting ended at 12:16 pm.

**Proceedings of the meeting of the
Subcommittee on Human Organ Transplant (Amendment) Regulation 2010 and
Human Organ Transplant (Appeal Board) Regulation
on Friday, 26 November 2010, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000755	Chairman	Welcoming remarks	
000756 - 001131	Hong Kong Academy of Medicine	The Academy's concern about - (a) whether the removal and transplantation of organs in a domino transplantation would contravene the Human Organ Transplant Ordinance (Cap. 465) ("HOTO"); and (b) whether there was any mechanism in place to monitor the reasonableness of the administrative fee charged to cover the administrative cost incidental to the removal, transportation or preservation of an organ, with a view to ensuring that no payment had been made to the donor for the supply of the organ	
001132 - 001642	The College of Surgeons of Hong Kong	The College's echo of the concern of the Academy regarding the payment for the administrative cost incidental to the removal, transportation or preservation of an organ The College's view that subject to rigorous monitoring, the provision of a mechanism for exempting regulated products from prohibition against commercial dealings would benefit patients with genuine medical need for transplant	
001643 - 003516	Mr CHEUNG Man-kwong Hong Kong Academy of Medicine Chairman Admin ALA5	Whether the removal and transplantation of organs in a domino transplantation would be regarded as commercial dealings in human organs under HOTO	
003517 - 005017	Mr CHEUNG Man-kwong Admin Dr LEUNG Ka-lau Hong Kong Academy of Medicine Chairman	Whether there was any mechanism in place to regulate the surgery fee and the administrative fee level	
005018 - 005026	Chairman	The Chairman thanked the deputations for their views	
005027 - 005613	Chairman Admin	Briefing on the Administration's response to issues raised by members at the meeting on 16 November 2010 (LC Paper No. CB(2)391/10-11(01))	

Time marker	Speaker	Subject	Action required
005614 - 005823	Chairman Admin	Whether a person would contravene HOTO if he committed in any part of the whole process of commercial dealing in human organ in Hong Kong, regardless of his nationality	
005824 - 010117	Chairman Admin Dr LEUNG Ka-lau	<u>Clause-by-clause examination of the Human Organ Transplant (Amendment) Regulation 2010</u> <i>Clause 1 - Commencement</i> The Administration undertook to advance the timetable for those provisions of the Human Organ Transplant (Amendment) Ordinance 2004 concerning regulated products that had not yet come into operation and in turn the two Regulations from the 4th quarter to the 3rd quarter of 2011 as far as practicable	Admin (para. 12 of the minutes refer)
010118 - 010529	Chairman Admin	<i>Clause 2 - Human Organ Transplant Regulation amended</i> <i>Clause 3 - Schedule substituted Form 1</i>	
010530 - 010935	Chairman Admin Mr CHEUNG Man-kwong Dr LEUNG Ka-lau	<i>Form 2</i> The medical practitioner to be responsible for completing the form if more than one medical practitioner was involved in transplanting the organ(s)	
010936 - 011020	Admin	<i>Form 3</i>	
011021 - 011456	Admin Chairman	<u>Clause-by-clause examination of the Human Organ Transplant (Appeal Board) Regulation</u> <i>Clause 1 - Commencement</i> <i>Clause 2 - Interpretation</i> <i>Clause 3 - Secretary to Appeal Board</i> <i>Clause 4 - Notice of Appeal</i>	
011457 - 011737	Mr CHAN Hak-kan Chairman Admin	<i>Clause 5 - Director's response to notice of appeal</i> The time required to process an appeal in respect of an application for exemption of a regulated product for the purpose of saving lives	
011738 - 011947	Admin Chairman	<i>Clause 6 - Appeal Board may give directions</i> Information that would be considered by the Appeal Board as commercially sensitive	
011948 - 012235	Chairman Admin	<i>Clause 7 - Failure to comply with directions</i> <i>Clause 8 - Date, time and place of hearing</i> <i>Clause 9 - Determining appeal without oral hearing</i>	
012236 - 012424	Chairman Admin	<i>Clause 10 - Hearings to be in public except in special circumstances</i> Whether the administrative guidelines for the operation of the Appeal Board would provide that information of the hearing of each appeal would be publicized by the Appeal Board for public information	

Time marker	Speaker	Subject	Action required
012425 - 012600	Chairman Admin	<i>Clause 11 - Failure of party to attend hearing</i> <i>Clause 12 - Procedure at hearing</i> <i>Clause 13 - Abandonment of appeal</i> <i>Clause 14 - Extension of time limits</i>	
012601 - 012654	Chairman Admin	<i>Clause 15 - Appeal Board to regulate own procedure</i> The Administration undertook to provide a copy of the administrative guidelines of the Appeal Board to the Panel on Health Services for information when it became available	Admin (para. 15 of the minutes refers)
012655 - 012841	Chairman Admin	<i>Clause 16 - Record of proceedings</i> The Chairman's view that the administrative guidelines for the operation of the Appeal Board should provide that record of proceedings in respect of every appeal determined by the Appeal Board should be made available for public inspection as a norm	
012842 - 013106	Chairman Admin	<i>Clause 17 - Decision of Appeal Board</i> <i>Clause 18 - Specified forms</i> <i>Clause 19 - Method of sending documents</i> <i>Clause 20 - Witness statements to be made on oath or affirmation</i> <i>Clause 21 - Offence for false or misleading information</i>	
013107 - 013316	Chairman Admin ALA5	Upon the Chairman's request, the Administration undertook to provide a response in writing on whether the administrative guidelines for the operation of the Appeal Board should provide that the record of proceedings, as well as the decision of the Appeal Board, in respect of every appeal determined by the Appeal Board would be made available for public information	Admin (para. 16 of the minutes refers)
013317 - 013500	Chairman Clerk	The legislative timetable	

Council Business Division 2
Legislative Council Secretariat
 22 December 2010