

立法會
Legislative Council

LC Paper No. CB(2) 1047/02-03

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 13th meeting
held in the Legislative Council Chamber
at 4:18 pm on Friday, 24 January 2003**

Members present :

Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, 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

Hon Martin LEE Chu-ming, SC, JP

Hon Eric LI Ka-cheung, JP

Dr Hon LUI Ming-wah, JP

Hon NG Leung-sing, JP

Hon Margaret NG

Hon James TO Kun-sun

Hon CHEUNG Man-kwong

Hon HUI Cheung-ching, JP

Hon CHAN Yuen-han, JP

Hon Bernard CHAN, JP

Hon CHAN Kam-lam, JP

Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP

Hon SIN Chung-kai

Hon Andrew WONG Wang-fat, JP

Dr Hon Philip WONG Yu-hong

Hon Jasper TSANG Yok-sing, GBS, JP

Hon Howard YOUNG, JP

Dr Hon YEUNG Sum

Hon YEUNG Yiu-chung, BBS

Hon LAU Chin-shek, JP

Hon LAU Wong-fat, GBS, JP

Hon Miriam LAU Kin-ye, JP

Hon Ambrose LAU Hon-chuen, GBS, JP

Mrs Betty LEUNG	Acting Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Mr Simon WONG	Acting Chief Public Information Officer
Ms Connie SZETO	Chief Assistant Secretary (1)4
Miss Odelia LEUNG	Chief Assistant Secretary (1) Select Committee
Mrs Constance LI	Chief Assistant Secretary (2)5
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Anita HO	Assistant Legal Adviser 2
Miss Connie FUNG	Assistant Legal Adviser 3
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Kitty CHENG	Assistant Legal Adviser 5
Mr KAU Kin-wah	Assistant Legal Adviser 6
Miss Monna LAI	Assistant Legal Adviser 7
Miss Betty MA	Senior Assistant Secretary (2)1

Action

I. Confirmation of the minutes of meeting of the 12th meeting held on 10 January 2003
(*LC Paper No. CB(2) 907/02-03*)

The minutes were confirmed.

II. Matters arising

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

Debate on Motion of Thanks

2. The Chairman said that she had thanked CS for having agreed to arrange the series of briefings by Directors of Bureaux before the debate on the Motion of Thanks. She had pointed out to CS that the briefings were necessary because of the absence of the elaborate Policy Objectives booklets issued in the past. Members held the consensus that they should have sufficient information on the Administration's various initiatives in order to have a meaningful debate. The earlier agreement to dispense with briefings by Directors of Bureaux had been reached on the premise that information such as that in the Policy Objectives booklets would be available.

Action

3. The Chairman further said that she had also pointed out to CS that the debate sessions proposed by the Administration did not specify clearly the policy areas involved, and that the grouping of policy areas proposed by Members had been worked out on the basis of the list of officials to be present in each debate session provided by the Administration. This would ensure that when a Member spoke on an issue during a debate session, the responsible Director of Bureau would be present. Nevertheless, the policy areas of "Labour" and "Manpower Planning" might still pose problems.

4. The Chairman informed Members that CS had explained that the Policy Agenda had been prepared in line with the goals and guiding principles in the Chief Executive's Policy Address. CS acknowledged the wish of Members for more information and had therefore agreed to arrange for briefings by Directors of Bureaux notwithstanding their prior commitments. CS had also explained that the Policy Agenda described the policy and legislative initiatives in the coming 18 months, and as some initiatives were less developed than others, there was insufficient information on them. CS had assured her that Panels would be briefed on government initiatives as soon as they were fully developed.

5. The Chairman added that CS had agreed that the arrangements had room for improvement. CS had undertaken to review the arrangements after the delivery of the Budget in March 2003.

Topic(s) for discussion with CS at the special meeting on 7 February 2003

6. The Chairman said that she had informed CS of the topics proposed by Members, i.e. "sustainable development" and "cooperation between Guangdong and Hong Kong".

7. The Chairman further said that at her meeting with CS, CS had asked whether it was possible to postpone his meeting with the House Committee to, say, 21 or 28 February 2003, as some policy initiatives would be more fully developed by then after consideration by the Executive Council. Also, CS might be out of town on 7 February 2003.

8. The Chairman informed Members that she had pointed out to CS that the possibility depended very much on whether there would be Finance Committee (FC) meetings on the two proposed dates. The Chairman said that as an FC meeting had been scheduled for 21 February 2003, CS's office had subsequently confirmed that the special meeting would be held at 2:30 pm on 28 February 2003. The Chairman added that Members had been informed of the arrangement vide LC Paper No. CB(2) 954/02-03 dated 17 January 2003.

Improving the Business Environment

9. The Chairman said that CS had clarified that the "high-level task force" for improving the business environment mentioned in the Policy Address had in fact been in operation under the chairmanship of the Financial Secretary, and the task force would be reorganized and its scope of work would be re-examined.

(b) 23 items of subsidiary legislation made under the Securities and Futures Ordinance tabled in Council on 18 December 2002
(LC Paper No. LS 48/02-03)

10. The Legal Adviser said that the scrutiny period of the 23 items of subsidiary legislation had been extended to 12 February 2003 to allow more time for the Administration to consider Legal Service Division's recommendations relating to the drafting of the Chinese text. The Legal Adviser further said that the Administration had since agreed to introduce amendments to the Chinese text of seven items of subsidiary legislation by moving a motion at the meeting of the Legislative Council (LegCo) on 12 February 2003. The Legal Adviser added that the proposed amendments were in order.

(c) Legal Service Division report on subsidiary legislation tabled in Council on 8 January 2003

(i) Admission and Registration (Amendment) (No. 2) Rules 2002 and Legal Practitioners (Risk Management Education) Rules
(LC Paper No. LS 41/02-03)

11. The Legal Adviser said that the scrutiny period of the two Rules had been extended to 26 February 2003 to allow more time for the Legal Service Division to discuss with the Law Drafting Division the most appropriate way to effect the proposed amendment in relation to the Chinese rendition for the English term "organisation" in the Legal Practitioners (Risk Management Education) Rules.

12. The Legal Adviser further said that the Administration had now confirmed that the Law Draftsman would make an Order under section 4D of the Official Languages Ordinance to effect the proposed amendment. The Order would be gazetted as soon as possible, and it would come into operation on 4 April 2003.

13. Members agreed that it was not necessary to set up a subcommittee to study these two items of subsidiary legislation.

Action

(ii) **Subsidiary legislation made under the Electoral Affairs Commission Ordinance:**

- **Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) (Amendment) Regulation 2002; and**
- **Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee)(Amendment) Regulation 2002**

(Paragraphs 29 to 37 of LC Paper No. LS 36/02-03 issued vide LC Paper No. CB(2)861/02-03 dated 9 January 2003)

14. The Legal Adviser said that the scrutiny period of these two items of subsidiary legislation had been extended to 26 February 2003 to allow more time for the Legal Service Division to study their drafting and legal aspects. The Legal Adviser further said that the Legal Service Division had now completed scrutiny of the two Regulations and no difficulties relating to the legal and drafting aspects had been identified.

15. Members agreed that it was not necessary to set up a subcommittee to study these two Regulations.

III. Business arising from previous Council meetings

(a) **Legal Service Division report on subsidiary legislation gazetted on 10 January 2003**

(LC Paper No. LS 40/02-03)

16. The Legal Adviser said that only one item of subsidiary legislation, the Ocean Park Bylaw, was gazetted on 10 January 2003 and tabled in Council on 15 January 2003.

17. The Legal Adviser explained that the Ocean Park Bylaw (the 2002 Bylaw) was made by the Ocean Park Corporation (the Corporation) to regulate the admission to, opening and closing of the Park. It also governed the use of facilities at the Ocean Park (the Park) and its amusement rides and the conduct of persons in the Park. The Legal Adviser further explained that under the 2002 Bylaw, a person was prohibited from doing certain acts in the Park.

Action

18. The Legal Adviser said that the Legal Service Division had sought clarification from the Administration on the status of the Ocean Park Corporation: By-laws (the 1988 Bylaws) made by order of the Board of the Corporation in 1988, as the 1988 Bylaws could not be found in the Laws of Hong Kong. The Administration had explained that it was not aware of the 1988 Bylaws having been published in the Gazette, and the 1988 Bylaws would appear to be currently unenforceable as "statutory legislation".

19. The Legal Adviser further said that the 2002 Bylaw was a piece of new subsidiary legislation subject to the negative vetting procedure of LegCo. The Legal Adviser added that in response to the Legal Service Division's comments on certain drafting issues, the Administration had agreed to make amendments to the 2002 Bylaw.

20. Mr James TO said that Members should follow up why the 1988 Bylaws had not been published in the Gazette, and whether any specific person(s) should be held responsible. Mr TO further said that clarification should also be sought from the Board of the Corporation as to whether it was aware that its 1988 Bylaws were not enforceable, since no enforcement action had so far been taken against any person for contravention of the 1988 Bylaws.

21. Referring to paragraphs 3 to 7 of the Legal Service Division report, Mr James TO said that the content of the 2002 Bylaw should be consistent with existing legislation and similar bylaws of other corporations such as the Mass Transit Railway Corporation. However, some of the provisions in the 2002 Bylaw were rather petty and peculiar, for example, a person was prohibited from putting his feet on or lie down on a seat or bench, or using obscene language so as to cause a nuisance or annoyance to a visitor or an animal.

22. Mr TO also pointed out that failure to hand over property that appeared to have been lost or misplaced by another person to an attendant of the Park or a police officer might not be a criminal offence in similar bylaws of other corporations. As regards the provision which prohibited a person from opening the door of a cable car, Mr TO said that it might be necessary to consider whether a "reasonable excuse" clause should be included to cater for emergency situations where a person needed to open the door of a cable car without authority granted by the Corporation. Mr James TO further said that as contravention of any provision in the 2002 Bylaw would be a criminal offence, the Bylaw should be carefully examined.

23. Miss Margaret NG said that some of the concerns raised by Mr James TO involved policy issues which could be followed up by the relevant Panel(s).

Action

24. The Chairman suggested that while the policy issues could be discussed by the Panel(s), the Legal Service Division could also seek clarification on the concerns and queries raised by Mr James TO, and provide a further report to the House Committee. The Chairman further suggested that Mr TO should list out all his concerns and queries in writing, and all Members should also be given copies.

25. Mr IP Kwok-him said that he shared Mr James TO's concerns and expressed support for the Chairman's proposed arrangement.

26. Mr Henry WU declared that he was a member of the Board of the Corporation. He informed Members that the Board had held several discussions on the 2002 Bylaw to ensure that its drafting was consistent with prevailing legislation. Mr WU said that he would be happy to provide assistance in seeking clarification on the 2002 Bylaw.

27. The Chairman said that to allow more time for the Legal Service Division to seek clarification on Mr TO's concerns and queries, she would give notice to move a motion at the Council meeting on 12 February 2003 to extend the scrutiny period of the subsidiary legislation to 5 March 2003. Members agreed.

(b) Legal Service Division report on subsidiary legislation gazetted on 17 January 2003

(LC Paper No. LS 46/02-03)

28. The Legal Adviser said that 16 items of subsidiary legislation were gazetted on 17 January 2003 and tabled in Council on 22 January 2003.

29. The Legal Adviser said that the Insurance Companies Ordinance (Amendment of Part 1 of Third Schedule) Regulation 2003 had added a definition of the term "Hong Kong long term insurance business" to Part 1 of the Third Schedule.

30. The Legal Adviser further said that the purpose of the Insurance Companies Ordinance (Amendment of Part 8 of Third Schedule) Regulation 2003 was to require an authorized insurer to submit annually to the Insurance Authority financial information in relation to its "Hong Kong long term insurance business".

31. The Legal Adviser informed Members that according to the Administration, the Hong Kong Federation of Insurers and the Hong Kong Society of Accountants had been consulted, and they supported the amendments to the two Regulations. He added that the two Amendment Regulations had not been submitted to the Panel on Financial Affairs for discussion.

Action

32. Members did not raise any queries on these two Regulations.

33. The Legal Adviser explained that to reflect technological advancement and market developments, the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order repealed and replaced seven exemption orders. The Order added items of exemption from the licensing requirement in respect of certain radiocommunications apparatus (such as cordless telephones), non-radiocommunications apparatus (such as telephones and fax terminals) and some hybrid telecommunication apparatus (i.e. telecommunication apparatus that might be used in a combination of manners relating to both non-radiocommunications and radiocommunications apparatus).

34. The Legal Adviser informed Members that the Panel on Information Technology and Broadcasting had not been consulted on the Order. The Legal Adviser added that the Order would come into operation on a day to be appointed by the Telecommunications Authority by notice published in the Gazette.

35. Members did not raise any queries on this item of subsidiary legislation.

36. The Legal Adviser explained that the Barristers (Admission) Rules, the Legal Practitioners (Fees) (Amendment) Rules 2002, the Practising Certificate (Barristers) (Amendment) Rules 2002, the Barristers (Advanced Legal Education Requirement) Rules and the Barristers (Qualification for Admission and Pupillage) Rules were made under the Legal Practitioners (Amendment) Ordinance 2000 which was passed in June 2000. The five sets of Rules were made to give effect to the new arrangement that all foreign lawyers seeking to practise as barristers in Hong Kong would have to sit and pass examinations to be set by the Bar Association. The Legal Adviser further said that the first three sets of Rules were made by the Chief Justice, and the other two sets of Rules were made by the Bar Council with the prior approval of the Chief Justice.

37. The Legal Adviser said that the Legal Service Division was still scrutinizing the Rules and would report to the House Committee if any difficulties in relation to the drafting and legal aspects of the Rules were identified.

38. Miss Margaret NG informed Members that the Bar Association had briefed the Panel on Administration of Justice and Legal Services (AJLS Panel) on the five sets of Rules in draft form at its meeting on 24 June 2002. She said that members of the Panel did not raise any objection to the Rules apart from seeking clarification on the implementation aspects of some of them. Miss NG further said that the Panel noted that the Bar Association had accepted the comments made by the Department of Justice in respect of the

Action

two sets of Rules made by it. Miss NG added that as the AJLS Panel had only considered the English text of the draft Rules, she hoped that the further report to be provided by the Legal Service Division would highlight whether there were any problems with the Chinese text of the Rules, and whether there were differences between the draft Rules considered by the AJLS Panel and the gazetted Rules .

39. The Chairman said that a decision on these five sets of Rules would be deferred to the next House Committee meeting. Members agreed.

40. On the Import and Export (General) Regulations (Amendment of Seventh Schedule) Notice 2003, the Legal Adviser explained that under the newly amended Import and Export (General) Regulations, import of rough diamonds from, or export of rough diamonds to, a country or place other than a specified country or place specified in the Seventh Schedule was prohibited. The Notice set out the specified countries and places in the Seventh Schedule. Members did not raise any queries on the Notice.

41. Regarding the Securities and Futures (Insurance) Rules, the Legal Adviser explained that the Rules empowered the Securities and Futures Commission (SFC) to approve a master insurance policy in respect of each regulated activity for specified licensed corporations (i.e. licensed corporations that were not subject to any condition prohibiting the holding of client assets), and that the insurance was to cover specified risks.

42. The Legal Adviser said that an earlier draft of the Rules had been published for public consultation and studied by the Subcommittee on Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance. The Legal Adviser further said that according to the Administration, the current version of the Rules reflected the consensus of the Industry Work Group convened by the SFC. A draft of the Rules had also been circulated to members of the Subcommittee in December 2002.

43. The Legal Adviser pointed out that no difficulties relating to the legal aspect of the Rules had been identified. The Legal Service Division had observed some drafting issues in the Chinese text of the Rules and had sought clarification from the Administration. The Legal Adviser added that as the reply from the Administration had just been received, a further report would be provided to the House Committee if necessary.

44. Mr Henry WU said that he was a member of the Industry Work Group, and that the industry had no further comments on the Rules.

Action

45. The Legal Adviser said that four Commencement Notices, viz. the Securities and Futures Ordinance (Cap. 571) (Commencement) Notice 2003, the Securities and Futures Ordinance (Cap. 571) (Appointment of Day — Repeal of Ordinances) Notice, the Securities and Futures Ordinance (Cap. 571) (Appointed Day — Unified Exchange Compensation Fund) Notice and the Securities and Futures Ordinance (Cap. 571) (Appointed Day — Futures Exchange Compensation Fund) Notice, were also covered in the report. The Legal Adviser explained that the Securities and Futures Ordinance was enacted in March 2002 after the Bill had been scrutinized in detail by a Bills Committee. Since then 38 sets of subsidiary legislation had been gazetted, and all were made to become operative upon the commencement of the Ordinance. The Legal Adviser further explained that the Administration had announced that the Ordinance would come into operation on 1 April 2003, and these four Commencement Notices were made to implement that decision.

46. The Legal Adviser said that the Commencement Notices would inaugurate the new regulatory regime for the financial markets in Hong Kong. He added that no difficulties in respect of the legal and drafting aspects of the four Commencement Notices had been observed.

47. As regards the Banking (Amendment) Ordinance 2002 (6 of 2002) (Commencement) Notice 2003, the Legal Adviser said that the Secretary for Financial Services and the Treasury had appointed 1 April 2003 as the date on which the Amendment Ordinance would come into operation. He added that the Amendment Ordinance was enacted in March 2002 immediately after the Securities and Futures Ordinance (Cap. 571).

48. Mr Henry WU suggested that a decision on the five Commencement Notices be deferred to the next meeting, as the securities and futures industry was still studying the Commencement Notices. Members agreed.

49. The Legal Adviser said that by the Solicitors (Group Practice) Rules (L.N. 122 of 2002) (Commencement) Notice 2003, the President of the Council of the Law Society of Hong Kong had appointed 1 February 2003 as the date on which the Rules would come into operation.

50. Miss Margaret NG said that the subcommittee formed to study the Rules had suggested that the Law Society should assist its members and the public in familiarising with the operation of group practice by issuing information leaflets to the public and providing practical guidelines to solicitors. The Law Society had recently informed the AJLS Panel that it had prepared the information leaflets and an advisory manual for its members, and copies had been provided to the AJLS Panel. Miss NG added that the subcommittee supported the Rules.

Action

51. Members did not raise any queries on the Commencement Notice.

52. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 19 February 2003, or 12 March 2003 if extended by resolution.

IV. Business for the Council meeting on 12 February 2003

(a) Questions

53. The Chairman reminded Members that the deadline for giving notice of questions was Thursday, 30 January 2003.

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

54. The Chairman said that no notice had been received yet.

(c) Government motions

- (i) Proposed resolution to be moved by the Secretary for Housing, Planning and Lands under the Housing Ordinance relating to the Housing (Traffic Contraventions) (Fixed Penalty) (Amendment) Bylaw 2003**
(LC Paper No. LS 49/02-03)

55. The Legal Adviser said that the Secretary for Housing, Planning and Lands (SHPL) had given notice on 22 January 2003 to move a proposed resolution at the Council meeting on 12 February 2003 relating to the Housing (Traffic Contravention) (Fixed Penalty) (Amendment) Bylaw 2003. The Legal Adviser further said that given the limited time, the Legal Service Division report on the proposed resolution could only be tabled at the meeting.

56. The Legal Adviser explained that the effect of the proposed resolution was to amend the Bylaw in such a way that the methods of payment of fixed penalty for traffic contraventions in the estates managed by the Housing Authority would be similar to those prescribed under the Fixed Penalty (Traffic Contraventions) Regulations and the Fixed Penalty (Criminal Proceedings) Regulations. The Legal Adviser further explained that the two Regulations were amended in 2001 so that payment of fixed penalty could be made at any Post Office, any magistracy specified in the notice, or through bank automated teller machines, Payment by Phone Service or the Internet.

57. The Legal Adviser added that no legal and drafting difficulties had been identified in the proposed resolution.

Action

58. In response to Mr Andrew WONG's query on whether the payment of fixed penalty for traffic contraventions in the estates managed by the Housing Authority would be credited to the Government General Revenue Account or the Housing Authority's account, the Legal Adviser said that he would seek clarification on the matter.

59. Miss Margaret NG said that Members would need time to consider the detailed provisions of the Bylaw and the Legal Service Division report which were tabled at the meeting. Miss NG further said that the Chairman of the House Committee should raise with CS that it was undesirable for the Administration to give such short notice for Members to consider the proposed resolution.

60. The Chairman said that SHPL had given 20 days' notice for the proposed resolution in accordance with the arrangement agreed with the Administration. However, as no House Committee meeting was scheduled for 31 January 2003 because of the Chinese New Year holidays, the proposed resolution had to be considered by the House Committee at this meeting. The Chairman further said that she would raise with CS that Policy Bureaux should have regard to the dates of House Committee meetings and intervening public holidays when giving notice for proposed resolutions. Members agreed.

61. The Chairman proposed that to allow more time for Members to consider the proposed resolution, a decision on the proposed resolution should be deferred to the next meeting on 7 February 2003. The Chairman added that as the deadline for giving notice of amendments, if any, to the proposed resolution was 5 February 2003, the House Committee would recommend to the President that the notice requirement be waived, if amendments were necessary. Members agreed.

(ii) Two proposed resolutions to be moved by the Secretary for Security under the Mutual Legal Assistance in Criminal Matters Ordinance relating to:

- **the Mutual Legal Assistance in Criminal Matters (Ireland) Order; and**
- **the Mutual Legal Assistance in Criminal Matters (Netherlands) Order**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 306/02-03 dated 20 January 2003.)
(*LC Paper No. LS 47/02-03*)

Action

62. The Legal Adviser explained that the purpose of the two proposed resolutions was to seek the Council's approval for the two Orders made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance. The Legal Adviser further explained that Schedule 1 to the Ireland Order and the Netherlands Order exhibited respectively the bilateral arrangements entered into between Hong Kong and Ireland and the Kingdom of the Netherlands for mutual legal assistance in criminal matters.

63. The Legal Adviser said that the Legal Service Division was seeking clarification from the Administration on certain matters, in particular, the respective reasons for not including a provision in the Netherlands Order to cover the situation of refusal of assistance if the request related to an offence carrying death penalty in the Requesting Party, and for not adopting the saving provision in relation to requests made before the termination of the Agreement. The Division had also made some comments on the Chinese text of the two Orders and was awaiting the Administration's reply. The Legal Adviser added that a further report would be issued if necessary.

64. The Legal Adviser added that subcommittees were formed previously to examine 11 similar Orders made under the Mutual Legal Assistance in Criminal Matters Ordinance.

65. The Chairman proposed that in line with past practice, a subcommittee should be formed to study the two proposed resolutions, and that the Secretary for Security should be asked to withdraw her notice. Members agreed. The following Members agreed to join : Miss Margaret NG, Mr James TO (as advised by Mr SIN Chung-kai), Mr TSANG Yok-sing, Ms Miriam LAU and Ms Audrey EU.

(d) Members' motions

(i) **Motion on "First Report of the Select Committee"**

(Wording of the motion issued vide LC Paper No. CB(3) 311/02-03 dated 22 January 2003.)

The Select Committee recommends that Members speaking should each be allowed to speak for not more than 15 minutes.

66. The Chairman said that the above motion would be moved by Ms Miriam LAU and the wording had been issued to Members.

67. Ms Miriam LAU, Chairman of the Select Committee on Building Problems of Public Housing Units, said that the Select Committee recommended that Members speaking at the debate should each be allowed to speak for not more than 15 minutes. Ms LAU further said that the speaking time limit for the debate on the report of the "Select Committee to inquire into

Action

the circumstances leading to the problems surrounding the commencement of the operation of the New Hong Kong International Airport at Chek Lap Kok since 6 July 1998 and related issues" was also 15 minutes. Members expressed support for the recommendation.

(ii) **Motion to be moved by Hon LAU Ping-cheung**

(Hon LAU Ping-cheung's letter dated 21 January 2003 to the Chairman of the House Committee)

68. Referring to his letter, Mr LAU Ping-cheung said that as the speaking time limit of 15 minutes was recommended for the debate on Ms Miriam LAU's motion on the first report of the Select Committee at the Council meeting on 12 February 2003, the debate could be very long if many Members would speak on the motion. He had therefore requested that his motion debate scheduled for the same Council meeting be deferred to the Council meeting on 19 February 2003. Mr LAU further said that he had put forward his request for Members' consideration on the advice of the LegCo Secretariat that he could withdraw the notice for his motion, or seek the House Committee's agreement for him to defer his motion debate to the following Council meeting. The purpose was to obviate the need for the Council meeting to be suspended in the late evening of 12 February 2003 and then to resume on the next day to deal with unfinished business on the Agenda. He stressed that his request was not made for the reasons mentioned by the Deputy Chairman of the House Committee as quoted in a press report.

69. Mr LAU Ping-cheung added that he had just learnt from the Chairman of the House Committee before the meeting that there was no precedent of the House Committee acceding to such a request before, and his request might also affect those Members who had applied for a debate slot at the Council meeting on 19 February 2003. He was also given to understand that if there was any unfinished business on the Agenda for the Council meeting in the late evening of 12 February 2003, the President would decide whether to suspend the meeting at about 10:00 pm that day and to continue the meeting on the following day. Mr LAU added that he had no strong view about pursuing his request for deferring his motion debate scheduled for the Council meeting on 12 February 2003. However, he would like to listen to Members' views on his request first.

70. The Chairman said that the motion debate on the report of the "Select Committee to inquire into the circumstances leading to the problems surrounding the commencement of the operation of the New Hong Kong International Airport at Chek Lap Kok since 6 July 1998 and related issues" was the only one held at the Council meeting on 3 February 1999 because Ms Miriam LAU, who had been allocated the other debate slot at the same Council meeting, had withdrawn her notice for the motion. On that occasion, Ms LAU was regarded as having used her debate slot for the purpose of the queuing system, and had to re-apply for a debate slot for a subsequent Council meeting.

Action

71. The Chairman further said that it was in order for Mr LAU Ping-cheung to propose that the House Committee discuss his request. However, there was no precedent of the House Committee agreeing to defer a motion debate on the ground that a 15-minute speaking time limit was recommended for the debate on another Member's motion scheduled for the same Council meeting. There were however precedents for two debates on Members' motions to be held at the same Council meeting even when the 15-minutes speaking time limit was recommended for one of the debates. The Chairman further said that if Members agreed to Mr LAU's request, every time when a 15-minute speaking time limit was recommended for a debate on a Member's motion, the House Committee would have to consider whether the other debate on a Member's motion scheduled for the same Council meeting should be deferred.

72. As regards Mr LAU's concern that the business of the Council meeting on 12 February 2003 might not be finished on that day, the Chairman advised that the existing practice was that if the President was of the opinion that the business on the Agenda for a Council meeting could unlikely be finished by about midnight on the day of the meeting, she would suspend the meeting at about 10:00 pm and order that the meeting resume on the following day.

73. Dr YEUNG Sum said that Members belonging to the Democratic Party did not support Mr LAU's request. Dr YEUNG further said that if many Members would speak on Ms Miriam LAU's motion at the Council meeting on 12 February 2003, it would be for the President to determine whether the Council meeting should be suspended and resume on the following day. Dr YEUNG added that Mr LAU's request would mean that only one other Member would be allocated a debate slot for the Council meeting on 19 February 2003.

74. Mr Andrew WONG said that he did not support Mr LAU's request. He, however, pointed out that if a quorum was not present during the Council meeting on 12 February 2003 immediately prior to the commencement of the debate on Mr LAU's motion, the President would have to adjourn the meeting, and any unfinished business, i.e. Mr LAU's motion, would be dealt with at the next Council meeting on 19 February 2003.

75. Miss Margaret NG said that the issue was not how many Members would speak on Ms Miriam LAU's motion, but rather a question of whether there were existing rules or practices to deal with the situation described in Mr LAU Ping-cheung's letter. She was of the view that it would not be necessary to change the existing rules and practices if they could address Mr LAU's concern about unfinished business on the Agenda of the Council meeting on 12 February 2003.

76. Mr IP Kwok-him said that he did not support Mr LAU's request because it was not possible to anticipate at this juncture how many Members would speak on Ms Miriam LAU's motion. Mr IP further said that it would be for

Action

the President to decide whether to suspend a Council meeting and then resume the meeting on the following day.

77. Mr LAU Ping-cheung said that in the light of Members' comments, he would not pursue his request, and that he would move his motion for debate at the Council meeting on 12 February 2003 as scheduled. Mr LAU also clarified that his request was not a case of "SIMA Zhao's trick (司馬昭之心)" as suggested by Mr Fred LI in the press report. He considered it unfair to him for Mr LI, as the Deputy Chairman, to have drawn such a conclusion without ascertaining the facts first.

78. Mr Fred LI said that regarding his comments to the press as mentioned by Mr LAU, he did not make them in his capacity as the Deputy Chairman of the House Committee. He said that he would explain the matter to Mr LAU after the House Committee meeting.

V. Advance information on business for the Council meeting on 19 February 2003

Bills - First Reading and moving of Second Reading

(a) **Foreshore, Sea-bed and Roads (Amendment) Bill 2003**

(b) **Bills of Exchange (Amendment) Bill 2003**

79. The Chairman said that the above two Bills would be introduced into the Council on 19 February 2003 and considered by the House Committee on 21 February 2003.

VI. Report of Bills Committee and subcommittee

(a) **Position report on Bills Committees/subcommittees**
(*LC Paper No. CB(2) 988/02-03*)

80. The Chairman said that there were 13 Bills Committees and four subcommittees in action as well as five Bills Committees on the waiting list.

81. The Chairman further said that there would be two vacant slots after the Bills Committee on the Village Representative Election Bill and the Bills Committee on the Dutiable Commodities (Amendment) Bill 2002 had reported under items (b) and (c) below. The Chairman added that the Bills Committee on the Evidence (Miscellaneous Amendments) Bill 2002 and the Bills Committee on the Housing (Amendment) Bill 2002 on the waiting list could commence work immediately.

Action

(b) Report of the Bills Committee on Village Representative Election Bill

(LC Paper No. CB(2) 983/02-03)

82. Mr IP Kwok-him, Chairman of the Bills Committee, reported that the Bills Committee had completed scrutiny of the Bill, and the deliberations were detailed in the report.

83. Mr IP Kwok-him said that the Bills Committee had discussed at length the legality of the Bill, as some members of the Bills Committee were concerned whether the Bill was consistent with the Hong Kong Bill of Rights and the Heung Yee Kuk Ordinance (Cap. 1097). The Administration had assured the Bills Committee that the electoral arrangements proposed in the Bill were compatible with the Laws of Hong Kong and the Court of Final Appeal judgment.

84. Mr IP Kwok-him informed Members that he would move Committee Stage amendments (CSAs) on behalf of the Bills Committee to the effect that all the prescribed public officers defined in the Bill, including civil servants, would be allowed to be nominated as a candidate and be elected as a Village Representative (VR), and hold office as VRs. Mr IP further informed Members that Mr Albert CHAN had indicated that he would give notice to move CSAs to delete the "residency-in-village" requirements for registration as an elector and for nomination as a candidate in a Resident Representative election. Mr CHAN would also consider moving CSAs in respect of the functions of an Indigenous Inhabitant Representative.

85. Mr IP Kwok-him further said that at the suggestion of the Bills Committee, the Administration had agreed to move CSAs in respect of village by-election and the number of electors required for lodging an election petition. Mr IP added that the Administration would also move CSAs regarding the commencement date of the Bill and the voting right of surviving spouses of indigenous inhabitants in an Indigenous Inhabitant Representative election, in addition to a number of technical and consequential amendments.

86. Mr IP Kwok-him said that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 12 February 2003.

87. Members did not raise objection to the resumption of Second Reading debate on the Bill at the Council meeting on 12 February 2003. The Chairman reminded Members that the deadline for giving notice of CSAs was Thursday, 30 January 2003.

**(c) Report of the Bills Committee on Dutiable Commodities
(Amendment) Bill 2002**

(LC Paper No. CB(1) 779/02-03)

88. Mr HUI Cheung-ching, Chairman of the Bills Committee, reported that the Bills Committee had completed scrutiny of the Bill, and the deliberations of the Bills Committee were detailed in the report.

89. Mr HUI Cheung-ching said that the main purpose of the Bill was to amend the Dutiable Commodities Ordinance (the Ordinance) and the Dutiable Commodities Regulations to implement the Open Bond System (OBS) in all bonded warehouses in Hong Kong.

90. Mr HUI further said that the Bills Committee noted the strong support from bonded warehouse operators and traders in dutiable goods for the full implementation of the OBS in Hong Kong which would facilitate operation of warehouses and reduce their compliance costs. He added that members supported the full implementation of the OBS, as it would bring about additional business opportunities, increase Hong Kong's competitiveness in the international market and enhance the business-friendly environment.

91. Mr HUI Cheung-ching informed Members that in scrutinizing the Bill, members had raised concern about the wide discretionary power of the Commissioner of Customs and Excise (the Commissioner) in considering application, renewal and revocation of OBS licences. Since the Commissioner was not obliged to give reasons for refusing to grant, renew, or revoking OBS licences, members considered the process lacked transparency. The Administration had explained that in exercising the discretionary power, the Commissioner must act reasonably, in good faith and upon lawful and relevant grounds of public interest in accordance with the administrative law principle. Moreover, any person aggrieved by the decision of the Commissioner could appeal to the Administrative Appeals Board and seek judicial review from the court.

92. Mr HUI further said that the Administration had taken on board members' views and agreed to move CSAs to require the Commissioner to give reasons for refusing to grant or renew licences, and for revoking OBS licences. The Administration considered that the new requirements would provide the trade with certainty, and form the bases of appeal action that might be taken by applicants or licensees aggrieved by the Commissioner's decision. Mr HUI added that the majority of the Bills Committee members accepted the Administration's explanation and supported the proposed CSAs.

93. Mr HUI Cheung-ching informed Members that as no Customs officers would be stationed at the open bonded warehouses, members considered it important to put in place a comprehensive control mechanism and risk-management system to guard against the risk of duty evasion. Members were

Action

of the view that apart from tightening the licensing requirements for OBS licences, there should be detailed storage, record-keeping and audit requirements on licensees. Mr HUI further informed Members that the Bills Committee noted that the Customs and Excise Department would conduct annual comprehensive checks and surprise checks on warehouses to ensure the licensees were in compliance with the licensing requirements.

94. Mr HUI Cheung-ching said that members had suggested that the validity of OBS licence be extended beyond one year and applications or renewals for licences be allowed to be submitted in electronic form. The Administration had pointed out that to reduce the risk of revenue loss and to ensure that accepting application or renewal by electronic means would be feasible and practicable, it would be prudent to maintain the validity of the OBS licence at one year, particularly during the initial period in implementing the OBS. Mr HUI further said that members appreciated the Administration's undertaking to re-examine these proposals in the context of the review on the OBS which would be conducted within one year after the full implementation of the system.

95. Mr HUI added that the Bills Committee supported the resumption of the Second Reading debate on the Bill on 19 February 2003.

96. Members did not raise objection to the resumption of the Second Reading debate on the Bill at the Council meeting on 19 February 2003. The Chairman reminded Members that the deadline for giving notice of CSAs was Monday, 10 February 2003.

**(d) Report of the Subcommittee on Appeal Board on Closure Orders
(Immediate Health Hazard) Rules**
(LC Paper No. CB(2) 950/02-03)

97. Mr Fred LI, Chairman of the Subcommittee, reported that the Subcommittee had held two meetings to discuss the Rules with the Administration and the Chairman of the Appeal Board on Closure Orders (Immediate Health Hazard).

98. Mr Fred LI said that the Subcommittee had raised concerns about the serving of notice of appeal, the arrangements for public hearings and the language used in the hearings, as well as the need for imposing a time limit of "10 working days" for the delivery of the Appeal Board's decision after the hearing. He further said that the Administration had agreed to make amendments to the Rules at the Council meeting on 12 February 2003 to address these concerns.

Action

99. The Chairman added that the scrutiny period of the Rules had been extended to 12 February 2003.

VII. Any other business

100. The Chairman reminded Members that the next regular meeting of the House Committee would be held on Friday, 7 February 2002 at 2:30 pm.

101. There being no further business, the meeting ended at 5:27 pm.

Council Business Division 2
Legislative Council Secretariat
5 February 2003