

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 1657/00-01

Ref : CB2/H/5

**House Committee of the Legislative Council**

**Minutes of the 29<sup>th</sup> meeting  
held in the Legislative Council Chamber  
at 5:00 pm on Friday, 25 May 2001**

**Members present :**

Hon Fred LI Wah-ming, JP (Deputy Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon James TIEN Pei-chun, JP  
Hon David CHU Yu-lin  
Hon Cyd HO Sau-lan  
Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Dr Hon LUI Ming-wah, JP  
Hon NG Leung-sing  
Prof Hon NG Ching-fai  
Hon Margaret NG  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching  
Hon CHAN Yuen-han  
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  
Hon WONG Yung-kan  
Hon Jasper TSANG Yok-sing, JP  
Hon Howard YOUNG, JP  
Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung  
Hon LAU Chin-shek, JP  
Hon LAU Kong-wah  
Hon Mrs Miriam LAU Kin-ye, JP  
Hon Ambrose LAU Hon-chuen, JP  
Hon Emily LAU Wai-hing, JP

Hon CHOY So-yuk  
Hon Andrew CHENG Kar-foo  
Hon SZETO Wah  
Hon LAW Chi-kwong, JP  
Hon TAM Yiu-chung, GBS, JP  
Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP  
Hon LI Fung-ying, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Michael MAK Kwok-fung  
Hon Albert CHAN Wai-yip  
Hon LEUNG Fu-wah, MH, JP  
Dr Hon LO Wing-lok  
Hon WONG Sing-chi  
Hon Frederick FUNG Kin-kee  
Hon IP Kwok-him, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members absent :**

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon Eric LI Ka-cheung, JP  
Dr Hon David LI Kwok-po, JP  
Hon CHAN Kwok-keung  
Hon Bernard CHAN  
Dr Hon Philip WONG Yu-hong  
Hon LAU Wong-fat, GBS, JP  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon Henry WU King-cheong, BBS  
Hon LAU Ping-cheung

**Clerk in attendance :**

Mrs Justina LAM Clerk to the House Committee

**Staff in attendance :**

Mr LAW Kam-sang, JP	Secretary General (Acting)
Mr Jimmy MA, JP	Legal Adviser
Mr LEE Yu-sung	Senior Assistant Legal Adviser
Ms Pauline NG	Assistant Secretary General 1
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
Mrs Constance LI	Chief Assistant Secretary (2)5
Miss Betty MA	Senior Assistant Secretary (2)1

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Action

**I. Confirmation of the minutes of the 28th meeting held on 18 May 2001  
(LC Paper No. CB(2) 1602/00-01)**

The minutes were confirmed.

**II. Matters arising**

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

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Report of the Panel on Administration of Justice and Legal Services on the applicability of Ordinances to the offices set up by the Central People's Government in the Hong Kong Special Administrative Region

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2. The Deputy Chairman said that he had conveyed Members' views to Acting Chief Secretary for Administration (Ag CS), Mr Michael SUEN. Ag CS had responded that the issues involved were complex and the Administration had encountered technical difficulties in the exercise. The Department of Justice was considering how the provisions should be drafted, and that the Central People's Government (CPG) would have to be consulted. The Deputy Chairman further said that Ag CS had emphasized that the offices set up by CPG were not above the law.

3. As regards the review of the Personal Data (Privacy) Ordinance, the Deputy Chairman informed Members that he had asked that the matter be brought to the attention of the Chief Executive (CE) in order that the matter could be resolved early with the involvement of both sides at a higher level. Ag CS had responded that he would bring the matter to CE's attention. He also explained that the Administration was still sorting out a few problems, and that the Administration would expedite action.

4. Regarding the adaptation exercise of the remaining Ordinances that had provisions about applicability to the "Crown", the Deputy Chairman said that Ag CS had promised to co-ordinate and expedite.

5. Miss Margaret NG said that the Administration should provide a time-table for the adaptation of the Ordinances concerned. As regards the 15 Ordinances which the Administration had confirmed in 1998 that they should apply to CPG offices, Miss NG pointed out that the matter had

dragged on for nearly four years. The Administration should explain why the issues involved were complex and why the Administration was taking such a long time to work out an agreed formulation to extend the applicability of the Ordinances to cover CPG offices.

6. Miss Margaret NG further said that the Administration should also explain what problems had been encountered by the Administration in the review of the Personal Data (Privacy) Ordinance.

7. Ms Emily LAU said that there was a limit to Members' patience and tolerance, and that Members could not wait indefinitely for a response from the Administration. She proposed that the matter should be raised with CS again. If a satisfactory answer was not provided by the Administration within two to three weeks, the House Committee should ask the Chairman to move a motion on the matter for debate in Council.

8. Miss Margaret NG said that the Panel on Administration of Justice and Legal Services would also follow up the matter.

9. The Deputy Chairman undertook to convey Members' views to CS again. He said that he would also inform CS that the House Committee would discuss Ms Emily LAU's proposal of holding a motion debate on the matter if the Administration did not provide a satisfactory response within these two weeks.

#### Improvement to "hardware" to facilitate the work of the Council

10. The Deputy Chairman said that he had also raised with Ag CS improvement to the "hardware", including a new Legislative Council (LegCo) Building, Members' remuneration and operating expenses reimbursement and resources for the Secretariat, to facilitate the work of the Council. Ag CS had responded that CS would personally follow up the matter when he returned from the visit to the western provinces of China.

### **III. Business arising from previous Council meetings**

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

##### **(i) Mandatory Provident Fund Schemes (Amendment) Bill 2001** *(LC Paper No. LS 98/00-01)*

11. Referring to the paper, the Legal Adviser explained that the Bill introduced a number of amendments dealing with various aspects relating

to the operation of the Mandatory Provident Fund (MPF) Schemes Ordinance and the implementation of the MPF System.

12. The Legal Adviser said that the Bill also contained proposals to enhance the effectiveness of the MPF Authority in its regulation of MPF schemes and its performance of statutory responsibilities for overseeing and monitoring the operation of the retirement protection systems in Hong Kong.

13. The Legal Adviser further said that the MPF Schemes Advisory Committee had been consulted on the proposed amendments. According to the Administration, the Committee had not raised any objection to the proposals.

14. The Legal Adviser pointed out that the Panel on Financial Affairs was consulted on the proposed amendments on 7 March 2001. While members of the Panel generally had no objection to amendments which were of a technical nature, some members were of the view that the actual provisions should be examined after the Bill had been introduced into the Council.

15. The Legal Adviser said that the Legal Service Division was still scrutinising the amendments proposed in the Bill and a further report would be made to the House Committee.

16. Mr Abraham SHEK, on behalf of Mr Bernard CHAN, suggested that a Bills Committee should be formed to examine the Bill in detail. Miss Margaret NG expressed support for the suggestion. She said that the proposed amendments had policy implications and were not merely technical in nature.

17. The Deputy Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join : Mr NG Leung-sing (as advised by Mr Abraham SHEK), Miss Margaret NG, Mr Bernard CHAN (as advised by Mr Abraham SHEK), Mr Andrew CHENG (as advised by Dr YEUNG Sum), Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG and Ms Audrey EU.

18. The Deputy Chairman said that the Bills Committee would be placed on the waiting list until a vacant slot was available.

**(ii) Companies (Corporate Rescue) Bill**  
(LC Paper No. LS 100/00-01)

19. Introducing the paper, the Legal Adviser said that the Bill was to implement the recommendations of the Law Reform Commission (LRC) on corporate rescue and insolvent trading.

20. The Legal Adviser further said that the legislative proposal was previously introduced into the Council as part of the Companies (Amendment) Bill 2000. Due to time constraint and complexity of the issues involved, the Bills Committee concerned recommended that the relevant provisions be excised from the Companies (Amendment) Bill 2000 and deferred for resubmission to the Council at a later stage. The Administration now resubmitted the legislative proposal as a stand alone bill.

21. The Legal Adviser explained that the Bill proposed to inaugurate the new regime of provisional supervision and voluntary arrangements. The aim was to stay all proceedings (with some specified exceptions) against an insolvent company so that an independent professional (appointed as a provisional supervisor) could prepare a proposal to salvage the company, or achieve more advantageous realisation of its assets.

22. The Legal Adviser added that according to the LegCo Brief, the Administration had consulted the relevant bodies on some of the LRC's proposals. The Panel on Financial Affairs was also briefed in June 1999 and February 2001 on the outcome of consultation on certain provisions in the Bill.

23. The Legal Adviser said that the Legal Service Division was still scrutinising the legal and drafting aspects of the Bill. As the Bill made significant innovation in the regime of corporate rescue and changed the law governing personal liabilities of company directors and management, the Legal Adviser recommended that a Bills Committee should be formed to study the Bill in detail.

24. Miss Margaret NG said that the then Bills Committee on the Companies (Amendment) Bill 2000 was inclined to oppose the amendments concerned. She was in favour of setting up a Bills Committee.

25. The Deputy Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join : Mr Albert HO, Miss Margaret NG and Ms Audrey EU.

26. The Deputy Chairman said that the Bills Committee would be placed on the waiting list until a vacant slot was available.

(b) **Legal Service Division's report on subsidiary legislation tabled in Council on 23 May 2001 (gazetted on 18 May 2001)**  
(LC Paper No. LS 101/00-01)

27. The Legal Adviser said that four items of subsidiary legislation were gazetted on 18 May 2001.

28. Referring to the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 (68 of 2000) (Commencement) Notice 2001, Mr James TO said that the Administration had undertaken to issue a set of guidelines on the taking of intimate and non-intimate samples from suspects before the Ordinance became operative. Mr TO further said that the Administration had provided the Internal Guidelines on Sample Taking for DNA Comparison to the Panel on Security. Mr TO suggested that a subcommittee should be formed to study the Commencement Notice and the Internal Guidelines.

29. The Deputy Chairman proposed that a subcommittee be formed to study the subsidiary legislation. Members agreed. The following Members agreed to join : Mr James TO, Ms Emily LAU and Mr MAK Kwok-fung.

30. Members did not raise any queries on the other three items of subsidiary legislation.

31. The Deputy Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 20 June 2001, or 27 June 2001 if extended by resolution.

#### **IV. Business for the Council meeting on 6 June 2001**

(a) **Questions**  
(LC Paper No. CB(3) 689/00-01)

32. The Deputy Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 6 June 2001.

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

(i) **Companies (Amendment) Bill 2001**

(ii) **Post Secondary Colleges (Amendment) Bill 2001**

(iii) **Employment (Amendment) Bill 2001**

33. The Deputy Chairman said that the above three Bills would be introduced into the Council on 6 June 2001 and considered by the House Committee on 8 June 2001.

(c) **Government motion**

34. The Deputy Chairman said that no notice had been received from the Administration.

(d) **Members' motions**

(i) **Motion on "Bridging the digital divide"**

35. The Deputy Chairman said that the motion would be moved by Mr SIN Chung-kai and the wording had been issued to Members.

(ii) **Motion on "The avian flu incident"**

36. The Deputy Chairman said that the motion would be moved by Mr WONG Yung-kan and the wording had been issued to Members.

37. The Deputy Chairman reminded Members that the deadline for giving notice of amendments, if any, to the two motions was 30 May 2001.

**V. Advance information on business for the Council meeting on 13 June 2001**

**Bills - First Reading and moving of Second Reading**

(a) **Import and Export (Electronic Transactions) Bill 2001**

(b) **Medical and Health Care (Miscellaneous Amendments) Bill 2001**

38. The Deputy Chairman said that the two Bills would be introduced into the Council on 13 June 2001 and considered by the House Committee on 15 June 2001.

**VI. Bills Committee and subcommittee reports**

**Position report on Bills Committees/subcommittees**

*(LC Paper No. CB(2) 1609/00-01)*

39. The Deputy Chairman said that there were 15 Bills Committees and four subcommittees in action. There were also five Bills Committee on the waiting list.



**VII. Report of Panel on Constitutional Affairs on Hong Kong Special Administrative Region Precedence Table**

*(LC Paper No. CB(2) 1616/00-01)*

40. Mr Andrew WONG, Chairman of the Panel on Constitutional Affairs (CA Panel), said that the CA Panel had followed up the issue of the precedence of LegCo Members on the Hong Kong Special Administrative Region (HKSAR) Precedence Table after 1 July 1997. Referring Members to paragraph 7 of the paper, Mr WONG said that prior to 1997, Government officials except the Chief Secretary, Financial Secretary and Attorney General ranked after LegCo Members on the Precedence Table. After 1997, LegCo Members ranked after Principal Officials and Directors of Bureaux. According to the Administration, the post-1997 Precedence Table was drawn up with reference to HKSAR's constitutional framework and also took account of the fact that the status of Principal Officials and Directors of Bureaux, Judges of the Court of Final Appeal and the Chief Judge of the High Court was recognised by the Basic Law.

41. Mr Andrew WONG further said that the Director of Administration (D of Adm) had advised in writing that he had conveyed the Panel's views on the HKSAR Precedence Table to CE. Mr WONG was of the view that ranking Principal Officials and Directors of Bureaux ahead of LegCo Members on the Precedence Table was a significant policy change. He invited Members to consider whether the House Committee should follow up the matter.

42. Mr James TIEN agreed with Mr Andrew WONG that the Administration had introduced a fundamental change to the order of precedence by ranking Principal Officials and Directors of Bureaux ahead of LegCo Members on the Precedence Table. He said that although the status of Principal Officials and Directors of Bureaux was recognised by the Basic Law, there was no reference in the Basic Law that they should be accorded higher precedence than LegCo Members. Mr TIEN further said that the matter should be brought to the attention of CS.

43. Mr Martin LEE concurred with Mr Andrew WONG and Mr James TIEN. He said that the crux of the matter was how the Administration viewed LegCo. He pointed out that under Article 64 of the Basic Law, the Government of the HKSAR must, among others, be accountable to the LegCo of the Region. He questioned why Principal Officials and Directors of Bureaux who were answerable to LegCo were of a higher precedence than LegCo Members on the Precedence Table.

44. Dr YEUNG Sum said that the relative order of precedence on the Precedence Table was of constitutional significance. He also questioned

whether the present arrangement had contravened the principle of the Basic Law.

45. The Deputy Chairman said that as D of Adm had already conveyed the CA Panel's views to CE, Members could raise a question on the matter at the coming CE's Question and Answer Session. Responding to the Deputy Chairman, Acting Secretary General advised that the coming CE's Question and Answer Session would be held on 14 June 2001 at 3:00 pm. Members agreed that the Chairman of the House Committee would raise a question on the matter at the CE's Question and Answer Session.

46. The Deputy Chairman said that he would also convey to CS Members' views on the matter.

### **VIII. Paper of the Committee on Rules of Procedure**

#### **Proposed amendments to the saving provision in Rule 50(8) of the Rules of Procedure**

*(LC Paper No. CB(1) 1306/00-01)*

47. Referring to the paper, Mr TSANG Yok-sing, Chairman of the Committee on Rules of Procedure, said that Rule 50(8) of the Rules of Procedure should be amended to bring the wording of the saving provision therein in line with that of the Adaptation of Laws (No.5) Ordinance 1999.

48. Mr TSANG Yok-sing further said that subject to Members' agreement, he would move a motion at a future Council meeting to amend Rule 50(8). Members agreed to the proposed amendment.

### **IX. Any other business**

49. There being no further business, the meeting ended at 5:25 pm.