

立法會
Legislative Council

LC Paper No. CB(2) 1058/01-02

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 14th meeting
held in the Legislative Council Chamber
at 4:35 pm on Friday, 1 February 2002**

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
Dr 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 Bernard CHAN
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Kong-wah
Hon Miriam LAU Kin-ye, JP

Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Anita HO	Assistant Legal Adviser 2
Miss Connie FUNG	Assistant Legal Adviser 3
Mr Stephen LAM	Assistant Legal Adviser 4
Mr KAU Kin-wah	Assistant Legal Adviser 6
Mrs Vivian KAM	Chief Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mr Andy LAU	Chief Assistant Secretary (1)2
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Betty MA	Senior Assistant Secretary (2)1

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**I. Confirmation of the minutes of the 13th meeting held on 25 January 2002
(LC Paper No. CB(2) 1014/01-02)**

The minutes were confirmed.

II. Matters arising

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

**(a) Application of certain provisions of the Prevention of Bribery
Ordinance to the Chief Executive (CE)**

2. The Chairman said that she had conveyed to CS the request of the Panel on Constitutional Affairs (CA Panel) that the legislative proposal to apply certain provisions of the Prevention of Bribery Ordinance (POBO) to CE should be introduced as soon as possible so that it would come into effect before the second term CE assumed office.

3. The Chairman informed Members that CS had responded that the Administration well recognised that no one was above the law. However, the Administration considered that it was important to examine carefully whether applying the regulatory and legal framework for government officers and public servants to CE would have any adverse impact on the administration of Hong Kong and the world market as a whole, and that the systems in other jurisdictions should also be studied as reference.

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4. The Chairman further informed Members that CS had pointed out that the rule of law should be ensured, but at the same time, the status of CE should not be compromised. CS hoped that an appropriate legislative proposal could be introduced in the next session.

5. Dr YEUNG Sum said that he was disappointed that the Administration had maintained its position that the legislative proposal would be introduced in the next session. He further said that CS had time and again spoken in public about the importance of Hong Kong's international image. He pointed out that the issue of applying certain provisions of the POBO to CE had dragged on for more than three years since it was first raised by the CA Panel, and any further delay in introducing the legislative proposal would adversely affect the international image of Hong Kong.

6. The Chairman said that when she raised the issue with Acting CS, Mr Michael SUEN, in June 2001, the Administration had not indicated when the legislative proposal would be introduced. CS had now confirmed and assured Members that the legislative proposal would be introduced in the next session.

(b) Delay in the implementation of the 25 uncompleted projects of the former Land Development Corporation

7. The Chairman said that she had conveyed to CS the concern of the Panel on Planning, Lands and Works about the need to expedite the implementation of the 25 uncompleted projects of the former Land Development Corporation.

8. The Chairman informed Members that CS had said that much as he would like, there were problems in implementing the 25 projects right away. Nevertheless, in the light of the changing economic situation, the newly appointed Managing Director of the Urban Renewal Authority had to review the original estimates, and the Financial Secretary had to examine cautiously the expenditure involved. The Chairman added that CS had assured that the Administration would expedite as far as possible.

III. Business arising from previous Council meetings

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

(i) Dutiable Commodities (Amendment) Bill 2002
(LC Paper No. LS 49/01-02)

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9. The Legal Adviser explained that the Bill sought to fully implement an open bond system (OBS) in all bonded warehouses in Hong Kong. The Legal Adviser further explained that to minimise the risk of duty evasion under an OBS, the Bill proposed to impose tighter control on the licensing, record keeping and auditing requirements for warehouse owners.

10. The Legal Adviser informed Members that a pilot scheme to test the implementation of OBS was carried out in the first half year of 2001. According to the Administration, feedback from the participants was highly positive as the OBS had brought about considerable savings in their operating costs. The Legal Adviser pointed out that according to the Legislative Council (LegCo) Brief on the Bill, the Administration had fully consulted the bonded warehouse owners and they had expressed strong support for the implementation of OBS.

11. The Legal Adviser further informed Members that the Panel on Commerce and Industry (CI Panel) was briefed on the legislative proposal on 14 January 2002, and was generally in support of the Administration's proposal. The Chairman added that while Panel members supported the policy objective of the Bill, the Panel did not discuss the operational details of the legislative proposal.

12. The Legal Adviser said that the Legal Service Division was still examining the legal and drafting aspect of the Bill as the Bill had raised some rather complex legal issues. The Legal Adviser pointed out that the Bill sought to create new offences as well as a compounding procedure for unintended mistakes in the stock account of dutiable goods. It also proposed that when determining an application for a licence in respect of premises the Commissioner for Customs and Excise had to take into account matters including whether the applicant was a "fit and proper" person. The Legal Adviser added that a further report on the Bill would be provided.

13. In response to Miss Margaret NG, the Legal Adviser explained that the new offences proposed in the Bill mainly concerned record keeping for the purpose of operating the proposed OBS. For instance, if a licensee failed to keep every relevant document relating to the movement of goods into and out of the warehouses for two years, he would be liable on summary conviction to a fine of \$500,000 and to imprisonment for 12 months.

14. Mr SIN Chung-kai said that from what the Legal Adviser had told Members about the Bill, Members should consider setting up a Bills Committee to examine the Bill in detail, particularly the operational aspect.

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15. Mr LAU Ping-cheung said that feedback about the pilot scheme from both the Administration and the industry was very positive, and the industry had urged for early implementation of the OBS in all bonded warehouses. He asked when the further report of the Legal Service Division would be ready to enable the House Committee to make a decision on the Bill.

16. The Legal Adviser responded that the Legal Service Division would provide a further report for Members' consideration at the next meeting of the House Committee on 22 February 2002. The Chairman proposed that a decision on the Bill be deferred to the next meeting. Members agreed.

(ii) Companies (Amendment) Bill 2002
(*LC Paper No. LS 50/01-02*)

17. The Legal Adviser said that the main purpose of this Bill was to implement recommendations made in "The Report of the Standing Committee on Company Law Reform on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance". The Legal Adviser further said that the Bill comprised amendments covering a broad range of topics from the incorporation to winding-up of companies, and introduced a number of new measures. The Legal Adviser pointed out that although the proposed amendments were meant to improve the Ordinance, individual proposals might cause concern. He added that certain amendments would also have considerable impact on the legal environment for carrying on business in Hong Kong.

18. The Legal Adviser informed Members that according to the LegCo Brief on the Bill, public consultation on the consultancy report was carried out for 11 months during the period from 1997 to 1998. The Panel on Financial Affairs was also briefed on the proposed legislative amendments at its meeting on 29 March 2001.

19. The Legal Adviser said that in view of the significance of the proposed legislation and the broad range of interests affected, Members might wish to consider setting up a Bills Committee to examine the Bill in detail.

20. Mr CHAN Kam-lam and Mr SIN Chung-kai said that a Bills Committee should be set up to study the Bill in detail.

21. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join : Mr Eric LI, Mr CHAN Kam-lam, Mr SIN Chung-kai, Ms Miriam LAU and Mr Henry WU.

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

(b) Legal Service Division report on subsidiary legislation gazetted on 25 January 2002

(LC Paper No. LS 53/01-02)

23. The Legal Adviser said that five items of subsidiary legislation, including four Commencement Notices, were gazetted on 25 January 2002.

24. The Legal Adviser said that at the meeting of the House Committee on 18 January 2002, Members supported the proposal of the Securities and Futures Commission to gazette the Commodities Trading (Contract Levy) (Amendment) Rules 2002 to repeal the Commodities Trading (Contract Levy) (Amendment) (No. 3) Rules 2001.

25. Regarding the Mutual Legal Assistance in Criminal Matters (United Kingdom) Order (Cap. 525 sub. leg.) (Commencement) Notice 2002, the Legal Adviser informed Members that the Order was approved by LegCo on 9 December 1998. The Administration had advised that it had only received the notification from the British Consulate General on 10 January 2002 that the requirements for the entry into force of the Agreement had been complied with.

26. Members did not raise any queries on the five items of subsidiary legislation.

27. The Chairman reminded Members that the deadline for amending the five items of subsidiary legislation was 27 February 2002, or 6 March 2002 if extended by resolution.

IV. Further business for the Council meeting on 6 February 2002

(a) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

Mandatory Provident Fund Schemes (Amendment) Bill 2001

28. The Chairman said that the relevant Bills Committee had reported to the House Committee on 25 January 2002, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

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(b) Request for special leave of the Council to give evidence of Council proceedings

Request made under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and Rule 90 of the Rules of Procedure for special leave of the Council to give evidence of Council proceedings

(The request of the Secretary for Justice has been set out in the paper issued on 29 January 2002 under LC Paper No. CB(3) 370/01-02.)

29. The Chairman said that the Secretary for Justice had, under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), sought special leave of the Council for five members of the staff of the Legislative Council Secretariat to give evidence in a court case.

30. The Chairman further said that in accordance with Rule 90(2) of the Rules of Procedure, the request for leave would be placed on the Agenda for such meeting as the President would appoint and, unless on a motion which could be moved without notice at that meeting by any Member the Council determined that such leave should be refused, the Council would be deemed to have ordered that such leave be granted.

V. Report of Bills Committee and subcommittee on subsidiary legislation

(a) Position report on Bills Committees/subcommittees
(LC Paper No. CB(2) 1018/01-02)

31. The Chairman said that there are 14 Bills Committees and four subcommittees in action, as well as 12 Bills Committees, including the Bills Committee on the Companies (Amendment) Bill 2002 formed under agenda item III(a) above, on the waiting list.

32. The Chairman added that as there was a vacant slot, the Bills Committee on the Noise Control (Amendment) Bill 2001 could commence work.

(b) Report of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2001

(LC Paper No. CB(1) 949/01-02)

33. Ms Miriam LAU reported on behalf of Mr Andrew CHENG, Chairman of the Bills Committee, who had to leave the meeting early. Ms Miriam LAU

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said that the main purpose of the Bill was to introduce a Driver Improvement Scheme (DIS) and to provide for deduction of three driving-offence points on a person's satisfactory completion of a driving improvement course. Ms Miriam LAU further said that the Bills Committee had held seven meetings and had received views from six organisations. Ms LAU advised that the Bills Committee was in support of the proposal to introduce a DIS to educate drivers on the proper driving attitude and behaviour with a view to enhancing road safety.

34. Ms LAU informed Members that the Bills Committee had examined the related issues in detail, including the eligibility criteria for the DIS, the penalty options open to the Court to order a person to attend and complete a driving improvement course, the fee determination mechanism, the general requirements in respect of a driving improvement school and the implementation details of the DIS as contained in the code of practice.

35. Ms Miriam LAU further informed Members that the Administration had accepted a number of suggestions raised by members and agreed to move Committee Stage amendments (CSAs) accordingly.

36. Ms Miriam LAU added that the Bills Committee supported the Bill and the CSAs to be moved by the Administration, and recommended the resumption of the Second Reading debate on the Bill on 27 February 2002.

37. Members did not raise objection to the resumption of the Second Reading debate on the Bill on 27 February 2002. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 18 February 2002.

VI. Any other business

Speaking time of Members for the adjournment debate on 6 February 2002

38. The Chairman informed Members that she had just received a note from Mr Martin LEE requesting the House Committee to discuss the speaking time of Members for the adjournment debate on 6 February 2002. The Chairman said that she would very exceptionally allow Mr LEE to raise the matter as it would be meaningless to defer the matter to the next meeting of the House Committee on 22 February 2002.

39. The Chairman said that at the last meeting, Members noted that the duration of an adjournment debate at a meeting would be kept within one hour (45 minutes for Members and 15 minutes for replies by government officials) unless extended by the President. Members also noted that the 45 minutes for

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Members would be apportioned among those Members who had notified the LegCo Secretariat that they wished to speak at the debate two clear days preceding the relevant meeting, and that the proposer was entitled to a minimum of five minutes' speaking time.

40. Mr Martin LEE said that he was aware that 25 Members had already indicated that they would speak at the adjournment debate. He pointed out that while he would have five minutes, each of the 25 Members would only have one minute and 36 seconds to speak as the remaining 40 minutes would be apportioned equally among the 25 Members. Mr Martin LEE requested the House Committee to consider recommending to the President that these 25 Members and any additional Members who informed the Secretariat that they would speak at the debate before the deadline would each be allowed a maximum of two minutes.

41. The Chairman said that as the deadline for Members to notify the Secretariat of their intention to speak at the adjournment debate was 12:00 midnight on Saturday, 2 February 2002, there might be more than 25 Members speaking at the adjournment debate, in addition to the proposer.

42. Mr James TIEN and Mr Frederick FUNG Kin-kee said that the speaking time of one minute and 36 seconds for each Member would not be sufficient. Mr Frederick FUNG suggested that the relevant rule should be changed so that each Member would be allowed a speaking time limit of three minutes.

43. The Chairman said that the last adjournment debate was held in October 1995. As only a few Members spoke at that debate, the apportionment of the 45 minutes' speaking time was not a problem on that occasion. The Chairman further said that the present arrangement of apportioning the 45 minutes as set out in rule 18 of the House Rules obviously did not cater for a situation where a large number of Members wished to speak at an adjournment debate. However, it would be for the Committee on Rules of Procedure to consider whether the relevant rules should be changed. She pointed out that Members should only deal with the specific case of the adjournment debate on 6 February 2002 and consider whether Mr Martin LEE's request should be supported.

44. Miss Margaret NG said that there appeared to be two options to resolve the problem. One option was that some of the 25 Members would not be able to speak at the debate. The other option was to equally apportion the speaking time among those Members who wished to speak at the debate but a speaking time of one minute 36 seconds for each Member seemed meaningless. The Chairman advised that according to the present rules, any Member who had signed up before the deadline would be able to speak at the debate, and the 45 minutes' speaking time would be apportioned among these Members and the

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proposer. Miss NG said that if Members were to consider an extension of the 45 minutes, a specific speaking time should be recommended for each Member.

45. Mr TSANG Yok-sing and Mr IP Kwok-him said that it would be for the President to determine whether to extend the duration of an adjournment debate. Mr IP further said that as an adjournment debate was different from a motion debate, it would not be appropriate for the duration of an adjournment debate to be extended for too long. He added that he would only accept a speaking time limit of up to two minutes for each Member.

46. Mr Fred LI agreed with Mr IP Kwok-him that it would not be appropriate to extend the duration of an adjournment debate for too long. He would support a speaking time of two minutes for each Member.

47. The Chairman proposed that the House Committee should recommend to the President that for those Members who indicated to the Secretariat that they would speak at the debate before the deadline, they would each be allowed a maximum of two minutes to speak while the proposer, Mr Martin LEE, would be allowed five minutes. The Chairman also proposed that the Committee on Rules of Procedure be invited to review the relevant rules relating to adjournment debate. Members agreed to the Chairman's proposals.

48. There being no further business, the meeting ended at 5:13 pm.