

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2204/10-11  
(These minutes have been seen by  
the Administration)

Ref : CB2/HS/1/10

**Subcommittee to Study Issues Relating to the Power of the  
Legislative Council to Amend Subsidiary Legislation**

**Minutes of meeting  
held on Friday, 10 June 2011, at 10:45 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Dr Hon Margaret NG (Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon LAU Kong-wah, JP  
Hon Cyd HO Sau-lan  
Dr Hon Priscilla LEUNG Mei-fun  
Hon IP Kwok-him, GBS, JP

**Members absent** : Hon Emily LAU Wai-hing, JP  
Hon Tanya CHAN

**Public Officers attending** : Ms Roxana CHENG  
Deputy Solicitor General (Constitutional)  
Department of Justice

Miss LEE Sau-kong  
Senior Assistant Solicitor General  
Department of Justice

Miss Emma WONG  
Senior Government Counsel/Law Drafting Division  
Department of Justice

Miss Agnes WONG, JP  
Deputy Director of Administration  
Administration Wing, Chief Secretary for  
Administration's Office

**Clerk in attendance** : Mrs Sharon TONG  
Principal Council Secretary (2)

**Staff in attendance** : Mr KAU Kin-wah  
Senior Assistant Legal Adviser 3

Mr Jove CHAN  
Senior Council Secretary (2) 8

Ms Michelle LEE  
Legislative Assistant (2) 7

---

## I. Meeting with the Administration

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

2. The Subcommittee requested the Administration -
  - (a) to provide information on examples of subsidiary legislation falling within the factors to be considered when deciding whether to make provision in primary or secondary / subsidiary legislation as listed in paragraph 6 of the Administration's paper (LC Paper No. CB(2) 1974/10-11(01)); and
  - (b) to advise, with reference to the No. 2 judgment of the case *Ng Ka Ling & Ors v Director of Immigration* (1999) 2 HKCFAR 4, whether judicial clarification was applicable to resolving differences over the interpretation of legislative provisions between the Legislative Council and the Administration.
3. The Subcommittee requested *SALA3* to provide members with a copy of the No. 2 judgment of the case *Ng Ka Ling & Ors v Director of Immigration* (1999) 2 HKCFAR 4.

## **II. Outline of the report of the Subcommittee for submission to House Committee**

4. The Subcommittee endorsed the proposed outline of the report of the Subcommittee for submission to the House Committee, subject to moving the issue "The proposal for alternative provisions for the Legislative Council's power to amend (including repeal) subsidiary legislation" referred to in paragraph 3(D)(iv) of LC Paper No. CB(2) 1974/10-11(05) to the recommendations of the Subcommittee. The Subcommittee agreed that the information referred to in paragraph 2(a) above, and the proposal for seeking judicial clarification on whether a piece of subsidiary legislation could be amended by the Legislative Council, should be included in the report.

## **III. Any other business**

### Date of next meeting

5. The Chairman suggested and members agreed that the next meeting would be scheduled when the draft report prepared by the Clerk was available for members' consideration.

6. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 2  
Legislative Council Secretariat  
24 June 2011

**Proceedings of meeting of the  
Subcommittee to Study Issues Relating to the Power of the  
Legislative Council to Amend Subsidiary Legislation  
held on Friday, 10 June 2011, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000042 - 000232	Chairman	Opening remarks	
000233 - 000504	Chairman Admin	Briefing on the Administration's paper "Supplementary information on the principles and policies for delegating power to make subsidiary legislation to an executive authority or other body" (LC Paper No. CB(2)1974/10-11(01))	
000505 - 000743	Chairman Admin	Briefing on the Administration's paper "Power of legislature to amend subsidiary legislation - Differences between the parliament of the United Kingdom and the Hong Kong legislature" (LC Paper No. CB(2)1974/10-11(02))	
000744 - 001205	Chairman Ms Cyd HO	The Administration's examples demonstrating the difference in the power of legislatures in amending subsidiary legislations under different regimes; and  the monitoring of the authorized bodies in making subsidiary legislations	
001206 - 001259	Chairman Dr Philip WONG	Clarification on revocation of the delegated legislative power from the executive authority or other body	
001300 - 001714	Chairman Mr IP Kwok-him	Significance of technicality in scrutinizing empowering provisions in primary legislation and subsidiary legislation; and  the power of amending primary legislation under the different regimes of the United Kingdom and Hong Kong	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
001715 - 001811	Chairman Dr Philip WONG	Clarification on the validity of subsidiary legislation made by an executive authority before the delegated legislative power being revoked	
001812 - 003027	Chairman Admin	Briefing by the Administration on its paper "Administration's response to the views of the Hong Kong Bar Association dated 8 April 2011" (LC Paper No. CB(2)1974/10-11(03))	
003028 - 003615	Chairman Dr Philip WONG	Clarification on the scope of legislative power delegated to an executive authority or other body; and  the power of the Legislative Council ("LegCo") to amend subsidiary legislation and the scope and extent of amendments that could be made	
003616 - 003928	Chairman Mr IP Kwok-him SALA3	SALA3's views on the Administration's response to the views of the Hong Kong Bar Association regarding the repeal of the Country Parks (Designation) (Consolidation) (Amendment) Order 2010	
003929 - 00	Dr Philip WONG Chairman	The differences between the views of the Hong Kong Bar Association, the Administration and the Senior Counsel engaged by LegCo on LegCo's power to amend subsidiary legislation, and the feasibility of resolving divergent views via judicial means	
004330 - 005151	Chairman SALA3	Briefing by SALA3 on the paper "Judicial Review and the Legislative Council" prepared by the Legal Service Division of LegCo Secretariat (LC Paper No. LS73/10-11)	
005152 - 010122	Chairman Dr Philip WONG SALA3 Admin	Clarification on the court's jurisdiction to deal with judicial review raised by the Administration against LegCo under the principle of separate powers of the administration, legislature and judiciary; and  consequence and result of seeking judicial review	
010123 - 010610	Chairman Mr IP Kwok-him Clerk	Proposed outline of the report of the Subcommittee for submission to the House Committee (LC Paper No. CB(2)1974/10-11(05))	

Time marker	Speaker	Subject(s)	Action Required
010611 - 011643	Chairman Ms Cyd HO Admin	Information to be included in the report; and  the number and examples of subsidiary legislation regarded by the Administration that LegCo did not have the power to amend them	The Administration to provide information on examples of subsidiary legislation falling within the factors to be considered when deciding whether to make provision in primary or secondary / subsidiary legislation as listed in paragraph 6 of the Administration's paper (LC Paper No. CB(2) 1974/10-11(01))
011644 - 012315	Chairman Dr Priscilla LEUNG	The feasibility of seeking judicial clarification on whether a piece of subsidiary legislation could be amended by LegCo	The Administration to advise, with reference to the No. 2 judgement of the case <i>Ng Ka Ling &amp; Ors v Director of Immigration</i> (1999) 2 HKCFAR 4, whether judicial clarification was applicable to resolving differences over the interpretation of legislative provisions between the LegCo and the Administration;  SALA3 to provide members with a copy of the No. 2 judgment of the case <i>Ng Ka Ling &amp; Ors v Director of Immigration</i> (1999) 2 HKCFAR 4
012316 - 012522	Chairman	Drafting of the Subcommittee report; and  date of next meeting	