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

**Purpose**

This paper reports on the deliberations of the Bills Committee on Provision of Municipal Services (Reorganization) Bill.

**Background**

2. Following the Review of District Organizations, the Administration has decided that the two Provisional Municipal Councils (PMCs) should be dissolved after the terms of office of the incumbent members expire on 31 December 1999. The Government will from 1 January 2000 resume responsibility for the delivery of municipal services, including all functions relating to food safety and environmental hygiene, as well as the main responsibilities for leisure and cultural services.

3. A new policy bureau and two new departments will be set up to undertake these responsibilities from 1 January 2000. Two non-statutory advisory bodies will also be established to advise Government on food safety and environmental hygiene, and culture and heritage matters respectively. To effect the reorganization, the Administration has proposed an omnibus bill to repeal and make necessary amendments to existing legislation concerning the PMCs. Amendment to about 58 ordinances and roughly 100 subsidiary legislation are proposed in the Bill.

4. Two other bills have also been introduced into the Legislative Council to amend the membership of two existing statutory bodies for arts and sports, i.e. the Arts Development Council and Sports Development Board. These Bills are now under the scrutiny of two separate Bills Committees.

## **The Bill**

5. The Bill seeks to provide for -

- (a) the transfer of all existing property, rights, liabilities, functions and powers of the PMCs to the Government or designated public officers;
- (b) the repeal of the Provisional Urban Council Ordinance (Cap. 101) and the Provisional Regional Council Ordinance (Cap. 385);
- (c) the establishment of a new Liquor Licensing Board and a Licensing Appeals Board in place of existing boards and committees under the PMCs performing similar licensing and review functions;
- (d) the establishment of a Municipal Services Appeals Board in place of the existing Urban Services Appeals Board and Regional Services Appeals Board;
- (e) a new fee-setting mechanism for various fees and charges related to municipal services;
- (f) the amendment of certain provisions in the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation, and the repeal of duplicate subsidiary legislation;
- (g) various transitional provisions and savings to maintain legal and administrative continuity; and
- (h) consequential amendments in related ordinances and subsidiary legislation.

6. The Bill contains 13 clauses and seven Schedules. The 13 clauses in the Bill provide for the dissolution of the two PMCs and the transfer of functions, property, rights and liabilities of the PMCs to the Government as from the appointed day. There are also savings provisions to preserve the subsidiary legislation and fees and charges in force before the amendments made in Schedules 1 to 7 come into operation. The liability for offences against a repealed enactment and the power to prosecute offences committed under a repealed enactment are also preserved. Schedules 1 to 7, which contain about 950 clauses, give details of the amendments to various ordinances and subsidiary legislation affected by the reorganization.

## **The Bills Committee**

7. At the House Committee meeting on 30 April 1999, a Bills Committee was formed to study the Bill. Chaired by Hon Andrew WONG, the Bills Committee has held a total of 29 meetings (equivalent to 38 two-hour sessions) with the Administration, including one meeting to receive views from incumbent members of the two PMCs and deputations.

8. The membership list of the Bills Committee is in **Appendix I**. A list of persons and organizations that have given views or submissions to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

9. The Bills Committee agreed from the beginning not to debate the issue as to whether the two PMCs should be dissolved, since this had been thoroughly discussed on various occasions in the Legislative Council (LegCo) and its Panels before and during the consultation period on the Review of District Organizations. The Bills Committee has noted that some members, including Members belonging to the Democratic Party and some Members who are also members of the PMCs, are strongly opposed to the substitution of the Government in place of the PMCs for the delivery of municipal services. However, given the extensive scope of the Bill and the fact that a new structure will need to be put in place when the term of office of PMC members expires on 31 December 1999, the Bills Committee has agreed to adopt a pragmatic approach by confining its discussion to “operational” policy issues related to the Bill, as well as the merits, rationale and legal effect of the detailed provisions therein. The Bills Committee has scrutinized the Bill in detail, and the main points of its deliberations are summarized below.

### Main clauses in the Bill

#### *Transfer of authority*

10. Members of the Bills Committee are very concerned whether the main clauses in the Bill can adequately effect the transfer of authority from the PMCs to the Government. They have specifically sought clarification on the legal effect of clauses 4, 5 and 6 of the Bill, as well as the legislative and administrative arrangements required for the transfer of powers from the “former authority” to the “new authority”.

11. In this connection, the Administration has explained that the transfer of functions is effected by specific statutory amendments in Schedules 3 to 7 of the Bill. In relation to a particular function, the Bill only changes the person who is authorized

to perform the relevant function. If the former authority has delegated any of its statutory powers which is to be transferred to the new authority, such delegation is preserved by clause 8(2)(e) of the Bill, as long as it is consistent with the Bill. It is therefore not necessary to arrange for gazette notice of the delegation of authority thus saved. The Bills Committee has also noted that the proposed Third and Sixth Schedules of the Public Health and Municipal Services Ordinance (Cap. 132) in Schedule 3 of the Bill set out the new designated authorities for carrying out different statutory functions, and for initiating proceedings for offences, under the said Ordinance.

*Validity and continuity of contracts after the transfer*

12. Members of the Bills Committee have expressed serious concern that there should be no legal uncertainty or ambiguity in the transfer provisions of the Bill to avoid unnecessary litigation over contractual obligations and liabilities after the transfer. Some members have asked whether the Bill has provided for re-negotiation of contracts and claims for compensation by parties to the contract or by a third party affected by the contract. These members are concerned that the transfer of authority may constitute a change in contract terms or circumstances, and the other party of the contract may have a claim to rescind or re-negotiate the contract previously signed with a municipal council.

13. The Administration has stressed that the purpose of the transfer provisions is to preserve the validity of contracts to maintain continuity of municipal services to the public after the transfer. The Administration has reassured members that the provisions of the Bill adequately deal with the transfer arrangements. By virtue of clauses 4, 5 and 6 of the Bill, the property, rights and liabilities of PMCs will be transferred to the Government, and that the rights of the contracting parties and the third parties are preserved. The legal rights and obligations of the contracting parties as well as the terms and conditions are not changed by the substitution of Government as the contracting party. Clause 5(3) expressly provides that Government may be sued for those liabilities inherited from PMCs and that they can be recovered from the Government. Clause 5(6) also provides that any legal claims against a municipal council may be continued or enforced against the Government. The Administration has advised that the different legal status of the Government from that of a statutory body in terms of liability is irrelevant as the liability was incurred by the PMCs in such capacity.

14. In response to members, the Administration has confirmed that the Bill does not give either the Government or the other party the right to discontinue or re-negotiate the terms of the contracts. The substitution of the Government for the PMCs as a contracting party does not give rise to a breach of a contract condition or a situation of loss for which damages are payable. However, the Bill does not prevent parties from varying or rescinding the contracts by mutual agreement. The legal position is similar to the substitution of the PMCs for the Municipal Councils on 1 July 1997. The Administration has acknowledged that some existing contracts

signed by the PMCs (such as contracts commissioning performances by performing arts companies) do contain provisions against the assignment of rights and liabilities without the written consent of the other party. However, the Administration considers it unlikely that the other party would wish to rescind the contract upon the transfer of contractual rights and liabilities to the Government.

15. The Bills Committee has noted that about 260 and 597 contracts respectively are under processing by the Provisional Urban Council and Provisional Regional Council and which will likely take effect or continue in force after 31 December 1999. For avoidance of doubt, the Administration will move a CSA to clause 5(1) and clause 8(2)(e) to expressly save those agreements and licences signed by the PMCs before 1 January 2000 which would take effect on or after that date.

16. On ownership of intellectual property, the Administration has advised that it will depend on the terms of the contract signed with the artists or companies by the PMCs. If PMC is the employer, it acquires the ownership of the piece of work produced. Clause 6(c) of the Bill specifically saves the rights held by PMCs in relation to trademarks, copyright and other intellectual property. In other words, the Government will become the owner of all such intellectual property of the PMCs including armorial bearings of the PMCs.

17. With regard to the transfer of property, the Administration has advised that PMCs do not hold any land titles. Under clauses 4, 5 and 6 of the Bill, the Government will become entitled to any property, rights and legal claims of the PMCs including the contractual fees and charges due to the PMCs. Responding to some members' concern that Government may change the land use of certain PMC facilities after the transfer, the Administration has assured members that Government will consult affected parties and district organizations should there be any proposed changes.

18. Concerning the employment contracts signed by the PMCs, the Administration has confirmed that these are also preserved under clauses 4 and 5(1) of the Bill. The Administration has assured members that the terms and conditions of those employees whose service is still needed will be no less favorable than those provided for under the Employment Ordinance and Employees Compensation Ordinance.

*Repeal, amendment and renaming of enactments*

19. The Bills Committee notes that upon dissolution of the two PMCs, the Administration will adopt a unified set of bylaws for the delivery of municipal services in urban areas and in the New Territories. In general, the Administration has selected the more comprehensive version among the two of the Bylaws of the PMCs under the Public Health and Municipal Services Ordinance (Cap. 132) for adoption. The selected Bylaw will be renamed and called regulations, and suitably amended to reconcile some existing differences between the two PMCs, while the

other Bylaw not adopted will be repealed under clause 7 of the Bill.

20. The Bills Committee notes that the deletion of four Bylaws under Cap. 132 are proposed in the Bill as they are either obsolete or already covered by other enactments. These Bylaws currently only apply to the Urban Council area and have not been invoked in recent years. These are -

- Basements (Urban Council) Bylaws;
- Mosquito Prevention (Urban Council) Bylaws;
- Ventilation (Urban Council) Bylaws; and
- Wells and Water Storage (Urban Council) Bylaws.

21. The Bills Committee has sought clarification from the Administration on the background and reasons for repealing these Bylaws and whether other enactments can adequately deal with situations to which the repealed provisions may still apply. The Administration has provided written responses in this connection and confirmed that the proposed repeal is appropriate and in order. The Administration will also move CSAs to address some inadvertent omissions in other parts of Cap. 132 and in the new regulations in connection with the repeal of the four Bylaws as identified by the Bills Committee.

*Continued offences under a repealed enactment*

22. With regard to the transitional provisions on offences in clause 10, members have raised queries on how continuing offences under a repealed enactment will be dealt with on or after 1 January 2000. The Administration has advised that all proceedings in respect of offences committed under an enactment repealed by this Ordinance before the repeal comes into effect may be commenced or continued on or after 1 January 2000, as long as there is a corresponding enactment. In other words, if the relevant act of an offence is committed under a repealed bylaw before 1 January 2000 and the act is continued beyond 1 January 2000, the defendant is liable for an offence under a technically different law. The new authority can therefore still initiate or continue proceedings for such offences.

23. A member has expressed concern that as the Administration has generally adopted the more comprehensive and stringent version among the two in aligning the different Bylaws, some conduct which was originally not unlawful under an existing Bylaw may become unlawful after the re-alignment exercise. Senior Assistant Legal Adviser has advised that if a new offence is created by the new provision, an act or omission will be an offence only if it takes place after the provision comes into effect. With regard to the penalty of a continued offence, Senior Assistant Law Draftsman points out that, under section 101J of the Criminal Procedures Ordinance (Cap. 221), an offender is liable to the penalty prescribed at the time of the offence if the penalty

level has been amended between the time the person committed an offence and the time of his conviction. However, if a lighter penalty has been imposed by the new provision, the court will normally take account of the new penalty level when giving sentence. The Administration has added that the existing penalty levels are preserved during alignment of the two Bylaws under Cap. 132.

24. To remove any doubt about the application of clause 10, the Administration has accepted the Chairman's suggestion and improved its drafting, to make it clear that the repealed legislation will only apply to offences committed before the repeal, and that the new corresponding enactment will apply to a continuing offence or offences committed after commencement of the new enactment.

25. On the question of whether there will be a vacuum period during which existing enactment has been repealed but corresponding enactment has not come into operation, the Administration has advised that the proposed Ordinance and the repeal will take effect at the same time on 1 January 2000. A grace period will however be given for compliance with some aligned Bylaws, for example, Commercial Bathhouses Regulation, which will bring commercial bathhouses operating in the Provisional Regional Council area under the same licensing regulation currently applied only to commercial bathhouses in urban area.

#### *Power of Chief Executive in Council to make consequential, transitional and savings provisions*

26. Some members have sought clarification as to whether clause 11, which seeks to amend the Ordinance by way of an order, instead of an amendment bill, is a common practice. The Administration has explained that there are similar provisions in other legislation, and that it is not uncommon to have an order, which is subsidiary legislation subject to LegCo approval, to amend an ordinance in the laws of Hong Kong. The purpose of clause 11 is to make additional consequential amendments and transitional and savings provisions which may become necessary as a result of the repeal and amendments contained in the Bill. For example, consequential amendments will be necessary to amend subsidiary legislation newly made by the PMCs before the Bill comes into operation. In this respect, the Administration has assured members that LegCo will have the opportunity to examine whether the amendments made under clause 11 are truly consequential when they are introduced into LegCo by way of positive resolution procedure.

27. A member points out that the scope of clause 11 as presently drafted will not be limited to such amendments. To address members' concern, the Administration has agreed to redraft clause 11 to make it simpler in presentation to show its limited scope. A CSA will be introduced to achieve this.

#### Schedules 1 and 2

28. Members have noted that Schedules 1 and 2 provide for the adoption, renaming

and repeal of certain subsidiary legislation made under the Public Health and Municipal Services Ordinance, Cap. 132, as a result of the reorganization. The Administration has intended that the repeal and renaming will take effect from 1 January 2000.

### Schedule 3

#### *Fees and charges*

29. The Bills Committee has noted that the PMCs now charged about 900 fees and charges (excluding admission charges for some 2000 cultural programmes) and these will come under general revenue after the reorganization. Clause 9 of the Bill saves the fees and charges immediately in force before the reorganization, including the different pricing levels of the two PMCs. The Administration has proposed to preserve the pricing levels until they are revised, and the realignment exercise is expected to complete in two years.

30. Members have expressed serious concern and have detailed discussion with the Administration on the future fee-setting mechanism as set out in paragraph 63 of Schedule 3 in the Bill. The Administration has proposed that fees and charges for licensing and regulatory schemes, which are mainly related to food and environmental hygiene services and based on cost-recovery principles, will be prescribed in regulations made by the relevant Policy Secretary and subject to negative vetting by LegCo. As for the other fees which are mainly admission charges/course fees for cultural and recreational programmes and hire charges of venues, they are to be determined by the future Director of Leisure and Cultural Services, subject only to the approval of the Financial Secretary. According to the Administration, these fees are often based on a "market-oriented" approach and set at heavily subsidized levels on policy considerations for promoting art, culture and sports. In view of the large volume and enormous diversity of such charges, the Administration considers it difficult for LegCo to vet and determine these fees on each occasion.

31. While most members have no objection to the proposed fee-setting mechanism for licensing and regulatory schemes in relation to food and environmental hygiene services, some members have expressed strong reservations about the mechanism for determining fees for cultural and leisure services. These members are concerned that Government will progressively increase the fee level of cultural and leisure services with the ultimate aim of full cost recovery. They are strongly of the view that, if the PMCs are to be dissolved, a mechanism should be put in place to enable a council with elected members, such as the LegCo, to vet and monitor price levels for those services. Members belonging to the Democratic Party have suggested a two-tier system whereby LegCo can vet and approve such fees and charges above a prescribed subsidy level, while the other fees can be determined by the Director of Leisure and Cultural Services subject to the approval of the Financial Secretary. Some other members have suggested enlarging the category of fees and charges which will require negative vetting by LegCo. Members have also requested the Administration to

undertake that the present fee levels will be preserved for two years after reorganization.

32. The Administration has responded that it will follow the well-established policies for setting fees and charges according to the nature of services. It also assures members that it will continue to subsidize leisure and cultural services and will ensure that the price levels are kept at reasonable levels. The existing pricing levels will be preserved while a review will be carried out to reconcile the existing differences between the two PMCs in two years. On the involvement of LegCo in the fee-setting mechanism, the Administration has undertaken to consult relevant LegCo Panels on changes to the fee-setting mechanism, including contracting-out and corporatization schemes that will require a degree of autonomy of fee-setting by the operators. The Administration will also discuss with Panels the pricing policy before any major fee review.

33. The Administration however considers it impractical to prescribe subsidy levels by legislative means as the subsidy levels are often the result of an interplay of various factors such as costs and patronage. Moreover, flexibility has to be provided to operators and the new Department for the setting of admission fees and programme charges for leisure and cultural programmes to encourage initiatives and respond to rapid market changes. To address members' repeated request that fees for certain basic leisure and cultural services should be subject to negative vetting by LegCo, the Administration has finally agreed that those fees and charges for venues and facilities which are widely used by individual members of the public will be prescribed in regulations to be approved by LegCo by way of negative vetting. Examples under this category include admission fees to public swimming pools and hire charges for tennis courts and football pitches. The other fees, including charges for commercial purpose and use by organizations, will be determined administratively by the new Department subject to the approval of the Financial Secretary. Committee stage amendments will be moved by the Administration to this effect. The Bills Committee welcomes the revised proposal.

34. Some members of the Bills Committee have expressed concern that there should be a mechanism to enable reduction of market rentals at times of economic downturn to help the stall-holders tide over difficult times. These members have suggested that market rentals may be included in the category of licences and permits so that they are also subject to the LegCo negative vetting procedure. The Administration has responded that market rentals are commercial charges which are set at market rates. It is not feasible to prescribe market rentals in the form of subsidiary legislation as the rates can be determined by tender, auction, contract or commercial negotiation.

#### *Division of responsibilities on food and drug matters*

35. Members of the Bills Committee have urged the Administration to have a clear delineation of responsibilities under the new structure for the control of food and drugs. As one principal objective of the reorganization is to improve co-ordination and to streamline the existing structure with regard to food and environmental hygiene

matters, members have inquired how the proposed structure can effectively achieve the objective. They have expressed particular concern about the regulation of Chinese herbal tea and health food composing of Chinese medicine, and the control of communicable food-borne diseases such as Avian flu. In this respect, members have urged the Administration to expedite actions to put in place an effective regulatory framework for these products to ensure their safety. Members belonging to the Liberal Party have also suggested the establishment of a single authority, modeled on the Food and Drug Administration in the United States, for the control of food and drug.

36. To allay members' concerns, the Administration has provided written responses and flowcharts to show the procedures and proposed division of responsibilities for the control of food and environmental hygiene. It has assured members that the new structure will improve co-ordination with the proposed Environment and Food Bureau assuming overall co-ordination and policy responsibilities for food safety and environmental hygiene. The new Food and Environmental Hygiene Department, the Agriculture and Fisheries Department (now under Economic Services Bureau) and Environmental Protection Department (now under Planning, Environment and Lands Bureau) will be placed under the new Bureau for carrying out these responsibilities. The proposed structure will provide leadership at a senior level to enhance the capability in dealing promptly and effectively with food incidents. A proactive approach will also be adopted for the food surveillance programme and public education on food risks.

37. The Administration has advised that an inter-departmental liaison group will also be established to co-ordinate actions and facilitate exchange of information in dealing with problems relating to public health, food safety and the environment.

38. The control of drugs will continue to be dealt with by the Health and Welfare Bureau and the Department of Health. Where necessary, regulatory control of a product can be taken by both Bureaux and Departments according to the power vested in relevant legislations.

39. Concerning the regulation of Chinese herbal tea, the newly enacted Chinese Medicine Ordinance (Cap. 546) will provide a statutory framework to regulate the practice, use, trading and manufacture of Chinese medicines (which includes Chinese herbal tea), upon commencement of the relevant part of the Ordinance. As for health food with medicinal claims or containing pharmaceutical components, they are regulated by the Pharmacy and Poisons Ordinance (Cap. 138) which is under the purview of the Department of Health. To ensure that there is adequate control of health food and other new food products, the Administration is closely monitoring international developments and will make necessary changes to the regulatory framework.

*Savings and benefits arising from the reorganization*

40. Members of the Bills Committee are concerned about the possible savings and benefits to be derived from the re-organization. The Bills Committee has sought a briefing from the Administration on the new framework for delivering municipal services after dissolution of the two PMCs. Members have inquired about the future organizational structure, the proposed staff establishment and deployment of posts, staff savings and arrangements for surplus staff. The Administration has advised that the structural change will bring about better co-ordination, focused strategic planning and clearer delineation of responsibilities for funding and delivery of municipal services. The proposed structure will also enhance accountability and cost-effectiveness in the delivery of these services, and LegCo will be able to monitor the services provided through approval of budgets and scrutiny of legislative proposals.

41. Members have noted that a total annual notional saving of about \$700 million will be brought about by streamlining of staffing structure, institutional efficiency and economies of scale. Some members have sought clarification on the calculation of the estimated savings and the Administration has provided more information in this respect. The staffing proposals in relation to the new framework will be further discussed by the Finance Committee.

42. In response to some members, the Administration has advised that the surplus staff are mainly general grades and common grades staff and they will be re-deployed to other departments upon reorganization. Their terms of employment will remain unchanged. A few other surplus posts will be deleted through natural wastage.

*Amendments to subsidiary legislation under Cap. 132*

43. The Bills Committee has scrutinized in detail the provisions in Schedule 3 amending the various subsidiary legislation under the Public Health and Municipal Services Ordinance (Cap. 132). Many of these provisions involve the transfer of authority from PMCs to the relevant government department(s) or bureau(x) for carrying out specific statutory functions. Members have noted that the Administration has taken the opportunity to delete some obsolete provisions and to update certain provisions to bring them in line with existing or new enactments. Amendments are also proposed to reconcile, where appropriate, some existing differences between the subsidiary legislation made by the two PMCs.

44. In the course of examination of individual provisions under the proposed regulations, members have identified some omissions and inconsistencies on which the Administration has agreed to move CSAs. Members have also discussed with the Administration the legislative intent and the future policy on a number of issues. These include the public markets and rental policy, control of hawkers, licensing of food business, food hygiene standards, posting of bills and billboards, and restrictions over the use of libraries, museums, public conveniences, and pleasure grounds, etc.

The Administration has advised that the existing policies of the two PMCs will be preserved after the reorganization, and the new Bureau and Departments will review the policies to re-align the existing differences where appropriate. In this respect, the Administration has re-assured members that the relevant LegCo Panels will be consulted on any policy reviews after reorganization. In aligning the differences, the Administration will carefully consider the implications on the trade and parties which are currently not subject to any regulation or restriction. For example, commercial bathhouses in the New Territories which are at present not subject to any licensing control will be given a grace period of two years to comply with the new regulatory framework.

45. Some members have also made specific suggestions to remove obsolete or redundant provisions governing public meetings and assemblies, and the prohibition of insufficient clothings, in government crematoria, public swimming pools, bathing beaches and civic centres. These members have also proposed to remove the restriction on the erection of statute or sculpture on pleasure grounds, and to standardize the age limit for application of certain licences in line with other relevant legislation. Clarification has been sought on the hygiene standards for public and private swimming pools, the control of clubhouses, the proposed height/age restriction for entering changing rooms of the other sex, and Government's exemption from liability of losses and damages. The Administration has agreed to most of these suggestions made by members and will move CSAs to address these concerns. A summary of the proposed amendments to the subsidiary legislation of Cap. 132 as discussed by the Bills Committee is given in **Appendix III**.

#### *Licensing Appeals Board*

46. Members have noted that a new Licensing Appeals Board (LAB) will be established to hear appeals against licensing decisions made by Director of Food and Environmental Hygiene and Director of Leisure and Cultural Services under Cap. 132. This will replace the existing review mechanism of the PMCs under section 125(9) of Cap. 132 to review licensing conditions made by the existing municipal services departments on behalf of the PMCs. The LAB, comprising unofficial members, is intended to be a less formal first-tier appeal mechanism to avoid overburdening the future Municipal Services Appeal Board (MSAB) with too many appeal cases. The provisions governing the membership, functions and powers of LAB are given in section 66 of Schedule 3 in the Bill.

47. Some members are concerned that the proposed LAB may not be able to cope with the enormous workload with its small membership (a Chairman and 14 members). Members have raised queries on its operation, for example, the quorum requirement, grounds for rejection of appeals and appointment of legal adviser. To address members' concerns, the Administration has agreed to move CSAs to provide a Vice-Chairman to LAB to share out the workload of the Chairman, and to set out more clearly its functions, quorum requirements and the requirement to give reasons in writing for its decisions in order to ensure fair hearings.

48. In response to members, the Administration has advised that the existing functions of the Review Committees of the two PMCs have been covered by the proposed LAB except certain appeals relating to termination of market stall tenancies. Some members are of the view that there should be an appeals channel to deal with such cases. The Administration has considered the suggestion and concluded that LAB's role is confined to handling appeals against licensing decisions and should not be broadened to cover appeals against administrative decisions. However, the Municipal Services Appeal Board (MSAB) can be asked to determine appeals against termination of a market stall agreement (see paragraph 53 below).

#### Schedule 4 -Municipal Services Appeal Board

49. Schedule 4 of the Bill sets out the amendments to the Municipal Services Appeals Boards Ordinance (Cap. 220). The Administration has proposed to merge the two existing Municipal Services Appeals Boards under the PMCs into a single board chaired by a legally qualified person to deal with appeals against decisions of the LAB, the Liquor Licensing Board (LLB) and other decisions made under Cap. 132 and Places of Public Entertainment Ordinance (Cap. 172).

50. Members have noted that there is no change in the board composition except that the attendance of a PMC member will cease in future. In this connection, some members have suggested inclusion of District Council (DC) members, as representatives of community opinions, in place of the PMC member. This will also enhance the role of DC members and increase district participation in managing environmental affairs in the District. The Administration has responded that at present 7 out of 21 existing MSAB members are District Board members and the same practice will continue. As the PMC member on MSAB is to advise on the relevant policies of the PMCs, the Administration considers that DC members will not be in a position to substitute PMC members and perform the same role. A conflict of interest situation may also arise if the DC member knows the appellant or has dealt with the case before. Despite the Administration's explanation, some members maintain the view that MSAB should include some DC members. To overcome practical difficulties in appointing DC members to the Board, the Chairman of the Bills Committee has suggested a roster system of appointing only the Chairmen and/or Vice-chairmen of the DCs to the MSAB. The Administration has subsequently given further consideration to the proposal and suggested appointing DC Chairmen and Vice-chairmen to MSAB on ad personam basis, instead of adding two ex-officio seats on MSAB as suggested by a member. The Administration considers that administrative arrangements will give greater flexibility when elections of DC Chairmen and Vice-chairmen are not yet held or completed.

51. Some members have also raised concern about overlapping membership of the different appeals boards. The Administration has pointed out that section 6 of Schedule 4 specifically excludes a person from MSAB if he has been involved in making the relevant administrative decision or the appeals decision. The

Administration has also acknowledged an oversight in the drafting of section 7 and will move a CSA to specify that both the Chairman and Vice-chairman of MSAB should be legally qualified.

52. Members have strong reservations about the proposal that government departments as licensing authority can also make use of MSAB to appeal against the decisions of the Liquor Licensing Board and Licensing Appeal Boards. They consider the arrangement unfair to the other party and an inappropriate use of resources. The Administration has accepted members' views and will introduce CSAs to remove the licensing authority's right of appeal to MSAB.

53. On suggestions to expand the scope of MSAB, the Administration has accepted some members' suggestion that MSAB can deal with appeals against termination of market stall tenancy. As regards disputes over market stall rentals, the Administration maintains its position that it is inappropriate for MSAB to handle these cases which require expert knowledge on assessment of open market rents. In this connection, a member has indicated that he will move CSAs to extend MSAB's jurisdiction to cover appeals on market stall rentals. With regard to a member's suggestion that MSAB should also deal with objections concerning the addition of facilities for burning of human remains in government crematoria, the Administration has expressed reservation. The Administration has advised that the relevant DCs and LegCo Panels can be consulted if there are plans to add such facilities in government crematoria.

#### Schedule 5 - Liquor Licensing Board

54. Schedule 5 of the Bill sets out the amendments to the Dutiable Commodities Ordinance (Cap. 109) and the Dutiable Commodities (Liquor) Regulations. It replaces the two existing liquor licensing boards under the PMCs by a new Liquor Licensing Board (LLB) comprising a Chairman and 10 members appointed by the Chief Executive to issue liquor licences. Some members have expressed concern that the proposed membership size of LLB is insufficient to cope with the large number of new applications and pending applications awaiting decision of the existing liquor licensing boards of PMCs. These members have suggested the Administration increase the number of members or consider setting up several panels to share out the work. To ensure fair hearings, some members have suggested that the decisions of LLB hearings should be made by the same members who sit through the hearings. In this connection, some members have suggested adjusting the quorum requirement for hearings.

55. The Administration has advised that in 1998, the two LLBs of the PMCs processed a total of 4,830 applications and most of them (about 4,660) are straightforward cases. To address members' concerns, the Administration has proposed a number of improvements to the operation of the new LLB. These include :

- empowering the Board to delegate its power and functions to a public officer, a member or a committee of the Board to deal with the straightforward applications and renewal cases;
- adding a Vice-chairman to the composition of the Board to deputize for the Chairman in his temporary absence;
- providing flexibility for the LLB to hold meetings as often as necessary; and
- specifying that the quorum for LLB meetings is not less than half of the members.

56. The Administration has maintained the view that a lower quorum requirement is inappropriate for the purpose of hearing contested applications, and that a single board is preferred to smaller panels for the same reason. Some members do not entirely agree with the Administration's revised proposals, considering that the quorum requirement may present difficulties in ensuring fair hearings. They have also suggested inclusion of DC members in the LLB. A few members will consider moving CSAs by themselves.

#### Schedules 6 and 7

57. Members have noted that Schedules 6 and 7 set out mainly technical amendments to relevant ordinances and subsidiary legislation arising from the dissolution of PMCs and transfer of authority. The Administration will move CSAs to address some omissions and to improve clarity and presentation.

#### **Committee Stage amendments**

58. After discussion with the Bills Committee, the Administration has accepted a number of members' suggestions and agreed to move Committee Stage amendments (CSAs) to that effect. These CSAs cover technical amendments and improvements to various provisions in the Bill including those governing the fee-setting mechanism, the Licensing Appeals Board, Liquor Licensing Board and Municipal Services Appeals Board. The Bills Committee has considered four sets of CSAs proposed by the Administration, and a consolidated list is given in **Appendix IV**.

59. The Bills Committee has also considered moving CSAs to change the name of the proposed Food and Environmental Hygiene Department to Food and Environmental Health Department in response to a submission of the Hong Kong Public Health Inspectors Association. The Administration has advised that the proposed use of "environmental health" as the name of new Department has exceeded the latter's scope of responsibilities and will cause confusion to the public and international organizations. After careful re-consideration, the Bills Committee has

finally decided not to move CSAs in the name of the Bills Committee. A member has indicated that he will move the CSAs in his own name. As the Administration has accepted many of the Bills Committee's proposals, the Bills Committee has not proposed other CSAs.

60. Three members of the Bills Committee have indicated that they will introduce CSAs to some provisions in Schedule 3 and to the composition and jurisdiction of MSAB in Schedule 4. The Administration has indicated support to some of these proposed amendments but expressed reservations on others. The Administration's responses are given in **Appendix V**.

61. The Bills Committee has also noted the "One Council, One Department" proposal of a member. The member has suggested that while Government should be responsible for territory-wide policies and functions relating to food safety, a Municipal Council should be retained to deliver services relating to environmental hygiene, culture and leisure. In his proposal, the Municipal Council will comprise 80 elected members, 59 of them to be returned by universal suffrage, 18 to be elected from each DC and 3 being representatives of Heung Yee Kuk. The Municipal Council will be assisted by a municipal services department in the delivery of such services. Members have also noted that the proposed Council will remain as a body corporate, and that both the Council and Department will be funded through a one-line vote to be approved by LegCo.

62. Some members have sought clarification on a number of points in relation to the "One Council, One Department" proposal. A member has commented that the proposed structure does not address the control of drugs, and that there are no concrete provisions for the election of Council members. The Chairman has also pointed out that all Provisional Municipal Council members are now appointed by the Chief Executive, and that no legislation exists for the election of Municipal Council members. The member will therefore need to draw up detailed provisions in this respect. Senior Assistant Legal Adviser has advised that the draft CSAs provided by the member will require technical improvements before they can achieve the intended legal effect.

63. The Administration has reiterated its objection to the "One Council, One Department" proposal, emphasizing that the member's proposed CSAs are inadequate and incapable of functioning without substantial amendments to the many existing provisions and clauses in the Bill. The Administration is of the view that the proposal cannot address the existing problem of fragmentation of responsibilities for food safety and environmental hygiene between Government and the Municipal Councils. There will also be overlapping responsibilities in the areas of arts and culture among the proposed Council, Home Affairs Bureau and other statutory bodies. The Administration has stressed that the "One Council, One Department" proposal has serious implementation problems and is incompatible with the provisions in the Bill.

64. The member has explained to the Bills Committee that his draft CSAs are only tentative and can be refined after discussion with members. With regard to the election arrangements, he suggests modelling on the District Council election and he envisages no difficulties in drawing up detailed provisions for this purpose.

65. With regard to some other amendments to be proposed by the member, the Bills Committee has not been able to discuss them as the text of these CSAs were not yet available at the last meeting of the Bills Committee held on 12 November 1999.

### **Consultation with the House Committee**

66. The Bills Committee has made two reports to the House Committee on 12 and 19 November 1999 on the deliberations of the Bill.

Legislative Council Secretariat  
23 November 1999

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

**Membership list**

Hon Andrew WONG Wang-fat, JP (Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon HO Sai-chu, JP  
Hon Cyd HO Sau-lan  
Hon LEE Wing-tat  
Hon Fred LI Wah-ming  
Hon Ronald ARCULLI, JP  
Hon James TO Kun-sun  
Hon Ambrose CHEUNG Wing-sum, JP  
Hon CHAN Wing-chan  
Hon CHAN Kam-lam  
Hon Jasper TSANG Yok-sing, JP  
Hon Howard YOUNG, JP  
Hon YEUNG Yiu-chung  
Hon CHOY So-yuk  
Hon FUNG Chi-kin  
Dr Hon TANG Siu-tong, JP

Total : 17 members

Date : 14 May 1999



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

**List of persons and organizations  
that have given views or submissions to the Bills Committee**

1. 青衣市政街市商戶聯合會
2. 持牌小販協進會
3. Hong Kong Vegetable Food & Grocery Hawkers Welfare & Fraternity Association Limited
4. Association of Hong Kong Bar & Pub Business Limited
5. Hong Kong Association for the Rights of Karaoke Entertainment & Catering Business
6. Provisional Urban Council
7. Urban Council's caucus of the Democratic Party
8. Regional Council's caucus of the Democratic Party
9. Sports Federation & Olympic Committee of Hong Kong
10. Hong Kong Public Health Inspectors' Association
11. Government Recreation and Sport Service Staff Union
12. Provisional Regional Council
13. 關注市政兩署改組工會聯席會
14. 225 signed petitions from market stall operators against the setting of rental levels of public market stalls by a government department

**The Administration's Response to  
Proposed Amendments to Subsidiary Legislation of Cap.132  
raised by Members of Bills Committee**

<b>Regulation</b>	<b>Adopted version</b>	<b>Section</b>	<b>Proposed Amendments</b>	<b>Meeting concerned</b>	<b>Remarks</b>
Advertisement Regulation	N.A.	11	To consider whether part of the section (which prohibits the erection of signs obstructing means of escape or interfering with road traffic) will be retained	15.9.99	Part of the section in respect of the power to remove signs causing obstruction to road traffic would be retained. Repeal of the remaining part is agreed as adequate power has been provided under the Fire Services Ordinance (Cap.95) to deal with obstructions to means of escape.  Administration will introduce a CSA.
		5(2), 13	To review whether the definitions of "occluding sign" & "neon sign" adequately cover new substances now used for advertisements	15.9.99	Consultation with other departments underway.
Bathing Regulation	Beaches UC	13	To delete the section which prohibits public meetings and assemblies in any bathing beach except with the permission of the Director	15.9.99	Agreed. Administration will introduce a CSA.
Civic Regulation	Centres RC	11(b)	To delete the provision which empowers the manager to refuse entry of persons who is indecently	17.9.99	Agreed. Administration will introduce a CSA.

			or insufficiently dressed		
Cremation and Gardens of Remembrance Regulation	UC	15(c) and (h)	To delete the provisions governing public meetings and clothings in Government crematorium	17.9.99	Agreed. Administration will introduce a CSA.
		22(c) and (h)	To delete the provisions governing public meetings and clothings in garden of remembrance	17.9.99	- ditto -
Food Business Regulation	RC	28	To provide further information on the purpose of the proposed amendment and the legal effects concerning the area of water where collection of shell fish is prohibited	17.9.99	Bylaw 29 of the Food Business (UC) Bylaws has already become obsolete after series of reclamation in the Kwai Chung area. We will introduce a CSA to amend "Harbour" to read as "harbour" which is defined in Cap. 1. By combining the descriptions of waters under s.28(a) and (b), the area stipulated in UC Bylaws would be covered.
		31	To consider re-inserting "accidentally defaced" in relation to the issue of duplicate licence	17.9.99	Agreed. A CSA will be introduced to put back the phrase.
		34(a)	To explain why more stringent licensing conditions are adopted, e.g. "deviation" instead of "material deviation" from plans is adopted in section 34.	17.9.99	S.34D describes precisely the scope of deviation. As such, the qualifying word "material" is considered unnecessary.
Frozen Confections Regulation	UC	16	To consider whether hawkers of frozen confections are required to wear uniforms and display numbers	17.9.99	This requirement is obsolete. Administration will introduce a CSA to delete the section.
		19	To consider re-inserting such provision as s.18(1)(i) of the RC Bylaws as one of the licensing	17.9.99	Agreed. A CSA will be put up to this effect.

			requirements. This provision prohibits the manufacture and storage of frozen confections near soil fitments or latrine fitments		
Funeral Parlours Regulation	RC	5	To consider deleting “under the age of 21 years” as a condition for refusal and revocation of licence	17.9.99	We consider that a minimum age should be stipulated, and this should be lowered to 18. The same will apply to s.7 of the Places of Amusement Regulation and the Undertakers of Burials Regulation. CSAs will be put up to amend the age limit in these Regulations.
Libraries Regulation	RC	N.A.	To rename the Regulation as " <b>Public</b> Libraries Regulation"	22.9.99	Libraries governed by the Regulation are clearly defined. There is no practical need to introduce the proposed amendment.
		33(4)	To review the necessity to include provision regarding absolute exclusion of liabilities for loss or damage of articles deposited in cloakroom		We have no objection to remove the provision and will put up a CSA for Members' consideration.
		34A	To repeal the restriction on taking of writing implements into any library	22.9.99	Agreed. Administration will introduce a CSA.
Declaration of Markets Notice	RC	N.A.	To set out the complete list of markets in both Chinese and English	22.9.99	The Declaration of Markets Notice will be updated to include three new markets and to delete one market no longer in use.
Milk Regulation	UC	16(1)	To re-insert the provision prohibiting the processing, reconstituting or storage of any	22.9.99	Agreed. We will put up a CSA for Members' consideration.

			milk or milk beverage in any part of the premises containing any soil fitment or latrine fitment as one of the licensing requirements		
		19(1)	To add the phrase "the temperature to which the milk or the milk beverage is subsequently cooled"	22.9.99	Agreed. Administration will introduce a CSA.
Museums Regulation	RC	5	To require museums to open on Sunday and public holidays in the legislation	22.9.99	Members' concerns are noted but there is no need to have this written into the law as s. 5(1) allows the Director to make such arrangements.
		8(6)	To review the necessity to include the provision regarding absolute exclusion of liabilities for loss or damage of articles deposited in cloakroom	22.9.99	We have no objection to remove the provision and will put up a CSA for Members' consideration.
		11	To explain the rationale of the 20% surcharge under section 11	22.9.99	The 20% surcharge is to cover administrative cost involved in the replacement of the item. It is consistent with the Government Store and Procurement Regulations and Financial and Accounting Regulations which stipulate an additional charge of 20% for overheads.
Offensive Trades Regulation	RC	10(1)	To consider whether a grace period should be allowed for introducing additional requirements under section 10(1) in the existing jurisdiction of Provisional Urban Council	22.9.99	The conditions as laid down in section 10(1) of the Offensive Trades Regulation are already provided in By-law 7 of the Offensive Trades (UC) By-laws except section 10(1)(m) which requires "any heating equipment provided is properly installed and, having regard to the nature of the premises, is not likely to be dangerous". We do not envisage

					the existing licence-holders in the urban area would encounter any difficulty to comply with this requirement. Therefore a grace period for implementation is not necessary.
		19	To delete the word "absolute" before "discretion"	22.9.99	Agreed. We will put up a CSA for Members' consideration.
		21	To explain the rationale for setting the age limit at 14	22.9.99	The Employment of Children Regulations, Cap. 57 specifies that children under the age of 15 shall not be employed in the industrial undertaking which includes offensive trade premises. The Administration will introduce a CSA to raise the age limit to 15.
Pleasure Grounds Regulation	UC	14(1)	To consider whether it is necessary to add "hand cart"	22.9.99	On reflection, it is not necessary to add "hand cart". A CSA will be put up to delete the purposed addition.
		20	To delete the addition of "statue or other sculpture" as proposed in section 505 of schedule 3 of the Bill	24.9.99	Agreed. Administration will introduce a CSA.
		28	To delete the section which prohibits public meeting, public discussion, procession, etc.	24.9.99	Agreed. Administration will introduce a CSA.
Private Cemeteries Regulation	UC	9(2)	To consider whether it is necessary to retain the provision in respect of prohibition to leave any coffin or urn deposited on surface of the ground.	24.9.99	Leaving any coffin or urn deposited on the surface of the ground is unsightly and unhygienic, save in so far as may be necessary in the course of disposing of any human remains. Retention of section 9(2) is therefore necessary.
Public Cemeteries	UC	7A(2A)	To review the drafting of the	24.9.99	The Chinese version accurately reflects our

Regulation			Chinese version of the provision to provide greater clarity		drafting intention and corresponds with the meaning of English text. No amendment is considered necessary.
		9	To review the need to retain the section on the exclusion of liabilities for loss or damage to articles	24.9.99	Retention is necessary because in the event of natural disasters such as landslips, whilst the Department would fulfill its management duties by reinstating or relocating damaged graves, it is important that the Government's liability for losses and damages to articles inside or in the vicinity of any grave be excluded from civil action.
Public Cleansing and Prevention of Nuisances Regulation	UC	15	To consider whether a uniform age, say, 14 or 16 should be adopted for section 15 and in other Regulations	24.9.99	Maintaining the age restriction at 16 as set out in the regulation is necessary because the Women and Young Persons (Industry) Regulations, Cap 57, prohibits employment of persons under 16 in dangerous trade or carrying any load exceeding 18 kg.
Public Conveniences (Conduct and Behaviour) Regulation	UC	4	To consider whether the charging provision for use of public latrines is necessary	24.9.99	We have no objection to delete this section. Administration will introduce a CSA.
		5(d)	To consider whether the provision on prohibition on loitering in public conveniences is necessary	24.9.99	In order to have better control over the proper use of public toilets, their management and cleansing, this section should be maintained.
		8	To consider whether the section on prohibition of entry of persons knowingly suffering from communicable diseases is necessary	24.9.99	We have no objection to delete this section. Administration will introduce a CSA.
		12	To consider whether granting exemption to attendants who are carrying out his duties in public	28.9.99	To provide for better management of public toilets and to enable the toilet attendants or assistants to execute their duties effectively,

			conveniences from being subject to the control of the Regulation is necessary		this section should be maintained.
Public Markets Regulation	RC	6	To consider whether "any one person" is appropriate and adequate for the purpose of section	24.9.99	'Any one person' is appropriate because under existing practice in the ProRC and PUC areas, a market stall is let to one person only.
Public Swimming Pools Regulation	UC	4(k)	To consider deleting "or so sparsely clad" as being an offence	24.9.99	There has recently been an incident where the pool staff had to remove, under this section, a swimmer who went swimming clad only in underwear and caused considerable embarrassment to other swimmers. We therefore suggest to retain the wording to prevent the recurrence of similar situation.
		7	To review the age and height limits for persons being prohibited from entering into dressing rooms of the opposite sexes	24.9.99	Retention of this section is recommended as it prevents children under the age of 8 who may accidentally wander into the deep pool after leaving the changing room, unsupervised by the career. The solution to this problem is to provide family changing rooms in public swimming pools.
Swimming Pools Regulation	UC	6(1)(h)	To consider adding the provision of equivalent latrine accommodation mentioned under s.6(1)(h) of the RC Bylaws, such as "aquaprivies" and "chemical closets"	24.9.99	Agreed. A CSA will be put up to add this phrase to section 6(1)(h).
		N.A.	To consider adopting more stringent licensing requirements contained in the RC Bylaws and to provide a grace period for implementation	24.9.99	We agree to adopt the provisions governing the quality of water in Bylaw 11 of the RC Bylaws. A CSA will be put up for Members' consideration. We do not envisage the existing licence-holders in the

					urban area will counter any difficulty in complying with the provisions. As regards control over disinfection of pool water, provision of testing kits and inspection book provided in Bylaws 17(A), 17B and 17C of the RC Bylaws, the control can be imposed through licensing conditions and need not be stipulated in the Regulation.
		15	To consider deleting the section which requires the sterilization of bathing costumes and towels supplied to bathers	24.9.99	For protecting public health, the provision has to be retained as some swimming pools provide towels to swimmers.
Undertakers of Burials Regulation	RC	7	To consider removing the age limit of 21 concerning the refusal to grant or revocation of licence	24.9.99	We consider that a minimum age should be stipulated and this should be lowered to 18. A CSA will be introduced for Members' consideration.
		8	To consider improving the drafting of the section adopting the version in the existing UC Bylaws	24.9.99	Agreed. A CSA will be put up for Members' consideration.

## **The Administration's Preliminary Comments on Draft Committee Stage Amendments Proposed by Members**

### **CSAs proposed by Hon. Li Wah-ming [Paper No. CB(2)245/99-00(03)]**

#### ***Schedule 3, section 256: Restriction on alteration of premises or fittings after grant of licence***

During the discussion at the Bills Committee of 5 November, it appeared that Members agreed that the phrase "material deviation" was preferred to "unreasonable deviation". On the understanding that the proposed amendment is to add the word "material" before "deviation" in section 34(a) of the Food Business Regulation, we have no objection to the proposed amendment.

#### ***Schedule 3, section 462: Conditions for the issue of offensive trade licence***

We have no objection to the general thrust of the proposed amendment to the Offensive Trades Regulation. Our Senior Assistant Law Draftsman has passed to the Legal Advisor to LegCo a suggestion on how to improve the wording of the amendment.

#### ***Schedule 3, section 690: Power of manager to direct persons in certain cases to leave a stadium***

We have reservation about the proposed repeal of section 7(1)(a)(i) of the Stadium Regulation which empowers the stadium manager to direct any person whom he reasonably believes to have committed or be about to committed any offence punishable under the Summary Offence Ordinance (Cap.228) to leave the stadium. The provision enables the stadium manager to prevent spectators from bringing into the stadium items which could be used to cause disorder such as metal poles, sticks, stone, other missile and aerosol spray items. We need this authority to enable the manager to prevent any possible breach of public order in a stadium.

#### **Schedule 4, section 5: Constitution of Municipal Services Appeals Board**

We understand that the latest thinking of Hon. Li Wah-ming is that the Vice Chairmen of the 18 District Councils (DC) should become ex-officio members

of the Municipal Services Appeals Board (MSAB) and that one of these ex officio members should be nominated to attend the hearing of each appeal case. We agree in principle to enhancing the input of DC members in the MSAB. We are still considering how this could best be achieved. One option is to appoint more DC members (including DC Chairmen and Vice Chairmen) as members of the MSAB and to advise the Chairman of the MSAB to nominate at least one DC member to hear any appeal. Another option is to make the DC Chairmen and/or Vice Chairmen ex-officio members and to nominate one of them to attend each hearing in place of the existing PMC member on the Board. We shall decide on the preferred approach as soon as possible.

**Further CSAs proposed by Hon. Li Wah-ming [Paper No. CB(2)376/99-00(02)]**

***Schedule 3, section 61: Provision for hearing objections where application for crematorium in certain locations***

We understand that Mr Li intends to revise the draft CSA to clarify the procedure for gazetting a proposal for adding any facility which is directly related to the burning of human remains in a government crematorium. We have reservation about the proposal of extending the jurisdiction of MSAB to cover such objections because the facility is added to an existing crematorium and sufficient consultation will be undertaken before a decision is made. The Administration will consult the relevant District Council(s) before finalising any proposal to add new facilities in an existing crematorium, if the addition has any significant impact on the local environment. Such a proposal will also likely be discussed at the relevant LegCo Panel and subject to the scrutiny of the Finance Committee of the Legislative Council where funding approval has to be sought.

The proposal to subject “the addition of any facility which is directly related to the burning of human remains” to the objection procedure might result in unnecessary delay in implementing minor improvements of the facilities in the crematoria.

***Schedule 3, section 615: Letting of market stalls: appeal mechanism for disputes over market stall rentals***

It would not be appropriate for the MSAB to hear appeals on market stall rentals. MSAB members are generalists who do not have expert knowledge on such matters. Any revision of market stall rentals will be set with reference to the

new open market rent (OMR) assessed by the Rating and Valuation Department (RVD). We believe that an objective yardstick is important in determining market stall rental. RVD is in the best position to make an objective OMR assessment as it has comprehensive information on open market rents. In future, any market stallholder who disagrees with the OMR assessed by the RVD upon renewal of stall agreement may put forth his reasons and request for a review of the OMR assessment. RVD will take into account the submission of the stallholder in reassessing the OMR of the stall. The proposed mechanism of review by RVD has worked reasonably well with the Provisional Urban Council. It should be noted that the new Food and Environmental Hygiene Department will review the policy of market stall rentals after the reorganisation. We will report to the relevant LegCo panel on the outcome of our review.

**CSAs proposed by Hon. Lee Wing-tat [Paper No. CB(2)321/99-00(01)]**

***Schedule 3, section 446: Times during which museums are open to public***

The proposal to fix the weekly closing day of all museums on Tuesdays is not user-friendly. Moreover, tourists who stay in Hong Kong for a short period and find all museums closed on Tuesday might be aggrieved. Among the 12 existing PMC museums, 2 close on Mondays, 6 close on Tuesdays, 1 closes on Wednesdays, 2 close on Thursdays and 1 closes on Fridays.

Currently, the major museums (History Museum, Arts Museum, Science Museum and Space Museum) only close on the first and second days of the Lunar New Year. However the 8 smaller museums close on four additional public holidays (namely, Christmas Day and the day following, New Year Day and the third day of the Lunar New Year). We consider that flexibility in opening times should continue to be allowed in view of the different scale, locations and characteristics of the museums.

We agree that the opening times of museums should be kept under review to examine the feasibility of increasing the overall opening hours. However, an inflexible schedule without due regard to use patterns and cost-effectiveness will result in ineffective use of resources.

***Schedule 3, section 500: Vehicles***

We have no objection to the proposed amendment.

***Schedule 3, section 559: Government or Director not liable for loss of or damage to articles***

We have reservation about the proposed repeal of the provision. The relevant provisions in the UC and RC Bylaws were amended by the then Municipal Councils in 1995/96 to ensure that the Government and the Councils' liabilities for losses or damages to articles inside graves were excluded from civil action in the event of natural disasters such as landslips. Public cemeteries are all outdoor, some of which are even without boundary walls/fences. While the Government will fulfil its duties by re-instating or relocating graves damaged by natural disasters such as typhoons and landslips, it cannot possibly ascertain what articles are placed inside the graves and be liable for losses or damages to articles inside or above the graves. The deletion of the section could lead to unwarranted work in the investigation and processing of unjustified or unfounded claims. There is no convincing reason for reverting the decisions of the Municipal Councils made fairly recently.

***Schedule 3, section 591 and 597: Conduct in public conveniences and Saving***

We have no objection to the proposed CSAs to the Public Conveniences (Conduct and Behaviour) Regulation

**CSAs proposed by Hon. Ambrose Cheung [Paper No. CB(2)349/99-00(01)]**

**General Comments**

We have explained to the relevant LegCo Panels and the Bills Committee on numerous occasions the reasons for objecting to the "One (Urban Services) Council, One (Urban Services) Department" proposal. Briefly, our main concerns are that:

- (a) the proposed "Urban Services Department" underpinning the so called "Urban Council" would comprise some 26 000 staff. Because of its huge size, the department would be difficult to manage;
- (b) the proposal fails to address the problem of fragmentation of responsibilities for food safety and environmental hygiene. To put food safety and environmental hygiene functions under the Government and the proposed Urban Council respectively would compromise efficiency and undermine

effective co-ordination; and

- (c) there would continue to be overlapping of responsibilities between the proposed Council, the Home Affairs Bureau and other statutory and advisory bodies (such as the Arts Development Council) in the areas of arts and sports. It fails to address the problems raised by the arts and sports community concerning the lack of overall culture and sports policies and less than optimal use of resources.

The proposed CSAs have not covered many provisions in the Bill which need to be amended in order that the new structure proposed by Mr Cheung can function and work properly. The CSAs, read with the Bill, do not constitute a comprehensive or coherent legislative scheme. Mr Cheung's CSAs are quite inadequate to give effect to his proposal. If they are enacted, they would create confusion and give rise to many uncertainties, arguments and grievances.

### ***Specific Comments***

#### ***Clause 2: Interpretation***

“Other municipal services” is defined as “functions and powers of the Urban Council other than food safety matters”. This implies that food safety matters also fall within the powers and functions of the Urban Council and is not consistent with the other provisions such as clause 6A and 6B.

#### ***Clause 5(1): Early termination of existing contracts***

The proposal to allow the other contracting party to terminate an agreement or contract with the Provisional Municipal Councils (PMCs) by giving at least 30 days notice in writing may have undesirable consequences. It may be exploited by contractors who want to avoid their contractual obligations. This may affect the continuity of services and result in loss to the public as well as the Government.

#### ***Clauses 6A and 6B: Vesting of property, rights and liabilities and other savings in relation to food safety matters and other municipal services***

It appears that these clauses intend to transfer the property, rights and liabilities of the PMCs to Government in respect of food safety matters and those in relation to other municipal services to a new Urban Council (UC). Such a proposal is impracticable because:

- (a) in respect of some of the existing contracts such as contracts to supply goods and services, the contracting parties (including the PMCs) had not distinguished whether the contract was for the purpose of food safety matters or other municipal services when they entered into the contract. In doubtful cases, the contracting parties would not be able to know from the CSA whether the Government or the UC or neither of them would take over the contract and it may not be in the interest of the parties to terminate the contract;
- (b) food safety matters are closely related to other municipal services. It is not possible to apportion and identify which property of PMCs is in relation to food safety matters and which property is in relation to other municipal services. The same problem applies to such matters as guarantees, indemnities, insurance policies, money assets, intellectual property rights; and
- (c) the legal claims against the PMCs may not necessarily be confined to food safety matters or other municipal services. For instance, the PMCs may be sued on liabilities incurred by them as legal persons (e.g. liability in tort) which do not arise out of their statutory functions. It appears that neither the Government nor the UC could be held liable in such circumstances.

***Schedule 4 [Schedule 3 of the Bill], Section 66: General provisions as to licences, etc.***

We propose to set up a Licensing Appeals Board (LAB) to replace the review committees of the PMCs under this clause. It appears from Mr Cheung's proposed CSA that both a review committee of the UC and the LAB would be set up. The proposed three-tier review/appeal mechanism (i.e. review committee, LAB and Municipal Services Appeals Board) will lead to more duplication and may subject the appellant to unnecessarily lengthy and costly appeal procedures.

***Third Schedule: Designated authorities***

*The CSA proposes to transfer functions related to food safety matters to the "Director of Food". We do not have a Director of Food in the civil service nor a Department of Food in the government structure.*

The new Third Schedule cannot work if the repeal of references to "public body" in section 3 of the Public Health and Municipal Services Ordinance

(Cap. 132) proposed in the Bill are enacted.

***New Schedule 1, Clauses 7: Urban Council and Clause 17: Election of first Chairman and Vice-Chairman***

Clause 7 proposes that the UC will have 80 members among whom 59 are elected through universal suffrage. Clause 17 proposes that the first meeting of the UC is to be held 7 days after the appointed day. There is however no provision on how an election of the 59 members is to be held and who are eligible to be elected members.

***Other Comments***

It appears that the CSAs have not covered all the provisions in the Bill (including the Schedules) which have the effect of transferring the powers from the PMCs to Government, resulting in a lot of contradictions in the statutory provisions. For example, the references to the Urban Council and “public body” repealed by the Bill may have to be reinstated. The references to the Director of Food and Environmental Hygiene and the Director of Leisure and Cultural Services in the subsidiary legislation of the Public Health and Municipal Services Ordinance (Cap. 132) as amended by the Bill should also be amended. Otherwise, they would be inconsistent with the proposed CSAs to the Third Schedule of Cap.132.

The CSAs have not followed the commonly adopted drafting conventions. For example, the new Clause 14 which states that “Schedule 1 shall become Schedule 2” etc. may cause confusion about the numbering of the Schedules to the Bill. The numbers of the Schedule to the Bill cannot be changed by merely adding a new section to the main clauses as proposed. Amendments will have to be made to the text of the Bill (i.e. textual amendments) to effect a change in the numbering.

Constitutional Affairs Bureau  
17 November 1999