

立法會
Legislative Council

LC Paper No. CB(2) 696/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 10th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 13 December 2002**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, 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

Hon Cyd HO Sau-lan

Ir Dr Hon Raymond HO Chung-tai, JP

Hon LEE Cheuk-yan

Hon Martin LEE Chu-ming, SC, JP

Hon Eric LI Ka-cheung, JP

Dr Hon David LI Kwok-po, GBS, JP

Hon NG Leung-sing, JP

Hon Margaret NG

Hon James TO Kun-sun

Hon CHEUNG Man-kwong

Hon HUI Cheung-ching, JP

Hon CHAN Kwok-keung

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

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 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 Timothy FOK Tsun-ting, SBS, JP
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 Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
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 Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Michael MAK Kwok-fung

Clerk in attendance :

Mrs Justina LAM	Clerk to the House Committee
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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 Connie FUNG	Assistant Legal Adviser 3
Mr KAU Kin-wah	Assistant Legal Adviser 6
Mr TSANG Siu-cheung	Senior Assistant Secretary (1)7
Miss Betty MA	Senior Assistant Secretary (2)1

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**I. Confirmation of the minutes of the 9th meeting held on 6 December 2002
(LC Paper No. CB(2) 609/02-03)**

The minutes were confirmed.

II. Matters arising

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

Attendance by CS at House Committee meetings

2. The Chairman informed Members that CS would be able to attend a special meeting of the House Committee on 7 February 2003 from 2:30 pm to about 4:00 pm, and CS was still considering the topic(s) for the meeting. The Chairman explained that 7 February 2003 was the earliest possible date to meet with CS as 3 and 10 January 2003 were not convenient for CS, and 17 January 2003 was for debating the Motion of Thanks. As for 24 January 2003, there were a Finance Committee meeting as well as a regular House Committee meeting scheduled for that day.

3. The Chairman added that the regular House Committee meeting scheduled for the same day would be held immediately after the special meeting.

Proposed resolution to be moved by the Secretary for Security at the Council meeting on 18 December 2002 relating to the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002

4. The Chairman said that she had informed CS that a subcommittee had

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been formed to study the draft Order.

5. The Chairman further said that at the request of the House Committee, the Secretary for Security had withdrawn her notice for moving the proposed resolution at the Council meeting on 18 December 2002.

(b) Legal Service Division report on subsidiary legislation gazetted on 29 November 2002

(LC Paper No. LS 25/02-03 issued vide LC Paper No. CB(2) 574/02-03 dated 5 December 2002)

(i) Marine Parks and Marine Reserves (Amendment) Regulation 2002 (L.N. 182)

(Letter dated 6 December 2002 from Assistant Legal Adviser to the Secretary for the Environment, Transport and Works (SETW) and SETW's reply dated 9 December 2002)

(ii) Practising Certificate (Special Conditions) Rules (L.N. 184)

(iii) Securities and Futures (Unsolicited Calls — Exclusion) Rules (L.N. 185)

(iv) Securities and Futures (Recognized Counterparty) Rules (L.N. 186)

(v) Securities and Futures (Registration of Commission Disciplinary Orders) Rules (L.N. 187)

(vi) Securities and Futures (Professional Investor) Rules (L.N. 188)

(vii) Securities and Futures (Leveraged Foreign Exchange Trading — Exemption) Rules (L.N. 189)

(viii) Securities and Futures (Leveraged Foreign Exchange Trading) (Arbitration) Rules (L.N. 190)

(ix) Securities and Futures (Exempted Instruments—Information) Rules (L.N. 191)

6. The Chairman said that Members agreed at the last meeting to defer a decision on the above nine items of subsidiary legislation to this meeting.

7. Referring to the Marine Parks and Marine Reserves (Amendment) Regulation 2002, Mr WONG Yung-kan said that he had obtained additional information from the Administration and the Country and Marine Parks Board.

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As the proposal would be implemented on a trial basis for one year, and a review would be conducted afterwards on whether the scheme should be made permanent, he considered that it was not necessary to set up a subcommittee to study this item of subsidiary legislation.

8. Regarding the Practising Certificate (Special Conditions) Rules, Miss Margaret NG said that the Rules had been circulated to members of the Panel on Administration of Justice and Legal Services on 28 November 2002. Miss NG further said that at its meeting on 13 December 2002, the Panel on Administration of Justice and Legal Services had not raised any query on the Rules, and it would be for the House Committee to decide whether a subcommittee was necessary. Miss NG added that she personally did not consider that a subcommittee was required as the Rules were not controversial. Miss NG pointed out that the Rules only set out the conditions which the Hong Kong Law Society might impose when issuing or amending an already issued practising certificate to a solicitor, and the matters to be considered by the Law Society when imposing such conditions.

9. As regards the seven sets of subsidiary legislation made under the Securities and Futures Ordinance, Mr Henry WU said that the securities and futures industry had studied the Rules and had not raised any queries.

10. Members agreed that it was not necessary to set up a subcommittee to study any of these nine items of subsidiary legislation.

III. Business arising from previous Council meetings

(a) Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)

Stamp Duty (Amendment) Bill 2002 *(LC Paper No. LS 19/02-03)*

11. The Legal Adviser explained that the Bill sought to provide for an alternative method of stamping, in order to allow the use of an electronic form of application and stamp certificate.

12. The Legal Adviser pointed out that according to the Legislative Council (LegCo) Brief on the Bill, the Hong Kong Law Society and the real estate industry had been consulted and were supportive of the Bill. However, as the Hong Kong Law Society had raised concern about the difficulty of checking the authenticity of the certificate, the Inland Revenue Department would study the possibility of providing a verification service for people to ascertain the authenticity of certificate in case of doubt.

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13. The Legal Adviser said that at the meeting of the Panel on Financial Affairs on 19 July 2002, issues such as an earlier implementation date and false information in an application were discussed. Members were generally in support of the proposal.

14. The Legal Adviser further said that the Legal Service Division had raised a query with the Administration about the impact on subsequent transactions in the event of a cancellation of a certificate under the scheme. The Administration's reply had just been received, and the Legal Service Division needed time to study the reply.

15. The Legal Adviser said that it would be for Members to consider whether a Bills Committee should be set up to study the Bill, given the concern raised by Panel members and the Law Society.

16. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join : Miss Margaret NG, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr SIN Chung-kai, Ms Miriam LAU and Mr Henry WU.

(b) Legal Service Division report on subsidiary legislation gazetted on 6 December 2002

(LC Paper No. LS 29/02-03)

17. The Legal Adviser said that 13 items of subsidiary legislation were gazetted on 6 December 2002 and tabled in Council on 11 December 2002.

18. Referring to the seven sets of subsidiary legislation made under or related to the Securities and Futures Ordinance, the Legal Adviser said that they were the second batch of the 37 sets of Rules made before the Ordinance would come into operation.

19. Mr Henry WU suggested that a decision on the seven sets of Rules be deferred as the securities and futures industry would need more time to study them.

20. The Chairman proposed that a decision on these seven items of subsidiary legislation be deferred to the next House Committee meeting. Members agreed.

21. The Chairman suggested that to allow more time for Members to consider these seven sets of Rules, she would give notice to move a motion at the Council meeting on 18 December 2002 to extend the scrutiny period to 12 February 2003. Members agreed.

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22. The Legal Adviser informed Members that the third batch of 23 sets of Rules were gazetted on 13 December 2002, and Members were advised to decide at the next House Committee meeting on 3 January 2003 whether a subcommittee was necessary to study any of these 23 sets of Rules.

23. The Legal Adviser said that the Nurses (Registration and Disciplinary Procedure) (Amendment) Regulation 2002 and the Enrolled Nurses (Enrolment and Disciplinary Procedure) (Amendment) Regulation 2002 prescribed the fees payable to the Nursing Council of Hong Kong for requests for review of results of examinations in respect of registered and enrolled nurses respectively under sections 8A and 14A of the Nurses Registration Ordinance. The fees were set at full cost recovery level and should be \$425 per application.

24. The Legal Adviser further said that the two Amendment Regulations would come into operation on 14 February 2003. The Legal Adviser pointed out that as the Ordinance had come into operation on 12 July 2002, the Legal Service Division had asked the Administration to clarify how the Nursing Council would deal with requests between now and 13 February 2003. The Administration had replied that the Council had processed the applications without charging a fee. Members did not raise any queries on these two Amendment Regulations.

25. The Legal Adviser advised that the Airport Authority Ordinance (Map of Airport Area) Order and the Airport Authority Ordinance (Map of Restricted Area) Order replaced the existing Orders and specified respectively the new boundaries of the Airport Area and the Restricted Area for the purposes of the Airport Authority Ordinance. The Legal Adviser further advised that the Panel on Economic Services had discussed the two Orders on 25 November 2002. Members did not raise any queries on these two Orders.

26. As regards the Appeal Board on Closure Orders (Immediate Health Hazard) Rules, the Legal Adviser explained that the Rules sought to -

- (a) regulate the making of appeals to the Appeal Board on Closure Orders (Immediate Health Hazard);
- (b) specify the documents to be served in relation to an appeal; and
- (c) provide for the hearing and determination of those appeals.

27. The Legal Adviser said that the Legal Service Division was studying the Administration's reply on certain technical points on the Rules.

28. Mr Tommy CHEUNG said that when the proposal of establishing the Appeal Board was studied by the Bills Committee on the Public Health and

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Municipal Services (Amendment) Bill 2001, the food business trade had raised concerns about the operation of the proposed Appeal Board, and the Administration had undertaken to adopt measures to address these concerns. Mr CHEUNG suggested that the scrutiny period of these Rules should be extended to allow more time for the trade to examine the Rules. Mr Fred LI suggested that a subcommittee should be formed to study the Rules in detail.

29. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join : Mr Fred LI, Mr WONG Yung-kan, Mr Tommy CHEUNG and Dr LO Wing-lok.

30. The Chairman said that to allow time for the subcommittee to scrutinize the Rules and then report to the House Committee, she would move a motion at the Council meeting on 18 December 2002 to extend the scrutiny period of the Rules to 12 February 2003. Members agreed.

31. On the Chiropractors Registration Ordinance (Cap. 428) (Commencement) Notice 2002, the Legal Adviser said that by this Notice, the Chief Executive (CE), after consultation with the Executive Council, appointed 13 February 2003 as the day on which the remaining provisions of the Chiropractors Registration Ordinance that had not come into operation would come into operation. The Legal Adviser further said that the Ordinance provided, among other things, that a person who, without having his name entered in the register, or not being the holder of a practising certificate then in force, practised chiropractic committed a criminal offence. Members did not raise any queries on the Notice.

32. The Chairman reminded Members that the deadline for amending these 13 items of subsidiary legislation was 8 January 2003, or 12 February 2003 if extended by resolution.

IV. Further business for the Council meeting on 18 December 2002

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

(i) Landlord and Tenant (Consolidation) (Amendment) Bill 2001

(ii) Electoral Provisions (Miscellaneous Amendments) Bill 2002

33. The Chairman said that the Bills Committees on the two Bills had reported to the House Committee at the last meeting. Members did not raise objection to the resumption of the Second Reading debates on the two Bills.

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(b) **Government motions**

- (i) **Proposed resolution to be moved by the Secretary for Commerce, Industry and Technology under section 34(2) 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) 231/02-03 dated 12 December 2002.)

34. The Chairman said that the Subcommittee on Patents (General) (Amendment) (No.2) Rules 2002 supported the Administration's proposal to repeal the Amendment Rules, and a written report of the Subcommittee would be presented under agenda item VI(c) below.

- (ii) **Two proposed resolutions to be moved by the Secretary for Health, Welfare and Food under section 34(2) of the Interpretation and General Clauses Ordinance relating to the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation**
(Wording of the proposed resolutions issued vide LC Paper No. CB(3) 229/02-03 dated 12 December 2002.)

35. The Chairman said that the Subcommittee formed to study the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation supported the amendments to be moved by the Administration, and its written report would be presented under agenda item VI(e) below.

- (iii) **Proposed resolution to be moved by the Secretary for Security under section 34(2) of the Interpretation and General Clauses Ordinance relating to the Karaoke Establishments (Licensing) Regulation**
(Wording of the proposed resolution issued vide LC Paper No. CB(3) 228/02-03 dated 12 December 2002.)

36. The Chairman said that the Subcommittee on Karaoke Establishments (Licensing) Regulation supported the amendments to be moved by the Administration, and its written report would be presented under agenda item VI(d) below.

V. **Business for the Council meeting on 8 January 2003**

The Chief Executive's Policy Address

37. The Chairman said that CE would deliver his Policy Address at the Council meeting on 8 January 2003.

VI. Report of Bills Committee and subcommittee

(a) Position report on Bills Committees/subcommittees *(LC Paper No. CB(2) 635/02-03)*

38. The Chairman said that there were 14 Bills Committees and six subcommittees in action as well as five Bills Committees, including the Bills Committee on the Stamp Duty (Amendment) Bill 2002 formed under agenda item III(a) above, on the waiting list.

39. The Chairman further said that as there would be a vacant slot after the Bills Committee on the Adaptation of Laws Bill 2001 had reported under item VI(b) below, the Bills Committee on the Occupational Deafness (Compensation) (Amendment) Bill 2002 on the waiting list could commence work.

(b) Report of the Bills Committee on Adaptation of Laws Bill 2001 *(LC Paper No. CB(2) 624/02-03)*

40. Miss Margaret NG, Chairman of the Bills Committee, informed Members that the Bills Committee supported the proposed amendments in the Bill, save for the clauses to adapt "Crown servant" with "prescribed officer". Whilst the Bills Committee was supportive of the Administration's proposal to replace the reference to "Crown servant" by "prescribed officer", the Bills Committee was of the view that the proposed definition of "prescribed officer" had the effect of interpreting and improving upon the existing expression of "Crown servant". The proposed amendment therefore fell outside the scope of adaptation of laws.

41. Miss Margaret NG said that having regard to the views of the Bills Committee, the Administration agreed that the proposal to replace "Crown servant" by "prescribed officer" should be dealt with by way of law reform. Accordingly, the Administration had undertaken to move Committee Stage amendments to delete all clauses relating to "Crown servant" in the Bill. As agreed by the Bills Committee, the Administration would pursue the proposed amendments to replace "Crown servant" by "prescribed officer" in the Law Amendment and Reform (Miscellaneous Provisions) Bill, an omnibus bill to be introduced into the Council in March 2003.

42. Miss Margaret NG further said that the Bills Committee had also considered the issue that CE did not fall within the definition of "Crown servant", or the proposed adapted definition of "prescribed officer" under the Prevention of Bribery Ordinance (Cap. 201) (POBO). According to the Administration, it would work out, as a separate law reform exercise, an appropriate option to extend the general standard of bribery prevention applicable to prescribed officers under POBO to CE. Miss NG added that the

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Bills Committee had urged the Administration to accord priority to the law reform exercise.

43. Miss Margaret NG informed Members that the Bills Committee recommended that the Second Reading debate on the Bill be resumed at a future Council meeting to be advised by the Administration.

44. Members did not raise objection to the resumption of Second Reading debate on the Bill.

**(c) Report of the Subcommittee on Patents (General) (Amendment)
(No.2) Rules 2002**

(LC Paper No. CB(1) 504/02-03)

45. Miss Margaret NG, Chairman of the Subcommittee, said that further to its report presented at the last meeting, the Subcommittee had held another meeting on 9 December 2002 to discuss the implications of the Court of Final Appeal (CFA) ruling on the Amendment Rules, and a further report was now provided.

46. Miss Margaret NG informed Members that in the light of the CFA judgment and members' views, the Administration would move a motion to repeal the Amendment Rules at the Council meeting on 18 December 2002. The Administration would also take the opportunity to consider in greater detail the appropriate amendments to be made to the relevant provisions in the Patents Ordinance.

47. Miss Margaret NG said that the Subcommittee considered that the Administration should take into account the CFA ruling when conducting the comprehensive review of the existing regime on registration of patent, especially the provisions on time limits. Miss NG further said that the Administration had undertaken to mention the scope of the review in the speech to be delivered by the Secretary for Commerce, Industry and Technology during the debate on the motion to repeal the Amendment Rules. She hoped that the Panel on Commerce and Industry would monitor the progress of the review and follow up the outcome of the review.

48. Mr HUI Cheung-ching expressed support for the Administration's proposal to repeal the Amendment Rules. Mr HUI further said that the Administration should in future avoid introducing new legislative provision or making amendment to existing legislative provisions which were related to issues material to pending court proceedings. He added that Members' time had been wasted in scrutinising the Amendment Rules which should not have been made.

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49. Ms Audrey EU said that she agreed with Mr HUI Cheung-ching, although she considered that Members' time had not been entirely wasted as the deputations had given views on issues related to the Amendment Rules. Ms EU further said that the Chairman should convey Members' concern to CS that the Administration should have mentioned the CFA case in the LegCo Brief on the Amendment Rules.

50. The Chairman said that she had already conveyed to CS Members' concern. The Chairman further said that CS had 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.

51. Miss Margaret NG said that in her speech to be delivered during the debate on the motion to repeal the Amendment Rules at the Council meeting on 18 December 2002, she would express the strong dissatisfaction of the Subcommittee on the Administration's failure to mention the appeal case in the LegCo Brief on the Amendment Rules.

(d) **Report of the Subcommittee on Karaoke Establishments (Licensing) Regulation and Karaoke Establishments (Fees) Regulation**
(LC Paper No. CB(2) 594/02-03)

52. Ms Audrey EU, Chairman of the Subcommittee, said that the Subcommittee had held a further meeting with the Administration on 9 December 2002. As stated in the report, the Administration would move a number of amendments to the Karaoke Establishments (Licensing) Regulation in response to suggestions made by the Subcommittee.

(e) **Report of the Subcommittee on Chinese Medicine (Fees) Regulation, Chinese Medicines Regulation and Chinese Medicines Traders (Regulatory) Regulation**
(LC Paper No. CB(2) 595/02-03)

53. Dr LO Wing-lok, Chairman of the Subcommittee, reported that the Administration would move some minor or textual amendments to the Chinese Medicines Regulation and the Chinese Medicines Traders (Regulatory) Regulation at the Council meeting on 18 December 2002.

VII. Any other business

54. There being no other business, the meeting ended at 3:02 pm.