

立法會
Legislative Council

LC Paper No. CB(2) 2249/01-02

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 26th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 7 June 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 Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Martin LEE Chu-ming, SC, 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 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
Hon LAU Wong-fat, GBS, JP
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 Timothy FOK Tsun-ting, SBS, JP
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 Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
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 James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi

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
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Kitty CHENG	Assistant Legal Adviser 5
Miss Monna LAI	Assistant Legal Adviser 7
Mrs Vivian KAM	Chief Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Ms Connie SZETO	Chief Assistant Secretary (1)4
Miss Salumi CHAN	Chief Assistant Secretary (1)5
Mrs Constance LI	Chief Assistant Secretary (2)5
Miss Betty MA	Senior Assistant Secretary (2)1

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I. Confirmation of the minutes of the 25th meeting held on 31 May 2002
(*LC Paper No. CB(2) 2176/01-02*)

The minutes were confirmed.

II. Matters arising

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

Report of the Panel on Food Safety and Environmental Hygiene concerning the "Report of the investigation team for the 2002 avian influenza incident"

2. Mr Fred LI said that he and the Chairman had conveyed to CS that the Panel on Food Safety and Environmental Hygiene was strongly dissatisfied that the Environment and Food Bureau had briefed the media on the "Report of the investigation team for the 2002 avian influenza incident" before briefing the Panel, and that the Bureau had also failed to comply with the deadline of providing papers five days before the Panel meeting. CS had responded that he would look into the matter, and it was important for the Administration and the Council to strengthen communication.

3. Ms Emily LAU said that she was shocked to learn that in spite of being reminded by the Chairman and Deputy Chairman on Monday, 3 June 2002, CS himself had held a press conference to announce the lifting of the moratorium on the sale of Home Ownership Scheme (HOS) flats and related issues at 4:45 pm on 5 June 2002 when there was a Council meeting in progress. She

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considered that CS should have made such an important announcement, and taken a few questions from Members, at the Council meeting on 5 June 2002, instead of simply issuing a copy of his press statement to members of the Panel on Housing.

4. The Chairman said that she had informally raised Ms LAU's concern with CS just before the meeting. CS had responded that as his press statement contained market-sensitive information, the statement could not be released until after 4:30 pm on that day. The Administration had nevertheless informed the Chairman and Deputy Chairman of the Panel on Housing of the matter prior to the press conference. The Chairman further said that she had pointed out to CS that it was important for all Members, and not just the Chairman and Deputy Chairman of the relevant Panel, to be informed of important announcements to be made by the Administration.

5. Ms Emily LAU agreed with the Chairman. She added that even if the information was commercially sensitive, CS could still seek the permission of the President for him to make a statement at 4:30 pm at the Council meeting on 5 June 2002, prior to his press conference. Mr SIN Chung-kai concurred with Ms LAU.

6. Mr Fred LI said that he was a member of the Panel on Housing, and a copy of CS's press statement was given to him during the Council meeting on 5 June 2002, after the press statement was made. He informed Members that when he received the copy of the press statement, not only was it folded into a bundle with his name scribbled on it, the statement also had no covering memo to indicate where it came from. He considered that the way the Administration had handled the matter reflected that the Administration did not have any respect for Members. He stressed that the Administration should not undermine the monitoring role of the Legislative Council (LegCo), and the Administration should brief Members on important matters or announcements prior to briefing the media.

7. Dr YEUNG Sum said that it was regrettable that the Administration had treated LegCo in such a manner, when the Administration had emphasised that one of the objectives of introducing an accountability system for principal officials was to strengthen communication between the Administration and LegCo. Dr YEUNG pointed out that under the Basic Law, the Government was accountable to LegCo, and therefore it should inform and explain to Members of any important announcements or matters at the earliest opportunity.

8. Mr IP Kwok-him said that he was a member of the Housing Authority (HA), and also a member of the Panel on Housing. He informed Members that HA members were notified in the morning of 5 June 2002 that a special meeting would be held at 3:45 pm on that day. What HA members were told

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at the meeting by CS was exactly the same as what was contained in the copy of the press statement provided to members of the Panel on Housing. He further said that HA members were requested not to disclose the information until 5:30 pm on that day, because the information was market-sensitive. Mr IP added that he personally did not consider the lifting of the moratorium on the sale of HOS flats a policy matter as it was a decision related to an established policy. However, he agreed that the Administration could have made better arrangement in communicating with LegCo on the matter.

9. Miss Margaret NG said that judging from what Members had said about the incident, it was not an oversight on the Administration's part, but a considered move not to inform LegCo about the matter, prior to making the public announcement. She was of the view that the Administration did not trust Members and therefore did not brief them on commercially sensitive matters before making a press announcement. She strongly protested the way the Administration had treated Members.

10. Mr Ambrose LAU said that what the incident had raised was not whether the Administration respected LegCo, but the technical question of communication between the Administration and LegCo. He further said that arrangement could be made for the relevant Panel(s) or other LegCo committee(s) to be briefed on important matters which involved commercially sensitive information at the earliest opportunity.

11. Mr James TO said that since a meeting could be arranged for HA members on 5 June 2002, the Administration could also have made arrangements for a briefing to be given to Members, prior to the press conference. He further said that it was quite clear that from the way it had handled the matter, the Administration did not show any respect for LegCo.

12. Ms Emily LAU said that it was a constitutional convention that the Administration should brief Members on important matters or announcements at the earliest opportunity, before briefing the media. She stressed that all Members, and not just members of the relevant Panel(s), should be informed of important matters and announcements.

13. The Chairman said that she would raise with CS that the Administration should brief LegCo on any important matters and announcements at the earliest opportunity prior to briefing the media, even if commercially sensitive information was involved. If the announcement or the matter was so urgent that a briefing for Members could not be arranged immediately, information about the matter or announcement should be provided to all Members at the earliest opportunity, prior to briefing the media.

14. Miss Margaret NG said that the Chairman should also ask CS about the

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criteria used by the Administration for determining when an announcement or briefing on an important matter would be made at a Council meeting, and when it would be made at a meeting of the relevant Panel(s). Members agreed.

Draft replies to oral questions

15. The Chairman said that she had raised with CS that there had been occasions recently that the Administration had not adhered to the 1:00 pm deadline for providing draft replies to oral questions on the day of the Council meeting. She had requested CS to remind bureaux of the deadline. The Chairman added that the Director of Administration (D of Adm) had confirmed that the deadline was agreed between the Administration and the Council.

(b) CITIC Ka Wah Bank (Limited) Merger Bill

16. The Chairman said that at the last House Committee meeting, Members agreed to defer a decision on the Bill to this meeting, to allow more time for Members to study the clarifications provided in the Legal Service Division's report of the points raised at the meeting of the Panel on Financial Affairs on 9 April 2002.

17. Mr SIN Chung-kai said that he was still seeking clarification from the solicitors for CITIC Ka Wah Bank Limited on a few issues. He requested that a decision on the Bill be further deferred to the next meeting of the House Committee. Members agreed.

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)

Public Officers Pay Adjustment Bill

(LC Paper No. LS 109/01-02)

(Director of Administration's letter dated 6 June 2002 on "Proposed Priority in the Scrutiny of Bills by Members")

18. Referring to the report, the Legal Adviser explained that the Bill essentially sought to provide a one-off reduction of the pay of, and the amounts of certain allowances payable to, public officers in that rates of salary on pay scales applicable to the various classes of public officers referred to in the Bill were to be reduced on 1 October 2002 by certain percentages specified in the Bill; but without prohibiting or affecting any adjustments that might be made after that date.

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19. The Chairman said that in view of the controversial issues involved and the representations made by parties concerned, she 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 Albert HO (as advised by Dr YEUNG Sum), Ir Dr Raymond HO, Mr LEE Cheuk-yan, Miss Margaret NG, Mrs Selina CHOW, Mr CHEUNG Man-kwong (as advised by Dr YEUNG Sum), Mr CHAN Kwok-keung, Mr Andrew WONG, Mr TSANG Yok-sing, Mr Howard YOUNG (as advised by Mrs Sophie LEUNG), Mr YEUNG Yiu-chung, Ms Emily LAU, Mr MAK Kwok-fung, Mr IP Kwok-him, Ms Audrey EU and Mr MA Fung-kwok.

20. Referring to D of Adm's letter dated 6 June 2002, the Chairman said that the Administration had requested that first priority be given to the scrutiny of this Bill, if a Bills Committee was set up. Members agreed to the request. The Chairman advised that as there were to be vacant slots after two Bills Committees had reported under agenda item VI(b) and (c) below, the Bills Committee on the Public Officers Pay Adjustment Bill could commence work immediately.

(b) Legal Service Division report on subsidiary legislation gazetted on 31 May 2002

(LC Paper No. LS 110/01-02)

21. The Legal Adviser said that three items of subsidiary legislation were gazetted on 31 May 2002.

22. The Legal Adviser explained that the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) Order sought to prescribe the new rate of interest applicable to shipowners and salvors who were liable for certain maritime claims. The Legal Adviser added that the legal and drafting aspects of the Order were in order.

23. The Legal Adviser further said that the Financial Resources Rules (Cap. 24 sub. leg.) set out the financial resources requirements imposed on persons registered with the Securities and Future Commission (SFC). SFC had reviewed the business practice of the securities dealers and securities margin financiers, and had identified two practices in their provision of securities margin financing which were considered to be particularly imprudent and risky. The Legal Adviser explained that the purpose of the Financial Resources (Amendment) Rules 2002 was to amend the principal Rules to limit such financial and credit risks with effect from 1 October 2002.

24. The Legal Adviser informed Members that the Legal Service Division had sought clarification from SFC on the insertion of the term "gearing adjustment" in item 29 of Schedule 7 of the principal Rules, and SFC's reply

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was attached to the report. He added that the legal and drafting aspects of the Rules were in order.

25. The Legal Adviser added that when the Panel on Financial Affairs discussed the proposals the Amendment Rules at the meeting on 6 May 2002, Members did not object to the proposals in general.

26. Mr Henry WU said that the industry considered the proposals in the Financial Resources (Amendment) Rules 2002 acceptable, in view of the overall interest of the industry and its development. Mr WU added that SFC had estimated that only about 5% of the industry would be affected by the proposals, and the Administration had undertaken to conduct a comprehensive review shortly.

27. As regards the Tax Reserve Certificates (Rate of Interest) (No. 6) Notice 2002, the Legal Adviser said that the Notice fixed the rate of interest payable on tax reserve certificates issued on or after 3 June 2002 at 0.2812% per annum.

28. Members did not raise any queries on these three items of subsidiary legislation.

29. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 3 July 2002, or the first meeting of LegCo in the next session if extended by resolution.

IV. Business for the Council meeting on 19 June 2002

(a) Questions

(LC Paper No. CB(3) 679/01-02)

30. The Chairman said that 11 questions (six oral and five written) had been scheduled for the Council meeting on 19 June 2002.

(b) Bills - First and Second Readings

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

(c) Government motion

Proposed resolution to be moved by the Secretary for Constitutional Affairs under the Interpretation and General Clauses Ordinance

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(Wording of the proposed resolution issued vide LC Paper No. CB(3) 678/01-02 dated 3 June 2002.)
(*LC Paper No. LS 112/01-02*)

32. The Legal Adviser said that the proposed resolution was to be made under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) to effect a transfer, with effect from 1 July 2002, of statutory functions of certain bureau secretaries who would be involved in the amalgamation of policy portfolios pursuant to the proposed accountability system for principal officials.

33. The Legal Adviser further said that the Legal Service Division had scrutinised the draft resolution provided by the Administration on 17 April 2002, and had made some comments to the Administration on the technical aspects. The Administration's response was attached to the report.

34. The Legal Adviser added that pursuant to the discussions of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues, and comments on technical aspects raised by the Division, the Administration had made changes to the draft resolution. These included changes to the distribution of portfolios of the policy bureaux and technical amendments.

35. The Legal Adviser said that he had prepared a written advice to the Subcommittee on the general legal points. In his advice, he had pointed out the differences in the legislative process between that for passing of a resolution and that for passing of a bill. The most significant differences lay in the debate process and the procedure for bringing the respective legislative instrument into operation. He had also pointed out that there were matters which would be desirable to clarify by legislation in the overall context of the accountability system, but which might not be related to the resolution for the transfer of statutory functions.

36. As regards the proposed resolution itself, the Legal Adviser said that he had drawn the Subcommittee's attention to the transfer of statutory functions from the Secretary for the Treasury (S for Tsy) to the Secretary for Financial Services and the Treasury (S for FS & Tsy). He had pointed out that it would appear that S for FS & Tsy could from 1 July 2002 exercise some of the statutory functions currently exercisable by the Financial Secretary (FS). This involved the policy consideration of whether it was appropriate for another public officer to exercise the statutory functions of FS, as he was also a principal official under the accountability system and did not have a supervisory role over that other principal official.

37. The Legal Adviser informed Members that the Administration had

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explained that the resolution sought to effect transfer of statutory functions from a named principal official, and would not change the legal effect of the statutory functions provided for under the relevant ordinances. Moreover, due to the limitations of section 54A of Cap. 1, it would not be possible to deal with policy issues beyond the mere transfer of statutory functions between public officers.

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38. The Legal Adviser further said that the Administration had provided supplementary papers to the Subcommittee to explain the provisions and the legal effect of individual paragraphs and the Schedules in the resolution. The Administration had accepted the comments raised by the Legal Service Division on certain technical points and would be making rectification to those supplementary papers.

39. Miss Margaret NG sought clarification on the conclusion made in the report prepared by the Legal Service Division that "the resolution proposed by the Secretary for Constitutional Affairs is in order from the legal point of view". She asked whether it meant that the Legal Adviser had accepted that it was lawful or legally in order to invoke section 54A of Cap. 1 to give effect to the proposed accountability system, or whether it just meant that the resolution could achieve the purpose of re-titling and transfer of statutory functions.

40. The Legal Adviser explained that the same approach for examining legislative proposals had been adopted by the Division in analysing this resolution. He said that the Division's analysis had focussed on whether the proposed resolution could achieve the intended legislative effect explained by the Administration. As he had pointed out to the Subcommittee, there were limitations in making a resolution under section 54A of Cap. 1. In addition, there were also matters which would be desirable to clarify by legislation in the overall context of the accountability system, but which were unrelated to the resolution for the transfer of statutory functions. For example, there might be confusion over the definition of "public servant" which provided "公務員" as one of the Chinese equivalents of that term, when a new principal official who was not a civil servant (i.e. "公務員") was by definition a public servant and a public officer in law.

41. The Legal Adviser further said that while the alternative legislative means of introducing a bill could be used by the Administration, there did not appear to be legal grounds for concluding that the application of section 54A of Cap. 1 would be unlawful.

42. Mr IP Kwok-him, Chairman of the Subcommittee, said that the Subcommittee had discussed the question of whether it was more desirable and appropriate to use a bill, instead of a resolution under section 54A of Cap. 1, to effect the transfer of statutory functions between public officers. The Subcommittee had considered the views of the Legal Adviser and that of the Administration, but members of the Subcommittee did not have a consensus view on the matter. He pointed out that the Legal Adviser had advised that it was not unlawful to use a resolution to effect the transfer of statutory functions between public officers, so long as the provisions were within the scope of section 54A of Cap. 1.

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43. Miss Margaret NG said that she could not accept that the Legal Service Division could come to a conclusion that the resolution was "in order from a legal point of view", when there were doubts as to the constitutionality of the proposed accountability system, and when the Legal Adviser had earlier advised the Subcommittee that it was not appropriate or desirable to invoke section 54A of Cap. 1 in the manner as proposed to implement the system. She said that the meaning of "in order" was unclear and she would separately discuss the matter with the Legal Adviser.

44. Ms Emily LAU said that her understanding of the Legal Adviser's opinion was that although it was not desirable or appropriate to use a resolution under section 54A of Cap. 1 to effect the transfer of statutory functions, it was not unlawful to do so. Ms Emily LAU further said that she would like the Legal Adviser to clarify with the Administration the following points in its reply to the comments made by the Legal Service Division -

- (a) when the Administration would seek the Finance Committee (FC)'s approval for the change of Controlling Officers in the approved estimates of expenditure (item B in the Administration's reply);
- (b) how the transfer of delegated powers and duties from CE to bureau secretaries would be effected after the reorganisation (item C in the Administration's reply);
- (c) whether it was necessary to adapt the references to various existing secretaries in non-statutory instruments such as codes of practice and technical memoranda made under the various ordinances (item E in the Administration's reply); and
- (d) why it was necessary to include preservation provisions under paragraph 14 of the resolution having regard to the limitations of section 54(A) of Cap.1 (item P in the Administration's reply).

45. As regards Ms Emily LAU's query in paragraph 44(a) above, Assistant Secretary General 1 informed Members that the Administration had just provided a paper for the FC meeting on 14 June 2002 to seek approval for, inter alia, the remuneration packages of the 14 principal officials under the accountability system and the change in Controlling Officers from the existing bureau secretaries to the permanent secretaries.

46. Referring to the query in paragraph 44(b) above, the Legal Adviser said that section 63 of Cap. 1 did not specify how CE should delegate to another person the powers and duties conferred on him by ordinances, and it would be for the Administration to make arrangements for fresh delegation.

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47. Regarding Ms Emily LAU's other queries in paragraph 44(c) and (d) above, the Chairman requested the Legal Adviser to seek further clarification from the Administration.

48. Ms Emily LAU said that Members had a duty to examine the resolution proposed by the Secretary for Constitutional Affairs (SCA). She pointed out that although the Subcommittee had held meetings to discuss the draft resolution, the incumbent bureau secretaries exercising the relevant statutory functions had not attended the relevant Subcommittee meetings to answer members' questions on the draft resolution. She suggested that a forum should be provided, such as setting up a new subcommittee, for Members to follow up the outstanding issues and the Administration's response to Members' queries relating to the proposed resolution.

49. Mr IP Kwok-him said that the Subcommittee had already held 14 meetings (or 52 hours of discussion) and had discussed all the major policy issues relating to the accountability system and the resolution. The Subcommittee therefore agreed not to hold further meetings, and a report was provided for the House Committee under agenda item VI(d) below. Mr IP added that it would be for the House Committee to decide how to deal with the resolution as the Legal Service Division had provided a report on the resolution.

50. Miss Margaret NG said that it was necessary for Members to study what was proposed in the resolution, for example, the kind of statutory functions to be transferred from the existing bureau secretaries to the new secretaries under the revised structure proposed by the Administration. Miss Margaret NG further said that as in the case of scrutinising the Adaptation of Laws Bills, she was concerned whether the terms used in the resolution and the proposed transfer of statutory functions would give rise to any inconsistencies or discrepancies from the policy point of view or operational difficulties. In this respect, she considered that the relevant bureau secretaries and other public officers concerned should be invited to explain to Members how the relevant statutory functions were being exercised, and whether it was appropriate and proper to transfer such functions to the new bureau secretaries from both the legal and operational points of view. She further said that as the public officers concerned did not attend the relevant Subcommittee meetings to answer members' questions on the statutory functions to be transferred between public officers, it had not been possible for the Subcommittee to scrutinise the draft resolution in detail.

51. Mr NG Leung-sing objected to the idea of setting up a new subcommittee to study the resolution. He said that the Subcommittee had already examined the resolution and concluded that it would not need to hold

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further meetings. He suggested that if Members considered it necessary to further examine the resolution, either the Subcommittee should be requested to consider holding further meetings, or the Legal Adviser should be requested to provide a further report.

52. Mr IP Kwok-him informed Members that the Subcommittee had actually scheduled two meetings to discuss the resolution, but not many members had raised questions on it. Mr IP added that he had no objection to the Subcommittee holding further discussion on the proposed resolution if the House Committee so decided.

53. Ms Audrey EU considered that it would be necessary to examine whether the proposed amalgamation of policy portfolios would give rise to any conflict or inconsistencies in the implementation of policies. Ms EU was concerned that there would be possible conflict of roles as a result of the redistribution of portfolios to the new principal officials. For example, if the new Secretary for Environment, Transport and Works was to be appointed in place of the Secretary for Transport to the Board of Directors of the Kowloon-Canton Railway Corporation, there could be a conflict of roles where environmental issues were concerned. Ms EU also wanted to know whether similar situations would arise in other portfolios, and whether it would be more appropriate to transfer certain statutory functions to the Permanent Secretaries instead of to the principal officials.

54. Mr IP Kwok-him responded that the Subcommittee had discussed the concerns raised by Ms Audrey EU, and the main points of deliberation were included in the Subcommittee's reports.

55. Dr YEUNG Sum, Deputy Chairman of the Subcommittee, commented that it had not been possible for the Subcommittee to discuss in detail the content of the resolution because SCA could not answer many of the questions raised, and the incumbent policy secretaries concerned did not attend the relevant Subcommittee meetings.

56. Mr Martin LEE considered that the Chief Executive (CE) should be invited to answer Members' questions on the transfer of statutory functions as proposed in the resolution. He added that if Members' questions could not be answered satisfactorily, the Administration should be requested to defer the moving of the resolution on 19 June 2002 to a later date.

57. Mr TAM Yiu-chung said that as agreed at the House Committee meeting on 19 April 2002, the Subcommittee was tasked to study the accountability system and related issues, including the resolution. He further said that the Subcommittee had scheduled meetings to discuss the resolution, but some members of the Subcommittee had not turned up for those meetings.

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58. Mr TAM further said that if the House Committee considered it necessary for the Subcommittee to further discuss the proposed resolution, a limit should be set on the number of further meetings to be held in this respect. Mr NG Leung-sing agreed with Mr TAM.

59. Mr SIN Chung-kai and Ms Emily LAU disagreed that the House Committee should impose a limit on the number of further meetings to be held by the Subcommittee.

60. Ms Emily LAU said that a new subcommittee could be set up to study the resolution, if some members of the existing Subcommittee did not want to continue discussion on the resolution.

61. Mr HUI Cheung-ching said that the Subcommittee had in fact discussed the resolution and agreed not to hold further meetings if the Legal Adviser considered the resolution was in order.

62. The Chairman said that as there were different views on whether Members should further study the proposed resolution, she would put the proposal of providing a forum for Members to further study the resolution to vote. The result was 15 Members voted in favour of the proposal and 15 Members voted against the proposal. As there was a tie vote, the Chairman exercised her casting vote in favour of the proposal. The Chairman explained that she had voted in favour of the proposal because she considered that the discussion on issues relating to the resolution had not yet been concluded and it was necessary to provide an opportunity for Members to further discuss such issues.

63. The Chairman said that there were two options to provide a forum for Members to further scrutinise the proposed resolution. One option was to request the existing Subcommittee to continue to study the resolution, while the other option was to set up a new subcommittee to study the resolution. The Chairman proposed and Members agreed that the two options be put to vote. Mr Kenneth TING requested that the names of Members who took part in the voting be recorded.

64. Twenty Members voted in favour of the option of requesting the existing Subcommittee to continue to study the proposed resolution. These Members were : Mr Kenneth TING, Ir Dr Raymond HO, Mr Fred LI, Mr NG Leung-sing, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr YEUNG Yiu-chung, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms LI Fung-ying, Mr Henry WU, Mr IP Kwok-him and Mr MA Fung-kwok.

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65. Fourteen Members voted in favour of the option of setting up a new subcommittee to study the proposed resolution. These Members were : Ms Cyd HO, Mr Martin LEE, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK and Mr Frederick FUNG.

66. The Chairman said that the existing Subcommittee should hold further discussion on the resolution, and Members who were not members of the Subcommittee should also be invited to attend the discussion.

67. Mr Fred LI suggested that the Subcommittee should also discuss the proposed resolutions to be moved by Dr YEUNG Sum and Mr CHEUNG Man-kwong under section 54A of Cap. 1. Members agreed.

68. Ms Emily LAU proposed that the Administration should be requested to withdraw its notice of the resolution to allow more time for the Subcommittee to study the resolution. Mr IP Kwok-him objected to the proposal. The Chairman put the proposal to vote. Ms Emily LAU, Mr Fred LI and Miss Margaret NG requested that the names of Members who took part in the voting be recorded.

69. Thirteen Members voted in favour of the proposal of asking the Administration to withdraw its notice. These Members were : Ms Cyd HO, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr SZETO Wah, Mr Michael MAK and Mr Frederick FUNG.

70. Twenty Members voted against the proposal of asking the Administration to withdraw its notice. These Members were : Mr Kenneth TING, Ir Dr Raymond HO, Mr NG Leung-sing, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Yuen-han, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Henry WU, Mr Tommy CHEUNG, Mr IP Kwok-him and Mr MA Fung-kwok.

71. The Chairman said that the Administration would not be requested to withdraw its notice for moving the proposed resolution. She reminded Members that the deadline for notice of amendments to the motion was Tuesday, 11 June 2002.

72. The Chairman said that the speaking time limit of 15 minutes would apply. The Chairman also informed Members that if it was unlikely that the business on the Agenda of the Council meeting could be finished by about

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midnight on 19 June 2002, the President would suspend the meeting at about 10:00 pm and order that the meeting resumed the following day at 9:30 am for the continuation of business. The Chairman added that Panels and other committees should avoid scheduling meetings for 20 June 2002.

(d) Members' motions

(i) Motion on "Determining the fares of new railways"

(Wording of the motion issued vide LC Paper No. CB(3) 684/01-02 dated 5 June 2002.)

73. The Chairman said that above motion would be moved by Mr Andrew CHENG Kar-foo.

(ii) Motion on "Improving the imbalance in the utilization ratio between public and private medical services"

(Wording of the motion issued vide LC Paper No. CB(3) 685/01-02 dated 5 June 2002.)

74. The Chairman said that the above motion would be moved by Mr Michael MAK Kwok-fung.

75. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 11 June 2002.

V. Advance information on business for the Council meeting on 26 June 2002

Government motion

Proposed resolution to be moved by the Secretary for Health and Welfare under the Pharmacy and Poisons Ordinance relating to:

(a) The Pharmacy and Poisons (Amendment) (No. 2) Regulation 2002; and

(b) The Poisons List (Amendment) (No. 2) Regulation 2002.

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 680/01-02 dated 3 June 2002.)

76. The Chairman said that the Secretary for Health and Welfare had given notice to move the above proposed resolution at the Council meeting on 26 June 2002. The Chairman further said that the Legal Service Division would

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provide a report for the House Committee meeting on 14 June 2002.

VI. Report of Bills Committee and subcommittee

(a) **Position report on Bills Committees/subcommittees** (LC Paper No. CB(2) 2172/01-02)

77. The Chairman said that there were 13 Bills Committees and four Subcommittees in action as well as 14 Bills Committees on the waiting list.

78. Referring to D of Adm's letter dated 6 June 2002, the Chairman said that the Administration had requested that priority be given to the scrutiny of the Registration of Persons (Amendment) Bill 2001 and the Immigration (Amendment) Bill 2001. Members agreed to D of Adm's request.

79. The Chairman further said that the Bills Committee on the Registration of Persons (Amendment) Bill 2001 could commence work immediately as there would be a vacant slot after the Bills Committee on the two Revenue Bills had reported under items (c) below. The Chairman added that the Bills Committee on the Immigration (Amendment) Bill 2001 could commence work once there was a vacant slot.

(b) **Report of the Bills Committee on Noise Control (Amendment) Bill 2001** --- (LC Paper No. CB(1) 1901/01-02)

80. Mr IP Kwok-him, Chairman of the Bills Committee, reported that the Bills Committee had held a total of four meetings, including one meeting with deputations to receive their views.

81. Mr IP Kwok-him said that the Bills Committee had studied in detail the proposal of imposing personal criminal liability on the corporate management. The Bills Committee had also examined the effectiveness of the warning system provided under the Bill.

82. Mr IP Kwok-him informed Members that the Administration had agreed to move Committee Stage amendments (CSAs) to address the concerns raised by members, including introducing a validity period of two years on the warning notice. He further informed Members that the Bills Committee would not move any CSAs.

83. Mr IP Kwok-him said that in the course of deliberation, members had raised a number of concerns which were outside the scope of the Bill but merited further study. These issues had been referred to the relevant Panel for follow-up.

84. Mr IP Kwok-him said that the Bills Committee supported the resumption of the Second Reading debate on the Bill on 26 June 2002 and the

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CSAs to be moved by the Administration.

85. Members raised no objection to the resumption of Second Reading debate on the Bill on 26 June 2002. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 17 June 2002.

(c) Report of the Bills Committee on Revenue Bill 2002 and Revenue (No.2) Bill 2002

(LC Paper No. CB(1) 1924/01-02)

86. Miss Margaret NG, Chairman of the Bills Committee, reported that the Bills Committee had completed scrutiny of the two Revenue Bills. Miss NG said that the Bills Committee had held three meetings, including one meeting to meet with representatives of four trade and business organisations.

87. Miss Margaret NG explained that the Revenue Bill 2002 sought to increase the ad valorem duty on wine from the existing rate of 60% to 80%, and various concerns had been raised by the deputations and some members of the Bills Committee. Miss NG said that the Bills Committee considered that it was for individual Members to decide whether or not to support the Bill.

88. As regards the Revenue (No. 2) Bill 2002, Miss Margaret NG said that the Bills Committee supported the Bill.

89. Miss Margaret NG added that the Bills Committee supported the resumption of the Second Reading debate on the two Bills on 26 June 2002, and neither the Bills Committee nor the Administration would move CSA to the two Bills.

90. Members raised no objection to the resumption of Second Reading debate on the Bill on 26 June 2002.

(d) Report of the Subcommittee to Study the Proposed Accountability System for Principal Officials and Related Issues

(LC Paper No. CB(2) 2171/01-02)

91. Mr IP Kwok-him, Chairman of the Subcommittee, reported that the Subcommittee had submitted an interim report up to the meeting on 21 May 2002 for the House Committee meeting on 24 May 2002. A further report on the deliberations of the Subcommittee at the meetings held on 24, 28, 31 May and 4 June 2002 was now provided. The Subcommittee had already held 14 meetings, or 52 hours of discussion, to discuss the proposed accountability system for principal officials and related issues. Mr IP further said that as the Subcommittee had discussed the main policy issues relating to the accountability system, members had agreed not to hold further meetings.

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92. Mr IP Kwok-him further said that as the House Committee had requested, under agenda item III(a) above, that the Subcommittee should further discuss the proposed resolution under section 54A of Cap. 1 on the transfer of statutory functions between public officers, he would convene a meeting as soon as possible.

VII. Report of the Panel on Manpower concerning the proposed amalgamation of the Labour portfolio with the Economic Development portfolio under the proposed accountability system for principal officials
(LC Paper No. CB(2) 2184/01-02)

93. Referring to the paper, Mr LAU Chin-shek, Chairman of the Panel, said that the Panel on Manpower held a special meeting on 4 June 2002 to discuss the proposed amalgamation of the Labour and Economic Development portfolios, and the retention of the Manpower portfolio in the Manpower and Education Bureau, as announced by CS during the debate on the Government motion on the accountability system for principal officials on 29 May 2002.

94. Mr LAU Chin-shek said that at the special meeting of the Panel, members expressed different views on the proposed amalgamation, which were summarised in the paper. Mr LAU further said that although members appreciated the efforts made by the Secretary for Education and Manpower (SEM) to try to answer members' questions at the meeting, members considered that SEM did not have the information or was not in the position to provide satisfactory answers to most of members' questions. Mr LAU added that the Panel wished to seek Members' agreement that CE should be invited to explain to Members the revised reorganisation proposals, and to answer questions from Members.

95. The Chairman said that the revised reorganisation proposals, including the proposed amalgamation of the Economic Development and Labour portfolios under one policy bureau, had been discussed by the Subcommittee to Study the Proposed System of Accountability for Principal Officials and Related Issues.

96. Mr IP Kwok-him said that paragraphs 65 to 72 of the Subcommittee's report set out the main points of the deliberations of the Subcommittee on the amalgamation of the Economic Development and Labour portfolios. Mr IP clarified that the Subcommittee did not ask individual Panels to discuss the revised amalgamation proposals. However, as the Subcommittee had decided not to hold further meetings with deputations on the Administration's revised reorganisation proposals, the Subcommittee saw no objection if the relevant Panel(s) wished to hold meetings to gauge the views of the organisations concerned.

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97. Mr LAU Chin-shek explained that members of the Panel were concerned about possible conflict of roles of the new bureau secretary who would be responsible for the Labour and Economic Development portfolios. Mr LAU said that some members had suggested that there should be a dedicated bureau secretary to look after labour matters.

98. Ms Cyd HO said that there would also be conflict of roles of the new bureau secretary responsible for the Environment, Transport and Works portfolios. Ms HO added that she had doubts whether the Director of Environmental Protection would be able to exercise his statutory power to reject the environmental impact assessment reports on certain infrastructural projects put forward by the new bureau secretary who would be his supervisor. Ms HO said that at the special meeting on 3 June 2002 held by the Panel on Environmental Affairs, the incumbent Deputy Secretary for Environment and Food could not give satisfactory answers to her questions.

99. Mr Fred LI said that as CE would hold three Question and Answer Sessions within a legislative session, the third one should be held before the end of the session. Mr LI suggested that CE should be requested to hold his next Question and Answer Session as soon as possible, preferably before 19 June 2002, so that Members could put questions to him on the revised reorganisation proposals. Mr LAU Chin-shek and Mr IP Kwok-him expressed support for the suggestion.

100. The Chairman said that she would write to CE to request that his next Question and Answer Session be held as soon as possible, preferably before 19 June 2002, to answer questions on the revised organisation proposals under the accountability system for principal officials. Members agreed.

VIII. Any other business

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