

立法會
Legislative Council

LC Paper No. LS81/11-12

**Paper for the Subcommittee on Banking Ordinance
(Amendment of Seventh Schedule) Notice 2012**

Purpose

The Banking Ordinance (Amendment of Seventh Schedule) Notice 2012 (L.N. 99 of 2012) (the Notice) was gazetted on 18 May 2012 and laid on the table of the Legislative Council (the Council) on 23 May 2012. Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO), the Notice may be amended by the Council by resolution passed at a sitting of the Council held not later than 28 days after the sitting at which it was so laid. This means that the last sitting at which any such resolution must be passed is the meeting of 20 June 2012 unless a resolution to extend the period to amend the Notice is passed under section 34(4) of IGCO. Section 34(6) of IGCO provides that "sitting", when used to calculate time, means "the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper".

2. At the meeting of the Subcommittee on Banking Ordinance (Amendment of Seventh Schedule) Notice 2012 held on 12 June 2012, the Legal Service Division was asked to consider whether, in the light of the definition of "sitting" in section 34(6) of IGCO, the Council could validly pass a resolution to amend or repeal the Notice under section 34(2) of IGCO on the second or later day of the meeting of 20 June 2012 if it continues onto another day under rule 14(4) of the Rules of Procedure (RoP). This paper provides an analysis on the above issue.

Analysis

3. The issue in question turns on the proper construction of section 34(2) and (6) of IGCO. It is noted that the definition of "sitting" was added to section 34(6) of IGCO by clause 16A of the Interpretation and General Clauses (Amendment) Bill 1992 (the Bill). In his Second Reading speech, the then Attorney General remarked that the proposed amendments to section 34 of IGCO (including the amendments to section 34(6)) would "reflect the wish that this Council's very proper power to scrutinize subordinate legislation should be full and untrammelled". During the Committee stage of the Bill, he noted that

the proposed amendments would resolve "potential procedural problems whereby this Council might be deprived of having adequate time to scrutinize subsidiary legislation". He further explained that "sitting" was defined to mean those occasions where the discussion of subsidiary legislation was on the Order Paper because the Council had special sittings where ordinary business was not discussed and questions concerning subsidiary legislation could not be raised¹. The then Attorney General, however, did not explain why "sitting" was also defined to mean "the day on which the sitting commences" when used to calculate time. As section 34(6) of IGCO does not provide for the meaning of "time" or for what purpose time is calculated, the question that arises is how the word "sitting" as used in section 34(2) of IGCO should be construed.

4. Section 19 of IGCO provides that an Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit. Given the legislative intent of the Bill to preserve the Council's "full and untrammelled" power to scrutinize subsidiary legislation, we are of the view that the definition of "sitting" under section 34(6), when applied to section 34(2), is used for calculating the 28-day period referred to in section 34(2) and identifying the last sitting at which the resolution to amend the relevant subsidiary legislation must be passed. As such, section 34(2) of IGCO should not be construed as requiring such resolution to be passed on the first day of that sitting if it continues onto one or more later day under rule 14(4) of RoP since such construction could have the effect of trammelling the Council's power to scrutinize subsidiary legislation and hence would be inconsistent with the true intent, meaning and spirit of the section.

Conclusion

5. In the light of the above analysis, we consider that for the purposes of section 34(2) of IGCO, the Notice may be amended or repealed by a resolution passed during the continuation of the meeting of 20 June 2012 if it continues onto one or more later day.

Prepared by

Legal Service Division
Legislative Council Secretariat
14 June 2012

¹ Official Record of Proceedings of Hong Kong Legislative Council (15 December 1993), pp.1516 and 1527.