

立法會
Legislative Council

LC Paper No. CB(3)187/98-99

Ref. : CB(3)/SE/Airport/3

**Select Committee to inquire into the circumstances leading to
the problems surrounding the commencement of the operation of
the new Hong Kong International Airport at Chek Lap Kok
since 6 July 1998 and related issues**

**Minutes of the first meeting (open meeting)
held on Thursday, 30 July 1998 at 4:30 pm in the Legislative Council Chamber**

Members present : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Dr Hon Raymond HO Chung-tai, JP (Deputy Chairman)
Hon LEE Wing-tat
Hon Margaret NG
Hon MA Fung-kwok
Hon Ambrose CHEUNG Wing-sum, JP
Hon Christine LOH
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon LAU Kong-wah
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

Members absent : Hon Edward HO Sing-tin, JP

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (3)(SC)

Staff in attendance : Mr Jimmy MA, JP
Legal Adviser

Mr LAW Kam-sang, JP
Deputy Secretary General

Mrs Betty LEUNG
Acting Assistant Secretary General 3

Ms Eva LIU
Head, Research and Library Services Division

Mr Matthew LOO
Senior Assistant Secretary (3) (SC)

Action

I. Practice and procedure of the Select Committee
(LC Paper No. CB(3) 138/98-99(01))

The Chairman welcomed members to the first meeting of the Select Committee and invited them to give views on the paper on "Practice and Procedure".

Term of office

2. The Chairman pointed out that in accordance with the Rules of Procedure, every select committee should be dissolved upon reporting to the Council or at the end of the session. If the committee was of the opinion that it would not be able to complete consideration of the matter before the end of the session, it should so report to the Council.

Conduct of public hearings

Examination of witnesses on oath

3. Legal Adviser (LA) advised that the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) provided that witnesses might be examined on oath. It was up to the Select Committee to decide whether such an arrangement would be required. In general, a witness would be examined on oath if the evidence to be given by him would likely involve the reputation or legal liability of a third party. Responding to the Chairman, LA said that witnesses were normally examined on oath in the inquiries conducted by the former Legislative Council. Members agreed to adopt the same practice for the Select Committee.

Privileges of witnesses

4. LA advised that unless excused under section 13 of Cap. 382 or justifiably claiming privilege from disclosure of evidence on the ground of public interest immunity, a witness summonsed under section 9 of Cap. 382 had to answer all lawful and relevant questions from the Select Committee. He pointed out that:

- (a) under section 13(2) of Cap. 382, where a witness refused to answer any question put to him by a committee on the ground that the question was of a private nature and did not affect the subject of inquiry, the chairman of the committee might report such refusal to the President of the Legislative Council who might excuse or order the answering of such question; and
- (b) where a witness refused to answer any question put to him by a committee and claimed privilege on the ground that the giving of the answer would be contrary to the public interest, the question would be determined by the committee in accordance with the procedure provided in the resolution of the Council made under section 15 of Cap. 382 (Appendix 3 of LC Paper No. CB(3) 138/98-99(01)).

5. Responding to some members, LA advised that unless excused under section 13 of Cap. 382, a witness who refused to answer any lawful and relevant question put by a committee could be charged with contempt under section 17 and that a witness who presented any false evidence to the committee intentionally would constitute an offence under section 18.

6. As the Commission of Inquiry on the New Airport (the Commission) would be conducting inquiry with a scope similar to that of the Select Committee, a member was concerned about a possible situation under which a witness, after presenting the evidence in camera to one of the two bodies, was requested by the other body to present the same evidence in public. In response, LA said that the possibility of such a scenario could, in theory, exist. For example, under the Commissions of Inquiry Ordinance (Cap. 86), the Commission might prohibit the disclosure by any person attending before it of all or part of the material received by it. However, the person, in complying with a lawful order by the Select Committee to present the same material in its public hearing, was protected under Cap. 382 so that his compliance with the order would not be admissible as an evidence against him in proceedings for any offence. Responding to a follow-up question from the member, LA advised that though there was no legal mechanism in place to deal with the possible scenario, the two bodies concerned were expected to exercise their statutory power in the public interest.

Premature publication of evidence

7. Referring to paragraphs 9(i) and 16 of the paper, the Chairman reminded members that:

- (a) the privilege in Cap. 382 was available only within the context of the hearings of the Select Committee. All members should therefore refrain from making comments outside the proceedings;
- (b) all members should not make public any information discussed during internal deliberations, including those contained in the draft report of the Select Committee; and
- (c) in accordance with Rule 81 of the Rules of Procedure, the evidence taken before the Select Committee and documents presented to it should not, except in the case of its meetings held in public, be published by a member of the Select Committee or by any other person before the Select Committee had presented its report to the Council. Any member who failed to comply with this Rule might be admonished or reprimanded by the Council on a motion to that effect.

8. Members noted that these provisions were necessary for maintaining the integrity and credibility of the Select Committee and agreed that before reporting to the Council by the Select Committee, the Chairman would, on its behalf, brief the media on the progress of the inquiry when necessary and individual members would not express their views outside the meetings of the Select Committee.

9. Responding to a member's suggestion of issuing a code of practice / code of conduct for the Select Committee, the Chairman said that previous select committees had considered the same suggestion and concluded that members should be trusted to exercise self-control for maintaining the integrity and credibility of the select committee. Members considered this approach appropriate.

10. In response to a member, Deputy Secretary General advised that staff of the Secretariat would also observe the confidentiality of the evidence given or papers presented to the Select Committee. In this connection, the Manual on Office Practice of the Secretariat provided that any staff who failed to comply with the principle of confidentiality would be subject to disciplinary actions.

Watching brief

11. Referring to paragraph 17 of the paper, the Chairman invited members

to give views on the proposal of asking members of the Select Committee or staff to attend the hearings of the Commission and the two alternatives set out in the paper on the way forward.

12. Members focused their discussion on the first alternative in paragraph 17(a) of the paper. They agreed that the Select Committee should operate independently and proceed with its own inquiry despite the fact that inquiry proceedings of the Commission had begun. Instead of appointing members or staff to attend hearings of the Commission, a member proposed to ask for the relevant verbatim transcripts and papers. A majority of members considered those documents useful references for the Select Committee.

13. On the question of whether the Commission's verbatim transcripts could be adopted as evidence by the Select Committee, LA advised that as the Select Committee was not a judicial body and the nature of its inquiry was not that of judicial proceedings, it was not bound by the usual rules of evidence and it might take into account any relevant information. However, only documents submitted at the proceedings of the Select Committee could be taken as evidence and protected under Cap. 382.

14. After deliberations, the Chairman concluded that:

- (a) the Select Committee would not appoint members or staff to attend the hearings of the Commission;
- (b) the Clerk would write to the Commission requesting it to provide the verbatim transcripts of all of its hearings and papers referred to in the transcripts and enquiring about the fees involved; and
- (c) the Select Committee had no objection in principle to releasing the verbatim transcripts of its public hearings to other statutory bodies but a final decision would be made upon receipt of such a request.

Clerk

II. Support services for meetings
(LC Paper No. CB(3) 138/98-99(02))

15. The Select Committee agreed that:

- (a) verbatim transcripts of its public hearings should be taken in the original language and so published in its report. Cassette tapes recording the simultaneous translation would be kept in the Legislative Council Library for use by the public;

- (b) written evidence should be submitted in its original language and, where possible, a translation would be requested. However, the translation would only be used as reference; and
- (c) information papers provided by the Government should be submitted in both Chinese and English, in line with existing practice.

III. Work plan of the Select Committee

Relevant papers

16. Members noted the following papers:

Papers issued before the meeting

- (a) "Scope of inquiry of the Select Committee proposed by the Democratic Party" (LC Paper No. CB(3) 138/98-99(04));
- (b) "Matters Relating to the Opening of the New Airport at Chek Lap Kok" prepared by the Research and Library Services Division of the Secretariat (LC Paper No. CB(3) 90/98-99(02));
- (c) "Legislative Council Brief on the appointment of the Commission of Inquiry on the New Airport" (LC Paper No. CB(3) 138/98-99(05));

Papers tabled at the meeting

- (d) "Scope of inquiry - Proposed issues for consideration of the Select Committee" prepared by the Secretariat (LC Paper No. CB(3) 138/98-99(03));
- (e) "Scope of inquiry of the Select Committee proposed by the Democratic Alliance for Betterment of Hong Kong" (LC Paper No. CB(3) 148/98-99(01)); and
- (f) "Preliminary proposal for inquiry into the new airport information technology systems" prepared by Hon SIN Chung-kai (LC Paper No. CB(3) 148/98-99(02)).

(Post-meeting note : The papers tabled at the meeting were circulated to members vide LC Paper No. CB(3) 148/98-99 on 31 July 1998.)

Scope of inquiry

17. The Chairman invited members to give views on the paper on "Scope of inquiry - Proposed issues for consideration of the Select Committee".

18. A member was concerned whether the problem area stated in paragraph 2(i) of the paper, i.e. "responsibilities and liabilities", would cover civil claims against the Airport Authority (AA) or relevant bodies initiated by individual parties such as air cargo service operators. LA reiterated that the Select Committee was not a judicial body and that any conclusion it made would not have legal consequences. He also pointed out that according to the Rules of Procedure, Members should not ask questions which reflected on the decision of a court of law or would be likely to prejudice a case pending in a court of law. He advised that the Select Committee should avoid inquiring into these possible claims.

19. Regarding the proposed list of information to be obtained by the Select Committee at the preliminary stage (Appendix of the paper), some members proposed to obtain the following information from the parties concerned:

- (a) the acceptance and commissioning procedures, and relevant reports in respect of the systems in the new airport such as Flight Information Display System and baggage handling system;
- (b) copies of franchised service contracts, including cargo and apron services, and their awarding procedures; and
- (c) all correspondence between AA and the Hong Kong Air Cargo Terminals Limited in the past six months regarding the opening and operation of the new airport.

On items (a) and (b) above, Head, Research and Library Services Division (H(RL)) advised that those might be covered under paragraph 2 of the proposed list of information to be obtained. On item (c) above, the Chairman concluded that the Select Committee would decide at a future meeting whether it was necessary to obtain the relevant correspondence.

20. After discussion, the Select Committee agreed, at this preliminary stage, that:

- (a) the scope of its inquiry would cover the nine major problem areas listed in paragraph 2 of the paper, and the overall economic loss of Hong Kong; and

- (b) the information listed in the Appendix of the paper be obtained from the relevant parties.

Action
Clerk

21. In response to a member, H(RL) advised that the reason for seeking the relevant information from the relevant parties in respect of the period from April 1990 until the present time was because the Provisional Airport Authority was established in April 1990.

22. The Chairman said that the Secretariat would, based on the information obtained from the relevant parties, summarize the background information in respect of the ten areas of concern for the consideration of the Select Committee at the next meeting.

Secretariat

IV. Date of next meeting

23. The Select Committee decided to hold its second meeting in camera on Tuesday, 8 September 1998 at 2:30 pm.

V. Any other business

Visit to the new airport

24. The Select Committee agreed to schedule a visit to the new airport in the afternoon of Tuesday, 15 September 1998. The details of the visit would be finalized at the second meeting.

Press cuttings

25. As directed by the Select Committee, the Clerk would arrange circulation of relevant press cuttings to members for reference.

Clerk

26. The meeting ended at 6:40 pm.