

LEGISLATIVE COUNCIL

MINUTES

No. 23

Minutes of the meeting held on Wednesday 2 April 2003 and
Thursday 3 April 2003 at 2:30 pm respectively

Members present:

President

The Hon Mrs Rita FAN HSU Lai-tai, GBS, JP

The Hon Kenneth TING Woo-shou, JP

The Hon James TIEN Pei-chun, GBS, JP

Dr the Hon David CHU Yu-lin, JP

The Hon Cyd HO Sau-lan

The Hon Albert HO Chun-yan

Ir Dr the Hon Raymond HO Chung-tai, JP

The Hon LEE Cheuk-yan

The Hon Martin LEE Chu-ming, SC, JP

The Hon Eric LI Ka-cheung, JP

Dr the Hon David LI Kwok-po, GBS, JP

The Hon Fred LI Wah-ming, JP

Dr the Hon LUI Ming-wah, JP

The Hon NG Leung-sing, JP

The Hon Margaret NG

The Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP

The Hon James TO Kun-sun

The Hon CHEUNG Man-kwong

The Hon HUI Cheung-ching, JP

The Hon CHAN Kwok-keung

The Hon Bernard CHAN, JP

The Hon CHAN Kam-lam, JP

The Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP

The Hon LEUNG Yiu-chung (absent on 3.4.2003)

The Hon SIN Chung-kai

The Hon Andrew WONG Wang-fat, JP

Dr the Hon Philip WONG Yu-hong

The Hon WONG Yung-kan

The Hon Jasper TSANG Yok-sing, GBS, JP

The Hon Howard YOUNG, JP

Dr the Hon YEUNG Sum

The Hon YEUNG Yiu-chung, BBS

The Hon LAU Chin-shek, JP

The Hon LAU Kong-wah

The Hon LAU Wong-fat, GBS, JP

The Hon Miriam LAU Kin-yee, JP

The Hon Ambrose LAU Hon-chuen, GBS, JP

The Hon Emily LAU Wai-hing, JP

The Hon CHOY So-yuk (absent on 3.4.2003)

The Hon Andrew CHENG Kar-foo

The Hon SZETO Wah

The Hon Timothy FOK Tsun-ting, SBS, JP (absent on 3.4.2003)

Dr the Hon LAW Chi-kwong, JP

The Hon TAM Yiu-chung, GBS, JP

Dr the Hon TANG Siu-tong, JP

The Hon Abraham SHEK Lai-him, JP

The Hon LI Fung-ying, JP

The Hon Henry WU King-cheong, BBS, JP

The Hon Tommy CHEUNG Yu-yan, JP

The Hon Michael MAK Kwok-fung

The Hon Albert CHAN Wai-yip

The Hon LEUNG Fu-wah, MH, JP

Dr the Hon LO Wing-lok

The Hon WONG Sing-chi

The Hon Frederick FUNG Kin-kee (absent on 2.4.2003)

The Hon IP Kwok-him, JP

The Hon LAU Ping-cheung

The Hon Audrey EU Yuet-mee, SC, JP

The Hon MA Fung-kwok, JP

Member absent:

The Hon CHAN Yuen-han, JP

Public officers attending:

On 2.4.2003 and 3.4.2003

The Hon Donald TSANG Yam-kuen, GBM, JP
The Chief Secretary for Administration

The Hon Antony LEUNG Kam-chung, GBS, JP
The Financial Secretary

The Hon Elsie LEUNG Oi-sie, GBM, JP
The Secretary for Justice

The Hon Henry TANG Ying-yen, GBS, JP
Secretary for Commerce, Industry and Technology

The Hon Michael SUEN Ming-yeung, GBS, JP
Secretary for Housing, Planning and Lands

The Hon Joseph WONG Wing-ping, GBS, JP
Secretary for the Civil Service

Dr the Hon Patrick HO Chi-ping, JP
Secretary for Home Affairs

The Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Secretary for Security

The Hon Stephen IP Shu-kwan, GBS, JP
Secretary for Economic Development and Labour

The Hon Frederick MA Si-hang
Secretary for Financial Services and the Treasury

The Hon Stephen LAM Sui-lung, JP
Secretary for Constitutional Affairs

On 2.4.2003 only

Prof the Hon Arthur LI Kwok-cheung, GBS, JP
Secretary for Education and Manpower

Dr the Hon Sarah LIAO Sau-tung, JP
Secretary for the Environment, Transport and Works

Clerks in attendance:

On 2.4.2003 and 3.4.2003

Mr Ricky FUNG Choi-cheung, JP, Secretary General

Mr Ray CHAN Yum-mou, Assistant Secretary General (3)

On 2.4.2003

Mr LAW Kam-sang, JP, Deputy Secretary General

Tabling of Papers

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

<u>Subsidiary Legislation / Instruments</u>	<u>L.N. No.</u>
1. Quarantine and Prevention of Disease Ordinance (Amendment of First Schedule) Order 2003 (gazetted on 27.3.2003)	79/2003
2. Prevention of the Spread of Infectious Diseases Regulations (Amendment of Form) Order 2003 (gazetted on 27.3.2003)	80/2003
3. Maximum Amount of Election Expenses (Village Representative Election) Regulation (gazetted on 28.3.2003)	81/2003
4. Electoral Procedure (Village Representative Election) Regulation (gazetted on 28.3.2003)	82/2003
5. Libraries (Amendment) Regulation 2003 (gazetted on 28.3.2003)	83/2003
6. Securities and Futures (Contract Limits and Reportable Positions) (Amendment) Rules 2003 (gazetted on 28.3.2003)	84/2003
7. Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2003 (gazetted on 28.3.2003)	85/2003
8. Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2003 (gazetted on 28.3.2003)	86/2003
9. Legal Practitioners (Amendment) Ordinance 2000 (42 of 2000) (Commencement) Notice 2003 (gazetted on 28.3.2003)	87/2003
10. Barristers (Admission) Rules (L.N. 5 of 2003) (Commencement) Notice 2003 (gazetted on 28.3.2003)	88/2003
11. Legal Practitioners (Fees) (Amendment) Rules 2002 (L.N. 6 of 2003) (Commencement) Notice 2003 (gazetted on 28.3.2003)	89/2003
12. Practising Certificate (Barristers) (Amendment) Rules 2002 (L.N. 7 of 2003) (Commencement) Notice 2003 (gazetted on 28.3.2003)	90/2003
13. Barristers (Advanced Legal Education Requirement) Rules (L.N. 8 of 2003) (Commencement) Notice 2003 (gazetted on	91/2003

28.3.2003)

14. Barristers (Qualification for Admission and Pupillage) Rules (L.N. 9 of 2003) (Commencement) Notice 2003 (gazetted on 28.3.2003) 92/2003

Questions

Written replies to Questions 1 to 20 were tabled for Members' information.

Bill

Second Reading

Appropriation Bill 2003

The debate on the Second Reading which had been moved on 5 March 2003 resumed, in accordance with Rule 67(2) of the Rules of Procedure.

24 Members and Hon James TIEN spoke on the motion.

While Hon James TIEN was speaking, the President left the chair at 7:00 pm temporarily and the President's Deputy, Hon Mrs Selina CHOW, took the chair.

Another two Members and Hon WONG Sing-chi spoke on the motion.

At 7:47 pm, while Hon WONG Sing-chi was speaking, the President resumed the chair.

Six more Members spoke on the motion.

The President suspended the meeting at 8:52 pm.

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The Council resumed at 2:30 pm on 3 April 2003 and continued to debate the Second Reading of the Appropriation Bill 2003.

13 Members and Hon Michael MAK spoke on the motion.

While Hon Michael MAK was speaking, the President left the chair at 5:24 pm temporarily and the President's Deputy, Hon Mrs Selina CHOW, took the chair.

Another Member and Hon MA Fung-kwok spoke on the motion.

At 5:49 pm, while Hon MA Fung-kwok was speaking, the President resumed the chair.

Seven more Members spoke on the motion.

Hon Mrs Selina CHOW moved that the debate on the motion be adjourned to the meeting to be held on 9.4.2003.

Question on the motion proposed, put and agreed to.

Motions

Proposed resolution under the Interpretation and General Clauses Ordinance

The Secretary for Commerce, Industry and Technology moved the motion in the Appendix and addressed the Council.

Question on the motion proposed.

Hon Margaret NG, Chairman of the Subcommittee on Trade Marks Rules and Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003, spoke on the motion.

Question on the motion put and agreed to.

Proposed resolution under the Employees' Compensation Ordinance

The Secretary for Economic Development and Labour moved the following motion and addressed the Council:

Resolved that the Third Schedule to the Employees' Compensation Ordinance be amended -

- (a) in paragraph 1(b), by repealing "\$175" and substituting "\$200";
- (b) in paragraph 2(b), by repealing "\$175" and substituting "\$200";
- (c) in paragraph 3, by repealing "\$175" and substituting "\$280".

Question on the motion proposed.

Hon Kenneth TING, Chairman of the Subcommittee to study the proposed resolutions under section 48A of the Employees'

Compensation Ordinance and section 40 of the Pneumoconiosis (Compensation) Ordinance, spoke on the motion.

A Member spoke on the motion.

Question on the motion put and agreed to.

Proposed resolution under the Pneumoconiosis (Compensation) Ordinance

The Secretary for Economic Development and Labour moved the following motion and addressed the Council:

Resolved that Part I of the Second Schedule to the Pneumoconiosis (Compensation) Ordinance be amended -

- (a) in paragraph 1(b), by repealing "\$175" and substituting "\$200";
- (b) in paragraph 2(b), by repealing "\$175" and substituting "\$200";
- (c) in paragraph 3, by repealing "\$175" and substituting "\$280".

Question on the motion proposed, put and agreed to.

Next meeting

The President declared that the next meeting of the Council would be held on 9 April 2003 at 2:30 pm.

The Council was adjourned at 7:43 pm.

(Mrs Rita FAN HSU Lai-tai)
President

Council Chamber
Hong Kong

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1))

Trade Marks Rules

RESOLVED that the Trade Marks Rules, published in the Gazette as Legal Notice No. 30 of 2003 and laid on the table of the Legislative Council on 12 February 2003, be amended –

- (a) in rule 2(1), in the definition of “opponent”, by repealing “16(1)” and substituting “16”;
- (b) in rule 13 –
 - (i) in subrule (2), by repealing “within the period beginning on the date of the notice and ending 6 months after that date” and substituting “at any time during the period beginning on the date of the notice and ending 6 months after that date, do either or both of the following”;
 - (ii) in subrule (3), by repealing “before the expiry of the 6-month period referred to” and substituting “within the period specified”;
 - (iii) by repealing subrules (4), (5) and (6) and substituting –
 - “(4) If –
 - (a) the applicant files written representations or a request for amendment under subrule (2) within the period specified in that subrule or, where the

Registrar has granted an extension of time under subrule (3), within the period as so extended; and

- (b) it appears to the Registrar, after considering the representations or request for amendment, that the application, or the application as amended or proposed to be amended, does not meet the requirements for registration,

the Registrar shall inform the applicant of his opinion by notice in writing.

(5) Where a notice is sent to the applicant under subrule (4), the applicant may, at any time during the period beginning on the date of the notice and ending 3 months after that date, do any or all of the following –

- (a) file written representations or further written representations to establish that the requirements for registration are met;
- (b) file a request or a further request under section 46 of the Ordinance to amend his application so as to meet those requirements (see rule 24); or
- (c) file a request for a hearing.

(6) The Registrar may, on a request being filed by the applicant on the specified form within the period specified in subrule (5) or, where the Registrar has previously granted an extension of time under this subrule, within the period as so extended, extend the time for filing written representations or a request under subrule (5) for such period or periods, not exceeding 3 months at any one time, and on such terms, if any, as he may direct, if he is satisfied that –

- (a) where the notice sent to the applicant under subrule (4) raises an objection to the registration of the trade mark on any of the grounds mentioned in section 12(1), (2) or (3) of the Ordinance (relative grounds for refusal of registration) –
 - (i) the applicant needs additional time to obtain the consent of the owner of a relevant earlier trade mark;
 - (ii) the applicant needs additional time to obtain an assignment of a relevant earlier trade mark; or
 - (iii) proceedings for the invalidation or revocation of a relevant earlier trade mark are pending

and time should be extended to allow for the proceedings to be disposed of;

- (b) the applicant needs additional time to prepare evidence of use to be filed in support of the application; or
- (c) other exceptional circumstances exist to justify the granting of an extension of time.”;

(c) by repealing rule 14(2) and (3) and substituting –

“(2) Subject to subrule (3), where –

- (a) the Registrar sends a notice to the applicant under rule 13(1);
- (b) the applicant files written representations or a request for amendment under rule 13(2) within the period specified in that rule or as extended under rule 13(3); and
- (c) the Registrar sends a notice to the applicant under rule 13(4),

the prescribed period for the application is the period beginning on the date of the notice sent to the applicant under rule 13(1) and ending 3 months after the date of the notice sent to the applicant under rule 13(4) or, where the Registrar has granted an extension of time under rule 13(6), ending on the last day of the period as so extended.

(3) Where –

- (a) the Registrar sends a notice to the applicant under rule 13(4); and

- (b) the applicant files a request for a hearing within the period specified in rule 13(5) or, where the Registrar has granted an extension of time under rule 13(6), within the period as so extended,

the prescribed period for the application is the period beginning on the date of the notice sent to the applicant under rule 13(1) and ending on the last day of the hearing or at such time as the Registrar may decide the matter without a hearing under rule 75.”;

- (d) in rule 16, by adding –

“(4) The Registrar may, on a request being filed by any person on the specified form within the period specified in subrule (1), extend the time for filing a notice of opposition or anything referred to in subrule (2) by 2 months, which time may not be further extended.”;

- (e) in rule 17 –

- (i) in subrule (3) –

- (A) by renumbering it as subrule (4);

- (B) by adding “or as extended under subrule (3)” after “subrule (1)”;

- (ii) by adding –

“(3) The Registrar may, on a request being filed by the applicant on the specified form within the period specified in subrule (1), extend the time for filing a counter-statement by 2 months, which time may not be further extended.”;

- (f) in rule 18(1), by adding “or as extended under rule 17(3)” after “rule 17(1)”;

- (g) in rule 37(4), by repealing “he shall not be permitted to take part in the proceedings” and substituting “the Registrar may treat the application for revocation as being unopposed by the owner”;
- (h) in rule 41(3), by repealing “he shall not be permitted to take part in the proceedings” and substituting “the Registrar may treat the application for revocation as being unopposed by the owner”;
- (i) in rule 47, by adding “with necessary modifications” after “apply”;
- (j) in rule 50(6), by repealing “he shall not be permitted to take part in the proceedings” and substituting “the Registrar may treat the application for variation or rectification as being unopposed by the owner”;
- (k) in rule 74 –
 - (i) in subrule (3), by adding “or on the filing of a request for a hearing in accordance with rule 13(5)” after “subrule (2)”;
 - (ii) by repealing subrule (6);
 - (iii) by renumbering subrule (7) as subrule (6);
- (l) in rule 95 –
 - (i) in subrule (1) –
 - (A) in paragraph (b), by repealing “and (3)” and by adding “(but see rule 13(3))” after “amendment”;
 - (B) by repealing paragraph (c) and substituting –
 - “(c) rule 13(5) (time for filing representations, a request for amendment or a request for a hearing) (but see rule 13(6));”;
 - (C) in paragraph (e), by adding “(but see rule 16(4))” after “opposition”;
 - (D) in paragraph (f), by adding “(but see rule 17(3))” after “counter-statement”;

- (E) in paragraph (u), by repealing “121(a)” and substituting “121(1)(a)” and by adding “(but see rule 121(2))” after “opposition”;
- (F) in paragraph (v), by repealing “121(b)” and substituting “121(1)(b)” and by adding “(but see rule 121(3))” after “counter-statement”;
- (ii) by adding –
 - “(3) No period of time specified in rule 13(3) or (6), 16(4), 17(3) or 121(2) or (3) may be extended under rule 94(1).”;
- (m) in rule 121 –
 - (i) by renumbering it as rule 121(1);
 - (ii) by adding –
 - “(2) The Registrar may, on a request being filed by any person on the specified form within the period specified in subrule (1)(a), extend the time for filing a notice of opposition by 2 months, which time may not be further extended.
 - (3) The Registrar may, on a request being filed by the applicant on the specified form within the period specified in subrule (1)(b), extend the time for filing the counter-statement by 2 months, which time may not be further extended.”;
- (n) in the Schedule –
 - (i) in Fee No. 3, under the column “**Matter or proceeding**”, by adding “or (6)” after “rule 13(3)”;
 - (ii) in Fee No. 29, under the column “**Matter or proceeding**”, by repealing “94” and substituting “16(4), 17(3), 94 or 121(2) or (3)”.