

立法會
Legislative Council

LC Paper No. CB(2) 2392/00-01

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 36th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 5 October 2001**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Chin-shek, JP
Hon LAU Kong-wah

Ms Bernice WONG	Assistant Legal Adviser 1
Miss Anita HO	Assistant Legal Adviser 2
Miss Connie FUNG	Assistant Legal Adviser 3
Mr Arthur CHEUNG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Mrs Vivian KAM	Chief Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Miss Becky YU	Chief Assistant Secretary (1)1
Miss Salumi CHAN	Chief Assistant Secretary (1)5
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Betty MA	Senior Assistant Secretary (2)1
Miss Yvonne YU	Senior Assistant Secretary (2)7

Action

I. Confirmation of the minutes of meeting on 10 July 2001
(LC Paper No. CB(2) 2080/00-01 issued vide LC Paper No. CB(2) 2115/0-01 dated 17 July 2001)

The minutes were confirmed.

II. Matters arising

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

Minutes of proceedings of committees

2. The Chairman informed Members that at her meeting with CS on 11 July 2001, CS had again emphasised the need to consider producing minutes of committee proceedings in a condensed form as there were already audio recordings of committee proceedings available for reference. She said that the matter would be further discussed under agenda item VII(b) below.

Application of certain provisions of the Prevention of Bribery Ordinance to the Chief Executive

3. The Chairman said that the Administration's written response to explain why it was taking such a long time to introduce the legislative proposal and what exactly the constitutional issues involved were had been received and circulated to Members on 13 July 2001.

III. Business arising from previous Council meetings

(a) **Legal Service Division's report on bills referred to the House Committee in accordance with Rule 54(4)**

Travel Agents (Amendment) Bill 2001
(LC Paper No. LS 162/00-01)

4. The Legal Adviser explained that the Bill sought to provide a legal framework to regulate inbound travel agents. Any person carrying on a business as an inbound travel agent without a licence would commit a criminal offence, and would be liable to a fine and imprisonment.

5. The Legal Adviser further said that according to the Legislative Council (LegCo) Brief, the Administration had consulted the industry and the Consumer Council, and they generally welcomed the legislative proposals.

6. The Legal Adviser added that the Panel on Economic Services was consulted on the proposed amendments at its meeting on 19 December 2000. Although the Panel was generally in support of the proposed Bill, some Panel members had expressed a number of concerns.

7. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join : Ms Cyd HO, Mr Fred LI, Mrs Selina CHOW, Mr CHAN Kam-lam and Mr SIN Chung-kai.

8. The Chairman added that the Bills Committee would be placed on the waiting list until a vacant slot was available.

(b) **Legal Service Division's reports on subsidiary legislation tabled on 11 July 2001 and subsidiary legislation gazetted from 13 July 2001 to 21 September 2001**

(LC Paper No. LS 163/00-01)

(LC Paper No. CB(2) 2340/00-01 issued vide LC Paper No. CB(2) 2349/00-01 dated 26 September 2001)

9. Introducing the report, the Legal Adviser explained that it covered two batches of subsidiary legislation -

(i) 16 items of subsidiary legislation which were tabled on 11 July 2001 (Appendix A of the paper); and

(ii) 14 items of subsidiary legislation which were gazetted between 13 July and 21 September 2001 and to be tabled on 10 October 2001 (Appendix B of the paper).

Action

10. Referring to the 16 items of subsidiary legislation tabled on 11 July 2001, the Legal Adviser said that the Securities (Miscellaneous) (Amendment) (No. 2) Rules 2001 and the Banking Ordinance (Amendment of Third Schedule) Notice 2001 would come into operation on 26 and 29 October 2001 respectively. He advised that any amendments to these two items of subsidiary legislation would have to be made at the Council meeting on 17 October 2001, unless the scrutiny period was extended to the third Council meeting. He pointed out that the Committee on Rules of Procedure would propose to the House Committee that the four-day debate (i.e. 17 to 19 and 24 October 2001) on the 2001 Policy Address should be regarded as one Council meeting. If the proposal was adopted by the House Committee, the third Council meeting would fall on 31 October 2001, by which time these two items of subsidiary legislation would have already come into operation.

11. The Chairman said that if Members wished to amend these two items before they came into operation, they should do so at the Council meeting on 17 October 2001. She reminded Members that the deadline for notice of amendment was 10 October 2001.

12. Regarding the Solicitors (Professional Indemnity) (Amendment) Rules 2001 which were also tabled on 11 July 2001, the Legal Adviser said that the main purpose of the Amendment Rules was to increase the contributions to the Professional Indemnity Fund. He further said that the Amendment Rules had already come into operation on 1 October 2001. The Legal Adviser added that the Amendment Rules were discussed by the Panel on Administration of Justice and Legal Services (AJLS Panel) at its meeting on 18 September 2001, and the Panel had recommended that a subcommittee should be formed to study the Amendment Rules in detail.

13. Miss Margaret NG, Chairman of the AJLS Panel, said that the level of increase for the 2001 contribution to the Solicitors Indemnity Fund was about 130%. Some legal practitioners had raised objection to the present arrangement whereby all solicitors firms paid their contributions under a prescribed formula, and requested an immediate and independent review of the existing scheme. Miss NG further said that the Law Society had provided explanations for the proposed increase in contributions and the Panel had also received representations made by a number of law firms.

14. Miss Margaret NG said that although the proposed increase in contributions had already come into effect, the AJLS Panel considered the matter an important one and recommended that a subcommittee should be set up to scrutinise the Amendment Rules. The AJLS Panel also agreed that the Law Society should be requested -

Action

- (a) to provide information on how the proposed increase in contributions would affect law firms of different sizes and businesses and the provision of legal services;
- (b) to explore whether the amount of contribution paid by a firm under the existing scheme should take into account its claims records and nature of business; and
- (c) to explore whether the existing scheme should be replaced by alternative schemes.

15. Miss Margaret NG informed Members that further to the Panel meeting, the Law Society provided a response on 4 October 2001 which had been circulated to members of the AJLS Panel. The Law Society had pointed out that it was unable to provide information on the impact of the proposed increase in contributions on law firms of different sizes and businesses. Miss NG further advised that the Law Society had agreed to carry out an independent review of the existing scheme. However, having regard to the number of law firms and the legal practitioners involved, the Law Society anticipated that such a review would need considerable time and expenses, and that it would have to seek a mandate from its members to conduct such a review. The Law Society was of the view that there might not be a need to set up a subcommittee to study the Amendment Rules.

16. Miss Margaret NG said that as some legal practitioners had raised objection to the proposed increase, it was necessary to set up a subcommittee to study the subsidiary legislation.

17. The Chairman proposed that a subcommittee be formed to examine the Solicitors (Professional Indemnity) (Amendment) Rules 2001. Members agreed. The following Members agreed to join : Mr Albert HO (as advised by Dr YEUNG Sum), Mr Eric LI, Miss Margaret NG, Mr Bernard CHAN, Mr TSANG Yok-sing, Mrs Miriam LAU and Ms Audrey EU.

18. Members did not raise any query on the remaining items of subsidiary legislation tabled on 11 July 2001.

19. As regards the 14 items of subsidiary legislation which were gazetted between 13 July and 21 September 2001, the Legal Adviser said that these items would be tabled in Council on 10 October 2001. The Legal Adviser further said that the deadline for amendments, if any, was the Council meeting on 7 November 2001, or the Council meeting on 14 November 2001, if extended by resolution.

20. Members did not raise any query on these items of subsidiary legislation.

Action

(c) Legal Service Division's report on subsidiary legislation gazetted on 28 September 2001 (to be tabled in Council on 10 October 2001)

(LC Paper No. LS 169/00-01)

21. The Legal Adviser said that a total of five items of subsidiary legislation were gazetted on 28 September 2001, which would be tabled in Council on 10 October 2001.

22. Members did not raise any query on the subsidiary legislation.

23. The Legal Adviser reminded Members that the deadline for amending the subsidiary legislation was the Council meeting on 7 November 2001, or the Council meeting on 14 November 2001, if extended by resolution.

IV. Business for the Council meeting on 10 October 2001

The Chief Executive's Policy Address

24. The Chairman reminded Members that the Chief Executive (CE) would deliver his Policy Address at the meeting.

V. Chief Executive's Question and Answer Session on 11 October 2001

25. The Chairman said that CE would answer Members' questions relating to his Policy Address. The session would start at 3:00 pm and would last for one hour.

VI. Bills Committee and subcommittee reports

(a) Position report on Bills Committees/subcommittees

(LC Paper No. CB(2) 2325/00-01)

26. The Chairman said that there were 15 Bills Committees and five subcommittees in action, as well as eight Bills Committees on the waiting list, including the Bills Committee on the Travel Agents (Amendment) Bill 2001 formed under agenda item III(a) above.

(b) Report of the Subcommittee on Public Health (Animals and Birds) (Chemical Residues) Regulation & Harmful Substances in Food (Amendment) Regulation 2001

27. Dr LO Wing-lok, Chairman of the Subcommittee, said that the

Action

Subcommittee had held three meetings and would hold further meetings to examine the Regulations. To allow time for the Subcommittee to continue its work and then report its deliberations to the House Committee, he would move a motion at the Council meeting on 17 October 2001 to extend the scrutiny period of the two Regulations to 31 October 2001. He added that a written report would be provided to the House Committee in due course.

(c) Report of the Subcommittee on Estate Agents (Licensing) (Amendment) Regulation 2001

28. Mr CHAN Kam-lam, Chairman of the Subcommittee, said that the Amendment Regulation sought to provide more flexibility to the existing licensing arrangement and reduce the present level of licence fees. The Subcommittee noted that while the trade generally supported the proposal, the trade was of the view that the period for unconditional re-entry should be extended from 24 months to a longer period. The trade also considered that there was room for further fee reduction if the Estate Agents Authority exercised more effective control over costs and explored other sources of income.

29. Mr CHAN Kam-lam further said that the Subcommittee would have to hold another meeting to discuss the Administration's response to the proposal for extending the period for unconditional re-entry. Mr CHAN informed Members that he would move a motion at the Council meeting on 17 October 2001 to extend the scrutiny period of the Amendment Regulation to 31 October 2001. He added that he would make a further report to the House Committee.

30. The Chairman reminded Members that the deadline for giving notice of amendment was 23 October 2001, if the scrutiny period was extended to the Council meeting on 31 October 2001.

VII. Papers of the Committee on Rules of Procedure

(a) Detailed arrangements for the debate on the Motion of Thanks in respect of the Chief Executive's 2001 Policy Address
(LC Paper No. CB(1) 2066/00-01)

31. Mr TSANG Yok-sing, Chairman of the Committee on Rules of Procedure (CRoP), reported that following consultation with all Members and the Administration, CRoP had finalised its proposals on the detailed arrangements for the debate on the Motion of Thanks in respect of CE's 2001 Policy Address. These detailed proposals were set out in paragraphs 6 to 17 of the paper.

Action

32. Mr TSANG said that CRoP had carefully considered the three written submissions received from Members during the period of consultation. While all the points raised in the submissions had been examined during the early discussion of the new mode of debate, CRoP had decided to take a fresh look at the issues to explore if any adjustments would need to be made. After detailed discussion, CRoP considered that no change should be made to the original proposals at this stage. As the new arrangements were to be implemented on a trial basis, CRoP would review the arrangements after the debate.

33. Mr TSANG further said that CRoP had also made two new proposals. Referring to paragraph 13 of the paper, Mr TSANG explained that if the remainder of the speaking time for Members in a debate session was less than seven minutes, the President would call upon the first Member on the waiting list to speak. This Member could speak up to seven minutes, or 15 minutes if he/she had already been allocated a 15-minute time slot in that debate session. As regards the second new proposal which was detailed in paragraph 15(b) of the paper, Mr TSANG said that during the general debate on the last day, CRoP recommended that priority be given to those Members who had given notice of amendments and indicated their intention to speak on that day.

34. Mr TSANG said that CRoP had further recommended in paragraphs 21 and 22 of the paper that-

- (a) the Administration be requested to put forward its proposal on the grouping of policy areas to the LegCo Secretariat not later than 11:00 am on 11 October 2001 to enable the House Committee to consider the proposal at its meeting on 12 October 2001; and
- (b) the Administration be reminded to observe the total speaking time limits for designated public officers for each of the six debate sessions on the first three days and the general debate session on the last day.

35. Mr TSANG further reported that CRoP had conducted a study to identify which rules of the Rules of Procedure would need to be suspended for the implementation of the new arrangements on a trial basis. CRoP considered that the only provision which needed to be suspended was the first part of Rule 13(1) of the Rules of Procedure, as it provided for a Motion of Thanks to be moved at a meeting held not less than 14 days after CE had presented the Policy Address. CRoP recommended that Rule 13(1) be suspended to enable the Motion of Thanks to be moved one week after the delivery of the Policy address. Mr TSANG said that he had given notice to move the motion to suspend Rule 13(1) at the Council meeting on 17 October 2001.

Action

36. In reply to Ms Emily LAU, the Chairman advised that subject to Members' agreement to CRoP's recommendations, both Members and the Administration were expected to abide by the proposed speaking time limits for the debate on the Motion of Thanks. She pointed out that although designated public officers attending Council meetings were not subject to the restriction on the speaking time referred to in the Rules of Procedure, the designated public officers should observe the total speaking time limits as the Administration had confirmed that it had no objection in principle to the new arrangements for debating the Policy Address.

37. Ms Emily LAU expressed support for the proposals made in paragraph 15 of the paper concerning the order of speaking. She further suggested that the President should also have regard to the political affiliation or grouping of a Member in determining the speaking order.

38. The Secretary General advised that it was already the existing practice that the President would have regard to Members' political groupings when deciding the speaking order in, say, a Member's motion debate. He also referred Members to paragraph 12 of the paper which stated that in deciding which of the 10 Members would be allocated the 10 15-minute speaking time slots for each debate session, the President would have regard to Members' groupings and priorities. The Chairman proposed that Ms LAU's suggestion be conveyed to the President. Members agreed.

39. Members endorsed CRoP's recommendations in paragraphs 6 to 17 and paragraphs 21 and 22 of the paper. The Chairman said that she would inform the Administration of the House Committee's decision.

(b) Minutes of proceedings of committees
(LC Paper No. CB(1) 2067/00-01)

40. Mr TSANG Yok-sing, Chairman of CRoP, said that in response to CS's concern about the lapse of time in the availability of the minutes of committee meetings after the relevant meetings as well as Members' views expressed at the House Committee meeting on 10 July 2001, CRoP had examined how minutes of meetings could be prepared in the most efficient and cost-effective manner. He further said that CRoP had proposed that two types of minutes were to be prepared, as detailed in paragraphs 7 to 10 of the paper -

- (a) where no report would normally be published to record the deliberations and views of the committees upon the completion of the study of a specific subject, a detailed form of minutes as presently adopted for Panels would continue to be used; and
- (b) where a detailed report would be published, such as a bill or a piece of subsidiary legislation, the minutes should be presented in a

Action

condensed form. The minutes would only record the decisions of the committee, outstanding matters to be followed up, undertakings by the Administration, decision of members to move Committee Stage amendments, etc. All proceedings would be audio-recorded and indexed to facilitate easy retrieval. Where considered necessary by a committee, verbatim transcripts of the relevant parts of the proceedings of a committee might be produced.

41. As regards the minutes of the House Committee, Finance Committee and its subcommittees, and other committees as discussed in paragraph 10 of the paper, Mr TSANG advised that CRoP had recommended that the current practice be maintained.

42. Mr TSANG added that CRoP had also proposed that the following target time be set for the production of minutes -

- (a) the draft minutes of a two-hour regular Panel meeting would be available for the Administration's comments within two weeks of the meeting; and
- (b) the draft minutes of a two-hour Bills Committee or subcommittee meeting would be available for the Administration's comments within three working days of the meeting.

43. Mr TSANG pointed out that the ability to meet the target time might be affected by a number of factors, e.g. sudden increase in the number of meetings serviced by the committee clerk within the same week. He added that subject to the House Committee's agreement, the new arrangement would be tried out for four months, and that a review would be carried out in February 2002.

44. In response to Mr CHEUNG Man-kwong, Mr TSANG Yok-sing said that Members had previously requested the Administration to provide discussion papers at least six days before the relevant committee meeting. In this connection, there was feedback from the Administration that the time lapse in the availability of the draft minutes had made it difficult for the Administration to prepare discussion papers and take follow-up actions.

45. Mr Martin LEE said that the production of minutes and preparation of papers were two different matters. He was of the view that since representatives of the Administration were usually present at a committee meeting, the Administration should be able to prepare the discussion papers and take necessary follow-up actions without having to wait for the minutes. He stressed that it was important for the Administration to provide discussion papers to Members well in advance to enable Members to consider the issues raised in the papers before the relevant committee meeting.

Action

46. Mr CHEUNG Man-kwong considered that if a target time was to be set for the production of draft minutes, the Administration should also be required to give its comments, if any, on the draft minutes of committee meetings within a specified period of time. Assistant Secretary General 1 advised that the Administration was normally requested to give its comments, if any, on the draft minutes within one week. The Chairman said that she would raise this with the Administration at her next meeting with CS.

47. Members endorsed the new arrangements for the production of draft minutes.

VIII. Report of the Panel on Home Affairs on deliberations on nomination procedure and criteria for honours and awards and motion under the Legislative Council (Powers and Privileges) Ordinance to be moved by the Chairman of the Panel on Home Affairs

(LC Paper No. CB(2) 2263/00-01)

48. Referring to the paper, Mr Andrew CHENG, Chairman of the Panel, said that the Panel on Home Affairs had earlier discussed the nomination and criteria for honours and awards at its meetings on 10 and 16 July 2001. He said that the Administration had repeatedly refused to disclose whether the nomination of Mr YEUNG Kwong had been considered by the Honours Committee, on grounds that the deliberation of the Honours Committee had to remain confidential. The Director of Administration had, however, confirmed at the Panel meeting on 10 July 2001 that CE could add or delete names to or from the list put forward by the Honours Committee, and the overriding consideration was that the honours and awards would only be awarded in accordance with the prescribed criteria.

49. Mr Andrew CHENG further said that some Panel members were of the view that as the issue had aroused great controversy within the community, it was in the public interest to find out whether CE had bypassed the normal procedures to add names to the Honours List. He further said that at the Panel meeting on 16 July 2001, Ms Emily LAU moved a motion that the Panel should seek the Council's authorisation for the Panel to use the powers conferred under the Legislative Council (Powers and Privileges) Ordinance for the purpose of ascertaining whether the nomination of Mr YEUNG was vetted by the 2001 Honours Committee.

50. Mr IP Kwok-him said that he had raised objection to the proposed motion at the Panel meeting. He added that Panel members held different views on the issue and the need to seek the Council's authorisation to use the powers conferred under the Legislative Council (Powers and Privileges) Ordinance for this purpose. Referring to paragraph 5 of the paper, he

Action

pointed out that it was in order for CE to add or delete names to and from the Honours List, and that this was similar to the practice before 1 July 1997.

51. Ms Emily LAU said that the crux of the issue was whether CE had bypassed the established mechanism for nominating and approving honours and awards. She was of the view that CE should follow the established procedure because he accorded the honours and awards on behalf of the Government of the Hong Kong Special Administrative Region. She also pointed out that the award to Mr YEUNG Kwong had aroused much controversy and public outcry. She reckoned that the community's reactions to a particular nomination should likely have been considered by the Honours Committee, if the nomination had been vetted by the Committee.

52. Mrs Miriam LAU commented that it was not uncommon for people to have different views on the Honours List. She said that Members belonging to the Liberal Party were concerned whether it was appropriate to seek to use the powers under the Legislative Council (Powers and Privileges) Ordinance to obtain the relevant documents which might contain personal data of the nominees, whenever there were different views on a particular award on the Honours List.

53. Dr YEUNG Sum said that the proposal did not aim to request detailed information about the nominations, such as the personal data of the nominees. He stressed that the purpose was only to ascertain whether, as a matter of procedure, the nomination of Mr YEUNG Kwong had been vetted by the Honours Committee. Ms Emily LAU added that there was no question of the Council abusing its powers conferred under the Legislative Council (Powers and Privileges) Ordinance as this was the first time in the history of the Council that Members had sought such powers for the purpose of obtaining documents in relation to a particular award on the Honours List.

54. Mr NG Leung-sing was of the view that it would not achieve any useful purpose to ascertain whether the nomination of Mr YEUNG Kwong had been vetted by the Honours Committee. He pointed out that as stated in paragraph 5 of the paper, CE had the right to add or delete names to or from the Honours List, and it was also the practice before 1 July 1997.

55. The Chairman advised that the purpose of the paper was to invite the House Committee to note the Panel's deliberations on the matter and its decision to move the motion set out in the Appendix. She said that Members could give their views when the motion was debated at the Council meeting on 31 October 2001.

56. Ms Emily LAU requested that the minutes of the Panel meetings on 10 and 16 July 2001 and other relevant papers should be circulated to Members before the motion debate.

IX. Reports of the Panel on Constitutional Affairs

(a) Duty visit to study the systems of executive accountability in the United Kingdom, France and Germany

(LC Paper No. CB(2) 2290/00-01 issued vide LC Paper No. CB(2) 2307/00-01 dated 19 September 2001)

57. Presenting the report, Mr Andrew WONG, Chairman of the Panel on Constitutional Affairs (CA Panel), said that a delegation of the CA Panel undertook a duty visit from 13 to 24 June 2001 to study the systems of executive accountability in the United Kingdom (UK), France and Germany.

58. Mr Andrew WONG said that CE had announced in his Policy Address in October 2000 that the Government would need to examine how the accountability of principal officials for their respective policy portfolios could be enhanced. The CA Panel considered that it should deliberate the issues relating to a system of accountability for principal officials and make recommendations for the consideration of the Administration. The CA Panel subsequently decided to send a delegation to visit UK, France and Germany to study their systems of executive accountability. During the visit, the delegation had met with members of the legislatures concerned, Ministers, senior civil servants, parliamentary staff as well as academics.

59. Mr Andrew WONG said that given their different political development and government structure, UK, France and Germany had their own unique ministerial and civil service systems. In UK, Ministers were appointed by the Monarch on the recommendation of the Prime Minister. The Parliament had no role to play in the appointment of Ministers. However, in Scotland, the choice of Ministers had to be agreed to by the Parliament, before the Monarch's approval was sought for appointment. Mr WONG added that the Parliament had no role to play in the appointment of Ministers in both France and Germany.

60. With regard to executive accountability, Mr Andrew WONG said that in UK, accountability of Ministers to Parliament was defined in parliamentary conventions and practices. Ministerial responsibility took the forms of collective responsibility for government policy and individual responsibility for their own department's work. In Scotland, the Scotland Act 1998 required Ministers to resign if the Parliament resolved that the Scottish Executive no longer enjoyed the confidence of the Parliament. In France, the Government of France was headed by the Prime Minister and, under the Constitution, was responsible to the Parliament. Distinct procedures were available in the Constitution for ousting a Government. In Germany, executive accountability was manifested in the provision of a constructive vote of confidence to bring down a Chancellor who lost the support of the Bundestag. When the Chancellor lost office, so did the Ministers.

Action

61. As regards the civil service, Mr Andrew WONG said that in UK, the Civil Service Code set out the constitutional framework within which all civil servants worked and the values they were expected to uphold. There were also detailed rules governing the acceptance of employment after departure from the Civil Service. In France, civil servants were subject to express provisions under the Civil Service regulation which laid down their obligations and the duty to account. Senior civil servants in France were not expected to be completely non-partisan. They could join political parties and stand for election. The civil servant was entitled to be reintegrated into the Civil Service after the temporary detachment. In Germany, there were political civil servants who were appointed to their office for the exercise of which they must be in agreement with the fundamental political aims of the Government of the day.

62. Mr Andrew WONG said that as the CA Panel was informed by the Administration that a blueprint on the system of accountability for principal officials would be included in the 2001 Policy Address to be delivered by CE on 10 October 2001, he hoped that the report prepared by the delegation would serve as useful reference if Members wished to speak on the subject during the debate on the Policy Address.

(b) Remarks made by the Acting Secretary for Constitutional Affairs during the debate on the motion moved by Hon LEUNG Yiu-chung under Article 159 of the Basic Law at the Council meeting on 4 July 2001

(LC Paper No. CB(2) 2335/00-01)

63. Referring to the paper, Mr Andrew WONG said that in Acting Secretary for Constitutional Affairs (Ag SCA)'s speech made during the debate on the motion moved by Mr LEUNG Yiu-chung under Article 159 of the Basic Law (BL) at the Council meeting on 4 July 2001, Ag SCA had said that "Mr LEUNG Yiu-chung has claimed (聲稱) to move a resolution for amending the Basic Law in accordance with Article 159 of the Basic Law". Some members of the Panel considered that as the President had allowed Mr LEUNG to move the motion, not only was Ag SCA's statement disrespectful to the President, it also amounted to a challenge to the decision of the President. Mr WONG further said that the Panel agreed that the matter should be brought to the attention of the House Committee, and that Members should be invited to consider whether the Chairman of the House Committee should raise the matter with CS.

64. Mr NG Leung-sing said that if the President had considered that the expression "聲稱" used by Ag SCA amounted to a challenge to her ruling to allow Mr LEUNG Yiu-chung to move the motion under BL 159, the President would have pointed this out to Ag SCA during the debate. Mr NG expressed reservations about raising the matter with CS without first

Action

obtaining the President's view. He added that it might be necessary to also seek expert opinion of the meaning of the expression "聲稱" as used in the Chinese language.

65. The Chairman said that she did not think that the President would wish to be brought in on the matter or make a response. It would be for the House Committee to decide whether the matter should be raised with CS.

66. Miss Margaret NG said that not agreeing with Mr LEUNG's motion and not agreeing with the President's ruling to allow Mr LEUNG to move the motion were two different matters. She did not have any problem with the Administration disagreeing with Mr LEUNG's motion and criticising it as premature. However, in saying that Mr LEUNG had claimed (聲稱) to move a resolution under BL 159, the Administration was in fact expressing disagreement with the President's ruling to allow Mr LEUNG to move his motion under BL 159. Miss NG added that under the rules of the Council, the President's ruling must be accepted and respected. To challenge a decision of the President at an open meeting was a very serious matter.

67. Mr LEUNG Yiu-chung said that the issue was not about the Administration being disrespectful to the President as an individual, but about the Administration being disrespectful to a ruling of the President and a decision of the Legislature.

68. Miss Audrey EU expressed agreement that the issue was not about the Administration being disrespectful to the President as an individual, but being disrespectful to the system or Council procedure as it was for the President of LegCo to decide whether certain motion could be moved under BL 159. Miss EU added that the Panel had merely requested that CS's attention be drawn to the matter. She did not consider it necessary to quote chapter and verse to explain the meaning of the expression "聲稱" to enable Members to make a decision on the Panel's request.

69. Mr CHAN Kam-lam said that the matter was a minor one, and that Members should spend their time discussing more important issues. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment of Hong Kong did not agree that using the expression "聲稱" was disrespectful to the President.

70. Mr Andrew WONG said that the debate on 4 July 2001 was the second time that the President had allowed Mr LEUNG to move a motion under BL 159. He was of the view that if the Administration did not agree with the President's ruling, it should have raised objection with the President before the debate. Mr WONG added that it was not necessary for Ag SCA to use the expression "聲稱" in his speech in order to convey the Administration's stance of not agreeing with Mr LEUNG's motion.

Action

71. Dr Philip WONG said that he did not consider using the expression "聲稱" to be disrespectful to the President. He pointed out that the President did not indicate that she had found the expression objectionable during the debate.

72. Mr TAM Yiu-chung expressed agreement that the matter was not serious. He suggested that the Chairman should let CS know that only some Members had raised concerns about Ag SCA using the expression "聲稱". Mr YEUNG Yiu-chung suggested that the Chairman should also inform CS that some Members had no problem with Ag SCA using the expression "聲稱".

73. The Chairman said that she would convey to CS the different views expressed by Members, as suggested by Mr TAM and Mr YEUNG. Members agreed.

X. Election of Members of The Legislative Council Commission
(*LC Paper No. AS 460/00-01*)

74. Members agreed that the election of members of The Legislative Council Commission should be held at the House Committee meeting on 26 October 2001.

XI. Election of Chairman and Deputy Chairman of the House Committee for the 2001-2002 session

75. Mrs Selina CHOW invited nominations for the chairmanship of the House Committee for the 2001-2002 session.

76. Dr YEUNG Sum nominated Mrs Selina CHOW. Mr LEE Cheuk-yan and Mr IP Kwok-him seconded the nomination. Mrs CHOW accepted the nomination.

77. Mr Fred LI took over from Mrs Selina CHOW to preside over the election of the Chairman of the House Committee. As there was no other nomination, Mr Fred LI declared Mrs CHOW elected as Chairman.

78. Mrs Selina CHOW took the chair and presided over the election of the Deputy Chairman of the House Committee for the 2001-2002 session.

79. Dr YEUNG Sum nominated Mr Fred LI. Dr Philip WONG and Miss Margaret NG seconded the nomination. Mr Fred LI accepted the nomination. As there was no other nomination, the Chairman declared Mr Fred LI elected as Deputy Chairman.

XII. Any other Business

Seating arrangement of Members in the Chamber

80. The Chairman invited Members' views on the seating arrangement for a Member who joined the Council after the start of a term. The Chairman explained that the seating plan of the second term was drawn up based on the following considerations -

- (a) in line with the arrangements for the first term, Members of the same political affiliation or grouping should sit together;
- (b) where re-elected Members asked to occupy the same seats allocated to them in the first term, their wish should be met as far as practicable;
- (c) the allocation of the remaining seats should be made in consultation with the other Members; if no agreement could be reached among them, then the allocation should be made by balloting.

81. The Chairman said that both Mr MAK Kwok-fung and Mr MA Fung-kwok had indicated that they wished to be allocated the seat previously occupied by Prof NG Ching-fai. The Chairman further said that the House Committee should focus on working out a mechanism for allocating seats for Members who joined the Council after the start of a term and not discuss the case of Mr MAK and Mr MA per se. The Chairman also informed Members that the problem did not arise when Ms LI Fung-ying asked to be allocated the seat previously occupied by the President because no other Member also indicated interest in occupying that seat.

82. The Chairman further said that Mr MAK Kwok-fung might wish not to take part in the discussion as his case would be dealt with in accordance with the House Committee's decision.

83. Dr YEUNG Sum suggested that allocation of seats for Members who joined the Council after the start of a term should be made by drawing lots. Mrs Miriam LAU, Mr CHEUNG Yu-yan and Ms LI Fung-ying concurred with Dr YEUNG.

84. Mr James TO also expressed agreement with Dr YEUNG. He added that it would usually take a few months for a by-election to be held. He did not see any problem with an incumbent Member being allocated the vacant seat in the Chamber in the meantime, if he or she so wished and if there was no objection from other Members.

85. Mr IP Kwok-him said that allocation should not be made by drawing lots, but through consultation and mutual agreement with the Members

Action

concerned. He further pointed out that Members of the second term returned by the general election had their chance of choosing their seats in the Chamber, but not the Member returned by the recent by-election.

86. The Chairman informed Members that the Secretary General had tried but could not resolve the case through consultation with the two Members. She said that as a proposal that allocation should be made by drawing lots had been put forward, she would put the proposal to vote. She added that if the proposal was agreed to, the Secretary General would be responsible for drawing the lots. The result of the vote was 20 Members voted in favour of the proposal and seven Members voted against the proposal.

87. Mr CHAN Kam-lam asked whether other Members could take part in the drawing of lots for the allocation of the seat previously occupied by Prof NG Ching-fai. The Chairman responded that it would be for the House Committee to decide.

88. Mr Andrew WONG and Mr LEE Cheuk-yan objected to allowing other Members to take part. Ms LI Fung-ying expressed agreement with Mr WONG and Mr LEE. Ms LI added that inviting other Members to take part would unnecessarily complicate the matter.

89. Mr CHAN Kam-lam said that he had no strong views, although it would be fair to allow other Members to take part in the drawing of lots for Prof NG Ching-fai's seat if they so wished.

90. Mr MAK Kwok-fung said that he wished to clarify for the record that he had asked to be allocated Prof NG Ching-fai's seat back in June 2001 when Prof NG indicated his intention to resign from LegCo.

91. The Chairman said that when Members-elect of the second term met on 28 September 2000 to discuss the seating arrangement, it was agreed that a mechanism for allocating seats in the Chamber effective from the third term onwards should be devised. The Chairman further said that when such a mechanism had been worked out by the relevant committee and agreed to by Members, it should be incorporated into the House Rules.

92. There being no further business, the meeting ended at 4:35 pm.