

立法會
Legislative Council

LC Paper No. CB(2)1033/17-18

Ref : CB2/H/5/17

House Committee of the Legislative Council

**Minutes of the 15th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 23 February 2018**

Members present :

Hon Starry LEE Wai-king, SBS, JP (Chairman)
Hon Dennis KWOK Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, BBS, JP
Hon POON Siu-ping, BBS, MH

Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon Jeremy TAM Man-ho

Members absent :

Hon Abraham SHEK Lai-him, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Dr Hon KWOK Ka-ki
Hon Martin LIAO Cheung-kong, SBS, JP
Hon Andrew WAN Siu-kin
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon KWONG Chun-yu

Clerk in attendance :

Miss Flora TAI

Clerk to the House Committee

Staff in attendance :

Miss Odelia LEUNG	Acting Secretary General
Ms Connie FUNG	Legal Adviser
Ms Anita SIT	Assistant Secretary General 1
Ms Dora WAI	Assistant Secretary General 3
Mr Matthew LOO	Assistant Secretary General 4
Mr Timothy TSO	Senior Assistant Legal Adviser 1
Mr YICK Wing-kin	Senior Assistant Legal Adviser 2
Mr Kelvin LEE	Senior Assistant Legal Adviser 3
Ms Amy YU	Principal Council Secretary 1
Ms Hallie CHAN	Head (Public Information)
Ms Maisie LAM	Chief Council Secretary (2)5
Ms Alice LEUNG	Chief Council Secretary (2)6
Miss Rachel DAI	Assistant Legal Adviser 2
Mr Bonny LOO	Assistant Legal Adviser 4
Ms Vanessa CHENG	Assistant Legal Adviser 5
Ms Wendy KAN	Assistant Legal Adviser 6
Mr Cliff IP	Assistant Legal Adviser 8
Miss Evelyn LEE	Assistant Legal Adviser 10
Mr Richard WONG	Senior Council Secretary (2)6
Miss Connie AU	Senior Council Secretary (2)8
Mr Clement HAU	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

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I. Confirmation of minutes of meeting

Minutes of 14th meeting held on 9 February 2018

(LC Paper No. CB(2)900/17-18)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration

2. The Chairman said that there was nothing special to report.
3. Ms Tanya CHAN said that while the Secretary for Justice, the Secretary for Transport and Housing and the Secretary for Security ("the three Principal Officials") had attended the first two meetings of the

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Bills Committee on Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill to answer questions raised by Members, Members still had many questions relating to the constitutional and legal issues of the Bill and the operation of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (such as the overall arrangement and train frequencies). Ms CHAN asked the Chairman to relay to the Chief Secretary for Administration ("CS") that she hoped the three Principal Officials would continue to attend meetings of the Bills Committee to respond to Members' questions.

4. The Chairman said that Ms CHAN's view would be relayed to CS. She trusted that the Chairman and the Deputy Chairman of the aforesaid Bills Committee would liaise with the Administration and decide on the meeting arrangements as appropriate.

III. Legal Service Division report on subsidiary legislation gazetted on 9 February 2018
(*LC Paper No. LS35/17-18*)

5. At the invitation of the Chairman, Legal Adviser ("LA") briefed Members on the report prepared by the Legal Service Division ("LSD") on the Hazardous Chemicals Control Ordinance (Amendment of Schedule 2) Order 2018 (i.e. L.N. 23) which was gazetted on 9 February 2018 and would be tabled in Council on 28 February 2018.

6. Members did not raise any questions on the Order.

7. The Chairman reminded Members that the deadline for amending the Order would be the Council meeting of 28 March 2018.

IV. Business for the Council meeting of 28 February 2018

Report No. 7/17-18 of the House Committee on Consideration of
Subsidiary Legislation and Other Instruments

8. The Chairman said that the above draft Report, which covered subsidiary legislation the period for amendment of which would expire at the Council meeting of 28 February 2018, had been issued to Members. No Member had indicated intention to speak on the subsidiary legislation.

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(a) **Questions**

(LC Paper No. CB(3)370/17-18)

9. The Chairman said that 22 written questions had been scheduled for the meeting.

(b) **Bill - First Reading and moving of Second Reading**

10. The Chairman said that the Administration had advised the Clerk to the Legislative Council that the Financial Secretary intended to present the Appropriation Bill 2018 and the Estimates of Expenditure for the year ending 31 March 2019 to the Council at the meeting.

V. Advance information on business for the Council meeting of 21 March 2018

Government motion

Proposed resolution to be moved by the Secretary for Transport and Housing under section 30 of the Housing Ordinance (Cap. 283)

(LC Paper No. CB(3)344/17-18)

(LC Paper No. LS36/17-18)

11. At the invitation of the Chairman, LA briefed Members on the report prepared by LSD on the above proposed resolution.

12. Members did not raise any questions on the proposed resolution and had no objection to the Administration moving the proposed resolution at the meeting.

VI. Reports of Bills Committees and subcommittees

(a) **Report of the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017**

(LC Paper No. CB(2)904/17-18)

13. The Chairman, on behalf of the Chairman of the Bills Committee, Mr CHAN Hak-kan, who was not at the meeting, briefed Members on the deliberations of the Bills Committee as detailed in its report. Members noted that both the Administration and the Bills Committee would not

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propose any amendments to the Bill, and that the Bills Committee raised no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 21 March 2018.

**(b) Report of the Bills Committee on Inland Revenue (Amendment)
(No. 4) Bill 2017**

14. Mr Kenneth LEUNG, Chairman of the Bills Committee, made a verbal report on the deliberations of the Bills Committee. He said that the objective of the Bill was to amend the Inland Revenue Ordinance (Cap. 112) to extend profits tax exemption to onshore privately offered open-ended fund companies ("subject OFCs").

15. Mr LEUNG informed Members that the Bills Committee had held two meetings to meet with the Administration, and had invited public views on the Bill. Members of the Bills Committee generally supported the Bill. In the course of the deliberations, the Bills Committee had examined issues including the residence requirement and the non-closely held condition that subject OFCs were required to meet for profits tax exemption, the tax treatment of investments by a subject OFC, the taxation of carried interest received by investment managers as well as the anti-avoidance measures. The Bills Committee had also sought the Administration's assurance that the proposed tax regime for subject OFCs was in line with the latest international standards under the Base Erosion and Profit Shifting package of the Organisation for Economic Co-operation and Development and the European Union.

16. Mr LEUNG further said that the Bills Committee noted that on the proposed tax treatment of investments by a subject OFC in private companies, a subject OFC might invest in securities of overseas private companies without a limit, but was subject to a limit of 10% of its gross asset value for investing in securities of local companies due to the 10% de minimis rule imposed by the Securities and Futures Commission ("SFC") at the fund regulation level. The Bills Committee was concerned that such differential tax treatment of investments in local versus overseas private companies would be considered as ring-fencing and hence harmful under the prevailing international standards. Besides, the Bills Committee was also concerned whether there was a loophole that might give rise to tax leakage since a subject OFC could invest in securities of overseas private companies which could in turn own assets in Hong Kong. To address the ring-fencing concern and plug the loophole, the Administration would propose amendments to the Bill to remove the 10% de minimis rule at the tax level as well as the tainting

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provisions. With the proposed amendments, a subject OFC, as long as it had been registered with SFC and met other requirements in the Bill, would be allowed to enjoy tax exemption on all of its profits, provided that it did not carry on direct trading or a direct business undertaking in Hong Kong involving assets of a non-Schedule 16A class and it did not invest in certain specified types of private companies.

17. Members noted that the Bills Committee supported in principle the amendments proposed by the Administration, and that the Bills Committee would not propose any amendments to the Bill. Members also noted that the Bills Committee did not object to the resumption of Second Reading debate on the Bill at the Council meeting of 21 March 2018. The Bills Committee would submit a written report in due course.

(c) Report of the Bills Committee on Inland Revenue (Amendment) (No. 7) Bill 2017

(LC Paper No. CB(1)610/17-18)

18. Mr Holden CHOW, Chairman of the Bills Committee, briefed Members on the deliberations of the Bills Committee as detailed in its report. Mr CHOW said that the Administration would propose amendments to the Bill and that the Bills Committee had examined and agreed to the amendments proposed by the Administration. Members noted that the Bills Committee would not propose any amendments to the Bill and that it had no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 21 March 2018.

(d) Report of the Bills Committee on Chinese Medicine (Amendment) Bill 2017

19. Ms Alice MAK, Chairman of the Bills Committee, made a verbal report on the deliberations of the Bills Committee. She said that the Bill sought to confer power on the Director of Health ("the Director") to issue a Chinese medicine safety order ("CMSO") to prohibit the sale or supply of Chinese herbal medicines ("Chms"), proprietary Chinese medicines ("pCms") or substances or compounds that were generated in the course of manufacture of pCms and/or to recall such products if there was reasonable cause to believe that such products were dangerous or injurious to health or unfit for use by human beings, or would pose a danger to public health. Members of the Bills Committee were in general supportive of the legislative proposal in order to further protect public health.

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20. Ms MAK informed Members that the Bills Committee had expressed concerns on a number of issues, including the scope of products subject to a CMSO, the principles of and procedures for recalling such products, and the legal liability of the relevant traders should they fail to completely recall the products concerned. The Administration had assured members of the Bills Committee that for enforcement of a CMSO in the future, the Department of Health would follow the approach, which was currently adopted for the recall system of Chinese medicine products, by discussing the details of the enforcement method and the time frame with the person subject to the CMSO in each case. Members noted that in addition to the defence provisions, the Bill would also provide an appeal mechanism to allow a person aggrieved by a CMSO to lodge an appeal against the decision of the Director.

21. Ms MAK further advised that some members of the Bills Committee were concerned whether the sampling methods and testing standards adopted in the existing market surveillance system for Chms and pCms could ensure effective implementation of a CMSO. These members of the Bills Committee had called on the Administration to strengthen the market surveillance system for related Chinese medicine products such that sub-standard products could be recalled in an efficient and timely manner. Members of the Bills Committee noted that the Administration was exploring amendments to the definition of pCm in the Chinese Medicine Ordinance (Cap. 549) so as to strengthen the current regulation. Members of the Bills Committee had urged the Administration to respond to the request of the trade for conducting a holistic review of Cap. 549 as soon as possible.

22. Members were also advised that having considered the views expressed by the Bills Committee, the Administration would propose five amendments to the Bill to revise the drafting of the relevant provisions. The Bills Committee did not object to the proposed amendments, and would not propose any amendments to the Bill. Members also noted that the Bills Committee raised no objection to the proposed resumption of the Second Reading debate on the Bill at the Council meeting of 21 March 2018. The Bills Committee would submit a written report later.

23. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above four Bills would be Monday, 12 March 2018.

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(*Post-meeting note:* Subsequent to the meeting, Members were informed vide LC Paper No. CB(2)986/17-18 issued on 6 March 2018 that the Administration intended to resume the Second Reading debate on the Chinese Medicine (Amendment) Bill 2017 at the Council meeting of 28 March 2018 instead of that of 21 March 2018 as it had originally intended, and that in the light of the above, the deadline for giving notice of amendments to the Bill, if any, was 19 March 2018.)

VII. Position on Bills Committees and subcommittees

(*LC Paper No. CB(2)901/17-18*)

24. The Chairman said that as at 22 February 2018, there were 11 Bills Committees, eight subcommittees under the House Committee ("HC") and four subcommittees on policy issues under Panels in action. Eight subcommittees on policy issues were on the waiting list.

VIII. Priority allocation of a debate slot for a motion debate on the Report of the Joint Subcommittee on Long-term Care Policy

(*LC Paper No. CB(2)907/17-18*)

25. At the invitation of the Chairman, Dr Fernando CHEUNG, Chairman of the Joint Subcommittee on Long-term Care Policy ("the Joint Subcommittee"), said that upon completion of the 12-month period of work which ended in December 2017, the Joint Subcommittee had been put on the waiting list for re-activation of work. As it was anticipated that a vacant slot would not be available in the near future, the Joint Subcommittee had submitted a report on the subjects already studied and its recommendations to the Panel on Welfare Services and the Panel on Health Services. Dr CHEUNG further said that in view of the wide public concern on long-term care policy and services, the Joint Subcommittee proposed to seek HC's approval for priority allocation of a debate slot under rule 14A(h) of the House Rules to him, in his capacity as the Chairman of the Joint Subcommittee, for moving a motion for debate on the Report of the Joint Subcommittee ("the Subcommittee Report") at the Council meeting of 9 May 2018. The debate would provide an opportunity for Members to express views on the subject and for the Administration to respond.

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26. Members agreed to the priority allocation of a debate slot to Dr Fernando CHEUNG for moving a motion on the Subcommittee Report at the Council meeting of 9 May 2018. Members also agreed to the Joint Subcommittee's proposal that in addition to the debate on the Subcommittee Report, only one other debate on a Member's motion without legislative effect should be held at the same Council meeting.

IX. Any other business

27. There being no other business, the meeting ended at 2:52 pm.

Council Business Division 2
Legislative Council Secretariat
14 March 2018