

立法會

Legislative Council

LC Paper No. CB(2)925/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/SS/2/11

Subcommittee on Places of Public Entertainment (Exemption) (Amendment) Order 2011

Minutes of meeting
held on Tuesday, 17 January 2012, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Cyd HO Sau-lan (Chairman)
Dr Hon Margaret NG
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat

Member absent : Hon IP Kwok-him, GBS, JP

Public Officers attending : Item II
Miss Winnie TSE
Principal Assistant Secretary for Home Affairs
(Civic Affairs)
Ms YEUNG Yuk-ip, Rita
Senior Superintendent (Licensing)
Food and Environmental Hygiene Department

Attendance by invitation : Item II

Legislative Council Secretariat

Action

Mr Jimmy MA, JP
Legal Adviser

Mrs Percy MA
Assistant Secretary General 4

Mr IP Ching-wan
Consultant Architect

Ms Emily PANG
Chief Council Secretary (4)3

Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (2)2

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mr Raymond LAM
Senior Council Secretary (2)2

Miss Jasmine TAM
Council Secretary (2)2

Miss Emma CHEUNG
Legislative Assistant (2)2

Action

I. Election of Chairman

Dr Margaret NG, the Member who had the highest precedence in the Council among those who were present at the meeting, presided over the election of Chairman of the Subcommittee.

2. Ms Cyd HO was nominated by Dr Margaret NG and the nomination was seconded by Ms Emily LAU. Ms Cyd HO accepted the nomination. As there was no other nomination, Dr Margaret NG declared Ms Cyd HO elected as the Chairman.

Action

II. Meeting with the Administration

- File Ref : L/M to HAB/D3/10/9/5 -- Legislative Council Brief
- L.N.183 of 2011 -- Places of Public Entertainment (Exemption) (Amendment) Order 2011("the Amendment Order")
- LC Paper No. LS 20/11-12 -- Legal Service Division ("LSD") Report on the Amendment Order ("LSD Report")
- LC Paper No. CB(2)841/11-12(02) -- Marked-up copy of the Places of Public Entertainment (Exemption) Order prepared by LSD
- LC Paper No. CB(2)841/11-12(03) -- Background brief prepared by the Legislative Council ("LegCo") Secretariat

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

Extension of scrutiny period

4. Members noted that the Amendment Order had been tabled at the Council meeting of 11 January 2012 and its scrutiny period, if not extended, would expire on 8 February 2012. To allow sufficient time for scrutiny of the Amendment Order, members agreed that the Chairman would move a motion at the Council meeting of 8 February 2012 to extend the scrutiny period to 29 February 2012.

Attendance of representatives of the LegCo Secretariat and the Administration

5. Members agreed that representatives of the LegCo Secretariat be invited to attend the meeting to answer questions from members on the Amendment Order.

Action
Admin

6. At the Chairman's request, the Administration undertook to invite representatives from the Department of Justice at future meetings of the Subcommittee.

Discussion

7. Dr Margaret NG and the Chairman declared that they were members of The Legislative Council Commission ("LCC"), which was responsible for the management of the LegCo Complex with which the Amendment Order was concerned.

Applicability of the Places of Public Entertainment Ordinance (Cap. 172)("PPEO") to the LegCo Complex

8. Dr Margaret NG noted with concern paragraph 4 of the LSD Report that LSD held the same view as the Administration that the LegCo Complex would be a place of public entertainment for the purpose of PPEO. She considered that the LegCo Complex was not a place of public entertainment and therefore should not be bound by PPEO. Nevertheless, with a view to allaying any possible public concern over the applicability of PPEO to LegCo and for the avoidance of doubt about LCC's compliance with the laws of Hong Kong, she raised no objection to the Amendment Order.

9. Legal Adviser, LegCo Secretariat ("LA") advised that LSD had arrived at the view stated in paragraph 4 of the LSD Report on the basis of a legal analysis of the relevant provisions of PPEO. Under section 4(1) of PPEO, no person was permitted to keep or use any place of public entertainment without a licence granted under PPEO ("PPE licence"). Section 4(2) stipulated that a breach of section 4(1) would be a criminal offence. Section 3A empowered the Secretary for Home Affairs to exempt places of public entertainment which were of a specified class or description from PPEO. PPEO provided for the respective definitions of "public entertainment" and "place of public entertainment" but did not elaborate on the term "place". In LSD's view, there were grounds for considering that the activities (such as story-telling and exhibitions) proposed by LCC to be held at the LegCo Complex might fall within the meaning of "public entertainment" as defined in PPEO, and LCC as the occupier of the LegCo Complex might fall under the regulation of PPEO and might have to obtain a PPE licence. As was the case with other bodies corporate, LCC had to observe the laws of Hong Kong. For the avoidance of doubt about LCC's compliance with the laws of Hong Kong, a prudent approach should be adopted by seeking an exemption to be given to LCC

Action

by virtue of section 3A of PPEO. LCC had agreed to adopt this approach after discussion.

10. Dr Margaret NG opined that LSD seemed to interpret the provisions relating to the scope of PPEO from a literal perspective only. She considered that the context and legislative intent of PPEO should be taken into consideration in interpreting the provisions of PPEO. In addition, the constitutionality of applying PPEO to LegCo was yet to be examined. She sought clarification on whether LSD had arrived at the view on the basis of the consideration of allaying any public concern about the applicability of PPEO to LegCo and avoiding doubt about LCC's compliance with the laws. She said that she would object to the Amendment Order if LSD's view was based on its concurrence with the Administration's view that the LegCo Complex would be a place of public entertainment for the purpose of PPEO.

11. LA reiterated that LSD's view was based on its understanding of the relevant requirements under PPEO and LCC's plan to admit members of the public generally to join the proposed activities to be conducted at the LegCo Complex. Given that a piece of legislation would remain in force and had to be observed unless it was ruled unconstitutional, it was prudent for LCC to seek exemption under PPEO until the relevant provisions of PPEO had been amended.

Scope of PPEO

12. Dr Margaret NG expressed grave concern about the wide scope of "public entertainment" under PPEO to the extent that almost all activities to which the general public was admitted were subject to the requirement for a PPE licence, undermining the freedom of speech and expression. She requested the Administration to explain its interpretation of a place of public entertainment under PPEO, whether a place being capable of admitting members of the public and where an activity falling within the scope of Schedule 1 to PPEO was conducted would be considered as a place of public entertainment within the meaning of PPEO, and whether prosecution would be instituted against the person who kept or used such a place without a PPE licence.

13. Principal Assistant Secretary for Home Affairs (Civic Affairs)³ (PAS(CA)³) advised that the definition of "entertainment" had been set out in Schedule 1 to PPEO. The Administration had considered applications for PPE licences in accordance with the definition of "public entertainment" under PPEO. Whether prosecution would be instituted

Action

against the conduct of a particular activity at a place would depend on a number of factors and it was difficult to make judgement which fitted all cases. Senior Superintendent (Licensing), Food and Environmental Hygiene Department ("SS (Licensing)") added that from January 2007 to November 2011, a total of 16 successful prosecutions were instituted but all such prosecutions were not related to lectures or story-telling.

Admin 14. In response to Dr Margaret NG's enquiry on whether the University of Hong Kong ("HKU") had been granted exemption or had to obtain a PPE licence for conducting activities to which the general public was admitted at its campus, SS (Licensing) advised that within the HKU campus, Loke Yew Hall was covered by a PPE licence. In Hong Kong, there were currently some 200 places with a PPE licence for a duration of one year subject to renewal to conduct public entertainment activities in Hong Kong.

Admin 15. Dr Margaret NG sought clarification on whether individual places within the HKU campus or the entire HKU campus were required to apply for a PPE licence and whether the same should apply to the case of the LegCo Complex. PAS(CA)3 advised that given the huge coverage of the HKU campus, public entertainment activities would not be held at some places, and such places would not be places of public entertainment and did not need a PPE licence. In drafting the Amendment Order, the Administration had communicated with the LegCo Secretariat on the activities proposed to be conducted at the LegCo Complex and examined whether such activities would fall within the scope of PPEO. She understood that LCC was responsible for managing the entire LegCo Complex and the exemption applied to the entire LegCo Complex.

Follow-up actions

Admin 16. The Subcommittee requested the Administration to provide a written response on the following –

- (a) the respective background to and legislative intent of PPEO enacted in 1919 and the subsequent amendments to PPEO, including the inclusion of "lecture or story-telling" in Schedule 1 to PPEO in 1951;
- (b) its interpretation of the meaning of "entertainment", "public entertainment" and "place of public entertainment" under PPEO and section 4(1) of PPEO; the circumstances under which a place would become a place of public entertainment; whether any place would become a place of public entertainment when

Action

activities falling within the scope of Schedule 1 to PPEO was held in that place; and the differences between a place of public entertainment and a place of private entertainment;

- (c) a list of places, other than Loke Yew Hall, within the campus of HKU which had obtained a PPE licence; whether prosecution had been instituted against the holding of activities falling within the scope of Schedule 1 to PPEO within places of HKU which had not been licensed under PPEO; and the reasons for instituting or not instituting prosecution;
- (d) how PPEO was implemented by the Administration, including the procedures and relevant forms concerning the application for a PPE licence and the criteria for granting a licence, and the number of rejected applications in the past and the reasons for rejection; and
- (e) a full list of places with a PPE licence, whether the licensee was an individual or an organization, and the activities conducted at such places.

III. Subsequent meetings

17. Members agreed that further meetings of the Subcommittee would be scheduled for 2, 3 and 6 February 2012 at 2:30 pm, 10:45 am and 4:30 pm respectively.

18. Members also agreed that the law faculties of local universities, the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong Human Rights Monitor, JUSTICE and local arts groups would be invited to give views on the Amendment Order at the meeting scheduled for 2 February 2012. In line with usual practice, an invitation for submissions would be uploaded onto the website of LegCo.

19. There being no other business, the meeting ended at 5:38 pm.

**Proceedings of meeting of the
Subcommittee on Places of Public Entertainment
(Exemption) (Amendment) Order 2011
on Tuesday, 17 January 2012, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000522 - 000608	Dr Margaret NG Ms Emily LAU Ms Cyd HO	Election of Chairman	
000609 - 000629	Chairman	Members' consent to invite representatives of the Legislative Council ("LegCo") Secretariat to attend the meeting to answer questions from members on the Places of Public Entertainment (Exemption) (Amendment) Order 2011 ("the Amendment Order").	
000630 - 000719	Chairman	Members' support for the Chairman's proposed extension of the scrutiny period for the Amendment Order to the Council meeting of 29 February 2012.	
000720 - 001641	Dr Margaret NG Chairman Legal Adviser ("LA") Admin	Declaration by Dr Margaret NG as a member of The Legislative Council Commission ("LCC"). Views of Dr Margaret NG and LA on the applicability of the Places of Public Entertainment Ordinance (Cap. 172) ("PPEO") to LegCo Complex	
001642 - 001748	Admin	The Administration's information on the number of prosecutions under PPEO in the past five years and whether there had been any prosecution relating to "lecture or story-telling" during the period.	
001749 - 003102	Dr Margaret NG Chairman Admin	Dr Margaret NG's concern about the scope of PPEO and the Amendment Order and her enquiry on the number of places with a licence issued under PPEO ("PPE licence"). The Administration's undertaking to invite representatives from the Department of Justice at future meetings of the Subcommittee. Request from Dr Margaret NG and the Chairman for the Administration to provide a	

Time marker	Speaker	Subject	Action required
		<p>written response on the following –</p> <p>(a) whether the University of Hong Kong ("HKU") had been granted exemption or had to obtain a PPE licence for conducting at its campus activities to which the general public was admitted;</p> <p>(b) whether individual places within the HKU campus, instead of the entire HKU, were required to apply for a PPE licence, and if so, whether the same consideration should be applied to the case of the LegCo Complex;</p> <p>(c) a list of places, other than Loke Yew Hall, within the HKU campus which had obtained a PPE licence; whether prosecution had been instituted against the holding of activities falling within the scope of Schedule 1 to PPEO within places of HKU which had not been licensed under PPEO, and the reasons for instituting or not instituting prosecution; and</p> <p>(d) a full list of places with a PPE licence, whether the licensee was an individual or an organization and the activities conducted at such places.</p>	<p>Admin to follow up (paragraph 14 of the minutes)</p> <p>Admin to follow up (paragraph 15 of the minutes)</p> <p>Admin to follow up (paragraph 16(c) of the minutes)</p> <p>Admin to follow up (paragraph 16(e) of the minutes)</p>
003103 - 010256	Chairman Dr Margaret NG Mr LEE Wing-tat LA	<p>Declaration by the Chairman as a member of LCC.</p> <p>Members' views on the interpretation of the provisions of PPEO, applicability of PPEO to LegCo Complex and whether the LegCo Complex was a place of public entertainment.</p> <p>Members' request for the Administration to provide a written response on the following –</p> <p>(a) the respective background to and legislative intent of PPEO enacted in 1919 and the subsequent amendments to PPEO, including the inclusion of "lecture or story-telling" in Schedule 1 to PPEO in 1951;</p> <p>(b) its interpretation of the meaning of "entertainment", "public entertainment" and "place of public entertainment" under PPEO and section 4(1) of PPEO; the</p>	<p>Admin to follow up (paragraph 16(a) of the minutes)</p> <p>Admin to follow up (paragraph 16(b) of the minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>circumstances under which a place would become a place of public entertainment; whether any place would become a place of public entertainment when activities falling within the scope of Schedule 1 to PPEO was held in the place; and the differences between a place of public entertainment and a place of private entertainment; and</p> <p>(c) how PPEO was implemented by the Administration, including the procedures and relevant forms regarding the application for a PPE licence, the criteria for granting a licence, and the number of rejected applications in the past and the reasons for rejection.</p> <p>Invitation of views of the public on the Amendment Order.</p>	<p>Admin to follow up (paragraph 16(d) of the minutes)</p>
010257 - 010929	Chairman Dr Margaret NG Mr LEE Wing-tat	Schedule of future meetings and deputations to be invited to give views on the Amendment Order.	

Council Business Division 2
Legislative Council Secretariat
1 February 2012