

立法會
Legislative Council

LC Paper No. CB(2) 399/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 6th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 15 November 2002**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Kong-wah
Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LAW Chi-kwong, JP

Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members absent :

Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon LEUNG Yiu-chung
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LI Fung-ying, JP
Hon Albert CHAN Wai-yip
Dr Hon LO Wing-lok
Hon WONG Sing-chi

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
Mr LAW Kam-sang, JP	Deputy Secretary General
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
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Betty MA	Senior Assistant Secretary (2)1

Action

**I. Confirmation of the minutes of the 5th meeting held on 8 November 2002
(LC Paper No. CB(2) 326/02-03)**

The minutes were confirmed.

II. Matters arising

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

Patents (General) (Amendment) (No. 2) Rules 2002

2. The Chairman said that she had informed CS that the existence of a relevant pending appeal to the Court of Final Appeal (CFA) was not mentioned in the Legislative Council (LegCo) Brief for the Amendment Rules. She had also pointed out to CS that it was unusual for the Administration to make legislative changes while relevant court proceedings were still in progress.

3. The Chairman further said that CS had responded that he did not know the details of the issue, but he understood that there were inconsistencies in the patents legislation which must be addressed. CS had also explained that the pending appeal case was not mentioned in the LegCo Brief because the Administration did not wish to make any comments while it was being handled by the courts. The government officials concerned would explain in detail to the subcommittee which had been set up to study the Amendment Rules.

4. Miss Margaret NG said that the Subcommittee on the Patents (General) (Amendment) (No.2) Rules 2002 had held its first meeting on 14 November 2002. Miss NG further said that if the one-month time limit in the existing section 39(1) of the Patents (General) Rules was removed, and if CFA ruled, in the end, in favour of the appellant, by holding that provision in question was *ultra vires*, the situation would be absurd. In her view, the Administration should not have made the Amendment Rules given the pending court case. Miss NG added that the Administration should have informed Members of the court proceedings and the issues concerned in the LegCo Brief for the Amendment Rules.

Action

5. The Chairman said that she had conveyed Members' views to CS. The Chairman further said that the Subcommittee would continue to discuss the Amendment Rules with the Administration, and would provide a report to the House Committee upon completion of its deliberation.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 8 November 2002

(LC Paper No. LS 17/02-03)

6. The Legal Adviser said that there were three items of subsidiary legislation gazetted on 8 November 2002 and tabled in Council on 13 November 2002.

7. The Legal Adviser explained that the Shipping and Port Control (Closure of Waters) (No. 2) Notice 2002 specified that the area of the waters off the Phase II Hong Kong Convention and Exhibition Centre would be closed to certain class of vessels for the period between noon on 18 November 2002 and 3:00 pm on 20 November 2002.

8. The Legal Adviser further explained that the Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2002 (L.N. 118 of 2002) (Commencement) Notice 2002 and Waste Disposal (Refuse Transfer Station) (Amendment) Regulation 2002 (L.N. 119 of 2002) (Commencement) Notice 2002 appointed 12 December 2002 as the day on which the two Amendment Regulations would come into operation.

9. The Legal Adviser said that no difficulties relating to the legal and drafting aspects of these three items of subsidiary legislation had been identified.

10. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 11 December 2002, or 8 January 2003 if extended by resolution.

IV. Further business for the Council meeting on 20 November 2002

(a) Questions

(LC Paper No. CB(3) 127/02-03)

11. The Chairman said that Mr Michael MAK Kwok-fung had withdrawn his oral question, and a new oral question would be raised by Ms Audrey EU Yuet-mee.

Action

(b) **Members' motions**

- (i) **Proposed resolution to be moved by Hon Mrs Selina CHOW LIANG Shuk-yee under section 34(4) of the Interpretation and General Clauses Ordinance relating to the Patents (General) (Amendment) (No. 2) Rules 2002**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 132/02-03 dated 14 November 2002.)

- (ii) **Proposed resolution to be moved by Hon Mrs Selina CHOW LIANG Shuk-yee under section 34(4) of the Interpretation and General Clauses Ordinance relating to :**

- **the Chinese Medicine (Fees) Regulation published in the Gazette as Legal Notice No. 159 of 2002;**
- **the Chinese Medicines Regulation published in the Gazette as Legal Notice No. 160 of 2002; and**
- **the Chinese Medicines Traders (Regulatory) Regulation published in the Gazette as Legal Notice No. 161 of 2002.**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 133/02-03 dated 14 November 2002.)

12. The Chairman said that at the last House Committee meeting, Members had formed two subcommittees to study the above Regulations. Members had also agreed that she should give notice to move motions at the Council meeting on 20 November 2002 to extend the scrutiny periods of these Regulations.

V. Business for the Council meeting on 27 November 2002

(a) **Questions**

(LC Paper No. CB(3) 128/02-03)

13. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 27 November 2002.

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

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

(c) **Government motion**

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

Action

(d) **Members' motion**

(i) **Motion on "Teaching in small classes"**

(Wording of the motion issued vide LC Paper No. CB(3) 137/02-03 dated 14 November 2002.)

(ii) **Motion on "The public's mental health"**

(Wording of the motion issued vide LC Paper No. CB(3) 138/02-03 dated 14 November 2002.)

16. The Chairman said that the above motions would be moved by Mr CHEUNG Man-kwong and Mr Michael MAK Kwok-fung respectively and the wording of the motions had been issued to Members.

17. The Chairman further said that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 20 November 2002.

VI. Advance information on business for the Council meeting on 4 November 2002

Bills - First Reading and moving of Second Reading

(a) **Housing (Amendment) Bill 2002**

(b) **Education (Amendment) Bill 2002**

18. The Chairman said that the above two Bills would be introduced into the Council on 4 December 2002 and considered by the House Committee on 6 December 2002.

VII. Report of Bills Committee and subcommittee

Position report on Bills Committees/subcommittees

(LC Paper No. CB(2) 334/02-03)

19. The Chairman said that there were 15 Bills Committees and seven Subcommittees in action, as well as three Bills Committees on the waiting list.

VIII. Any other business

20. There being no further business, the meeting ended at 2:37 pm.