

立法會
Legislative Council

LC Paper No. CB(2) 2597/03-04

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 26th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 28 May 2004**

Members present :

Hon Miriam LAU Kin-ye, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Martin LEE Chu-ming, SC, JP
Dr Hon Eric LI Ka-cheung, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kwok-keung, JP
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Dr Hon YEUNG Sum
Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBS, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo

Hon SZETO Wah
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok, JP
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent :

Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon HUI Cheung-ching, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon YEUNG Yiu-chung, BBS
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, SBS, JP
Hon IP Kwok-him, JP
Hon MA Fung-kwok, JP

Clerk in attendance :

Mrs Justina LAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3

Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Miss Kathleen LAU	Chief Public Information Officer
Ms Anita SIT	Chief Council Secretary (1)6
Mrs Constance LI	Chief Council Secretary (2)5
Mrs Betty LEUNG	Chief Council Secretary (3)1
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Anita HO	Assistant Legal Adviser 2
Mr KAU Kin-wah	Assistant Legal Adviser 6
Miss Lolita SHEK	Senior Council Secretary (2)7

Action

I. Confirmation of the minutes of the 25th meeting held on 21 May 2004
(LC Paper No. CB(2) 2515/03-04)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration (CS)

2. The Chairman said that she had informed CS that as three Bills Committee had completed their work, the first three Bills Committees on the waiting list could commence work.

III. Legal Service Division report on subsidiary legislation gazetted on 21 May 2004
(LC Paper No. LS 79/03-04)

3. The Legal Adviser said that there were two items of subsidiary legislation, including one Commencement Notice, gazetted on 21 May 2004 and to be tabled in Council on 2 June 2004.

4. The Legal Adviser explained that by the Probation of Offenders (Approved Institution) (Consolidation) (Amendment) Order 2004, the Schedule to the Probation of Offenders (Approved Institution) (Consolidation) Order (Cap. 298 sub. leg. B) was amended by repealing "The Kwun Tong Probation Hostel". The Order would come into effect on 30 June 2004.

5. The Legal Adviser further explained that the Administration had come to the view that the services provided by the Hostel could be more effectively provided by the non-governmental sector.

Action

6. As regards the Deposit Protection Scheme Ordinance (Commencement) Notice 2004, the Legal Adviser said that by this Notice, the Secretary for Financial Services and the Treasury (SFST) had appointed 22 May 2004 as the date on which certain provisions of the Deposit Protection Scheme Ordinance (7 of 2004) would come into effect.

7. The Legal Adviser said that no difficulties had been observed in the legal or drafting aspects of these two items of subsidiary legislation.

8. Members did not raise any queries on these two items of subsidiary legislation.

9. The Chairman said that the deadline for amending these items of subsidiary legislation was 30 June 2004, or the first meeting of the Legislative Council (LegCo) in the next session, if extended by resolution.

IV. Further business for the Council meeting on 2 June 2004

Questions

(LC Paper No. CB(3) 639/03-04)

10. The Chairman said that Mr Albert HO and Mr Martin LEE had replaced their previous questions.

V. Business for the Council meeting on 9 June 2004

(a) Questions

(LC Paper No. CB(3) 640/03-04)

11. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 9 June 2004.

(b) Bills - First Reading and moving of Second Reading

12. The Chairman said that no notice had been received yet.

(c) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

(i) Hong Kong Sports Development Board (Repeal) Bill

(ii) Airport Authority (Amendment) Bill 2004

Action

13. The Chairman said that the relevant Bills Committees had reported at the last House Committee meeting on 21 May 2004, and Members did not raise objection to the resumption of the Second Reading debate on the two Bills.

(d) Government motion

Proposed resolution to be moved by the Secretary for the Environment, Transport and Works under the Fixed Penalty (Criminal Proceedings) Ordinance

(Wording of the proposed resolutions issued vide LC Paper No. CB(3) 644/03-04 dated 25 May 2004.)

14. The Chairman said that the relevant subcommittee had examined the proposed resolution and reported at the last House Committee meeting on 21 May 2004. Members did not raise objection to the Secretary for the Environment, Transport and Works moving the proposed resolution.

(e) Members' Bills - First Reading and moving of Second Reading

Wing Hang Bank, Limited (Merger) Bill

15. The Chairman said that Dr David LI had given notice to introduce the above Bill into the Council on 9 June 2004. The House Committee would consider the Bill at its meeting on 11 June 2004.

16. Mr Ambrose LAU declared that he was a non-executive director of Wing Hang Bank, Limited.

(f) Members' motions

(i) Motion to be moved by Hon LEE Cheuk-yan

17. The Chairman said that Mr LEE Cheuk-yan had been allocated a debate slot. The draft wording of Mr LEE's motion was tabled for Members' reference, pending the President's approval.

(ii) Motion on "Enhancing the attractiveness of Hong Kong to tourists"

(Wording of the motion issued vide LC Paper No. CB(3) 646/03-04 dated 27 May 2004.)

18. The Chairman said that the above motion would be moved by Mr Howard YOUNG and the wording of the motion had been issued to Members.

Action

19. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 2 June 2004.

VI. Reports of Bills Committees and subcommittees

(a) Report of the Bills Committee on Inland Revenue (Amendment) Bill 2000

(LC Paper No. CB(1) 1927/03-04)

20. Dr Eric LI, Chairman of the Bills Committee, said that the Bills Committee had completed scrutiny of the Inland Revenue (Amendment) Bill 2000.

21. Dr LI informed Members that the Bills Committee was most concerned about the following areas -

- (a) deduction of self-education expenses from the assessable income for salaries tax;
- (b) amendments relating to royalty income; and
- (c) rules governing deduction of interest expenses from chargeable profits.

22. Dr LI said that in response to members' concerns, the Administration had agreed to move Committee Stage amendments (CSAs) to extend the scope of self-education expenses under clause 4 of the Bill.

23. Regarding the royalty income, Dr LI further said that the accounting profession had expressed concern about the proposed section 15(1)(ba), which deemed a person to have taxable profits which was derived outside Hong Kong. The accounting profession objected to the proposed section and considered it a departure from the territorial source principle of the Hong Kong tax system. After the Administration's explanation, most members of the Bills Committee accepted that the amendment would not have significant impact on investments in Hong Kong. Dr LI added that he had requested the Secretariat to arrange for clause 5 and the relevant consequential amendments to be voted on separately at the Committee Stage.

24. Dr LI said that the most controversial part of the Bill was the proposed amendments to the anti-avoidance provisions on deduction of interest expenses from chargeable profits. The Real Estate Developers Association of Hong Kong (REDA) and Hong Kong General Chamber of Commerce (HKGCC) had expressed strong reservations about the need and justification for the proposed provisions to disallow deduction from chargeable profits of interest expenses

Action

on debt instruments held by a controlling shareholder of the issuing corporation. In their view, the proposed section was unfair to the controlling shareholders of a Hong Kong company, and would hamper the development of the local debt market.

25. Dr LI further said that the Administration had maintained the view that the proposed amendments were necessary in order to combat tax avoidance. The Administration considered that the existing anti-avoidance provisions in section 61A of the Ordinance were far from effective because of its highly restricted scope of application.

26. Dr LI added that the Bills Committee had not taken a position on the issues relating to interest expenses on marketable debt instruments. While Mr SIN Chung-kai had indicated support for the Administration's proposal, other members of the Bills Committee had said that they needed more time to examine the possible implications of the proposal and had requested the Administration to further discuss with the business sector. However, the Administration had made it clear that it would not amend its proposal. It had already informed the Chairman of the House Committee in writing that it intended to resume the Second Reading debate on the Bill on 16 June 2004.

27. Dr LI said that as all issues had been thoroughly discussed, the Bills Committee supported the resumption of the Second Reading debate on the Bill. The Bills Committee also agreed that separate voting for the relevant clauses during the Committee Stage should be arranged.

28. Mr CHAN Kam-lam said that he was a member of the Bills Committee and he supported the Administration taking measures to combat tax avoidance. He further said that members of the Bills Committee had urged the Administration to further discuss with the business sector, in particular REDA and HKGCC, to work out an alternative proposal which would safeguard government revenue from deliberate tax avoidance schemes and not cause unnecessary inhibition to genuine commercial transactions.

29. Ms Audrey EU said that she was a member of the Bills Committee, and she supported in principle the Administration's proposed amendments. Ms EU explained that as the Bills Committee had recently received submissions which raised objection to the Administration's proposal, she had to study all these submissions and the implications before taking a position on the matter.

30. The Chairman said that she was also a member of the Bills Committee. She pointed out that some members who expressed reservations about individual provisions in the Bill did not object to the principle of introducing measures to combat tax avoidance. They were however concerned that interest expenses for genuine commercial purposes might not be deductible under certain provisions of the Bill.

Action

31. Dr LI said that there were differences in the views on the definition of tax avoidance arrangements. The business sector was of the view that some arrangements were made for genuine commercial purposes, and the tax savings so achieved should not be regarded as tax avoidance.

32. Mr Abraham SHEK said that he was not a member of the Bills Committee, but he had attended the last meeting of the Bills Committee as a representative of REDA. Mr SHEK explained that REDA did not object to strengthening anti-avoidance provisions, but was of the view that the proposed amendments would have the effect of discriminating against the controlling shareholders of a Hong Kong company by treating them differently from normal investors. Mr SHEK further said that at a previous meeting with the Administration, REDA was given the understanding that the Administration was prepared to consider amending the Bill to enable taxpayers to deduct interest before profit tax in certain circumstances. However, the Administration had now refused to amend its proposal.

33. The Chairman informed Members that SFST had indicated his intention to resume the Second Reading debate on the Bill at the Council meeting on 16 June 2004. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 7 June 2004.

(b) Interim report of the Subcommittee on the United Nations Sanctions (Liberia) Regulation 2003
(LC Paper No. CB(2) 2507/03-04)

34. Miss Margaret NG, Chairman of the Subcommittee, said that the Subcommittee was concerned about the arrangements for implementing resolutions of the Security Council of the United Nations (UNSC) in relation to sanctions in Hong Kong. Miss NG explained that after 1 July 1997, regulations for implementing these resolutions in Hong Kong were made by the Chief Executive (CE) under the United Nations Sanctions Ordinance (Cap. 537) (UNSO) on the instruction of the Ministry of Foreign Affairs (MFA) of the People's Republic of China. Members had expressed concern that such regulations were not subject to approval or amendment by LegCo, even though they purported to have serious penal effect, and to confer vast powers of investigation on unspecified authorized officers .

35. Miss NG added that the Subcommittee considered that since CE's power to make regulations was predicated upon the instruction from MFA, the instruction should be provided to LegCo as a standard procedure to enable Members to assess whether the regulation had given effect to the relevant instruction in full. However, the Administration had advised that it was inappropriate to release the instruction, which was an internal correspondence, to persons outside the Administration. Miss NG said that the Subcommittee

Action

was not convinced by the Administration's explanations and had requested it to provide further justifications as to why it was inappropriate to disclose the MFA instruction.

36. Miss NG further said that section 3(1) of UNSO provided that CE would make regulations to give effect to a relevant instruction given by MFA, and this was tantamount to conferring CE a power to enact laws. The Subcommittee was concerned about the constitutional problem to place the legislative power in the hands of the executive, and whether the provision was consistent with the separation of powers between the legislature and the executive under the Basic Law. The Subcommittee considered it necessary to amend UNSO.

37. Miss NG added that the Subcommittee was seeking the views of experts on the legal and constitutional issues arising from the existing arrangements for implementing resolutions of UNSC in relation to sanctions in Hong Kong, and whether and how UNSO should be amended. The Subcommittee would provide a further report to the House Committee after concluding its deliberations.

VII. Position on Bills Committees/subcommittees

(LC Paper No. CB(2) 2514/03-04)

38. The Chairman said that there were 14 Bills Committees and seven subcommittees in action, as well as six Bills Committees on the waiting list.

39. The Chairman said that there was a vacant slot after the Bills Committee on Inland Revenue (Amendment) Bill 2000 had reported on its work under agenda item VI(a) above. She invited Members' views on whether the Bills Committee on Criminal Procedure (Amendment) Bill 2004 on the waiting list should commence work.

40. Mr SIN Chung-kai asked whether it was possible for the Bills Committee on Criminal Procedure (Amendment) Bill 2004 to complete its scrutiny work in time for resumption of Second Reading debate at the last Council meeting.

41. Miss Margaret NG said that the proposals contained in the Bill had been discussed by Members on various occasions and there was consensus on most of the provisions therein. However, it was necessary to seek clarification from the Administration on certain issues relating to the Bill, for instance, whether there should be rules or guidelines on the early release of a prisoner. Miss NG further said that the prisoners concerned had been waiting for a long time to know the minimum term that they had to serve. Miss NG considered that the Bills Committee should commence work immediately so that its

Action

scrutiny work could be completed in time for resumption of Second Reading debate at the last Council meeting.

42. The Chairman proposed that the Bills Committee should commence work. Members agreed.

VIII. Report of the Panel on Administration of Justice and Legal Services on procedure for endorsement of removal of judges by the Legislative Council under Article 73(7) of the Basic Law
(LC Paper No. CB(2) 2417/03-04)

43. Miss Margaret NG, Chairman of the Panel, said that the Panel had proposed a procedure for endorsement of removal of judges by LegCo which was essentially the same as that for endorsement of appointment of judges. The comments of the Administration, the Judiciary Administration and the two legal professionals bodies had been sought on the proposed procedure. The Panel had noted the view of the Law Society of Hong Kong about the need for a subcommittee of the House Committee to discuss the recommendation of the relevant tribunal to remove a senior judge. The Panel was of the view that the proposed procedure for endorsement of removal of judges should mirror that for endorsement of appointment of judges. It would be for the House Committee to decide whether or not a subcommittee should be formed to consider the recommended appointment or removal of a senior judge.

44. Members endorsed the proposed procedure set out in paragraph 8 of the paper.

IX. Any other business

45. There being no other business, the meeting ended at 2:59 pm.