

立法會
Legislative Council

LC Paper No. CB(2)2330/98-99
(These minutes have been seen
by the Administration)

Ref : CB2/BC/23/98

**Bills Committee on
Provision of Municipal Services (Reorganization) Bill**

**Minutes of Meeting
held on Tuesday, 5 October 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon HO Sai-chu, SBS, JP
Hon LEE Wing-tat
Hon Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon CHAN Wing-chan
Hon Jasper TSANG Yok-sing, JP
Hon FUNG Chi-kin

Public Officers Attending : Mrs Maureen CHAN
Deputy Secretary for Constitutional Affairs

Mr John LEUNG
Principal Assistant Secretary for Constitutional Affairs

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Mr K T LAI
Assistant Director of Regional Services
(Environmental Health Policy)

Mr Sunny CHAN
Senior Government Counsel (Department of Justice)

Miss Selina LAU
Government Counsel (Department of Justice)

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Confirmation of minutes
[LC Paper No. CB(2)2905/98-99]

The minutes of meeting held on 25 June 1999 were confirmed.

II. Clause-by-clause examination
[Paper Nos. CB(2)2887/98-99 and CB(2)2912/98-99(01)]

2. The Bills Committee continued clause-by-clause examination of the Bill from paragraph 5 of Schedule 4 onwards.

Paragraph 5 of Schedule 4

3. Deputy Secretary for Constitutional Affairs (DS(CA)) advised that the Municipal Services Appeals Broad (MSAB) would consist of 3 persons including the Chairman or a Vice-chairman. Responding to Dr TANG Siu-tong, DS(CA) confirmed that the Administration would consider how the existing functions of the Review Committees of the two Provisional Municipal Councils (PMCs) could be adequately covered by the proposed appeal mechanisms. Mr

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LEE Wing-tat was not satisfied with the answer and queried why the proposed appeal mechanisms could not cover these existing functions from the beginning. DS(CA) explained that as the Urban Services Appeals Board and the Regional Services Appeals Board currently did not deal with appeals against market rental review or termination of a market stall agreement, the Administration did not propose to add these functions to the MSAB. She pointed out that at the first tier of the appeal mechanism, the Licensing Appeals Board (LAB) was confined to handling appeals against licensing decisions and it would not be appropriate to broaden it to cover appeals against other administrative decisions. In response to Mr LEE's concerns, DS(CA) said that the Administration was considering an appropriate mechanism to deal with market stall tenancy matters.

Paragraph 6 of Schedule 4

4. Members noted that the MSAB would not include a person who was involved in making the relevant administrative decision in order to avoid any conflict of interest.

Paragraph 7 of Schedule 4

5. Dr TANG Siu-tong asked about the meaning of "a legally qualified person" and whether the Vice-chairman of MSAB should also be a legally qualified person. DS(CA) said that "legally qualified" was defined in the Municipal Services Appeals Boards Ordinance (Cap. 220) as "qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336)". The Administration would move an amendment to require that the Vice-chairman of MSAB should also be a legally qualified person as the Chairman.

6. Members noted that the Administration was considering a suggestion raised at the last meeting that District Council (DC) members should be appointed as panel members of the MSAB. Mr LEE Wing-tat said that the Administration should appoint representatives of community opinions as panel members and these representatives must be members of councils returned by direct election. Mr Ambrose CHEUNG shared similar views, and suggested stipulating the criteria and number of seats in the legislation. Mr LI Wah-ming said that a simpler approach would be to establish a roster system so that all members of the relevant district could take turn to sit on the panel to hear appeal cases related to the district. Mr Ambrose CHEUNG supported Mr Fred LI's proposal. Dr TANG Siu-tong pointed out however that the DC member might then have possible conflict of interest or might be subject to undue interference if he had to hear an appeal case from his district. The Chairman opined that it would be more appropriate to develop quasi-judicial expertise by designating independent members representing the community to sit on the panel. DS(CA) undertook to consider members' views.

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Paragraphs 8-10 of Schedule 4

7. DS(CA) explained the need to differentiate "administrative decision" from "appeal board decision". Members did not raise any queries.

Paragraph 11 of Schedule 4

8. Mr LEE Wing-tat asked why "respondent" was amended to "decision maker" in the proposed section 9(1). Senior Government Counsel (SGC) explained that while "decision maker" meant the person who made the administrative decision or the first decision, "respondent" in the existing section 9(1) referred to the government department or the person that had made the first decision which was the subject of appeal.

9. Mr LEE Wing-tat then sought clarification on the difference between "respondent" and "appellant" in section 9(2). SGC explained that government departments as the licensing authority would also have the right to appeal to the MSAB against a decision made by the LAB. In this case, the government department would be the appellant. Where the licence applicant was the appellant, the government department would be the respondent. Mr LEE queried the rationale for allowing the government departments to make use of the second tier appeal mechanism to appeal against a decision made by the LAB. DS(CA) explained that while there was no first tier appeal mechanism under the existing system, the Review Committees of the PMCs had a self-reviewing mechanism whereby licensing decisions made by the municipal services departments could be reviewed upon application of the licence applicants. Mr LEE and Mr Ambrose CHEUNG were of the view that it would be inappropriate use of resources if the licensing authority could also appeal to the MSAB. They questioned the rationale for allowing the licensing authority to appeal to the MSAB as this would be unfair to licence applicants. Mr CHEUNG considered that it would be simpler to retain the existing one-tier appeal mechanism. Dr TANG Siu-tong shared similar views, pointing out that if both the licensing authority and the applicant could appeal to the MSAB, it might lead to endless disputes on the same case.

10. Principal Assistant Secretary for Constitutional Affairs (PAS(CA)) responded that as the LAB was a less formal mechanism without any legal expert, the proposed arrangement was to enable government departments to make formal representation to the MSAB which was chaired by a judge and capable of deliberation of legal issues in complicated cases. The MSAB could also refer any question of law arising from such appeals to the Court of Appeal for determination under section 13 of the Municipal Services Appeals Boards Ordinance. The proposed arrangement would obviate the need for either party to initiate legal proceedings to save cost and time. He assured members that the

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licensing authority would not invoke its right to appeal to the MSAB unless the case involved important principles of law.

11. Mr LEE Wing-tat argued that any case involving an important principle of law should not be dealt with by the LAB in the first place.

12. DS(CA) responded that the proposed establishment of LAB was to provide an informal review/appeal mechanism similar to the Review Committees of the PMC. The Administration considered that it would only be fair for both parties to have equal rights to appeal against a decision made by the LAB. The licensing authority would not exercise its right unless in exceptional circumstances. Mr CHAN Kam-lam indicated support for the Administration's proposal that both parties should have equal right to appeal, and that no restriction should be set for the licensing authority to appeal to the MSAB. The Chairman said that he personally would prefer restricting the use of the second tier appeal mechanism by government departments only to cases involving points of law. DS(CA) said that the Administration would consider members' views and provide a written response.

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Paragraph 12 of Schedule 4

13. Mr Ambrose CHEUNG referred to section 10 which required hearings to be held in public except in special circumstances and asked about the criteria for not holding a hearing in public. DS(CA) replied that the MSABs of the two PMCs had handled over 20 appeal cases in 1998. All such hearings were held in public and no difficulties had been encountered in this respect. Assistant Director of Regional Services (Environmental Health Policy) (AD/RS(EHP)) added that the provision was only to provide an alternative for the hearing to be held in camera upon application by the appellant. Mr CHEUNG expressed concern about giving the MSAB Chairman the discretion to decide such application if no criteria were specified in the legislation.

14. In response to the Chairman, Senior Assistant Legal Adviser (SALA) advised that he was not aware of any legislation specifying the situations in which court proceedings should be held in camera. He said that the judge had a discretion to decide, and he would normally consider whether the proceedings could be held smoothly or whether it would be difficult for the witness to give evidence if the proceedings were held in public. At Mr CHEUNG's request, DS(CA) agreed to provide information on the current criteria for determining whether a MSAB appeal hearing should not be held in public.

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Paragraphs 13-19 of Schedule 4

15. Members did not raise any queries.

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Paragraph 20 of Schedule 4

16. DS(CA) informed members that a new section 21A was added to the effect that the term of office of any person appointed to a board which existed under the Public Health and Municipal Services Ordinance (Cap. 132) would cease on commencement of the Provision of Municipal Services (Reorganization) Ordinance, and that new appointments would be made.

Paragraph 21 of Schedule 4

17. Members did not raise any queries.

Schedule 5 - Amendments to Dutiable Commodities Ordinance and its subsidiary legislation

18. At the Chairman's invitation, DS(CA) briefed members on the Administration's paper explaining the establishment of the Liquor Licensing Board (LLB) as provided in Schedule 5 to the Bill [Paper No. CB(2)2912/98-99(01)].

19. Mr CHAN Kam-lam asked whether the two PMCs currently adopted different liquor licensing criteria. AD/RS(EHP) said that the existing LLBs of the PMCs had adopted the guidelines as specified in paragraph 5 of the Administration's paper when considering whether a liquor licence should be granted, and individual LLB members might exercise their own discretion in applying these guidelines. In response to the Chairman, DS(CA) said that under the present one-tier appeal mechanism, the police did not have the right to appeal to the MSAB against a decision made by the LLB. However, the police would have the opportunity to state its position during the LLB hearings.

20. Mr LI Wah-ming expressed concern that a single LLB was proposed to replace the two existing LLBs. He was worried that the proposed membership size of the new LLB would not be able to cope with the large workload. He also considered that LLB should include representatives of community opinions. Mr Ambrose CHEUNG expressed similar concern, pointing out that the LLB under the Provisional Urban Council (PUC) had to deal with more than ten cases each month and each LLB member had to spend two days a week on these cases. He reminded the Administration that the LLBs were quasi-judicial bodies which might involve legal representation and its hearings normally lasted a whole day. Mr CHEUNG also questioned the practicability of setting a stringent quorum requirement for the new LLB having regard to the heavy workload.

21. DS(CA) responded that the existing LLBs of the PUC and Provisional Regional Council (ProRC) comprised 11 and 14 members respectively. The majority of cases were applications for renewal of liquor licences which were

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rather straight-forward and could be dealt with by circulation or by one member under delegated authority. The Administration did not anticipate that there would be many contested applications requiring prolonged hearings. Moreover, the Bill had already provided for the LLB to hold meetings as often as necessary. In recognition of the efforts of members of the LLB, the Administration was considering to give honorarium to LLB members at a rate to be determined by the Finance Bureau. Mr LI Wah-ming pointed out that the LLB of PUC only had 11 members because many PUC members were unwilling to join in view of the heavy workload. DS(CA) responded that it was a matter of judgement as to whether the new LLB should have 11 members or more but its membership size could be reviewed after the new LLB had operated for some time.

22. Concerning the quorum and voting requirements, Mr Ronald ARCULLI suggested that smaller panels with a higher quorum requirement could be set up to share out the workload and to ensure fair hearings. Mr Ambrose CHEUNG supported Mr ARCULLI's suggestion. The Chairman also pointed out that decisions of the LLB should be made by the same members who sat through the hearings to ensure fairness to all parties.

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23. In the light of members' comments, the Chairman asked the Administration to re-consider whether the number of members, quorum requirements and frequency of meetings for the LLB were appropriate and adequate to cope with anticipated workload. He also requested the Administration to take this opportunity to improve the operation of LLB to ensure fair hearings and decisions.

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24. Referring to members' suggestion of including a DC member in the panel of MSAB, Mr LI Wah-ming asked the Administration to consider whether DCs would also have a role to play in liquor licensing.

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25. Mr Ronald ARCULLI asked about the transitional arrangements for those liquor applications which had hearings held but were awaiting a decision of the LLB just before the commencement of the Provision of Municipal Services (Reorganization) Ordinance (Cap. 132). PAS(CA) replied that the applicants concerned would not need to make new applications. These pending applications would be treated as new applications by the new LLB without repeating the hearing process. He further explained that the LLBs were able to make quick decisions on cases where hearings had been held. The Administration therefore did not envisage that there would be many pending applications for the new LLB to decide. Mr ARCULLI said that while administrative arrangement should be made to expedite the processing of pending applications, the transitional arrangement would need to be clearly specified in legislation to dispel any doubt in this regard. Mr Ambrose CHEUNG expressed support for the suggestion. The Chairman therefore asked the Administration to consider the suggestion.

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III. Any other business

26. Members agreed to continue clause-by-clause examination of Schedule 5 and Schedule 6 at the next meeting on 8 October 1999. DS(CA) informed members that the Deputy Secretary for Home Affairs would also attend the meeting to brief members on the Administration's proposal on the vetting mechanism for certain fees and charges in respect of leisure and cultural services.

27. The meeting ended at 4:40 pm.

Legislative Council Secretariat

12 May 2000