

# *Legislative Council*

LC Paper No. CB(2)267/99-00  
(These minutes have been  
seen by the Administration)

Ref : CB2/SS/11/98

**Legislative Council  
Subcommittee to study three items of  
Subsidiary legislation gazetted on 9 July and 20 August 1999**

**Minutes of meeting  
held on Tuesday, 5 October 1999 at 10:45 am  
in the Chamber of the Legislative Council Building**

**Members Present** : Hon Ambrose LAU Hon-chuen, JP (Chairman)  
Hon Fred LI Wah-ming, JP  
Hon Ronald ARCULLI, JP  
Hon SIN Chung-kai

**Member Absent** : Hon James TO Kun-sun

**Member Attending** : Hon Margaret NG

**Public Officers Attending** : Post Office (Amendment) Regulation 1999  
  
Mr Allan CHIANG  
Acting Postmaster General  
  
Ms Dora FU  
Principal assistant Secretary for Economic Services  
  
Mr Allen LEUNG  
Chief Treasury Accountant, Hong Kong Post  
  
Miss Leonora IP  
Government Counsel

Telecommunication (Amendment) (No.2) Regulation 1999

Ms Eva CHENG  
Deputy Secretary for Information Technology and Broadcasting

Mr Eddie MAK  
Principal Assistant Secretary for Information Technology and  
Broadcasting

Mr T Y CHAN  
Chief Telecommunications Engineer (Advisory and Planning)

Solicitors (Professional Indemnity) (Amendment) Rules 1999

Representatives of the Law Society of Hong Kong

Mr Anthony CHOW (Chairman)  
Mr Mark BRADLEY  
Mr Patrick MOSS  
Ms Rashida MOOTEE

**Clerk in Attendance** : Mrs Percy MA  
Chief Assistant Secretary (2)3

**Staff in Attendance** : Miss Connie FUNG  
Assistant Legal Adviser 3

Mrs Eleanor CHOW  
Senior Assistant Secretary (2)7

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Action  
Column

**I. Election of Chairman**

Mr LI Wah Ming, the member of the highest precedence in the Subcommittee, presided the meeting and called for nominations for the chairmanship of the Subcommittee.

2. Mr Ambrose LAU was nominated by Mr LI Wah-ming and the nomination was seconded by Mr Ronald ARCULLI. As there were no other nominations, the Presiding Member declared Mr Ambrose LAU elected as Chairman of the Subcommittee.



3. The Chairman advised members that Mrs Selina CHOW had decided not to join the Subcommittee.

## II. Meeting with the Administration and the Law Society of Hong Kong

### Post Office (Amendment) Regulation 1999 (LC Paper Nos. LS 243 and 281/98-99)

4. At the invitation of the Chairman, Acting Postmaster General (PMG) briefed members on the Post Office (Amendment) Regulation 1999. He said that the Hong Kong Post Office (HKPO) used to operate remittance services but due to keen competition from banks, such services ceased in 1994. Since the HKPO had operated as a trading fund in August 1995, it was more customer-oriented and operated more commercially to sustain the viability of its business and to secure resources for future investments. To this end, the HKPO was more forward-looking in exploring business opportunities in postal and related services. Since the handover in July 1997, the HKPO had fostered a closer relationship with the China Post. In the past year, the two postal administrations considered that there were business opportunities in developing a reciprocal remittance service between Hong Kong and the Mainland. At the same time, the HKPO had also explored the possibility of re-introducing the reciprocal remittance service with the Philippine Post, given the large number of Filipino domestic helpers in Hong Kong. The Regulation sought to, inter alia, re-introduce remittance services.

5. Mr SIN Chung-kai pointed out that it was the policy of the Administration not to compete with the private sector. He asked whether the proposal was against the Administration's long-standing policy.

6. PMG responded that it was a common practice for postal administrations around the world to provide remittance services. The purpose of re-introducing remittance services was to complement the service presently offered in the private sector by providing an additional choice to people who needed the service. Postal remittance network tended to be wider and more comprehensive. There were over 50,000 and over 1,800 post offices throughout the Mainland and the Philippines respectively and their reach included remote areas without a bank. In addition, the group of customers targetted by banks and the HKPO was different. Unlike banks, the HKPO did not deal with large remittance transactions. The remittance services provided by the HKPO focused at the low end market. The ceiling for each non-local money order was prescribed in the Regulation.

#### *Viability of postal remittance services*

7. Mr LI Wah-ming asked about the projected market share of the HKPO in the remittance business and its rate of return. He also asked how the fees for handling non-

local money orders were set. Mr SIN Chung-kai expressed concern on the viability of postal remittance services, having regard to keen competition from banks.

8. PMG replied that the existing services would not be subsidizing the new remittance services. The proposed fee levels would achieve full cost recovery of the new services to be provided by existing staff of the 125 post offices. On the other hand, the new services would bring in additional revenue as they would not incur additional capital expenses and resources in the short term. As regards the proposed fees, he advised that these were comparable to those charged by banks. As banks normally charged a fixed amount on remittance services whereas the HKPO's fees would vary depending on the remittance amount, the proposed commission for a small amount of remittance charged by the HKPO would be lower than those charged by banks.

9. PMG further said that the Administration held the view that the postal remittance service would be financially viable as it had its market niche and the marginal cost of operation was minimal. In vast countries such as the Mainland, the postal network was in fact wider than the banks. While the Administration was not in a position to provide information on HKPO's market share, it was expected that the proposed remittance services for the Mainland and the Philippines were able to generate an additional revenue of \$2.3 million per year.

#### *Void non-local money orders*

10. Referring to subregulation (4), Mr SIN Chung-kai asked about the reason for amending the validity period of non-local money orders from one year to the end of the third month following the month of issue, and whether the period could be longer.

11. PMG explained that the proposed validity period followed that promulgated in the Postal Financial Services Manual of the Universal Postal Union. The amendment was necessary to safeguard the HKPO against belated claims from recipients of non-local money orders, which were treated as void by the issuing postal administration. If the recipient wished to receive payment, he might ask the sender to remit again.

12. In response to Mr SIN Chung-kai, PMG explained that on receipt of a remittance, the HKPO would issue a cheque to the recipient in Hong Kong dollars.

13. Mr LI WAH-ming asked the Administration to provide past statistics on the time taken for payment of money orders after the date of issue. PMG responded that the validity period of a money order was not to be determined unilaterally as it was subject to bilateral agreement. If the HKPO did not comply with the bilateral agreement, it would suffer loss arising from unauthorised payments.

*Exchange rates for payment of non-local money orders*

14. Mr SIN Chung-kai asked how the exchange rates for money orders were fixed. Mr LI Wah-ming expressed concern about profiteering of postal administrations as a result of exchange rates.

15. PMG said that for the two postal administrations in question, the amount of money order would be specified in US dollars for reciprocal remittance services. The HKPO would accept HK dollars received from a sender and convert it into US dollars by making reference to the rate fixed by the Hong Kong Association of Banks (HKAB) before remitting it to an overseas country. The receiving country would then convert the money order which was in US dollars into local currency before issuing the money order to the recipient. Given the very stable US dollar/HK dollar exchange rate under the Linked Exchange Rate System, it was unlikely for the HKPO to make a profit out of exchange rates. As regards the arrangements in other postal administrations, the HKPO was not in a position to comment. In response to a further question from Mr SIN, PMG said that it was for the consumers to exercise his freedom of choice and decide whether it was more economical and convenient to remit money through the banks or the HKPO.

16. In response to Mr LI Wah-ming, PMG said that the HKAB had been consulted on the proposal and they had no objection to the re-introduction of remittance service.

錯誤! 尙未定義書籤。 Members agreed to support the Post Office (Amendment) Regulation 1999.

Telecommunication (Amendment) (No. 2) Regulation 1999  
(LC Paper Nos. LS 243 and 281/98-99)

17. Deputy Secretary for Information Technology and Broadcasting (DS for ITB) briefed members on the Regulation as set out in the LegCo Brief. She said that it was the original intention of the Administration to appoint 1 September 1999 to be the day on which the Regulation would come into operation. Having considered the concerns expressed by the Panel on Information Technology and Broadcasting at its meeting on 12 July 1999, the Administration had not published the commencement notice relating to the Regulation in the Gazette. The Administration now intended to bring the Regulation into operation on 15 October 1999, the date on which the commencement notice would be published in the Gazette.

18. Members did not raise any queries on the Regulation.

Solicitors (Professional Indemnity) (Amendment) Rules 1999  
(LC Paper Nos. LS 266, 281 and 282/98-99)

19. The Chairman welcomed representatives of the Law Society of Hong Kong (Law Society). The Chairman and Mr Ronald ARCULLI declared interest as a member of the Law Society.

20. Mr Anthony CHOW, Chairman of the Law Society, explained to members that the Professional Indemnity Scheme (the Scheme) which was governed by the Solicitors (Professional Indemnity) Rules was intended to cover negligence by solicitors and their staff in their practice of the law. Currently the Scheme was managed by the Hong Kong Solicitors Indemnity Fund Limited, a company wholly owned by the Law Society. It had never been intended that the Scheme should cover other categories of claim. The purpose of the proposed amendment was to exempt the Hong Kong Solicitors Indemnity Fund Limited from providing indemnity in respect of losses arising out of claims which arose from or were connected with the fact that any computer equipment was not Y2K compliant.

21. On the operation of the Scheme, Mr Anthony CHOW said that the Scheme comprised a mutual fund and reinsurance. The amount of cover provided to each solicitor per claim was \$10 million. The first \$1 million of each claim was made from the fund and the remainder of the claim up to \$10 million was made from cover provided by re-insurers. The Law Society had been negotiating for quite a long time with the insurers to cover indemnity in respect of claims arising from Y2K problems. The insurers had responded that it was the common practice in the insurance industry that no cover was provided for a Y2K system failure, and they were not prepared to make an exception. The proposed amendment sought to reflect that negotiation.

22. In response to Mr LI Wah-ming, Mr Anthony CHOW clarified that the purpose of the current proposal was to exclude from cover provided by the Scheme any claims in respect of a failure of a firm's office system due to Y2K problems. However, it would not exclude claims against solicitors for negligent advice in relation to Y2K or any other area of practice of the law.

23. Mr LI Wah-wing asked about the channel for a consumer to lodge a claim against a law firm which had given wrong advice due to Y2K problems. Mr Anthony CHOW responded that the consumer was at liberty to take legal action against the law firm in the circumstances. He reassured members that the proposal did not seek to deprive consumers of their rights to seek legal remedy. The Rules were amended to reflect the reality of the position that the Scheme was originally not intended to cover claims arising from Y2K problems and would continue to be so.

24. Mr Ronald ARCULLI pointed out that if the fund had not been created by statute, the Law Society actually would not have had to appear before LegCo to explain its position. Like any other insurers, the scheme would be excluded from Y2K liability

under the policy practised by the insurance industry. However, given that the fund was established under the Rules, any change to the Scheme had to receive the sanction of the LegCo. Citing another example of restricting liability of insurers, Mr ARCULLI referred members to the case of LegCo being asked a few years ago to change the law in respect of the third party risks insurance scheme for motor vehicles, a statutory scheme similar to the Scheme of the Law Society. On that occasion, LegCo gave approval to limit the liability of insurers to a prescribed amount per claim, having regard to the increasing level of compensation paid by insurance companies and the amount of premium paid by consumers.

25. In response to Mr LI Wah-ming, Mr Anthony CHOW said that the Law Society had informally consulted the Consumer Council and confirmed that it was the market practice that claims arising from Y2K problems were excluded by insurers. The proposed amendment was also placed before the Chief Justice before publication in the Gazette. In response to Miss Margaret NG, he said that he was not aware of any other professional fund that was specifically declared to cover claims arising from Y2K problems. If amendments were not made to the Rules, this fund would probably be the only fund which covered claims arising from Y2K problems.

26. Mr LI Wah-ming said that the Subcommittee should seek the views of the Consumer Council on the proposed amendments. Mr SIN Chung-kai supported his view. Mr Ronald ARCULLI disagreed that there was a need to do so. He held the view that individual members could approach the Consumer Council in his personal capacity. Miss Margaret NG questioned the purpose of seeking views from the Consumer Council. She pointed out that the Law Society had full autonomy in setting its own rules and that its decision should not be subject to the views of other organizations.

27. Mr Anthony CHOW pointed out that the Rules were the Law Society's provincial rules. He questioned whether it was fair that other organizations should be consulted on every and each proposed amendment and the extent of the consultation. He expressed concern that if this sort of trend was to be started, it would make the operation of the legal profession extremely difficult. If the Subcommittee considered it necessary to consult other organisations, the Law Society wanted to understand the questions that were going to be asked. He held the view that the questions should be confined to the existing market practice. If the question was extended to say, whether the fund should also cover claims arising from Y2K problems, then the answer would tend to be affirmative from the consumer point of view. He cautioned that the Consumer Council, without knowing the background for introducing the amendment, might say something that was going to change the entire nature of the fund. The Law Society did not want to further complicate the matter.

28. Mr LI Wah-ming insisted that the Subcommittee should seek the views of the Consumer Council on the amendment proposal despite Mr Ronald ARCULLI's objection. He said that it was the normal practice of LegCo to consult relevant

organizations on proposed amendments to existing laws. Mr Anthony CHOW pointed out that the proposal made by Mr LI was rather general. He said that unless the background was explained to the Consumer Council, it would be difficult for it to give a response. Miss Margaret NG suggested that the Consumer Council should also be asked to advise specifically on the existing market practices. To facilitate the preparation of a letter to the Consumer Council, the Chairman instructed the Clerk to liaise with the Law Society with a view to preparing an information note on the Scheme. Subject to the response of the Consumer Council, the Subcommittee would decide whether a further meeting was necessary. Members noted that the expiry of the scrutiny period was 3 November 1999, unless extended to 10 November 1999 by a resolution of the LegCo.

*(Post-meeting note : After endorsement of the Subcommittee, the letter to the Consumer Council was issued on 14 October 1999. The reply from the Consumer Council and the Law Society's response to the Consumer Council's suggestions were issued to members vide LC Paper No. CB(2)183/99-00)*

29. Mr Anthony CHOW asked to put on record that the Law Society disagreed that consultation with other organizations should be made in respect of rules made by the Law Society. This case should not be taken as a precedent.

30. The meeting ended at 12:00 noon.

Legislative Council Secretariat  
3 November 1999