

立法會
Legislative Council

LC Paper No. CB(2) 1194/01-02

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 15th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 22 February 2002**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (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
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, 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 Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Dr Hon YEUNG Sum
Hon LAU Kong-wah
Hon Miriam LAU Kin-ye, JP
Hon Ambrose LAU Hon-chuen, GBS, 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 LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
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 LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok

Members absent :

Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Dr Hon LUI Ming-wah, JP
Hon CHAN Kwok-keung
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung

Clerk in attendance :

Mrs Justina LAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP Secretary General
Mr Jimmy MA, JP Legal Adviser

Mr LAW Kam-sang, JP	Deputy Secretary General
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	Assistant Secretary General 3
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
Miss Polly YEUNG	Chief Assistant Secretary (1)3
Ms Connie SZETO	Chief Assistant Secretary (1)4
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Yvonne YU	Senior Assistant Secretary (1)4
Miss Betty MA	Senior Assistant Secretary (2)1

Action

I. Confirmation of the minutes of the 14th meeting held on 1 February 2002
(LC Paper No. CB(2) 1058/01-02)

The minutes were confirmed.

II. Matters arising

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

Date of meeting with CS

2. The Chairman informed Members that the Deputy Chairman met with CS on 4 February 2002.

CS's visit to Beijing

3. The Chairman said that CS had informed the Deputy Chairman that he had led an official delegation to Beijing on 30 and 31 January 2002. The delegation had met with officials from the State Development Planning Commission and other relevant Ministries and the Guangdong Province. The purpose of the meetings was to discuss ways to further enhance the coordination and cooperation between the Mainland and Hong Kong, and to avoid duplication and overlap regarding major transport and infrastructure projects. An information paper on the visit had been prepared by the

Action

Administration and issued to Members on 5 and 6 February 2002 vide LC Papers No. CB(2) 1060 and 1080/01-02.

Action

4. The Chairman further said that CS had also told the Deputy Chairman that he would be happy to brief Members on further developments during his next meeting with them. The Chairman also pointed out that CS was currently in Beijing for another visit and he might also wish to brief Members on this visit. Ms Emily LAU asked when the meeting would be held. The Chairman responded that she would raise the matter with CS.

Budget arrangements

5. The Chairman said that CS had also informed the Deputy Chairman that the Financial Secretary (FS) had decided that there should be new arrangements for the forthcoming Budget. CS had said that there had been criticism that the Budget was presented in a piecemeal fashion and could not be looked at as a comprehensive whole. FS therefore considered that both the revenue and expenditure components should be presented on the same day, i.e. Budget Day on 6 March 2002.

6. The Chairman further said that FS had also suggested that the special Finance Committee (FC) meetings be held from 25 to 27 March 2002 (instead of from 18 to 20 March 2002 as originally scheduled), so as to allow Members the same amount of time to study the proposals.

7. The Chairman added that the Director of Administration (D of Adm) had informed the Deputy Chairman that the Finance Bureau would work out detailed arrangements with the Legislative Council (LegCo) Secretariat. The Administration subsequently wrote to the Secretariat on 8 February 2002 and a circular detailing the revised Budget arrangements was issued to members of FC on 9 February 2002.

8. The Chairman said that Dr YEUNG Sum and Ms Emily LAU had separately written to her regarding the revised Budget arrangements proposed by FS. Their letters would be discussed under agenda item IX below.

(b) Dutiable Commodities (Amendment) Bill 2002

(Paragraphs 9 to 16 of the minutes of the 14th House Committee meeting on 1 February 2002)

[Previous paper: LC Paper No. LS 49/01-02 issued vide LC Paper No. CB(2) 1025/01-02 dated 31 January 2002]

9. The Chairman said that a decision on the Bill was deferred from the last House Committee meeting pending a further report from the Legal Service Division.

10. The Legal Adviser said that as the Administration had not yet responded to the queries raised by the Legal Service Division, the Division was unable to

Action

provide a further report for this meeting.

Action

11. The Chairman proposed that a decision on the Bill be deferred to the next meeting on 1 March 2002. Members agreed.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 1 February 2002

(LC Paper No. LS 54/01-02)

12. The Legal Adviser said that seven items of subsidiary legislation, including one Commencement Notice, were gazetted on 1 February 2002. The Legal Adviser further said that the legal and drafting aspects of these items of subsidiary legislation were in order.

13. Mr Henry WU informed Members that he had consulted the industry on the Securities and Futures Commission (Annual Returns) (Amendment) Rules 2002. The industry had raised certain queries about completing the annual return form as a result of the new Continuous Professional Training, and he had approached the Securities and Futures Commission (SFC) on these queries. As the SFC had provided clarification and agreed to make improvement to the annual return form, the industry no longer had any problem with the two sets of Amendment Rules.

14. Members did not raise any other points or query on these items of subsidiary legislation.

15. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 6 March 2002, or 13 March 2002 if extended by resolution.

IV. Legal Service Division reports on subsidiary legislation to be tabled in Council on 27 February 2002

(a) Legal Service Division report on subsidiary legislation gazetted on 8 February 2002

(LC Paper No. LS 56/01-02)

16. The Legal Adviser said that only one item of subsidiary legislation, the Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59 sub. leg.) (Commencement) Notice 2002, was gazetted on 8 February 2002. The Regulation had been studied by a subcommittee formed under the House Committee before it was approved by a resolution of the Council in November 1999.

Action

17. The Legal Adviser explained that the Commencement Notice appointed 1 April 2002 as the day on which certain provisions of the Regulation would come into operation. The Legal Adviser added that the legal and drafting aspects of the Commencement Notice were in order.

18. Members did not raise any query on this item of subsidiary legislation.

19. The Chairman reminded Members that the deadline for amending this item of subsidiary legislation was 13 March 2002, or 10 April 2002 if extended by resolution.

(b) Legal Service Division report on subsidiary legislation gazetted on 15 February 2002

(LC Paper No. LS 57/01-02)

20. The Legal Adviser said that three items of subsidiary legislation, including one Commencement Notice, were gazetted on 15 February 2002.

21. The Legal Adviser explained that the amendments proposed in the two Orders made under the Pension Benefits Ordinance were technical in nature. The Legal Adviser further informed Members that the Legal Service Division had asked the Administration to provide details of the names of new ranks created after the Pension Benefits Ordinance (Established Offices) (Amendment) Order 1996, names of ranks which had been retitled and names of ranks deleted. As the three lists provided by the Administration were rather lengthy and in order to save the re-production of large volume of hard copies, Members were invited to view the lists at the LegCo website. The Legal Adviser added that the Legal Service Division could provide hard copies of the lists upon request.

22. The Legal Adviser further explained that the Mutual Legal Assistance in Criminal Matters (Canada) Order (L.N. 290 of 2001) (Commencement) Notice 2002 specified 1 March 2002 as the date on which the Order would come into operation. The Legal Adviser added that the Order had been scrutinised by a subcommittee before it was approved by the Council in December 2001.

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

24. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 13 March 2002, or 10 April 2002 if extended by resolution.

Action

V. **Business for the Council meeting on 27 February 2002**

(a) **Questions**

(LC Paper No. CB(3) 421/01-02)

25. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 27 February 2002.

(b) **Bills - First and Second Readings**

Employees Compensation Assistance (Amendment) Bill 2002

26. The Chairman said that the Bill would be introduced into the Council on 27 February 2002 and considered by the House Committee on 1 March 2002.

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

Road Traffic Legislation (Amendment) Bill 2001

27. The Chairman said that the relevant Bills Committee had reported to the House Committee on 1 February 2002, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) **Government motion**

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

(e) **Members' motions**

(i) **Motion on "Expectations for the 2002-03 Budget"**

(Wording of the motion issued vide LC Paper No. CB(3) 401/01-02 dated 9 February 2002.)

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

(ii) **Motion on "Promoting community spirit"**

(Wording of the motion issued vide LC Paper No. CB(3) 402/01-02 dated 11 February 2002.)

30. The Chairman said that the motion would be moved by Mr TAM Yiu-chung and the wording had been issued to Members.

Action

VI. Business for the Council meeting on 6 March 2002

Questions

(LC Paper No. CB(3) 422/01-02)

31. The Chairman said that 20 written questions had been scheduled for the Council meeting on 6 March 2002.

VII. Advance information on business for the Council meeting on 13 March 2002

Bills - First and Second Readings

Extension of Vetting Period (Legislative Council) Bill 2002

32. The Chairman said that the Bill would be introduced into the Council on 13 March 2002 and considered by the House Committee on 22 March 2002.

VIII. Report of Bills Committee and subcommittee on subsidiary legislation

(a) Position report on Bills Committees/subcommittees

(LC Paper No. CB(2) 1125/01-02)

33. The Chairman said that there were 14 Bills Committees and four subcommittees in action as well as 12 Bills Committees on the waiting list.

(b) Report of the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000

(LC Paper No. CB(1) 1086/01-02 issued vide LC Paper No. CB(2) 1131/01-02 dated 19 February 2002)

34. Mr SIN Chung-kai, Chairman of the Bills Committee, said that the Bills Committee had completed the scrutiny of the Securities and Futures Bill and Banking (Amendment) Bill 2000. As its deliberations were set out in detail in the report, he wished only to highlight a few important points.

35. Mr SIN Chung-kai said that the Bills Committee welcomed the introduction of a single licensing system for market intermediaries which would help to reduce administrative costs and burden on the SFC in regulating the intermediaries as well as cut down the compliance costs for intermediaries. However, some members and securities dealers had expressed concern that under the dual regulator approach, the regulatory standards and requirements would not be consistently applied to the SFC licensees and exempt authorized

Action

institutions (AIs), and would result in unfair competition in the securities and futures market.

36. Mr SIN further said that the Administration had explained that the regulation of securities business of AIs by the Hong Kong Monetary Authority (HKMA) could help minimise regulatory overlap. The SFC rules and codes/guidelines would apply directly to exempt AIs and their securities staff unless there were equally or more stringent requirements under the Banking Ordinance, and both regulators would also work closely in exchanging regulatory information.

37. Mr SIN Chung-kai informed Members that to address members' concerns about the differences in disciplinary sanctions and appeal mechanisms for persons regulated by the SFC and exempt AIs and their securities staff, the Administration had proposed a revision of the disciplinary sanctions applicable to exempt AIs so that they and their securities staff would be subject to the same range of sanctions as the SFC licensees. The Administration had also proposed to standardise the appeal channels for exempt AIs and SFC licensees. Mr SIN said that members generally welcomed the Administration's proposals, as they would partly address the concern of market intermediaries about the need to maintain a level playing field in the securities and futures markets.

38. Mr SIN Chung-kai further said that the Securities and Futures Bill had given a wider range of powers and discretion to the SFC in order to enable it to perform its functions effectively under the new regulatory framework. The Bills Committee considered that while the SFC should remain autonomous in discharging its duties, it should also maintain a high degree of accountability. The Bills Committee also recognised that there was the need to strike a balance between possible abuse of powers by the SFC and too much restriction on its powers. Mr SIN pointed out that some members were very concerned that clause 11 of the Securities and Futures Bill, which provided the Chief Executive (CE) with the power to give written directions to the SFC regarding the performance of its functions, might compromise its independence. The Administration had explained that CE would not resort to the power unless in unforeseen and extreme circumstances and in the public interest. Mr SIN added that Miss Margaret NG had indicated that she remained opposed to clause 11 and would vote against it during the Committee Stage.

39. Mr SIN Chung-kai said that to enhance the accountability of the SFC, some members were of the view that a statutory consumer panel, similar to the Consumer Panel established under the United Kingdom Financial Services Authority as required under the Financial Services Market Act, should be set up. These members considered that a formalised statutory consumer panel would not only consolidate the views of investors at large and make known their needs to the regulator, it would also contribute to enhancing their understanding of the

Action

market. Mr SIN further said that the Administration had explained that the interest of market participants would be fully represented in the various statutory committees and specialised standing committees required under the Securities and Futures Bill. In addition, the SFC had agreed to upgrade the current Shareholder Group to a statutory standing committee. The Administration believed that this would facilitate investors to participate more effectively in the SFC consultative exercises. Mr SIN added that the Administration had agreed to move a Committee Stage amendment (CSA) to the Securities and Futures Bill to include a statutory public consultation requirement with respect to any rules before they were made by the SFC.

40. Mr SIN Chung-kai informed Members that the Bills Committee had noted the safeguards to be put in place to ensure that the SFC would observe the procedural requirements in exercising its power and provide the relevant party an opportunity of being heard before coming to the final decision. Mr SIN further informed Members that under the Securities and Futures Bill, all rules made by the SFC, CE in Council or the Chief Justice would be subsidiary legislation subject to the negative vetting procedure of LegCo.

41. Mr SIN Chung-kai said that as far as combating market misconduct was concerned, members supported the introduction of dual civil and criminal regimes to deter and punish market misconduct. Mr SIN added that the Administration had proposed to set up a Market Misconduct Tribunal (MMT) under the civil system. The MMT would conduct hearings to determine whether market misconduct had taken place and identify the persons committing the misconduct. The range of civil sanctions available to MMT was expanded to include "disgorgement order", i.e. to demand payment to the Government the amount of the profit gained or loss avoided as a result of the misconduct engaged by a person.

42. Mr SIN further said that the proposed criminal regime covered criminal offences such as market misconduct, acts of fraud or deception. The maximum criminal sanction was 10 years' imprisonment and/or fines of \$10 million. In view of the heavy penalty, members were keen to ensure that the legislation adopted the proper standard and burden of proof for criminal offences. The Administration had explained that in instituting prosecutions, the onus of proof would be on the prosecution who was required to establish an "intentional" or "reckless" mental element. Moreover, defence provisions were provided in the Securities and Futures Bill.

43. Mr SIN Chung-kai said that members welcomed the setting up of the new Investor Compensation Scheme to enhance the protection of investors and the new regime for the disclosure of interests in securities to enhance market transparency. Members had stressed that the new disclosure regime should bring Hong Kong in line with international standards, but not adversely affect

Action

Hong Kong's competitiveness as an international financial centre.

44. Mr SIN Chung-kai informed Members that the Administration had agreed to move CSAs to the two Bills to address the various concerns raised by the Bills Committee. Subject to these CSAs, the Bills Committee supported the resumption of the Second Reading debate on the two Bills on 13 March 2002.

45. Mr SIN Chung-kai further informed Members that according to the Administration, 39 sets of subsidiary legislation which were subject to the negative vetting procedure would be made under the Securities and Futures Bill after its enactment. Mr SIN said that the Administration was prepared to consult Members on these items of subsidiary legislation in draft form before they were introduced into the Council. In view of the large number and complexity of the subsidiary legislation to be made and to allow sufficient time for scrutiny, the Bills Committee had recommended that a subcommittee should be formed under the House Committee to study the proposed subsidiary legislation.

46. Mr SIN added that the Bill Committee had held 55 meetings over a 14-month period. It had discussed over 300 information papers and received a total of 48 submissions from 21 organisations and four individuals. The Bills Committee had also conducted an overseas duty visit to study the financial systems in the United Kingdom and the United States. Mr SIN said that he would like to take the opportunity to thank members of the Bills Committee for their hard work and the staff of the LegCo Secretariat for their support services.

47. The Chairman said that Mr SIN himself should also be thanked by Members for very ably steering the work of the Bills Committee and bringing it to a satisfactory conclusion.

48. Mr Henry WU said that the brokerage industry supported the spirit of the Securities and Futures Bill which aimed to enshrine a user-friendly regulatory regime for the development of a fair, orderly and transparent market that was competitive internationally as well as attractive to investors, issuers and intermediaries. However, the industry also had grave concern about the dual regulator approach for market intermediaries. Mr WU pointed out that the administration of the new regulatory regime would be underpinned by a revised Memorandum of Understanding (MOU) between the SFC and HKMA. The industry considered it of paramount importance for the respective regulatory roles of the SFC and HKMA to be clearly set out in the revised MOU, and for the revised MOU to be made public. Mr WU said that the industry had just put forward its views to the Administration and it was expected to give a response in the early part of the following week. He might consider proposing CSAs to the relevant provisions should the Administration disagree to make

Action

public the revised MOU between the SFC and HKMA.

49. Mr Henry WU further said that to his knowledge, some investment bankers had expressed concern that the proposed disclosure regime which extended disclosure requirements to short positions, unissued shares and cash-settled derivatives, etc, might go considerably beyond the disclosure schemes of other international markets. These investment bankers hoped that their concerns would be addressed in the course of scrutinising the relevant items of subsidiary legislation.

50. The Chairman asked whether the Bills Committee had considered the brokerage industry's concerns and possible CSAs to be proposed by Mr Henry WU. Mr SIN Chung-kai said that the Bills Committee had held lengthy discussions on the brokerage industry's concerns. Mr SIN further said that members had been asked to provide their proposed amendments, if any, to the Bills Committee for consideration at its last meeting on 14 January 2002, but no amendment had been forwarded to the Bills Committee. As the Bills Committee had completed scrutiny of the two Bills, members decided to conclude their work and report to the House Committee. Mr SIN added that just as any other bills, individual Members could propose amendments to the two Bills, as long as the requirements in the Rules of Procedure were met.

51. Miss Margaret NG agreed with Mr SIN Chung-kai that the Bills Committee had discussed in detail the brokerage industry's concerns. She pointed out that the Administration had in fact proposed an earlier date for the resumption of the Second Reading debate on the two Bills. The Bills Committee had carefully considered the proposal and recommended that the Bills should be resumed on a later date, i.e. on 13 March 2002. Miss NG was of the view that there was no need for the Bills Committee to further meet to study the amendments proposed by Mr Henry WU, if he decided to do so.

52. Mr Henry WU clarified that he did not object to the resumption of the Second Reading debate on the two Bills on 13 March 2002.

53. Members did not raise objection to the resumption of the Second Reading debate on the Securities and Futures Bill and the Banking (Amendment) Bill 2000 on 13 March 2002. The Chairman reminded Members that the deadline for giving notice of amendments to the two Bills was Monday, 4 March 2002.

54. Assistant Secretary General 3 said that in view of the complexity of the two Bills, he hoped that Members would inform the Secretariat as early as practicable if they wished to propose CSAs or vote against any particular clause during the Committee Stage.

Action

55. The Chairman proposed that a subcommittee be set up under the House Committee, as recommended by the Bills Committee. Members agreed. The following Members agreed to join : Mr NG Leung-sing, Mr SIN Chung-kai, Mr TSANG Yok-sing (as advised by Mr IP Kwok-him) and Mr Henry WU.

Action

56. The Chairman added that as there was a vacant slot, the Bills Committee on the Statute Law (Miscellaneous Provisions) Bill 2001 could commence work.

IX. Letters from Dr Hon YEUNG Sum and Hon Emily LAU regarding the Budget arrangements

(Letters dated 18 February 2002 from Dr Hon YEUNG Sum and Hon Emily LAU)

(LC Paper No. FC 38/01-02 dated 9 February 2002 on "Special Finance Committee meetings to examine the Draft Estimates of Expenditure 2002-03")

(Letter dated 21 February 2002 from the Financial Secretary to the Chairman of House Committee)

(Hon SIN Chung-kai's letter dated 20 February 2002 and the reply of the Clerk to Finance Committee dated 22 February 2002)

57. Dr YEUNG Sum said that his concern was that the Administration should consult LegCo before introducing changes to the arrangements for briefing Members on the expenditure part of the Budget for the 2002-03 financial year. He further said that the new arrangements departed from the usual practice that the Administration would brief members of FC on the Draft Estimates of Expenditure on the Friday immediately before the delivery of the Budget. He was of the view that it was disrespectful to LegCo that the Administration had decided on the new arrangements unilaterally.

58. Dr YEUNG said that in his letter to the Chairman, he had proposed that FS should be invited to attend a meeting of the House Committee to explain the reasons for the changes and to answer Members' questions. He noted that FS had sent a letter to the Chairman on 21 February 2002 to explain the rationale behind the changes. Dr YEUNG further said that having read FS's letter, he remained of the view that the Administration should consult LegCo on changes that would affect LegCo, even if there were good reasons for making the changes. He added that as FS had provided a written explanation, it was unlikely that FS would accept an invitation to attend a meeting of the House Committee to further discuss his rationale for the changes.

59. Ms Emily LAU said that she was shocked to learn about the new arrangements for the presentation of the expenditure part of the Budget, upon return from the Chinese New Year holidays. Ms LAU pointed out that from the Chairman's earlier report under agenda item II(a) above, CS had only informed the Deputy Chairman of the House Committee of the new arrangements on 4 February 2002. She was aware that it was upon subsequent enquiry by the LegCo Secretariat that the Administration notified the Clerk to FC in writing on 8 February 2002 of the detailed arrangements. Ms LAU further pointed out that the original dates for the special FC meetings (i.e. 18 to

Action

20 March 2002) had been agreed with the Administration months ago. She stressed that the Administration should discuss with Members well in advance changes that would affect the operation of LegCo, just as LegCo had consulted the Administration on the new mode for debating the Policy Address.

60. Ms LAU further said that Members had different views on the new arrangement of presenting both the expenditure and revenue parts of the Budget on the same day. While some Members found the new arrangement acceptable, some other Members were worried that they would not have sufficient time to examine and "digest" both parts of the Budget if these were presented at the same time. Ms LAU expressed strong dissatisfaction that FS had made the changes unilaterally as this was disrespectful to LegCo. She also pointed out that FS had not apologised in his letter dated 21 February 2002 to the Chairman for making the changes without consulting LegCo. She added that the rescheduling of the briefing on the Draft Estimates and the special FC meetings had upset the meeting schedules of other LegCo committees. Ms LAU was of the view that as there was no prior consultation with LegCo on the new arrangements, the Administration should follow the existing practice for the presentation of the Budget this year. As to whether the new arrangements should be adopted for next year, this should be discussed with LegCo first.

61. The Chairman said that according to FS's letter of 21 February 2002, the new arrangements were to be tried out for the financial year 2002-03 to enable Members and the public to have a complete picture of the Budget. The Secretary General (SG) said that CS had informed the Deputy Chairman at their meeting on 4 February 2002 that the new arrangements were made in view of the criticism that the presentation of the Budget in a piecemeal fashion had made it difficult for it to be looked at as a comprehensive whole. SG advised that according to Rule 67(1) of the Rules of Procedure, "estimates containing the details of the said financial requirements shall be presented to the Council not later than the commencement of the meeting at which such bill is placed on the Agenda of the Council for first reading". He added that as long as the Draft Estimates on Expenditure were presented before the start of the meeting at which the Appropriation Bill would have its First Reading, there would not be a breach of Rule 67(1).

62. Ms Emily LAU said that even if some Members did not find the existing Budget arrangements satisfactory, these Members should raise the matter with the House Committee first.

63. Mr LEE Cheuk-yan expressed strong dissatisfaction with the new arrangements. Mr LEE said that Members would not have sufficient time to examine both the expenditure and revenue parts of the Budget if they were presented on the same day. He preferred the existing practice of Members being provided with advance copies of the Draft Estimates of Expenditure a

Action

few days before FS delivered his Budget Speech. He pointed out that this would allow more time for Members and the public to understand both the expenditure and revenue parts of the Budget, which would in turn facilitate effective discussion of the Budget by Members and the public.

64. Mr LEE further said that he agreed with Ms Emily LAU that it was disrespectful to LegCo for FS to take a decision on the changes unilaterally. He added that he was not convinced of FS's argument in his letter of 21 February 2002 that under the existing practice, it was difficult to analyse the estimates on expenditure in the absence of other related information such as the revenue forecast. Mr LEE expected that there would be substantial reduction in government expenditure, and he wondered whether the new arrangements were intended to divert public attention from the expenditure estimates to the revenue proposals. Mr LEE said that as LegCo had not been consulted on the new arrangements, the House Committee should consider objecting to trying out the new arrangements for the 2002-03 Budget.

65. Miss Margaret NG said that she would not object to changes if the changes were necessary, but there should be prior consultation with LegCo. She found it regrettable that the Administration had failed to consult LegCo on the new Budget arrangements. She pointed out LegCo had discussed with the Administration the new mode for debating the Policy Address to ensure smooth implementation, even though it was entirely within the authority of LegCo to amend its procedures. Miss NG sought clarification on how the estimates on expenditure should be presented to the Council in order to comply with Rule 67(1) of the Rules of Procedure. She also asked whether the Administration had confirmed the time for the briefing on the Budget scheduled for 7 March 2002.

66. SG responded that the LegCo Secretariat had not yet been informed by the Administration of the exact arrangements, including the time, for the presentation of the Draft Estimates of Expenditure for the financial year 2002-03 under Rule 67(1). Assistant Secretary General (ASG) 1 added that the Administration had also not decided on the time for the briefing on 7 March 2002.

67. In response to Miss Margaret NG's further enquiry, ASG3 advised that the procedure on notice of presentation of bills was provided in Rule 51(1) of the Rules of Procedure. Procedurally, an Appropriation Bill would be regarded as having been presented to the Council after the notice of its introduction together with the Bill was received by the Clerk and distributed to Members before the relevant Council meeting. Under Rule 67(1), the Bill would relate to the Draft Estimates of Expenditure.

68. Miss Margaret NG said that although technically, it would not be a

Action

breach of Rule 67(1) for the Administration to present the Draft Estimates a few minutes before the commencement of the relevant Council meeting, it would be meaningless as Members would not have time to study them.

Action

69. Mr NG Leung-sing said that he had not given any comments to the Administration on the current arrangements for the presentation of the expenditure part of the Budget. However, he recalled that during briefings on the Draft Estimates on Expenditure in previous years, some Members had raised questions on information which was not covered in the Draft Estimates and which could only be answered after the Budget Speech was made by FS. Mr NG considered that the new arrangements were reasonable, although he understood that some Members were unhappy about the short notice for the changes and the lack of consultation with LegCo. Mr NG further said that he supported the new arrangements in principle, but he agreed that the House Committee should reflect to the Administration that it should consult LegCo before introducing changes to existing practices.

70. Dr YEUNG Sum said that Members should not be discussing the new arrangements, as the issue was whether the Administration should consult LegCo on changes that affected LegCo. Dr YEUNG pointed out that it was LegCo's responsibility to monitor the work of Government. The Administration should therefore consult LegCo, and not "lead" or direct the work of LegCo. He stressed that this was an important principle that should be taken seriously.

71. Mr CHAN Kam-lam said that he did not share the strong feelings expressed by Ms Emily LAU about the new Budget arrangements. He considered that the presentation of both the expenditure and revenue parts of the Budget at the same time was a better arrangement as it would facilitate more sensible discussion on the Budget by Members and the public. Nevertheless, he agreed that there should be more communication between the Administration and LegCo to minimise disruption to the meeting schedules of LegCo committees.

72. Referring to the Clerk to FC's reply to Mr SIN Chung-kai's letter (both letters were tabled at the meeting), Mr James TO pointed out that the Administration was aware of paragraph 49 of the FC Procedure which set out the prevailing arrangement for providing advance copies of the Draft Estimates of Expenditure to members of FC a few days before the Council meeting at which the Appropriation Bill was read the first time. Mr James TO asked whether the Administration had replied that it agreed to the FC Procedure when consulted by the LegCo Secretariat in 1994. He also asked whether the Administration had informed LegCo Secretariat of its intention to change the existing arrangements of announcing the Budget.

73. ASG1 advised that the FC Procedure was first adopted on 8 July 1994 after the LegCo Secretariat had taken over from the Administration the servicing of the FC. The procedural arrangements in paragraph 49 of FC Procedure were the prevailing arrangements at that time which were set out in

Action

an internal document used by the then Finance Branch for the purpose of FC proceedings. On the basis of this document, the Secretariat prepared the FC Procedure which included the procedure of the special meetings to examine the Draft Estimates of Expenditure. The same set of practice and procedure was adopted in 1998 by LegCo under Rule 71(13) of the Rules of Procedure. ASG1 said that on both occasions, the FC Procedure, when still in draft form, was forwarded to the Administration for comments before adoption, and the Administration had “no comment” on this part of the draft Procedure. ASG1 further said the Secretariat was first made aware of the new arrangement after the Deputy Chairman was informed of the changes by CS on 4 February 2002. To enable the Secretariat to follow up, SG approached D of Adm for further information, and the Secretary for the Treasury wrote to the Clerk to FC on 8 February 2002 about the new arrangements.

74. Mr Andrew WONG said that before the financial year 1990-91, the Draft Estimates were provided to Members only half an hour before the Council meeting at which the Appropriation Bill would have its First Reading. Starting from the financial year 1990-91, the Appropriation Bill was gazetted on the Friday immediately preceding the Budget Day, and advance copies of the Draft Estimates of Expenditure were provided to Members about the same time. Mr WONG agreed that paragraph 49 of the FC Procedure was only descriptive of how the Administration handled the Draft Estimates of Expenditure. It did not create a procedural obligation on FS and the new arrangements did not amount to a breach of paragraph 49 of the FC Procedure. Mr WONG further said that he was prepared to accept the new arrangements, if the Administration had genuine difficulties in providing advance copies of the Draft Estimates on Expenditure a few days before the First Reading of the Appropriation Bill.

75. Mr James TO asked whether a Member could move without notice to adjourn the debate on the Appropriation Bill at the Council meeting on 6 March 2002. SG responded that it was not possible to move such a motion as after the motion for the Second Reading of the Appropriation Bill had been proposed, “the debate thereon shall be adjourned and shall be resumed not earlier than the seventh day thereafter”, in accordance with Rule 67(2) of the Rules of Procedure.

76. Ms Cyd HO said that the rules requiring that advance copies of the Draft Estimates on Expenditure be provided aimed to enable Members to have time to examine the details of the Estimates to facilitate effective discussion. Ms HO was of the view that the Administration would not be acting in accordance with the spirit of Rule 67(1) if the Draft Estimates were distributed to Members only a few minutes before the commencement of the Council meeting at which the Appropriation Bill was to be introduced. She considered that FS should follow the existing practice and provide advance copies of the Draft Estimates to Members before the Council meeting on 6 March 2002. Ms Emily LAU

Action

concurrent with Ms Cyd HO. Ms LAU added that the Draft Estimates should be provided on 1 March 2002 as originally agreed with the Administration.

Action

77. Mr LEE Cheuk-yan said that the Chairman of the House Committee should convey a clear message to the Administration that it should consult LegCo before introducing any changes to existing practice. Mr LEE and Dr YEUNG Sum agreed that as LegCo had not been consulted on the new arrangement, the Administration should adhere to the existing practice for presenting the 2002-03 Budget.

78. The Chairman said that the Administration should consult LegCo on the new Budget arrangements, given that these were important changes affecting the operation of LegCo. The diverse views expressed at the meeting all the more showed that Members needed time to consider the new arrangements proposed by FS. The Chairman further said that it would not be conducive to improving the relationship between the Executive and the Legislature, if the Administration was to introduce such important changes unilaterally. The Administration and LegCo should work on the basis of constructive cooperation and there should be consultation on changes to procedures and practices, just as LegCo had consulted the Administration on the new mode of debating the Policy Address. The Chairman pointed out that the Administration should understand that Members were held accountable for their decisions on the Administration's proposals, and they should be given sufficient time to examine such proposals. The Chairman proposed that she would request the Administration to provide advance copies of the Draft Estimates of Expenditure to Members, in accordance with existing practice.

79. Mr James TIEN expressed support for the Chairman's proposal. Mr TIEN added that it would also be of advantage to the Administration to allow Members more time to examine the Draft Estimates so that Members could give well-considered responses to FS's Budget proposals.

80. Mr NG Leung-sing stressed that the new Budget arrangements were not in breach of the Rules of Procedure, but he agreed that the Administration should be requested to provide the Draft Estimates to Members at the earliest possible time.

81. Mr IP Kwok-him said that although Members belonging to the Democratic Alliance for the Betterment of Hong Kong had no strong views about the new Budget arrangements, they agreed to the Chairman's proposal. Mr IP further said that the Administration should consult LegCo as early as possible, given that Members had different views on the new Budget arrangements proposed by FS. Mr James TO concurred with Mr IP.

82. Miss Margaret NG said that her concern was whether the new Budget arrangements were in compliance with the Rules of Procedure. If it was entirely in order for the Administration to adopt the new arrangements for the presentation of the Budget, she had no interest in urging the Administration to

Action

provide advance copies of the Draft Estimates to Members as if the Administration was doing LegCo a favour. She said that if the Administration had already taken a decision on the matter, it should inform Members of the exact arrangements, such as the time for the briefing by FS on 7 March 2002, as early as possible. The Chairman responded that there was no question of asking the Administration to do LegCo a favour as providing advance copies of the Draft Estimates was the existing practice.

83. The Chairman said that she would convey to CS on Monday, 25 February 2002, Members' request that the Administration should, in accordance with existing practice, provide advance copies of the Draft Estimates of Expenditure to Members a few days before 6 March 2002. The copies should be provided as early as possible, preferably on 1 March 2002 as originally scheduled. Members agreed.

84. Mr James TO asked whether the matter would be further discussed at the next House Committee meeting on 1 March 2002. Ms Emily LAU said that Members needed time to consider how the matter should be followed up, depending on the Administration's response. Ms LAU requested and the Chairman instructed the Secretariat to inform Members of the Administration's response as soon as practicable after her meeting with CS.

X. Any other business

85. There being no further business, the meeting ended at 4:05 pm.

Council Business Division 2
Legislative Council Secretariat
27 February 2002

minutes