

**Letterhead of CONSTITUTIONAL AFFAIRS BUREAU
GOVERNMENT SECRETARIAT**

OUR REF.: CAB 4/17/7

YOUR REF.:

14 October 1999

Mrs Constance LI
Clerk to Bills Committee
Legislative Council
8 Jackson Road
Central
Hong Kong
(Fax: 2509 9055)

Dear Mrs LI,

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

Follow-up to meetings on 29 September and 5 October 1999

Thank you for your letters of 2 and 6 October 1999, conveying the Bills Committee's concerns raised at the above meetings. Our response to these concerns, following your same order, is set out below:

Concerns raised on 29 September 1999

1. Schedule 3 (Cap. 132)

Section 105S: To provide information on the rationale of 105S and to review its drafting

Section 105S provides the Chief Secretary with the power to grant or withhold consent for applications to use civic centres for the purpose of holding public meeting. When this section was enacted in 1976, the rationale then was to safeguard public order, public safety and security. Both USD and RSD have not exercised the authority to withhold consent for a public meeting since being delegated with this authority in 1992. *As there is no need to retain this provision, we will introduce a CSA to remove section 105S from the Ordinance.*

Section 111D: To review and provide further information on the mechanism, criteria and public consultation arrangements for naming of new streets and alteration of existing street names

In accordance with section 111C, the relevant authorities for street-naming are the PUC in the Urban Council area and Director of Lands in the New Territories.

In the case of *a new street*, the relevant authorities will solicit views and suggestions from the local groups and residents through the District Offices of the Home Affairs Department. Where a name has been suggested by the Works Department/Housing Department or the private developer, the District Office will arrange to seek public views on the suggestion. If a name has not been proposed, District Office will assist by inviting suggestions from members of the public in the district concerned. The network of consultation includes the relevant Area Committees, Mutual Aid Committees, Owners' Incorporation and the Provisional District Boards as appropriate. For streets within village areas, the District Officers will also consult the village representatives and Rural Committee. The views and suggestions received will be circulated to the relevant Government departments (including the Official Language Agency, Rating and Valuation Department, Postmaster General, the Highways Department, and the Land Registrar etc.) for comments in order to avoid confusion or duplications. After due consideration is given to all comments received, a final decision will be taken by the relevant authority and a reply will be sent to those who offered comments or objection. The relevant authority will then arrange for the street name to be declared in gazette.

In the case of *renaming a street*, the relevant authority will take similar action. After consultation, the relevant authority shall give notice of its intention to change the street name by gazetting and by posting it in both English and Chinese language in a prominent place in the street. Should there be any objection, the relevant authority will review the proposed change of name. If the objection is not sustained, the person may, within 30 days of that notice, appeal against the decision of the relevant Authority to the Municipal Services Appeals Board (for urban area) or CE in Council (for N. T. area).

In the case of *private street*, the naming or renaming exercise is nearly the same except that the owner may propose a name for consideration by the relevant Authority.

There are some general principles governing street naming. For example, it is a standing practice that the name of a person or institution or an organization or names that carry an element of advertising should not be adopted. Except when the name of a nearby place, development or estate is adopted for the street, the English name to be given to a street should be the anglicised version and not the English translation of the Chinese name.

The current arrangement whereby the naming of streets falls under the purview of two different authorities is not satisfactory. It is proposed in the Provision of Municipal Services (Reorganization) Bill that the authority for street naming in Hong Kong Island and Kowloon be transferred to the Director of Lands upon reorganization, thereby unifying the authority for street naming throughout the territory. It also stipulates that appeal against the decision of the Authority is to be made to the Municipal Services Appeals Board.

Section 60: To take urgent action to review the authorities for taking charge of certain grey areas in food and drug matter

As advised earlier, food safety will continue to be governed by the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation and will be the responsibility of the Food and Environmental Hygiene Department and the Environment and Food Bureau. The control of drugs will continue to be dealt with by the Department of Health and the Health and Welfare Bureau. Where necessary, regulatory control for a product can be taken jointly by the two departments according to the power vested by the relevant legislation.

Health food is a relatively new product. Many of them currently on the market may in fact be classified as propriety Chinese medicine under the Chinese Medicine Ordinance (Cap. 549) and hence would be subject to control upon commencement of the relevant part of the Ordinance. For health food with medicinal claims or containing pharmaceutical components, they are regulated by the Pharmacy and Poisons Ordinance (Cap. 138). Both Ordinances are under the purview of the Department of Health.

To ensure that there is adequate control for health food and other new food products, the Government will monitor the situation and will consider improving current regulatory measures when necessary.

2. **Schedule 4 (Cap. 220)**

*To consider including a member of the relevant District Board in the panel of the **Municipal Services Appeals Board***

We have considered the proposal. Our observations are:

- we do value the input of District Board members as representatives of community opinions and have appointed District Board members as panel members of the MSAB. At present 7 out of the 21 existing MSAB members are District Board members. We will continue to adopt the same practice in the future appointment of MSAB members;
- the purpose of having a Provisional Municipal Councillor on the MSAB is mainly to advise the Board on the relevant policies of the Council so that these policies could be taken into account when an appeal is determined. Following the proposed dissolution of the Provisional Municipal Councils, policies on licensing or municipal services matters will be made by the relevant government authorities. District Council Members will not be in a position to substitute Provisional Municipal Councillors and perform the same role;
- conflict of interest may arise if the District Council member participated in a hearing relating to matters concerning the member's District Council constituency, because he may know the appellant or may have been involved in the case before. In liquor licence applications, sometimes District Board members represented the local residents in raising objection to the grant of liquor licences.

*To consider including market stall tenancy cases (and rentals) in the appropriate **appeals mechanism***

The existing functions of the Review Committees of PUC and ProRC have been covered by the proposed Licensing Appeals Board except for the following:

- (a) the PUC Review Select Committee may review decisions by USD to terminate a market stall agreement upon application by a market stallholder and decide whether the decisions be upheld, withdrawn or varied. The ProRC Review Sub-committee does not perform such function; and
- (b) the ProRC has established a Market Stalls Rental Review Sub-committee to consider and decide on appeals from stall lessees of ProRC markets against stall rentals. The PUC relies on the Rating and Valuation Department to review the Open Market Rent and its Review Select Committee does not perform any rental review function.

Both the PUC and ProRC Review Committees do not deal with appeals on matters related to award of restaurant tenancies in civic/cultural centres which are handled in the same manner as commercial contracts.

We have considered whether the functions of the proposed Licensing Appeals Board (LAB) or the Municipal Services Appeals Board should be broadened to cover the additional functions in (a) and (b) above. Our views are:

- (a) LAB's role is confined to handling appeals against licensing decisions. It would not be appropriate to broaden it cover appeals against other administrative decisions;
- (b) ***MSAB can be asked to determine appeals against termination of a market stall agreement. We will put up a CSA for Members' consideration;***

- (c) it would not be appropriate for MSAB to handle appeals against stall rentals. Appeals against market stall rentals involve assessment of the open market rent of the stalls in question. MSAB members are generalists who do not have expert knowledge on such matters;
- (d) as stated in the paper on "Public Markets and Markets Rental Policy" submitted for discussion at the meeting of 9 September 1999 (Paper No. CB(2)2747/98-99(05)), we consider that the stall rental review mechanism adopted by the PUC is adequate for dealing with such appeals.

Concerns raised on 5 October 1999

1. *To consider how the existing functions of Review Committees of the two Provisional Municipal Councils can be adequately covered by the proposed appeals mechanisms (e.g. matters related to market stall tenancies, award of restaurant licence in civic/cultural centres, etc.)*
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As indicated above, appeals concerning termination of market stall tenancies will be included in the jurisdiction of Municipal Services Appeals Board (MSAB) and CSAs for this purpose will be put up for Members' consideration.

2. *To consider whether there should be restriction for government departments to make use of the second tier appeals mechanism (i.e. Municipal Services Appeals Board)*
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We have no objection to removing government's right of appeal to the MSAB against a LAB decision since it is unlikely to be invoked. We will propose CSAs to this effect.

3. *To provide information on the current criteria for determining whether an appeals hearing should be held in camera*
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At present, the MSAB always conducts hearings in open session. Based on our records, the Board only had a handful of requests from parties concerned for closed sessions since its establishment in 1990, and all such requests were turned down by the Board. Should a party to an appeal wish to have a hearing held in camera, he would have to make an application with reasons to the MSAB, and the MSAB would, in accordance with section 10(2) of the MSAB Ordinance, make a decision on the application after considering the reasons provided by the applicant and the view of the other parties to the appeal. Each case will be considered on its merits.

Schedule 5 Amendments to Dutiable Commodities Ordinance and its Subsidiary
Legislation

4. *To re-consider whether the number of members, quorum requirements and frequency of meetings are appropriate and adequate to cope with the future workload of the Liquor Licensing Board*
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Based on workload statistics of 1998, the two Liquor Licensing Boards (LLBs) of PUC and PRC processed a total of 4,830 applications for liquor licences and most of them (about 4,660 applications) are straight forward fresh applications or renewal applications. In view of this workload, we propose to introduce the following CSAs to facilitate the operation of the future LLB:

- giving the Board the power to delegate any of its power and functions to a public officer, a member or a Committee so that straight forward or renewal applications can be dealt with more efficiently;

- adding a Vice-chairman to the composition of the Board so that this person can deputise the Chairman during his temporary absence;
- providing the flexibility that the Board can hold meetings as often as necessary;
and
- specifying that the quorum of the LLB shall not be less than half of the members.
We do not think a lower quorum requirement is appropriate for the purpose of hearing contested applications.

5. *To consider the suggestion of improving the operation of the Liquor Licensing Board to ensure fair hearings and decisions by members of the Board, e.g. whether several smaller panels with a higher quorum requirement can be set up to hear appeals*

The proposal in the Bill adopts the current practice of LLBs of the two Provisional Municipal Councils. Since the LLB is a decision making authority, a single Board is preferred to smaller panels for the purpose of hearing contested applications. If the above proposed CSAs to facilitate operation of the future LLB are accepted, it should help to improve the efficiency of the Board.

Yours sincerely,

(John C. Y. Leung)

for Secretary for Constitutional Affairs