

立法會
Legislative Council

LC Paper No. CB(2)1782/05-06

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/04

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Minutes of the 16th meeting
held on Tuesday, 14 February 2006 at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon Andrew CHENG Kar-foo (Chairman)
 - Hon Martin LEE Chu-ming, SC, JP
 - Hon Howard YOUNG, SBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Tommy CHEUNG Yu-yan, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon Vincent FANG Kang, JP
 - Hon LI Kwok-ying, MH
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
 - Dr Hon KWOK Ka-ki
 - Hon WONG Ting-kwong, BBS
 - Hon Albert Jinghan CHENG
- Members absent** :
- Hon Albert CHAN Wai-yip (Deputy Chairman)
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon LEE Cheuk-yan
 - Hon Fred LI Wah-ming, JP
 - Hon LEUNG Yiu-chung
 - Dr Hon YEUNG Sum
 - Hon Abraham SHEK Lai-him, JP
 - Dr Hon Joseph LEE Kok-long
 - Hon KWONG Chi-kin

Public Officers attending : Ms Julina CHAN
Principal Assistant Secretary for Health, Welfare and Food
(Health)

Dr T H LEUNG, JP
Deputy Director of Health

Mr CHEUNG Wing-leung
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Doris CHAN
Chief Council Secretary (2) 4

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Miss Mary SO
Senior Council Secretary (2) 8

Miss Maggie CHIU
Legislative Assistant (2) 4

I. Clause-by-clause examination of the Bill

(The Bill, marked-up copy of the Bill and LC Paper No. CB(2)901/05-06(03))

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Clause 3 - Long title amended

2. The Administration was requested to incorporate the following views/questions raised by members and Assistant Legal Adviser 7 at the meeting in its outstanding response to the Bills Committee on enforcement of the smoking ban -

- (a) whether inspectors appointed under the proposed new section 15F could assist in the enforcement of the smoking ban under existing section 3(3)(c), having regard to the fact that it was mentioned in section 3(3)(c) that the manager of no smoking area could only call a police officer for assistance in the enforcement of the smoking ban;
- (b) whether inspectors mentioned in (a) above were uniformed staff;
- (c) whether empowering an inspector to enter any place in which the inspector reasonably suspected that a relevant offence was likely to be committed under the proposed new section 15G(1)(a) was excessive and unreasonable, and should be deleted; and

- (d) whether the removal of the owner, occupier or lessee who smoked in the common area of his/her building from that common area by the manager of the building provided under section 3(3)(c) would be in breach of the Bills of Rights, the Basic Law and other legislation, as the private property rights of the owner, occupier or lessee in enjoying the common parts of his/her building would be affected.

3. The Administration agreed to provide a written response to questions raised by the Bills Committee at this and previous meetings on enforcement of the smoking ban by the end of February 2006 at the latest.

4. The Administration was also requested to provide a paper setting out the delineation of powers and duties on enforcement of the smoking ban between inspectors appointed under the proposed new section 15F and managers of no smoking area as defined under Clause 4, including whether the inspectors concerned could enter a common part of any residential building and a room or suite of rooms in a hotel or guesthouse.

Clause 4 - Interpretation

5. The Administration was requested to make the drafting of the proposed amended section 3 more user-friendly.

II. Any other business

Provision of draft Committee Stage amendments (CSAs)

6. At the request of Mr Tommy CHEUNG, the Administration undertook to prepare a paper setting out the provisions in the Bill to which CSAs would be moved by the Administration and the timing for submitting these CSAs for members' consideration. At the urging of the Bills Committee, the Administration agreed to provide the draft CSAs as when they were ready and not in one go in mid-March 2006.

Declaration of interests

7. Dr KWOK Ka-ki proposed that, in line with the practice adopted by other places to increase the transparency of the scrutiny work of their anti-smoking legislation, members of the Bills Committee should declare if they had any relationship with tobacco control advocacy groups and industries affected by the Bill. Mr Martin LEE supported Dr KWOK's proposal. Mr LEE pointed out that it was widely known that in other places, tobacco companies regularly made donations to political parties to protect the companies' interests.

8. Mr Tommy CHEUNG declared that he had not received any donations or free meals from the industries affected by the Bill. Mr CHEUNG said that he had no strong view about declaring interests that went beyond what was stipulated in the Rules of Procedure (RoP) to make the scrutiny work of the Bill more transparent, on the condition that the nature of the interests to be declared must be made clear. Mr CHEUNG pointed out that it was up to individual Members to provide the required information for the Register of Members' Interests in accordance with RoP 83(4), and be answerable to his fellow Members and the public for the information he had provided or not provided. Mr CHEUNG further pointed out that Members were also required to disclose pecuniary interests under RoP 83A which stipulated that "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest". A case in point was that during the scrutiny of the Betting Duty (Amendment) Bill 2003, some members of the Bills Committee concerned declared on their own volition that they were members of the Hong Kong Jockey Club.

9. Ms Audrey EU agreed with Mr Tommy CHEUNG that the additional interests to be declared must be clearly defined. She added that as Dr KWOK Ka-ki had not given prior notice for discussion of his proposal at the meeting, members who did not attend the meeting should be given an opportunity to speak on the proposal before a decision was made.

10. Mr WONG Ting-kwong said that the Democratic Alliance for the Betterment and Progress of Hong Kong had no strong view about Dr KWOK's proposal, if the nature of the interests to be declared was made clear. As the proposal now stood, it was unclear whether a member should declare if he was a smoker, or his company had commercial dealings with the tobacco industry, or he had been entertained by the industries affected by the Bill, or the political organisation with which he was affiliated had received donations from tobacco companies, etc.

11. Dr KWOK Ka-ki clarified that his proposal did not seek to go beyond what was stipulated in RoP for registration of interests, including whether members had pecuniary interests, whether direct or indirect, and their relationship with the organisations affected by or which had vested interest in the Bill, if any. He emphasised that the purpose of his proposal was to increase transparency and public confidence.

12. Ms LI Fung-ying said that if Dr KWOK's proposal was merely to follow the existing practice on registration of interests, she saw no need for further discussion. Ms LI also said that changing the existing practice on such was outside the ambit of the Bills Committee.

13. Mr Tommy CHEUNG pointed out that it was not true that Dr KWOK's proposal did not go beyond the existing practice on registration of interests, as Members were currently not required to register donations received by the political organisation with which they were affiliated.

14. Mr Albert CHENG was of the view that members should declare if they had received any pecuniary interest or other material benefits, whether direct or indirect, from tobacco companies. Mr CHENG declared that he had neither received any pecuniary interest nor other material benefits, whether direct or indirect, from tobacco companies nor had met with any lobby groups on the Bill.

15. In the light of the clarification made by Dr KWOK in paragraph 11 above, the Chairman invited members' views on how to take Dr KWOK's proposal forward.

16. Mr WONG Ting-kwong asked whether the organisations referred to by Dr KWOK in paragraph 11 above included chambers of commerce and other similar organisations with which members had affiliation. If that was the case, it would go beyond what was presently required under RoP.

17. Mr Tommy CHEUNG said that he needed to consult the Liberal Party on Dr KWOK's proposal, as the scope of declarable interests would be significantly widened. Mr CHEUNG questioned the need for Dr KWOK's proposal, as the existing rules and procedures on declaration of interests already provided adequate safeguards to ensure the transparency of the scrutiny work of the Bill.

18. Mr Howard YOUNG said that he did not see the need for drawing up another set of declarable interests for the Bills Committee, as the existing provisions on declaration of interests in RoP were sufficient. If a member wished to declare more than what was stipulated in RoP, it was up to the member concerned to do so as he saw fit.

19. Dr KWOK Ka-ki asked whether under RoP, a Member would need to declare donations received by the political party to which he belonged. Assistant Legal Adviser 7 said that interests to be registered or disclosed by Members were set out in RoP. It was for members to decide whether the interests to be declared by members of the Bills Committee would be beyond what was required by RoP.

20. Ms Audrey EU suggested to refer to the Committee on Rules of Procedure (CRoP) for consideration the issue of whether donations or material benefits received by a Member's political party constituted a pecuniary interest.

21. Mr Martin LEE said that members of the Bills Committee should declare interests according to the relevant provisions in RoP, together with donations or material benefits received by a member's political party. Mr LEE asked the Chairman to seek members' agreement on this.

22. Ms LI Fung-ying said that it should be for individual member to decide whether he should declare interests not stipulated in RoP. She considered that as Dr KWOK's proposal was not made known to the Bills Committee prior to the meeting, it was necessary to notify members of the proposal first and any decision made at the meeting should not be binding on them.

23. Both Mr WONG Ting-kwong and Mr Tommy CHEUNG were of the view that there was a need to first define what political party meant.

24. The Chairman suggested to discuss the question of whether donations or material benefits received by a member's political party should be declared, pending a decision taken by CRoP on whether such declaration was within the scope of the existing registrable interests.

25. Miss Emily LAU said that it was unlikely that CRoP could come to a view on whether donations or material benefits received by a Member's political party should be declared before the completion of the scrutiny of the Bill. To her understanding, RoP was silent on the definition of political party. Miss LAU further said that she had no objection if the Bills Committee should decide that members should declare if the political organisations to which they belonged had received donations or material benefits from the organisations affected which were by or had vested interests in the Bill.

26. Mr Albert CHENG opined that there was no need to seek the views of CRoP on whether donations or material benefits received by a Member's political party should be declared, having regard to the fact that Members were required under RoP to declare indirect pecuniary interest.

27. In summing up, the Chairman said that the subject would be further discussed at a future meeting with prior notice given for the discussion.

Date of next meeting

28. The Chairman reminded members that the next meeting had been scheduled for 17 February 2006 at 8:30 am.

29. There being no other business, the meeting ended at 12:48 pm.

Council Business Division 2
Legislative Council Secretariat
21 April 2006

Time marker	Speaker	Subjects	Action required
012053 – 013515	Mr Tommy CHEUNG Chairman Administration Ms Audrey EU Ms Emily LAU	<u>Clause 4 - Interpretation</u> The Administration was requested to make the drafting of the proposed amended section 3 more user-friendly.	✓ (Admin to provide a written response)
013516 – 020215	Administration Mr Tommy CHEUNG Ms Audrey EU ALA7 Chairman	The Administration was requested to provide a written response on whether the removal of the owner, occupier or lessee who smoked in the common area of his/her building from that common area by the manager of that building provided under section 3(3)(c) would be in breach of the Bills of Rights, the Basic Law and other legislation as the private property rights of the owner, occupier or lessee in enjoying the common part of his/her building would be affected.	✓ (Admin to provide a written response)
020216 – 020226	Chairman	Date of next meeting	

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 21 April 2006