

**立法會**  
**Legislative Council**

LC Paper No. CB(2)386/18-19  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/4/17

**Bills Committee on  
Conservation of Antarctic Marine Living Resources Bill**

**Minutes of meeting  
held on Tuesday, 6 November 2018, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Steven HO Chun-yin, BBS (Chairman)  
Hon Kenneth LEUNG  
Dr Hon Elizabeth QUAT, BBS, JP  
Hon SHIU Ka-fai

**Member absent** : Hon HUI Chi-fung

**Public Officers attending** : Item I

Mr Daniel CHENG Chung-wai, JP  
Deputy Secretary for Food and Health (Food) 1

Mr Bill WONG Kwok-piu  
Principal Assistant Secretary for Food and Health (Food) 3

Ms Leonora IP Wan-yok  
Senior Assistant Law Draftsman  
Department of Justice

Miss Celia HO Wai-kwan  
Government Counsel  
Department of Justice

Mr Mickey LAI Kin-ming  
Assistant Director (Fisheries)  
Agriculture, Fisheries and Conservation Department

Ms Louise LI Wai-hung  
Senior Fisheries Officer (Fisheries Management)  
Agriculture, Fisheries and Conservation Department

**Clerk in attendance** : Miss Josephine SO  
Chief Council Secretary (2) 2

**Staff in attendance** : Mr Cliff IP  
Assistant Legal Adviser 8

Ms Wendy LO  
Senior Council Secretary (2) 2

Miss Cally LAI  
Legislative Assistant (2) 2

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**I. Meeting with the Administration**

(LC Paper Nos. CB(2)46/18-19(01), CB(2)166/18-19(01), CB(2)175/18-19(01), CB(2)2001/17-18(01), CB(2)2049/17-18(01), CB(2)2058/17-18(01)&(02) and CB(3)732/17-18)

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

Follow-up actions required of the Administration

2. In relation to the proposed power of the Director of Agriculture, Fisheries and Conservation ("DAFC") to exchange information with the Secretariat of the Commission for the Conservation of Antarctic Marine Living Resources ("the Commission") or the competent authority of any place as provided under clause 26 of the Bill, the Administration was requested to provide supplementary information on the following issues raised by members:

- (a) the relevant requirements relating to information exchange under the Convention on the Conservation of Antarctic Marine Living Resources and its Conservation Measures;

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the scope of information that might be exchanged, as "reasonably required" by the Secretariat of the Commission or competent authorities of other places; and whether personal data of individuals would, and if so, under what circumstances would those data, be disclosed in the information exchange process; and

- (b) how DAFC would ensure that, when exchanging information with the Secretariat of the Commission or competent authorities of other places, the Personal Data (Privacy) Ordinance (Cap. 486) would be complied with; and whether the Administration would consider seeking the relevant exemption(s) under Cap. 486 for the purpose of exchanging information with the Secretariat of the Commission or competent authorities of other places pursuant to clause 26.

*(Post-meeting note: The English and Chinese versions of the supplementary information provided by the Administration were respectively circulated to members vide LC Paper Nos. CB(2)302/18-19 and CB(2)314/18-19 on 22 November 2018.)*

Proposed amendments to the Bill

3. The Administration briefed members on its proposed amendments to the Bill, as set out in Appendix 1 to LC Paper No. CB(2)166/18-19(01). Members raised no objection to the proposed amendments.

Legislative timetable

4. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill and would not propose amendments to the Bill. Members noted that the Administration would later advise on the proposed date for resumption of the Second Reading debate on the Bill. The Chairman would report the deliberations of the Bills Committee to the House Committee in due course, supporting the resumption of the Second Reading debate on the Bill.

*(Post-meeting note: Members were informed vide LC Paper No. CB(2)302/18-19 issued on 22 November 2018 that the Administration would give notice for resumption of the Second Reading debate on the Bill at the Council meeting of 23 January 2019.)*

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**II. Any other business**

5. There being no other business, the meeting ended at 3:05 pm.

Council Business Division 2  
Legislative Council Secretariat  
4 December 2018

**Proceedings of the meeting of the Bills Committee on  
Conservation of Antarctic Marine Living Resources Bill  
on Tuesday, 6 November 2018, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

| <b>Time marker</b>                              | <b>Speaker</b>                        | <b>Subject(s)/Discussion</b>   | <b>Action Required</b>                   |
|---|---------------------------------------|--|--|
| 000409 -<br>000416                              | Chairman                              | The Chairman's opening remarks.  |  |
| 000417 -<br>000923                              | Chairman<br>Admin                     | The Administration's briefing on its response to issues raised at the meeting on 8 October 2018 (LC Paper No. CB(2)166/18-19(01)).   |  |
| <i>Clause-by-clause examination of the Bill</i> |                                       |  |  |
| 000924 -<br>001034                              | Chairman<br>Admin                     | <p>The Bills Committee continued clause-by-clause examination of the Bill from clause 25, with the aid of the Blue Bill (LC Paper No. CB(3)732/17-18).</p> <p><u>Part 4 - Enforcement, etc.</u></p> <p>Division 3 - Director's Power to Obtain and Exchange Information</p> <p><i>Clause 25 - Power to obtain information from Director of Marine</i></p>  |  |
| 001035 -<br>001714                              | Chairman<br>Mr Kenneth LEUNG<br>Admin | <p><i>Clause 26 - Power to exchange information</i></p> <p>In relation to the proposed power of the Director of Agriculture, Fisheries and Conservation ("DAFC") to exchange information with the Secretariat of the Commission for the Conservation of Antarctic Marine Living Resources ("the Commission") or the competent authority of any place as provided under clause 26 of the Bill, the Chairman's enquiry and the Administration's response on the scope of information that might be exchanged under the Convention on the Conservation of Antarctic Marine Living Resources ("CCAMLR") and its relevant Conservation Measures ("CMs").</p> <p>The Administration was requested to address, in writing, the following issues raised by the Chairman and Mr Kenneth LEUNG:</p> <p>(a) the relevant requirements relating to information exchange under CCAMLR and its CMs; the scope of information that might be exchanged, as "reasonably required" by the Secretariat of the</p> | <b>Admin</b><br>(para. 2 of the minutes) |

| Time marker     | Speaker                                       | Subject(s)/Discussion  | Action Required |
|-----------------|---|--|-----------------|
|                 |   | <p>Commission or competent authorities of other places; and whether personal data of individuals would, and if so, under what circumstances would those data, be disclosed in the information exchange process; and</p> <p>(b) how DAFC would ensure that, when exchanging information with the Secretariat of the Commission or competent authorities of other places, the Personal Data (Privacy) Ordinance (Cap. 486) would be complied with; and whether the Administration would consider seeking the relevant exemption(s) under Cap. 486 for the purpose of exchanging information with the Secretariat of the Commission or competent authorities of other places pursuant to clause 26.</p> |                 |
| 001715 - 001915 | Chairman<br>Admin                             | <p><u>Part 5 - Miscellaneous Provisions</u></p> <p>Division 1 - Offences</p> <p><i>Clause 27 - Obstruction and non-compliance with requirements or instructions</i></p> <p><i>Clause 28 - Provision of false information</i></p>   |                 |
| 001916 - 002459 | Chairman<br>Mr Kenneth LEUNG<br>Admin         | <p>Division 2 - Liability of Directors, Partners, etc. for Offences</p> <p><i>Clause 29 - Bodies corporate - liability of directors, etc.</i></p> <p><i>Clause 30 - Partnerships and unincorporated bodies - liability of partners, members, etc.</i></p>  |                 |
| 002500 - 003447 | Chairman<br>Mr Kenneth LEUNG<br>ALA8<br>Admin | <p>Division 3 - Liability of Employers and Principals and Defence for Employees</p> <p><i>Clause 31 - Liability of employers and principals</i></p> <p><i>Clause 32 - Defence for employees</i></p> <p>In response to Mr Kenneth LEUNG's enquiry, the Administration advised that the policy intent was that the defendant would only be required to discharge an evidential burden to establish the proposed defence in clauses 31(4) and 32. As such, the defendant would have to provide sufficient evidence to raise a potentially exculpatory issue and the legal burden would</p>  |                 |

| Time marker     | Speaker           | Subject(s)/Discussion  | Action Required |
|-----------------|-------------------|--|-----------------|
|                 |                   | <p>remain on the prosecution to disprove the alleged exculpatory matter and to prove the case beyond reasonable doubt. The Administration undertook to propose amendments to clauses 31(4) and 32 to make the policy intent clearer.</p> <p>Discussion on whether and how an employee could invoke the proposed defence in clause 32(b), which would depend on the circumstances of individual case.</p> <p>Division 4 - Immunity</p> <p><i>Clause 33 - Immunity from civil liability</i></p> <p>Mr Kenneth LEUNG's enquiry and the Administration's explanation on the meaning of the expression "purportedly performing" in clause 33(1) and the use of the same expression in other ordinances.</p> |                 |
| 003448 - 003725 | Chairman<br>Admin | <p>The Administration's briefing on its proposed amendments to the Bill (Appendix 1 to LC Paper No. CB(2)166/18-19(01)):</p> <p>(a) in relation to clause 15(3)(b), to state expressly that authorized officers would only use "reasonably necessary force"; and</p> <p>(b) in relation to clauses 31(4) and 32, to make clear that it was the policy intent that the defendant would only be required to discharge an evidential burden to establish the defence.</p> <p>Members did not object to the above proposed amendments.</p>   |                 |
| 003726 - 003951 | Chairman          | <p>Completion of scrutiny of the Bill.</p> <p>The Chairman requested the Administration to provide written responses to issues of concern raised at the meeting and inform the Bills Committee of its intended date of resumption of the Second Reading debate on the Bill.</p>  |                 |