

立法會
Legislative Council

LC Paper No. CB(2) 2490/01-02

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 29th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 28 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 James TIEN Pei-chun, GBS, JP
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, 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-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, 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
Miss Kitty CHENG	Assistant Legal Adviser 5
Mrs Vivian KAM	Chief Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
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 28th meeting held on 21 June 2002
(*LC Paper No. CB(2) 2395/01-02*)

The minutes were confirmed.

II. Matters arising

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

(*CS's letter dated 25 June 2002 on "Timing for the Delivery of Policy Address"*)

Briefing for Legislative Council (LegCo) on important announcements

2. The Chairman said that she had conveyed Ms Emily LAU's request to CS that the Chief Executive (CE) should brief LegCo on the new appointments under the accountability system, despite the fact that CE had already announced the appointment of principal officials by the time she met with CS.

3. Ms Miriam LAU, Chairman of the Subcommittee on matters relating to the implementation of railway development projects (under the Panel on Transport), said that the Subcommittee was strongly dissatisfied that the Administration had failed to brief the Subcommittee before announcing to the media the award of the development right for the Shatin to Central Link (SCL) project to the Kowloon-Canton Railway Corporation (KCRC).

4. Ms Miriam LAU informed Members that the Subcommittee wrote to the former Secretary for Transport on 6 December 2001 requesting the Administration to brief the Subcommittee on the assessment of SCL before a decision was made by the Executive Council on which railway corporation should be granted the development right for SCL. The Subcommittee had

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enquired about the progress of the matter in May 2002, and the former Secretary for Transport had replied in June 2002 that the Administration would brief the Subcommittee once a decision was reached on the award of the development right for SCL.

5. Ms Miriam LAU further informed Members that the Administration held a press conference on 25 June 2002 to announce the award of the development right for SCL to KCRC. As the Administration had not made any arrangement to brief the Panel on Transport or the Subcommittee, she had therefore placed the matter on the agenda of the meeting of the Subcommittee scheduled for 27 June 2002. Ms LAU stressed that it was the Subcommittee, and not the Administration, which had taken the initiative to discuss the award of the development right for SCL.

6. Ms Miriam LAU said that as this was not an isolated incident of the Administration not briefing Members on an important matter prior to announcing it to the media, CS's attention should be drawn to the matter.

7. Ms Emily LAU said that she was not a member of the Subcommittee, but she shared the Subcommittee's dissatisfaction. Ms LAU further said that CS made a statement on the "Review of Remuneration of Senior Executives of Major Statutory and Other Bodies" at the Council meeting on 26 June 2002. CS could have taken the opportunity to also announce the award of the development right for SCL. Ms LAU pointed out that Mr Joseph YAM, Chief Executive of the Hong Kong Monetary Authority, had invited all Members, through the Panel on Financial Affairs, to attend a briefing on 28 June 2002 on the progress on monetary matters, including the issue of the new ten dollar notes. Ms LAU commented that the Administration was selective in briefing LegCo on important announcements or matters.

8. Mr Albert CHAN said that he and Mr Andrew CHENG had walked out of the meeting of the Subcommittee on 27 June 2002 in protest of the Administration's failure to brief the Subcommittee before announcing to the media which railway corporation was awarded the development right for SCL. Mr CHAN further said that the Subcommittee was very concerned about the development right for SCL, and had written to the Administration on several occasions about the matter. Mr CHAN considered that the Administration's decision to brief the media, and not the Subcommittee, was blatantly disrespectful to LegCo, and not conducive to improving the relationship between the Executive and the Legislature. Mr CHAN said that a strong message should be conveyed to CS that Members were strongly dissatisfied with the Administration's failure to brief Members on important matters or announcements.

9. Ms Miriam LAU said that at the meeting of the Subcommittee on 27 June 2002, the Administration had explained that as the award of the

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development right for SCL was commercially sensitive information, the Administration had to make the announcement in the late afternoon of 25 June 2002. Ms LAU further said that the Subcommittee did not find the explanation convincing, because the Subcommittee could have held an urgent meeting at 4:30 pm on the day the announcement was made, if the Administration had so requested.

10. The Chairman said that she and the Deputy Chairman had reminded the Administration on several occasions during their regular meetings with CS that the Administration should brief Members on important matters prior to briefing the media about them. The Chairman further said that as the Administration had time and again failed to do so, she would formally write to CS about the Subcommittee's case and other recent incidents, and also provide him with the relevant documents. Members agreed.

CE's Policy Address

11. The Chairman said that CS had informed her and the Deputy Chairman that after careful consideration, the Administration had decided to change the timing of CE's Policy Address. At the request of the Deputy Chairman, CS had set out the new timetable and rationale behind the change in writing in his letter dated 25 June 2002. The Chairman further said that CE had proposed to deliver his Policy Address in the second week of January, which meant that the next Policy Address would be delivered on 8 January 2003.

12. Ms Emily LAU said that she was very surprised to learn about the new arrangement. Ms LAU further said that it was regrettable that the Administration had not consulted LegCo on the new arrangement which would have major impact on the operation of LegCo. Ms LAU considered that the proposed arrangement was not logical, as it would be difficult for LegCo to monitor the work of the Government without knowing what policy initiatives would be proposed by the Government. Ms LAU also pointed out that in accordance with Rule 13(1A) of the Rules of Procedure, "CE shall deliver a Policy Address to the Council, if he so wishes, at the first meeting of a session". She wondered whether the new arrangement would mean that the first meeting of the next session would be deferred to 8 January 2003.

13. Mr LAW Chi-kwong said that it was unreasonable of the Administration to propose the new arrangement unilaterally without prior consultation with LegCo. Mr LAW further said that the delivery of a Policy Address which set out the policy objectives, legislative timetable and work plan of the Government at the beginning of a session enabled LegCo to plan its work for the session. If a Policy Address was to be delivered in the middle of a session, it would affect LegCo in carrying out its function of monitoring the work of the Government as stipulated in the Basic Law.

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14. Mr LAW said that in his view, Rule 13(1A) of the Rules of Procedure could have two interpretations. One interpretation was that it was obligatory for CE to deliver a Policy Address to LegCo, but he could do so at any time. The other interpretation was that CE could decide whether to deliver a Policy Address, but if he chose to do so, he could only deliver the Policy Address at the first meeting of a session. Mr LAW considered that the wording of Rule 13(1A) was not unambiguous, and the Rule should be reviewed to remove such ambiguity.

15. Dr YEUNG Sum sought the Legal Adviser's advice on the interpretation of Rule 13(1A) of the Rules of Procedure. The Legal Adviser said that Rule 13(1A) reflected the established practice and expectation of LegCo in respect of the timing of the Policy Address, i.e. CE would deliver his Policy Address at the first Council meeting of a session.

16. Dr YEUNG Sum asked whether the new timing of CE's Policy Address would mean that the next LegCo session would commence in January 2003. The Legal Adviser responded that CS's letter dated 25 June 2002 did not mention when the next session would begin. The Legal Adviser further pointed out that according to section 9(2) of the Legislative Council Ordinance, CE must publish in the Gazette the dates on which an ordinary session of LegCo was to begin and end.

17. Responding to Dr YEUNG Sum, the Chairman said that CS was only notifying Members, through her and the Deputy Chairman, of the new arrangement, and it was her understanding that the new timing for the delivery of Policy Address would be adopted for the whole five-year term of CE.

18. Dr YEUNG Sum said that the new arrangement was a major change to the existing practice. Dr YEUNG further said that while he appreciated that the delivery of the next Policy Address might have to be deferred to allow time for the new principal officials to settle in at their posts, he could not accept that the arrangement should be adopted for the whole five-year term of CE. Dr YEUNG expressed strong dissatisfaction that the Administration had decided on the new timing unilaterally. He pointed out that the Basic Law stipulated that the Government of the Hong Kong Special Administrative Region was accountable to LegCo, and Members were elected by the public to monitor the work of the Government. He expressed concern that the position of LegCo would be greatly undermined if the Government sought to unilaterally make decisions which affected LegCo.

19. Mr LEE Cheuk-yan said that although the Administration had repeatedly stated that it would improve the relationship between the Administration and LegCo, the Administration did not in practice show much respect to LegCo. Mr LEE further said that he could not accept CS's explanation for changing the timing for the delivery of Policy Address, and the

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Administration's failure to consult LegCo on the change. Mr LEE considered that if it was necessary to narrow the time gap between the delivery of the Policy Address and the Budget, there were other possible options, such as advancing the timing for the delivery of the Budget. Mr LEE added that the Administration should understand that there were good reasons for the delivery of the Policy Address at the beginning of a session, and the new timing would seriously affect the work of LegCo.

20. Mr Andrew WONG said that in the 1960s, the Standing Orders were amended to enable the Governor of Hong Kong to deliver his Policy Address at the first Council meeting in a session, if he so wished. The objective was to allow the Governor to announce his policy objectives and work plan at the beginning of a session.

21. Mr Andrew WONG further said that it was only logical for the debate on the Policy Address to take place before the debate on the Budget, so that the policies would be thoroughly discussed before resources were allocated for their implementation. Mr WONG was worried that if discussion on policies was to be "combined" with the examination of the Budget, the financial implications, and not the merits of a policy, would be the overriding consideration for policy formulation. Mr WONG added that he saw no reason for changing the timing for the delivery of the Policy Address to January 2003, and such a change entailed amendment to Rule 13(1A) of the Rules of Procedure.

22. Mr SIN Chung-kai said that the timing of presenting the Budget could be advanced if the Administration wanted to narrow the time gap between the Policy Address and the Budget. Mr SIN stressed however that sufficient time should be allowed for Members to examine the Budget.

23. The Chairman advised that Members should focus their discussion on the Administration's proposed new timing for the delivery of the Policy Address, and not on proposing options for narrowing the time gap between the Policy Address and the Budget.

24. Miss Margaret NG said that she was very disappointed that LegCo was merely "notified" by the Administration of the new arrangement, and there was no prior consultation with LegCo. Miss NG pointed out that under Article 73(4) of the Basic Law, one of the functions of LegCo was to receive and debate the Policy Addresses of CE, and that under Article 75 of the Basic Law, the Rules of Procedure were to be made by LegCo on its own. Miss NG said that CS should explain to Members how the Administration's new arrangement for the delivery of Policy Address could meet the relevant requirements in the Basic Law and Rules of Procedure.

25. Mr IP Kwok-him said that the Administration should not introduce

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changes to the established practice without prior consultation with LegCo. Mr IP sought clarification on whether the Rules of Procedure allowed CE to deliver his Policy Address at a meeting other than the first meeting of LegCo in a session. He added that if this was not allowed under the Rules of Procedure, the Administration should explain to Members why it chose not to follow Rule 13(1A).

26. The Legal Adviser responded that Rule 13(1A) was the only provision in the Rules of Procedure which dealt with the delivery of Policy Address by CE. The Legal Adviser pointed out that Rule 13(1A) was last amended in 1999, and there was detailed discussion before the amendment was made. He reiterated that Rule 13(1A) reflected the existing practice of CE delivering his Policy Address at the first Council meeting in a session.

27. The Legal Adviser further said that the Rules of Procedure should not be interpreted using common law principles for interpreting legislation only. Regard should also be given to constitutional considerations and the established practices of LegCo. He pointed out that if Rule 13(1A) was to be read very literally, it could give rise to the two interpretations mentioned by Mr LAW Chi-kwong. The Legal Adviser added that if the interpretation of Rule 13(A) was that CE could only deliver his Policy Address at the first Council meeting of a session and not at other meetings, it would not be possible for CE to defer the Policy Address to a later date. However, it should also be borne in mind that as LegCo had the function of receiving Policy Addresses from CE as stipulated in the Basic Law, there must be an enabling provision in the Rules of Procedure for this purpose.

28. The Secretary General informed Members that according to a letter issued in 1999 by the Chairman of the Committee on Rules of Procedure (CRoP) to the Director of Administration, the intention of Rule 13(1A) was not to restrict CE from delivering his Policy Address only at the first meeting of a session.

29. Mr James TIEN said that CS had not elaborated in his letter about the public concern which had purportedly given rise to the proposed change. He agreed that the way the Administration had handled the matter was not conducive to improving its relationship with LegCo. He suggested that CS should be invited to attend a special meeting of the House Committee on the following Friday to explain to Members the reasons for the proposed change.

30. Ms Cyd HO, Mr LEE Cheuk-yan and Mr CHAN Kam-lam expressed support for Mr James TIEN's suggestion. Ms HO said that the Administration should also explain the impact of the proposed change on the implementation of policies as well as the operation of the Government and LegCo. Mr LEE suggested that the Administration should defer the new arrangement to next year to allow time for LegCo to assess the implications.

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31. Mr CHEUNG Man-kwong said that he strongly opposed to the Administration unilaterally changing the timing for the delivery of CE's Policy Address. Mr CHEUNG considered that not only was the Administration disrespectful to LegCo, it also failed to meet public expectations. Mr CHEUNG pointed out that as CE and the new principal officials had assumed office on 1 July 2002, the community expected CE to deliver his Policy Address as soon as possible. Mr CHEUNG further said that it would be irresponsible for the Government to defer announcing its policy initiatives to address pressing problems, such as the high unemployment rate, until January 2003. Mr CHEUNG added that it was the practice of LegCo Panels to plan their work in a session after receiving CE's Policy Address.

32. Ms Emily LAU said that her understanding was that Rule 13(1A) was amended in view of the unsatisfactory situation in 1998 where CE delivered his Policy Address a few months after the first LegCo term had commenced in July 1998. Ms LAU said that it was undesirable for CE to deliver his Policy Address in the middle of a session.

33. Dr YEUNG Sum expressed regret and strong dissatisfaction that the Administration had unilaterally changed the timing for the delivery of CE's Policy Address. Dr YEUNG said that according to the Basic Law, LegCo was an independent body and the Administration was accountable to LegCo. He pointed out that the Rules of Procedure were formulated by LegCo on its own, and he did not want to give the public the impression that LegCo did not have a stance on the interpretation of Rule 13(1A) of the Rules of Procedure. He considered that CE should deliver his Policy Address at the first Council meeting of a session, although the wording of Rule 13(1A) provided flexibility for CE to determine the date of the first Council meeting of a session. Dr YEUNG added that it was unacceptable for CE to defer the delivery of his Policy Address for six months, given the present economic downturn.

34. Ms Emily LAU echoed Dr YEUNG's view that it was unambiguous that CE must deliver his Policy Address at the first Council meeting of a session, and not at other meetings. Ms LAU said that the Administration should withdraw its proposal of changing the timing for the delivery of the Policy Address.

35. The Chairman said that as Members had raised queries and concerns about the new arrangement for the delivery of the Policy Address, CS should be invited to attend a special meeting of the House Committee on the following Friday, as suggested by Mr James TIEN, so that Members could discuss the matter with CS. Members agreed.

36. Mr LEUNG Yiu-chung said that Members should agree amongst themselves on the interpretation of Rule 13(1A) before discussing the matter

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with CS. Mr IP Kwok-him pointed out that the purpose of the special meeting was not to seek an interpretation of Rule 13(1A) from CS.

37. Mr TSANG Yok-sing said that Rule 13(1A) of the Rules of Procedure sought to reflect the existing practice of CE delivering his Policy Address at the first Council meeting of a session. He further said that Members might wish to ask CS why the Administration did not wish to follow the existing practice. Mr TSANG added that Members might also wish to consider whether the wording of Rule 13(1A) was sufficiently clear in reflecting the intention and practice. He was of the view that Rule 13(1A) should be reviewed.

38. The Chairman said that the matter would be further discussed at the special meeting of the House Committee on 5 July 2002 at 2:30 pm, and CS would be invited to join the discussion at 3:30 pm.

39. The Chairman asked the Secretariat to prepare a background paper on Rule 13(1A) to assist Members in their discussion.

Reply to Council questions

40. The Chairman informed Members that she had conveyed Mr Albert CHAN's complaint to CS. CS had responded that a longer reply could not be provided at present, because the subject matter was sub judice. The Chairman said that CS had guaranteed that when the court case was concluded, a reply could be made available with "words not fewer than those in Mr Albert CHAN's question".

41. The Chairman added that CS had remarked that whilst LegCo had to be respected, it was also necessary to respect the judicial system.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 21 June 2002

(LC Paper No. LS 128/01-02)

42. The Legal Adviser said that three items of subsidiary legislation were gazetted on 21 June 2002. Regarding the Child Abduction and Custody (Parties to Convention) (Amendment) Order 2002, the Legal Adviser explained that the Order amended the Child Abduction and Custody (Parties to Convention) Order (Cap. 512 sub. leg.) to update the list of Contracting States and territories under the Convention on the Civil Aspects of International Child Abduction by adding four countries to the list.

43. The Legal Adviser further explained that the Convention provided an

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international mechanism for the swift return home of children wrongfully removed from their place of habitual residence to another Contracting State in violation of custodial rights.

44. The Legal Adviser said that the Declaration of Mental Hospital (Consolidation) (Amendment of Schedule) Order 2002 announced the exclusion and addition of wards and floor in Castle Peak Hospital and Kwai Chung Hospital as mental hospitals.

45. As regards the Shipping and Port Control (Closure of Waters) Notice 2002, the Legal Adviser said that the waters off the Phase II Hong Kong Convention and Exhibition Centre would be closed to all vessels except ferries providing franchised and licensed services to and from Wanchai between 8:00 am on 30 June 2002 and 6:00 pm on 1 July 2002. The waters off the Harbour Plaza Hotel were also closed to all vessels for the same period.

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

47. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was the second meeting of LegCo in the next session.

IV. Further business for the Council meeting on 3 July 2002

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

(a) Fire Safety (Buildings) Bill

(b) Karaoke Establishments Bill

48. The Chairman said that the Bills Committees concerned had provided reports to the House Committee on 21 June 2002. Members did not raise objection to the resumption of the Second Reading debate on the two Bills.

V. Chief Executive's Question and Answer Session on 8 July 2002

49. The Chairman reminded Members that the Session would be held from 3:00 pm to 4:00 pm.

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VI. Business for the Council meeting on 10 July 2002

(a) Questions

(LC Paper No. CB(3) 755/01-02)

50. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 10 July 2002.

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

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

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

(i) Import and Export (Electronic Transactions) Bill 2001

52. The Chairman said that the Bills Committee concerned provided a report to the House Committee on 21 June 2002, and Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(ii) Supplementary Appropriation (2001-2002) Bill 2002

53. The Chairman said that the Administration had given notice to resume the Second Reading debate on the Bill. The Chairman further said that at the last House Committee meeting, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) Government motions

(i) Proposed resolution to be moved by the Secretary for Commerce and Industry under the Copyright (Suspension of Amendments) Ordinance 2001 relating to the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2002

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 740/01-02 dated 20 June 2002.)

(LC Paper No. LS 125/01-02)

54. The Legal Adviser explained that the Notice was to amend the expiry date of the suspension provisions under section 3 of the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) from 31 July 2002 to 31 July 2003.

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55. The Legal Adviser said that certain provisions in the Copyright Ordinance (Cap. 528) were amended by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000, and that one of the amendments to the criminal provisions provided that any person who possessed an infringing copy of a copyright work in the course of trade or business without the licence of the copyright owner would commit an offence.

56. The Legal Adviser further said that difficulties were encountered when the Amendment Ordinance commenced operation in April 2001. The Suspension Ordinance was subsequently passed in June 2001 to suspend the operation of the relevant provisions except in respect of four categories of works, i.e. computer programs, movies, television dramas, and musical recordings until 31 July 2002, so that the Administration would have about one year's time to conduct consultation and work out a long term solution.

57. The Legal Adviser pointed out that section 3 of the Suspension Ordinance also provided that the Secretary for Commerce and Industry could amend the expiry date of the suspension provision by notice in the Gazette subject to the approval of LegCo. The Legal Adviser added that the Administration had now proposed to first extend the suspension period for 12 months, and it would introduce a bill into LegCo.

58. Mr Kenneth TING said that the Administration had informed the Panel on Commerce and Industry on 25 June 2001 that the bill was being finalised and would be introduced early in the next legislative session. Mr TING added that the bill in draft form would be presented to the Panel on 8 July 2002.

59. Members did not raise objection to the Secretary for Commerce and Industry moving the proposed resolution at the Council meeting on 10 July 2002.

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

- **the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2002; and**
- **the Poisons List (Amendment) (No.3) Regulation 2002**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 745/01-02 dated 21 June 2002.)
(*LC Paper No. LS 127/01-02*)

60. The Legal Adviser said that the motion sought the Council's approval for the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2002 and the

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Poisons List (Amendment) (No. 3) Regulation 2002. The Legal Adviser explained that the two Amendment Regulations sought to add two new substances, i.e. Dexmedetomidine and Rasburicase, to the First and Third Schedules to the Pharmacy and Poisons Regulation and Part I of the Poisons List Regulation. The addition meant that pharmaceutical products containing any of the two substances must be sold in pharmacies under the supervision of a registered pharmacist and in his presence, with the support of prescriptions.

61. The Legal Adviser further explained that the Amendment Regulations also sought to relax the control on clobetasone butyrate when contained in preparations intended for external application only at not more than 0.05%, and to exempt Desloratadine from the labelling requirement so that the container of these substances was not required to carry a warning that this drug might cause drowsiness.

62. Members did not raise objection to the Secretary for Health and Welfare moving the proposed resolution.

(e) Members' Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

CITIC Ka Wah Bank (Limited) Merger Bill

63. The Chairman said that Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(f) Members' motions

(i) Motion on "Alleviating the hardship of negative-equity property owners"

(Wording of the motion issued vide LC Paper No. CB(3) 779/01-02 dated 27 June 2002.)

64. The Chairman said that the above motion would be moved by Mr Albert CHAN Wai-yip and the wording of the motion had been issued to Members.

(iii) Motion on "Giving priority to employment"

(Wording of the motion issued vide LC Paper No. CB(3) 771/01-02 dated 27 June 2002.)

65. The Chairman said that the above motion would be moved by Mr CHEUNG Man-kwong and the wording of the motion had been issued to Members.

66. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 3 July 2002.

VII. Report of Bills Committee and subcommittee

(a) **Position report on Bills Committees/subcommittees**
(LC Paper No. CB(2) 2415/01-02)

67. The Chairman said that there were 11 Bills Committees and four Subcommittees in action as well as eight Bills Committees on the waiting list.

68. The Chairman further said that as four Bills Committees had completed scrutiny work and would report under agenda item VII (c) to (f) below, the slots vacated could be taken up by the following Bills Committees on the waiting list -

- (a) Bills Committee on Adaptation of Laws Bill 2001;
- (b) Bills Committee on Copyright (Amendment) Bill 2001;
- (c) Bills Committee on Interest on Arrears of Maintenance Bill 2001;
and
- (d) Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 2001.

69. The Chairman added that when the Bills Committee on the United Nations (Anti-Terrorism Measures) Bill had completed scrutiny work, the Bills Committee on the Companies (Amendment) Bill 2002 could also commence work. Members agreed.

(b) **Report of the Bills Committee on United Nations (Anti-Terrorism Measures) Bill**
(LC Paper No. CB(2) 2401/01-02)

70. Mr LAU Kong-wah, Chairman of the Bills Committee, said that he made a verbal report at the last meeting of the House Committee, and a written report covering the deliberations of the Bills Committee up to the meeting on 27 June 2002 was now provided. Mr LAU informed Members that the Bills Committee had held 13 meetings in the past six weeks to discuss with the Administration and meet with deputations. As there were still some outstanding issues which required further discussion, the Bills Committee would meet again on 2 July 2002 and provide a further report to the House Committee after the meeting.

71. Mr LAU Kong-wah said that members of the Bills Committee were concerned that the definition of "terrorist act" was too wide and some normal activities might be caught inadvertently by the definition. To address members' concerns, the Administration had agreed to move Committee Stage

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amendments (CSAs) in this respect by drawing reference from the definitions in similar legislation in the United Kingdom and Canada, and having regard to the situation in Hong Kong.

72. Mr LAU Kong-wah further said that some members of the Bills Committee were very concerned about clause 4 which empowered CE to specify, by notice published in the Gazette, persons and property that he had reasonable grounds to believe were terrorists, terrorist associates or terrorist property. Such notice would not be subsidiary legislation and would, unless revoked, expire on the third anniversary of the date of its publication in the Gazette. Mr LAU pointed out that members were concerned that the power given to CE was too wide, and it was left for the affected individual to bring an application before a judge to have the specification by CE reviewed.

73. Mr LAU said that to address these concerns, the Administration had proposed to replace clause 4 by new clauses 4 and 4A. Under the new clause 4, CE would publish a notice in the Gazette specifying the names of the person or property, if such person or property was designated by a United Nation (UN) Security Council Committee as a terrorist, terrorist associate or terrorist property. If such persons or property ceased to be designated by UN Security Council Committee, the notice would be deemed to be revoked to the extent that it related to the person or property immediately upon the cessation of the designation.

74. Mr LAU informed Members that the new clause 4A provided that CE might make an application to the Court of First Instance for an order to specify certain persons or property as terrorists, terrorist associates or terrorist property. Such an order would be published in the Gazette. The specifications in the order, if not otherwise revoked, would expire after two years. Mr LAU said that under the new clause 4A, if CE received information which caused him to have reasonable grounds to believe that a person or property was not, or was no longer, a terrorist, a terrorist associate or terrorist property, he should as soon as practicable make an application to the Court of First Instance for the order to be revoked.

75. Mr LAU further said that members of the Bills Committee had also expressed concern about clause 10 relating to the prohibition against false threats of terrorist acts. The Administration had explained that the provision was necessary to prevent and deter hoax which were intended to cause panic and confusion. Some members did not accept the Administration's explanation and might move amendments to this clause.

76. Mr LAU informed Members that the relevant professional bodies had raised concern about clause 11 which required a person to make a report if he "knew or had reasonable grounds to suspect" that a property was terrorist property. The Administration had explained that clause 11 sought to facilitate

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action on freezing of funds and forfeiture of certain terrorist property pursuant to clauses 5 and 13. To address members' concerns, the Administration had proposed to move an amendment to clause 11 to change the mental element which triggered off the requirement to report to "know or suspect".

77. Mr LAU added that some members of the Bills Committee had suggested that there should be a provision for compensation if it turned out that the specification under clause 4 was unjustified. The Administration had accepted members' suggestion and would propose to add a new clause 16A to provide that where a person or property had ceased to be specified as a terrorist, terrorist associate, or terrorist property, the Court of First Instance could order the Government to pay compensation in some circumstances. However, members considered that the requirement of "serious default" on the part of any person concerned in obtaining the relevant specification as a pre-requisite for seeking compensation was unreasonable, and had asked the Administration to review the requirement.

78. Mr LAU Kong-wah said that some members of the Bills Committee were unhappy that the Administration had given notice on 24 June 2002 to resume the Second Reading debate on the Bill on 10 July 2002, when it was clearly indicated at the Bills Committee meeting held earlier on the same day that they would not support the Administration giving such notice before the Bills Committee had completed deliberations on the Bill. Mr LAU informed Members that the Bills Committee had passed, without objection, the following motion proposed by Ms Cyd HO at the meeting on 27 June 2002 -

"That this Bills Committee expresses deep regret that the Executive has given notice to resume Second Reading debate on the United Nations (Anti-Terrorism Measures) Bill on 10 July 2002 before the scrutiny of the Bill has been completed, which is at variance with the established practice of the Legislative Council."

79. Mr LAU said that the Bills Committee had not taken a decision on whether to support the resumption of the Second Reading debate on the Bill on 10 July 2002 or not. However, as the Bills Committee had scheduled a further meeting for 2 July 2002, the Bills Committee had recommended that the President's permission be sought to extend the deadline for giving notice of CSAs to 3 July 2002.

80. Miss Margaret NG said that the Bills Committee had made their best efforts to scrutinise the Bill under a very tight timeframe. While members appreciated that the Administration had provided responses and draft CSAs efficiently, members were unhappy that the Administration should rush members into making a decision on whether to support resumption of the Second Reading debate on the Bill on 10 July 2002, when the Bills Committee

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had not yet completed scrutiny work and some important issues still required further discussion.

81. Dr YEUNG Sum expressed dissatisfaction that Members were given very little time to scrutinise the Bill which had wide implications on the relevant professional sectors as well as the community at large. Dr YEUNG said that he did not want to set a precedent of Members agreeing to the Administration giving notice to resume the Second Reading debate on a bill, when the relevant Bills Committee had not completed scrutiny work.

82. The Chairman said that she was also a member of the Bills Committee. She further said that the Bills Committee had worked very hard to scrutinise the Bill under a tight timeframe, although it did not agree to the Administration giving notice to resume the Second Reading debate when the scrutiny work had not yet been completed. The Chairman sought Members' views on whether to support the resumption of the Second Reading debate on the Bill on 10 July 2002, as the Bills Committee had not made a recommendation in this respect.

83. Mr LAU Kong-wah said that although the Bills Committee had not made a recommendation on the resumption of the Second Reading debate, members had not raised objection to the proposed resumption date at the meeting held in the morning of 28 June 2002.

84. Ms Cyd HO said that at the meeting held in the morning of 28 June 2002, the Administration had agreed to provide further amendments for discussion on 2 July 2002. Ms HO further said that the Administration had not yet provided response to some outstanding issues, and there was no guarantee that the Bills Committee could conclude discussion on all these issues at the meeting on 2 July 2002. She requested that the Chairman of the Bills Committee should urge the Administration to provide all outstanding responses and amendments before 2 July 2002. Mr LAU Kong-wah undertook to do so.

85. Ms Audrey EU said that both the Bills Committee and the Administration had made their best efforts to scrutinise the Bill under the tight timeframe, and the Administration had taken on board a lot of members' suggestions and provided draft amendments for members' consideration. Ms EU stressed, however, that sufficient time must be allowed for the scrutiny of legislative proposals. Ms EU pointed out that the Bill involved very complicated issues, such as the freezing of funds and forfeiture of terrorist property, which required careful consideration as the related provisions might not be consistent with the Basic Law. Ms EU added that some deputations had also raised a number of important issues at the meeting of the Bills Committee on 25 June 2002 which needed to be examined in detail.

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86. Ms Audrey EU said that it was important that the wording of individual clauses in a bill should clearly reflect the policy intention, and she could not accept the Administration's explanation that flexibility had to be provided in the drafting of legislation. Ms EU further said that she was unhappy that there were always late rushes, and Members were given very limited time, particularly towards the end of a session, to examine legislative proposals. She cited the resolution made under section 54A of Interpretation and General Clauses Ordinance to effect the transfer of certain statutory functions to the principal officials under the accountability system, the Land Registration (Amendment) Bill and the Public Officers Pay Adjustment Bill as cases in point. Ms EU also expressed concern that the quality of scrutiny work would be affected if Members had to work under a tight timeframe. She said that she would not want to see a repeat of the Intellectual Property (Miscellaneous Amendments) Bill 2000 which was passed hastily in June 2000, and subsequently found to have a lot of problems.

87. Ms Audrey EU said that the Administration should adhere to the established practice of giving notice for the resumption of the Second Reading debate on a bill after completion of scrutiny work by the relevant Bills Committee. She considered that exceptions should not be allowed, and she would not support the resumption of the Second Reading debate of the Bill on 10 July 2002.

88. Ms Emily LAU said that while she appreciated that the Administration had taken on board many of the Bills Committee's suggestions, she considered that it was unacceptable that the Administration had already given notice for the resumption of the Second Reading debate before the Bills Committee completed scrutiny work. She said that the Bill involved complex issues and Members should be allowed sufficient time to examine the Bill. She further said that if Members agreed to the Administration's proposed date of resumption exceptionally on this occasion, it would set a bad precedent for the future.

89. Mr Howard YOUNG said that he was a member of the Bills Committee. Mr YOUNG agreed that both the Administration and the Bills Committee had worked very hard to scrutinise the Bill under the tight timeframe. However, he was of the view that the Bills Committee might not be able to reach consensus over the proposed definition of "terrorist act" and the requirement of "serious default" for obtaining compensation from the Government. He considered that Members who disagreed with these provisions could move their own amendments or vote against the Administration's proposals at the Council meeting on 10 July 2002.

90. Miss Margaret NG said that the Administration's proposed definition of "terrorist act" was too wide, while the requirements for obtaining compensation from the Government for wrongful specification were too strict. Miss NG

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said that as the Administration was not prepared to make further amendments in this regard, she had proposed CSAs for the Bills Committee's consideration. Miss NG stressed that as the Bill was an important one with wide implications, sufficient time should be allowed for Members to carefully examine the provisions therein. Miss NG strongly objected to the Administration giving notice on 24 June 2002 to resume the Second Reading debate on the Bill on 10 July 2002, before the Bills Committee had completed scrutiny work.

91. Mr IP kwok-him said that he was not a member of the Bills Committee but he recognized that the Bills Committee had made great efforts to scrutinise the Bill. He suggested that if members of the Bills Committee could not reach agreement with the Administration on the outstanding issues after the meeting on 2 July 2002, members could consider voting against the relevant provisions during the resumption of the Second Reading debate on the Bill. Mr IP also sought clarification as to whether it was possible for the Administration to resume the Second Reading debate on the Bill on 10 July 2002, if the House Committee did not support the proposed resumption date.

92. The Legal Adviser advised that the Rules of Procedure did not require the Member or public officer in charge of a bill to obtain the agreement of the Bills Committee concerned or House Committee for the resumption of the Second Reading debate on a bill. The Legal Adviser also referred Members to Rule 54(5) of the Rules of Procedure which stipulated that “when a debate has been adjourned under subrule (4), it may be resumed on notice by the Member or public officer in charge of the Bill, given by him in writing delivered to the office of the Clerk, after consultation with the Chairman of the House Committee”.

93. Miss Margaret NG asked whether the Administration's notice given on 24 June 2002 was valid if the Chairman of the House Committee had not yet been consulted. Miss NG also queried whether the House Committee should support the resumption of the Second Reading debate on the Bill on 10 July 2002, if the Administration's notice was not valid.

94. The Secretary General explained that in normal circumstances, the LegCo Secretariat would advise the public officer or Member in charge of a bill to give notice to resume the Second Reading debate on the bill, after the relevant Bills Committee had reported to the House Committee, or if the House Committee had not raised objection to the resumption of Second Reading debate on the bill, in the case where no Bills Committee was formed on the bill. The Secretariat would also consult the Chairman of the House Committee, on behalf of the Member or public officer concerned, on the proposed resumption date. After the Chairman of the House Committee had indicated agreement to the proposed resumption date, the Secretariat would then proceed to seek the President's approval for the inclusion of the Bill in the Agenda for the relevant Council meeting. The Secretary General said that in practice, “consultation”

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with the Chairman of the House Committee took place after notice had been given by the public officer or Member concerned for resumption of Second Reading debate.

95. The Chairman pointed out that in the past two years, particularly towards the end of a session when the examination of Bills could not be concluded until the last minute, there had been occasions where the Administration had given notice for the resumption of Second Reading debate on a bill, before the relevant Bills Committee had reported to the House Committee.

96. The Secretary General pointed out that the Administration had also given notice to resume the Second Reading debates on the four Bills on which the relevant Bills Committee would report to the House Committee under agenda items VII(c) to (f) below.

97. Mr James TO said that he was the Chairman of the Bills Committee on Drug Trafficking and Organised Crimes (Amendment) Bill 2000, and he would report on the deliberations of the Bills Committee under agenda item VII(c) below. He informed Members that the Bills Committee had agreed to the Administration giving notice for the resumption of the Second Reading debate on the Bill at the Council meeting on 10 July 2002, although the Chairman of the House Committee had not been consulted. He further said that it was the established practice that the Administration would only give notice to resume the Second Reading debate with the agreement of the relevant Bills Committee.

98. Mr Andrew WONG said that the purpose of Rule 54(5) was only to set out the timetable for giving notice of resumption of Second Reading debate, in order to allow sufficient time for preparation of the debate. He was of the view that the requirement for “consultation with the Chairman of the House Committee” was only to enable the public officer or Member in charge of a bill to notify the Chairman of the House Committee of the resumption date, regardless of whether Members supported or opposed the resumption of the Second Reading debate on the bill.

99. Ms Audrey EU was of the view that the requirement of “consulting” the Chairman of the House Committee was to obtain the latter’s agreement to the proposed resumption of Second Reading debate, after the Chairman had listened to the report of the Bills Committee and the views of the House Committee. Ms EU said that members of the Bills Committee had clearly indicated at the meeting on 24 June 2002 that they objected to the Administration giving notice on that day to resume the Second Reading debate on the Bill on 10 July 2002. Ms EU pointed out that members understood that it was not possible to reach consensus on all issues and only wanted more time for thorough scrutiny of the Bill.

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100. Assistant Secretary General 2 informed members that in 1999, the Administration had given notice to resume the Second Reading debate on the District Councils Bill when the relevant Bills Committee had not yet completed scrutiny work. As the Bills Committee strongly objected to the resumption date notified, the Administration subsequently withdrew its notice and deferred the resumption date by one month. The matter subsequently was raised with CS by the Chairman of the House Committee, at the request of the Bills Committee.

101. Dr YEUNG Sum said that in the present case, the Bills Committee had also requested the Administration to withdraw its notice, but it refused to do so.

102. The Chairman said that the general issue of the giving of notice by the Administration on resumption of Second Reading debate would be discussed under agenda item X below. The Chairman further said that it would be more appropriate for CRoP to review Rule 54(5) of the Rules of Procedure and advise on the interpretation of “after consultation with the Chairman of the House Committee” under that Rule. The Chairman pointed out that the questions before Members were whether they would support the resumption of the Second Reading debate on the Bill on 10 July 2002, and whether the President’s permission should be sought for the deadline for giving notice of CSAs to be extended to 3 July 2002.

103. Mr LAU Kong-wah clarified that although some members of the Bills Committee objected to the Administration’s giving notice, the Bills Committee had not taken a vote on whether or not the resumption of Second Reading debate should take place on 10 July 2002. He added that in his verbal report made at the last House Committee meeting, he had informed Members of the Administration’s intention to resume Second Reading debate on 10 July 2002.

104. Ms Cyd HO said that in the other cases where the Administration had given notice to resume the Second Reading debate on a bill before the relevant Bills Committee had reported to the House Committee, the bill in question was either not controversial or the Bills Committee had already agreed to the proposed resumption date. Ms HO added that the present case was different in that members of the Bills Committee had strongly objected to the Administration giving notice on 24 June 2002, and there was no guarantee that the scrutiny work could be completed by 2 July 2002.

105. Mr IP Kwok-him asked whether the Administration could resume the Second Reading debate without the support of Members.

106. The Legal Adviser advised that the public officer or Member in charge of a bill had the right to resume the Second Reading debate on a bill. He further said that Rule 54(5) of the Rules of Procedure merely required that the Chairman of the House Committee be consulted. It did not require that the

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agreement of the Chairman of the House Committee be sought for the resumption of the Second Reading debate on a Bill.

107. In response to Ms Emily LAU, the Legal Adviser said that in determining whether the Bill should be placed on the Agenda for the Council meeting, the President would have regard to the practice of the Secretariat in consulting the Chairman of the House Committee on behalf of the public officer or Member in charge of a bill.

108. Miss Margaret NG was of the view that the Administration's notice was not valid as there was no prior consultation with the Chairman of the House Committee. She considered that the Administration had taken an extraordinary step in giving the notice for resumption without the agreement of the Bills Committee.

109. Mr James TO said that the Administration's notice given on 24 June 2002 might not be in compliance with Rule 54(5) of the Rules of Procedure, as the Chairman of the House Committee had not been consulted. He further said that he would write to the President to express his view that the Administration's notice given on 24 June 2002 was not valid.

110. Dr YEUNG Sum said that Members should respect the motion passed by the Bills Committee on 27 June 2002 that it objected to the Administration giving notice to resume the Second Reading debate on the Bill before the Bills Committee had completed scrutiny work.

111. Dr LUI Ming-wah expressed concern that there would be UN sanctions and adverse impact on the business environment of Hong Kong, if the Bill had still not been enacted one year after the terrorist attack on 11 September 2001. He considered that Members should allow the resumption of Second Reading debate to take place on 10 July 2002, and the Bills Committee could continue discussion with the Administration in the meantime.

112. Ms Emily LAU said that it was not appropriate to take a vote at this meeting on whether or not Members would support resumption of Second Reading debate on the Bill, as the Bills Committee would continue discussion with the Administration on 2 July 2002. Mr TSANG Yok-sing and Ms Cyd HO concurred.

113. Ms Cyd HO asked whether the President's permission could still be sought to waive the notice for resumption of Second Reading debate on the Bill, after the House Committee had considered the Bills Committee's further report on 5 July 2002.

114. The Secretary General advised that in accordance with Rule 54 (5)(c) of the Rules of Procedure, if at the meeting of House Committee to consider the

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Bill in preparation for resumption of debate, the Committee recommended that the Second Reading debate be resumed at the next meeting of the Council, then resumption could take place at the meeting with the permission of the President provided that due notice had been given under subrule (e). The Secretary General further said that under subrule (e), where resumption of debate was to take place nine clear days or less after the meeting of House Committee at which the Bill was considered in preparation for resumption, then notice for resumption of Second Reading debate should be given no later than two clear days after that meeting.

115. The Chairman proposed that the House Committee should first consider the Bills Committee's further report at the special meeting on 5 July 2002, before taking a decision on the matter. Members agreed.

116. Assistant Secretary General 3 said that Members might wish to consider the Bills Committee's recommendation that the deadline for giving notice of CSAs should be extended to 3 July 2002.

117. Miss Margaret NG said that she would move CSAs to the Bill, and the Bills Committee had scheduled a further meeting for 2 July 2002. She further said that if the Administration did not withdraw its notice for resumption and if such notice was regarded valid, it would be necessary to extend the deadline for giving notice of CSAs.

118. Dr YEUNG Sum agreed that the deadline for giving notice of CSAs should be extended to 3 July 2002, pending further discussion at the House Committee meeting on 5 July 2002. Ms Cyd HO concurred.

119. The Chairman proposed that the House Committee should make a recommendation to the President that the deadline for giving notice of CSAs should be extended to 3 July 2002. Members agreed.

120. The Chairman said that the meaning and procedure of "consultation with the Chairman of the House Committee" in Rule 54(5) of the Rules of Procedure should be referred to CRoP for consideration. Members agreed.

(c) **Report of the Bills Committee on Drug Trafficking and Organized Crimes (Amendment) Bill 2000**
(LC Paper No. CB(2) 2417/01-02)

121. Mr James TO, Chairman of the Bills Committee, said that the Bills Committee had completed scrutiny work, and its report was tabled at the meeting. Mr TO explained that the Bill made a number of proposals to increase the effectiveness of the Hong Kong's anti-money laundering legislation.

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122. Mr James TO said that the Bill proposed that it would be an offence for a person to deal with property if he knew or had reasonable grounds to believe that the property represented proceeds of a drug trafficking or indictable offence. Members of the Bills Committee noted that clause 11 of the United Nations (Anti-Terrorism Measures) Bill would be amended to require a person to make a report if he knew or suspected that property was terrorist property. In the light of the new development and the grave concerns expressed by members, the Administration had agreed to withdraw the proposal of creating the new offence in this Bill.

123. Mr TO further said that the level of mens rea in section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance was not consistent with that in section 25(1) of both Ordinances. The Bill proposed to change the test for requiring a disclosure "from knows or suspects" to "knows or has reasonable grounds to suspect". Mr TO explained that under the existing section 25A, where a person knew or suspected that any property represented any person's proceeds of drug trafficking or an indictable offence, he must disclose that knowledge or suspicion to an authorised officer. As some members had expressed objection to the proposal of using the mental element of "having reasonable grounds to suspect" for the disclosure of suspicious transaction under section 25A, the Administration agreed to withdraw its proposal.

124. Mr TO said that some members of the Bills Committee had raised concern about the making of restraint or charging orders in relation to property of a person who had been arrested for a drug trafficking offence of a specified offence and released on bail. In response, the Administration had agreed to move CSAs to section 7 of Schedule 1 and section 6 of Schedule 2 to the effect that the Court would be given the discretion to set an expiration date for a restraint order or charging order. The Administration had also agreed to specify the conditions of "not later than is reasonably necessary for the purposes of the investigation concerned", and "not later than 6 months after the date on which that order is made" for the Court of First Instance to consider an application for imposing a restraint order or charging order, or extending such order.

125. Mr TO further said that the Bill proposed to revise the requirement of notifying an absconded defendant along the line that "reasonable steps should be taken to ascertain that person's whereabouts". At members' suggestion, the Administration had agreed to move a CSA to add a deemed service provision of publishing the notice of the confiscation proceedings in a Chinese language newspaper and an English newspaper of wide circulation. Mr TO added that the Administration had confirmed that the proposal of a deemed service provision would be incorporated as a step to ascertaining the abscondee's whereabouts, in addition to the requirements under Order 65 rule 5(1)(d) of the Rules of the High Court.

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126. Mr James TO also informed Members that the Bill proposed to apply an assumption that all property held by the defendant since conviction of drug money laundering offences came from drug trafficking. Such assumption currently only applied to persons convicted of drug trafficking offences.

127. Mr James TO said that the Bills Committee supported the Administration's proposal of resuming the Second Reading debate on the Bill on 10 July 2002. Mr TO further said that the Bills Committee also recommended that the President's permission be sought to extend the deadline for giving notice to move CSAs until 3 July 2002.

128. The Chairman pointed out that the Administration had given notice of the resumption of Second Reading debate on the Bill on 24 June 2002 before the Bills Committee had completed scrutiny work. Mr James TO clarified that the Administration had consulted the Bills Committee on the proposed resumption date before giving notice.

129. Members did not raise objection to the resumption of the Second Reading debate on the Bill on 10 July 2002. Members also agreed to the Bills Committee's recommendation to seek the President's leave to extend the deadline for giving notice of CSAs to 3 July 2002.

(d) Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

(LC Paper No. CB(2) 2410/01-02)

130. The Chairman reported on behalf of Miss Margaret NG, Chairman of the Bills Committee (who had to leave the meeting early) that the Bills Committee had completed scrutiny work, and its deliberations were detailed in the report.

131. The Chairman informed Members that the Bill proposed miscellaneous amendments or provisions to a number of Ordinances and subsidiary legislation. The Administration had agreed to move CSAs as suggested by members of the Bills Committee. The Chairman added that the Bills Committee had not proposed any CSAs.

132. The Chairman further said that the Bills Committee supported resumption of the Second Reading debate on the Bill on 10 July 2002.

133. Members did not raise objection to the resumption of Second Reading debate on the Bill on 10 July 2002. The Chairman reminded Members that the deadline for notice of CSAs was Saturday, 29 June 2002.

(e) **Report of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2002**

(LC Paper No. CB(1) 2114/01-02)

134. Referring to the report, Mr Ambrose LAU, Chairman of the Bills Committee, explained that the principal objects of the Bill were to revise the minimum level of relevant income for the Mandatory Provident Fund (MPF) and its subsidiary legislation to enhance the efficiency and effectiveness of the MPF System.

135. Mr Ambrose LAU said that the Administration had proposed to revise the minimum level of relevant income from \$4,000 to \$5,000 per month. As regards the maximum level of relevant income, the Administration proposed to retain the existing level of \$20,000 per month having regard to the prevailing economic conditions. Mr LAU further said that most members of the Bills Committee had not expressed any strong views on these proposed amendments in view of the current economic situation. However, some members had expressed the view that the minimum level of relevant income should be adjusted to \$6,000, instead of \$5,000, per month. In this connection, Mr Andrew CHENG would move CSAs to amend the minimum level of relevant income accordingly.

136. Mr Ambrose LAU informed Members that upon enactment of the Bill, the MPF Authority would be required to conduct a review of the minimum and maximum levels of relevant income not less than once in every four years. To address members' concerns, the Administration had agreed that it would report to the Panel on Financial Affairs on each review conducted by the MPF Authority. The Administration would give an undertaking to this effect during the resumption of Second Reading debate on the Bill.

137. Mr Ambrose LAU pointed out that the Bill also sought to confer on the court the power to impose a daily fine of \$500 upon the second or subsequent conviction of the employer for each day the offence was continued. He further pointed out that the Bill amended the prosecution time-bar for non-enrolment in MPF schemes and non-payment of mandatory MPF contributions from six months after the occurrence of the offence to six months after the discovery of the offence, or coming to the notice of, the MPF Authority.

138. Mr Ambrose LAU said that the Bill also proposed amendments to provide wider choices of investment vehicles and remove unnecessary restrictions on the investment of funds.

139. Mr Ambrose LAU added that some members were of the view that as the MPF System affected a significant portion of the workforce and was of widespread concern to both employers and employees, the Labour Advisory Board should also be consulted if changes were contemplated to the System in future. He said that the Administration had noted these members' views.

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140. Mr Ambrose LAU further said that the Bills Committee supported resumption of the Second Reading debate on the Bill on 10 July 2002, and the Bills Committee would not propose any amendments.

141. Members did not raise objection to the resumption of Second Reading debate on the Bill on 10 July 2002. The Chairman reminded Members that the deadline for notice of CSAs was Saturday, 29 June 2002.

(f) Report of the Bills Committee on Public Officers Pay Adjustment Bill

(LC Paper No. CB(1) 2116/01-02)

142. Referring to the report, the Chairman, who was also Chairman of the Bills Committee, said that the Bills Committee had held seven meetings and met with the four central consultative councils (staff sides), major civil service unions and deputations from the subvented sector. The Bills Committee had also exchanged views with the Law Society of Hong Kong on the legal issues of the Bill.

143. The Chairman informed Members that while the Bills Committee had no objection to the Administration's decision to reduce civil service pay in accordance with the existing pay adjustment mechanism, members were concerned whether the existing mechanism had allowed for pay reduction. The Chairman further informed Members that some members questioned the legal grounds for the Administration to reduce civil service pay unilaterally, the need to implement the pay reduction by legislation and whether the Bill would contravene the Basic Law. Some members were concerned whether civil servants would be deprived of their existing rights after the passage of the Bill. The Chairman added that the Bills Committee had also discussed the implications on the remuneration of the public-funded employees in the subvented sector.

144. The Chairman said that the Administration had agreed to move CSAs to the Bill, and the Bills Committee had not proposed any amendments. She added that at the conclusion of the last Bills Committee meeting on 25 June 2002, no member indicated that they would move CSAs to the Bill.

145. The Chairman further said that the Administration had, after informing the Bills Committee, given notice on 24 June 2002 to resume Second Reading debate on the Bill on 10 July 2002 before the Bills Committee completed its work.

146. Members did not raise objection to the resumption of Second Reading debate on the Bill on 10 July 2002. The Chairman reminded Members that the deadline for notice of CSAs was Saturday, 29 June 2002.

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VIII. Proposed subcommittee to review the distribution of work among Panels in the light of the reorganisation of policy bureaux under the accountability system for principal officials

(Paragraphs 15 to 27 of the minutes of the 28th House Committee meeting on 21 June 2002)

147. The Chairman proposed that the discussion on this item be deferred to the special meeting of the House Committee scheduled for 5 July 2002. Members agreed.

IX. Proposed invitation to principal officials to meet with relevant Panels

(Letters dated 24 June 2002 from Hon Emily LAU and Dr Hon YEUNG Sum)

148. Referring to her letter, Ms Emily LAU said that the new Secretaries and Directors of Bureau should be invited to meet with the relevant Panels and answer Members' questions on their respective policy portfolios. She further said that if the majority of Members agreed that special meetings of Panels should be held in July or September for the purpose, the Chairman of the House Committee should convey the message to CS.

149. Referring to his letter, Dr YEUNG Sum suggested that the Chairman of the House Committee should raise with CS that the Directors of Bureau should take the initiative to attend meetings of the respective Panels as early as possible.

150. The Chairman said that she would raise with CS that Members requested the new Secretaries and Directors of Bureau to attend meetings of the relevant Panels as soon as possible. She further said that individual Panels should extend the invitation to the principal officials separately. Members agreed.

151. The Chairman informed Members that the Panel on Food Safety and Environmental Hygiene had already invited the new Secretary for Health, Welfare and Food to its meeting on 15 July 2002.

X. The giving of notice by the Administration to resume the Second Reading debate on a bill prior to the completion of scrutiny of the bill by the relevant Bills Committee

152. Referring to the discussion under item VII(b) above, Ms Cyd HO said that Members should convey a clear message to the Administration that late rushes of legislative proposals at the end of a session should be avoided. Ms HO stressed that sufficient time should be allowed for thorough scrutiny of legislative proposals, especially those proposals which had wide implications

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on the community. She expressed concern that hasty passage of bills could result in mistakes which might have serious consequences. She suggested that the Chairman of the House Committee should raise with CS and request the Administration to introduce its legislative proposals early in a session.

153. Ms Cyd HO further said that the rules of the Council should be strictly observed, such as the public officer or Member in charge of a bill should consult the Chairman of the House Committee before giving notice for resumption of Second Reading debate on the bill. She added that the Administration should not expect that Members would express support every time the Administration requested for special treatment, such as the waiving of requisite notice periods for CSAs or resumption of Second Reading debate.

154. Ms Emily LAU concurred with Ms HO. She said that Members might wish to consider whether the Rules of Procedure should be amended to the effect that the Second Reading debate on a bill could not be resumed without the agreement of the majority of members of the House Committee.

155. The Legal Adviser responded that Ms Emily LAU's suggestion raised a very fundamental constitutional issue and required careful examination. Mr IP Kwok-him and Mr James TO pointed out that as the proposed restriction on resumption of Second Reading debate would also apply to Members' Bills, Members should carefully consider whether they really wanted such an amendment.

156. The Chairman said that she would raise with CS that the Administration should better plan its legislative programme and avoid late rushes of legislative proposals at the end of a session. She added that Members had adopted the most responsible attitude in scrutinising the United Nations (Anti-Terrorism Measures) Bill under a very tight legislative timetable. The Chairman suggested that CRoP should be invited to examine whether the relevant rules on the giving of notice for resumption of Second Reading debate should be revised. The Chairman pointed out, however, that the problem could not simply be resolved by a revision of rules or procedures, as it also involved the working relationship between the Administration and LegCo. The Chairman stressed that the Administration must understand that Members should be allowed sufficient time to thoroughly scrutinise legislative proposals, and there should be prior consultation and discussion with LegCo on matters which affected LegCo. She would urge CS to convey the message to all principal officials.

157. Mr TSANG Yok-sing and Mr IP Kwok-him concurred with the Chairman. Mr TSANG agreed that CRoP should review the relevant rules on the giving of notice for the resumption of Second Reading debate on bills. Mr IP added that there should be mutual respect between the Administration and LegCo.

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XI. Any other business

158. There being no further business, the meeting ended at 5:45 pm.

Council Business Division 2
Legislative Council Secretariat
25 September 2002