

立法會  
*Legislative Council*

LC Paper No. CB(2) 1585/02-03

Ref : CB2/H/5

**House Committee of the Legislative Council**

**Minutes of the 19th meeting  
held in the Legislative Council Chamber  
at 2:30 pm on Friday, 21 March 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  
Dr Hon David CHU Yu-lin, JP  
Hon Cyd HO Sau-lan  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Hon Eric LI Ka-cheung, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Dr Hon LUI Ming-wah, JP  
Hon NG Leung-sing, JP  
Hon Margaret NG  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon CHAN Kwok-keung  
Hon Bernard CHAN, JP  
Hon CHAN Kam-lam, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon LEUNG Yiu-chung  
Hon SIN Chung-kai  
Hon Andrew WONG Wang-fat, JP  
Dr Hon Philip WONG Yu-hong  
Hon WONG Yung-kan  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, JP

Dr Hon YEUNG Sum  
Hon YEUNG Yiu-chung, BBS  
Hon LAU Chin-shek, JP  
Hon LAU Kong-wah  
Hon Miriam LAU Kin-yeet, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Andrew CHENG Kar-foo  
Hon SZETO Wah  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon LAW Chi-kwong, JP  
Hon TAM Yiu-chung, GBS, JP  
Dr Hon TANG Siu-tong, JP  
Hon Abraham SHEK Lai-him, JP  
Hon LI Fung-ying, JP  
Hon Henry WU King-cheong, BBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Michael MAK Kwok-fung  
Hon Albert CHAN Wai-yip  
Hon LEUNG Fu-wah, MH, JP  
Hon WONG Sing-chi  
Hon Frederick FUNG Kin-kee  
Hon IP Kwok-him, JP  
Hon LAU Ping-cheung  
Hon Audrey EU Yuet-mee, SC, JP  
Hon MA Fung-kwok, JP

**Members absent :**

Hon CHAN Yuen-han, JP  
Hon LAU Wong-fat, GBS, JP  
Hon CHOY So-yuk  
Dr Hon LO Wing-lok

**Clerk in attendance :**

Mrs Justina LAM Clerk to the House Committee

**Staff in attendance :**

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

Mr LAW Kam-sang, JP	Deputy Secretary General
Ms Pauline NG	Assistant Secretary General 1
Mr Ray CHAN	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)
Miss Kathleen LAU	Chief Public Information Officer
Miss Becky YU	Chief Assistant Secretary (1)1
Ms Connie SZETO	Chief Assistant Secretary (1)4
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Ms Bernice WONG	Assistant Legal Adviser 1
Miss Connie FUNG	Assistant Legal Adviser 3
Mr Stephen LAM	Assistant Legal Adviser 4
Miss Monna LAI	Assistant Legal Adviser 7
Miss Betty MA	Senior Assistant Secretary (2)1

---

Action

**I. Confirmation of the minutes of the 18th meeting held on 7 March 2003**  
*(LC Paper No. CB(2) 1437/02-03)*

The minutes were confirmed.

**II. Matters arising**

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

---

Consultation with Members on Budget

2. The Chairman said that CS had earlier undertaken to convey to the Chief Executive (CE) the point raised by Ms Emily LAU that CE had selectively met with some Members, and not others, to discuss the Budget. The Chairman added that Ms LAU had requested her to ask CS what CE's response was.

3. The Chairman informed Members that CS had said that CE had noted the point raised by Ms Emily LAU.

4. Ms Emily LAU asked whether CE's response meant that that he agreed with her.

Action

5. The Chairman reiterated that CS had merely said that CE had noted Ms LAU's point. CS did not say whether CE agreed or disagreed with Ms LAU. The Chairman suggested that Ms LAU might wish to raise her point with CE directly in other forums.

Government Legislative Programme

6. The Chairman said that to follow up Miss Margaret NG's query raised at the last House Committee meeting, she had asked CS why the Building Management (Amendment) Bill and the Independent Police Complaints Council Bill had not been included in the updated Government Legislative Programme. CS had explained that the Administration considered it necessary to conduct further consultation on the Building Management (Amendment) Bill. As regards the Independent Police Complaints Council Bill, the Administration had to give further thoughts to the operational details of the independent secretariat, especially the resource implications.

7. The Chairman further said that she had reminded CS of the need to avoid "bunching" in the introduction of bills.

Policy on foreign domestic helpers

8. The Chairman said that she had briefed CS on Miss Margaret NG's query regarding the legality of imposing a levy of \$400 for the employment of foreign domestic helpers under the Employees Retraining Ordinance. CS had responded that the Administration was of the view that it was appropriate to impose the levy under the Employees Retraining Ordinance.

9. The Chairman pointed out that the Panel on Manpower held a special meeting on 12 March 2003 to discuss the policy on foreign domestic helpers. The Panel would follow up the queries and issues raised by Members at the meeting, including the appropriateness to impose the \$400 levy under the Employees Retraining Ordinance.

10. The Legal Adviser said that the Administration had been requested to provide a written response to points raised at the Panel meeting, including the provision of Department of Justice's advice on the legality of imposing the \$400 levy under the Employees Retraining Ordinance and relevant policy considerations.

11. Miss Margaret NG asked when the request was made and whether the response had been received. The Legal Adviser informed Members that the request was issued on 14 March 2003. The Administration's response was still awaited, and it would be circulated to Members for consideration once available.

Action

Action

**III. Business arising from previous Council meetings**

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

---

**(i) Law Amendment and Reform (Miscellaneous Provisions) Bill 2003**

*(LC Paper No. LS 68/02-03)*

12. The Legal Adviser said that despite the reference of miscellaneous provisions in the short title of the Bill, some of the amendments proposed in this Bill were not purely technical in nature but concerned policy issues.

13. The Legal Adviser further said that the major proposals in the Bill had been discussed by the Panel on Administration of Justice and Legal Services (AJLS Panel) at seven of its meetings between November 2001 and February 2003.

14. The Legal Adviser further informed Members that no legal difficulties had been identified. The Legal Adviser added that the Legal Service Division was studying the Administration's response to a number of technical and drafting points. If those points could be resolved satisfactorily, the Bill would, subject to Members' views, be ready for resumption of Second Reading debate.

15. Miss Margaret NG said that the legal profession considered that the Bill should be enacted as soon as possible. The legal profession was particularly concerned about the proposed amendments to the Conveyancing and Property Ordinance, as many property transactions had been held up because of problems with the execution of conveyancing documents by corporations. Miss NG further said that as the major proposals in the Bill had been discussed by the AJLS Panel on seven occasions, she personally did not consider a Bills Committee necessary.

16. Members agreed that a Bills Committee to study the Bill was not necessary.

17. The Chairman said that as the Legal Service Division needed time to study the Administration's response to a number of technical and drafting points, a decision on whether the Bill was ready for resumption of Second Reading debate should be deferred to a future meeting, pending the Legal Service Division's further report. Members agreed.

**(ii) Construction Workers Registration Bill**

*(LC Paper No. LS 67/02-03)*

Action

18. The Legal Adviser explained that the Bill sought to make provisions for the registration and regulation of construction workers personally carrying out construction work on a construction site, and the establishment of a Construction Workers Registration Authority.

19. The Legal Adviser said that the Panel on Planning, Lands and Works and the Panel on Manpower were consulted on 3 October 2002 and 23 January 2003 respectively. While Panel members generally supported the proposed registration system, concerns were raised on the proposed registration requirements (e.g. the minimum number of years of experience for exemption to be granted), the implementation date and other related issues.

20. Mr CHAN Kwok-keung said that a Bills Committee should be formed to study the Bill given the various concerns expressed on the Bill.

21. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join : Ms Cyd HO, Mr LEE Cheuk-yan, Mr CHAN Kwok-keung, Ms LI Fung-ying and Mr LEUNG Fu-wah.

22. The Chairman added that the Bills Committee would be placed on the waiting list.

**(iii) The Bank of East Asia, Limited (Merger of Subsidiaries) Bill**  
*(LC Paper No. LS 74/02-03)*

23. The Legal Adviser said that this was a Member's Bill introduced by Mr NG Leung-sing with the consent of CE. The Bill sought to provide for the vesting in The Bank of East Asia, Limited of the undertakings of East Asia Credit Company Limited and East Asia Finance Company, Limited, and for other related purposes.

24. The Legal Adviser further said that the Bill was discussed by the Panel on Financial Affairs on 16 December 2002. The Legal Adviser added that the legal and drafting aspects of the Bill were in order.

25. Members did not raise objection to the resumption of the Second Reading debate on the Bill.

**(b) Legal Service Division report on subsidiary legislation gazetted on 5 March 2003 and tabled in Council on 12 March 2003**  

---

*(LC Paper No. LS 73/02-03)*

Action

26. The Legal Adviser said that only one item of subsidiary legislation, the Public Revenue Protection (Revenue) Order 2003, was gazetted on 5 March 2003 and tabled in Council on 12 March 2003.

27. The Legal Adviser explained that the Order was a temporary measure taken under the Public Revenue Protection Ordinance to give effect to the proposed increase in motor vehicles first registration tax as set out in the Budget Speech delivered by the Financial Secretary (FS) on 5 March 2003. The bill which would give long-term effect to the revenue proposal would be introduced into the Legislative Council (LegCo) following normal legislative procedures.

28. The Legal Adviser further said that the Order came into force at 2:30 pm on 5 March 2003 and would be in force for a maximum of four months. The Legal Adviser pointed out that if the proposed increase in motor vehicles first registration tax was rejected by LegCo, any excess of tax paid under the Order over that payable immediately after the expiry of the Order would be repaid to the person who paid the same.

29. Ms Emily LAU enquired about the procedures for amending the Order. The Legal Adviser explained that the power of CE in Council under section 2 of the Public Revenue Protection Ordinance was to make an order giving full force and effect of law to all the provisions of the bill. Consistent with this power, Members only had the power to repeal the Order and not amend the provisions therein. Should LegCo decide to exercise the power under section 34(2) of the Interpretation and General Clauses Ordinance, the repeal of the Order had to be made by 9 April 2003, or by 30 April 2003 if the scrutiny period was extended by a resolution. The Legal Adviser added that the deadline for notice of a motion to repeal the Order at the Council meeting on 9 April 2003 was Tuesday, 1 April 2003.

30. Responding to Mr CHAN Kam-lam, the Legal Adviser said that if the Order was repealed, the increase in motor vehicles first registration tax would cease to be in force, i.e. the tax rates would revert to the levels before the Order came into force on 5 March 2003.

31. Ms Emily LAU said that a subcommittee should be formed to study the proposed increase in motor vehicles first registration tax in detail. Ms Miriam LAU expressed support.

32. Mr CHAN Kam-lam said that a subcommittee formed to study an item of subsidiary legislation would normally focus on the implementation details of the relevant proposals as well as the drafting and legal aspects of the subsidiary legislation. As Members only had the power to repeal and not amend the Order, he did not consider a subcommittee necessary. Mr CHAN

Action

added that he, however, did not have strong views against forming a subcommittee.

Action

33. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join : Ms Cyd HO, Mrs Selina CHOW, Mr SIN Chung-kai, Ms Miriam LAU, Ms Emily LAU and Ms Audrey EU.

**(c) Legal Service Division report on subsidiary legislation gazetted on 7 March 2003 and tabled in Council on 12 March 2003**  
*(LC Paper No. LS 75/02-03)*

34. The Legal Adviser said that eight items of subsidiary legislation were gazetted on 7 March 2003 and tabled in Council on 12 March 2003.

35. Referring to the six Orders on schedules of public bus routes made under the Public Bus Services Ordinance, the Legal Adviser explained that these Orders replaced the previous Orders made in 2001 to update the schedules of bus routes operated by the public bus companies. The Legal Adviser added that these Orders would come into operation on 2 May 2003.

36. The Legal Adviser said that the Immigration (Anchorages and Landing Places) (Amendment) Order 2003 sought to amend the boundary of the Western Immigration Anchorage to make it the same as that of the Western Quarantine Anchorage under item 1(b) of the Seventh Schedule to the Shipping and Port Control Regulations (Cap. 313 sub. leg.).

37. As regards the Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2003, the Legal Adviser explained that the Notice added two organisations to the list of training bodies capable of providing or conducting retraining courses for the purposes of the Employees Retraining Ordinance.

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

39. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 9 April 2003, or 30 April 2003 if extended by resolution.

**(d) Legal Service Division report on subsidiary legislation gazetted on 14 March 2003 and tabled in Council on 19 March 2003**  
*(LC Paper No. LS 79/02-03)*

40. The Legal Adviser said that two items of subsidiary legislation were gazetted on 14 March 2003 and tabled in Council on 19 March 2003.

Action

41. Regarding the Import and Export (General) Regulations (Amendment of Seventh Schedule) (No. 3) Notice 2003, the Legal Adviser explained that the Notice added two countries or places, for which the Kimberley Process Certification Scheme was effective, to the Seventh Schedule to the principal Regulations.

42. The Legal Adviser said that the Inland Revenue (Amendment) Ordinance 2003 (5 of 2003) (Commencement) Notice 2003 appointed 17 April 2003 as the day on which the Inland Revenue (Amendment) Ordinance 2003 (5 of 2003) would come into operation.

43. The Legal Adviser further said that the Amendment Ordinance provided the legal basis for the use of password for authentication and fulfilment of the signature requirement for tax returns filed under the Government's Electronic Service Delivery Scheme and the filing of tax returns by telephone. The Legal Adviser added that the Amendment Ordinance was passed in February 2003, after scrutiny by a Bills Committee.

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

45. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 9 April 2003, or 7 May 2003 if extended by resolution.

**IV. Business for the Council meeting of 2 and 3 April 2003**

**(a) Questions**  
*(LC Paper No. CB(3) 496/02-03)*

46. The Chairman said that 20 written questions had been scheduled for the Council meeting of 2 and 3 April 2003.

**(b) Bills - resumption of debate on Second Reading**

**Appropriation Bill 2003**

47. The Chairman reminded Members that in accordance with Rule 36(5) of the Rules of Procedure, Members would each have a maximum of 15 minutes to speak.

Action

**V. Advance information on business for the Council meeting on 9 April 2003**

**Bills - First Reading and moving of Second Reading**

**Construction Industry Levy (Miscellaneous Amendments) Bill 2003**

48. The Chairman said that the Bill would be introduced into the Council on 9 April 2003 and considered by the House Committee on 11 April 2003.

**VI. Report of Bills Committee and subcommittee**

**(a) Position report on Bills Committees/subcommittees**  
*(LC Paper No. CB(2) 1516/02-03)*

49. The Chairman said that there were 15 Bills Committees and eight subcommittees in action, as well as two Bills Committees, including the Bills Committee on the Construction Workers Registration Bill formed under agenda item III(a)(ii) above, on the waiting list.

50. Miss Margaret NG, Chairman of the Bills Committee on Interest on Arrears of Maintenance Bill 2001, said that she would like to report the concern of the Bills Committee about the Administration's delay in providing papers and draft Committee Stage amendments (CSAs) for discussion at meetings, and in following up issues raised by the Bills Committee. Miss NG further said that the delay had affected the scrutiny work of the Bills Committee. For instance, the Bills Committee planned to conclude its work at the meeting on 21 March 2003 when the fourth draft of certain CSAs and the Administration's response to the Bills Committee's suggestion of developing a computer software for the calculation of interest on maintenance arrears would be discussed. However, no paper on the Bills Committee's suggestion was provided by the Administration for the meeting. As for the draft CSAs, the English version was tabled at the meeting while the Chinese version and the marked-up copy showing the changes made to the third draft of the CSAs were not available. As a result, another meeting had to be scheduled.

51. Miss Margaret NG said that while the delay could be because there were internal communication problems within the Home Affairs Bureau or the implementation details had not yet been worked out, she did not wish to speculate what the reason was.

52. The Chairman said that the Administration should have alerted the Bills Committee and proposed that the relevant meeting be postponed. Miss NG expressed agreement and added that the Bills Committee was prepared to give

Action

the Administration more time if it was not ready to revert to Members. Miss NG requested the Chairman to convey to CS the Bills Committee's concern and also remind the Administration to provide papers and follow up issues raised by committees in a timely and efficient manner.

53. The Chairman suggested that in addition to raising the matter to CS, she would formally write to request the Administration to follow up the matter. Members agreed.

**(b) Report of the Subcommittee on Trade Marks Rules and Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003**  
*(LC Paper No. CB(1) 1156/02-03)*

54. Miss Margaret NG, Chairman of the Subcommittee, said that the Subcommittee had completed its scrutiny work, and the deliberations of the Subcommittee were detailed in the report.

55. Miss Margaret NG informed Members that to address the concerns raised by Members about the non-extendible time limits stipulated in Rules 13, 14, 16 and 17 of the Trade Marks Rules, the Administration had agreed to propose amendments. Rules 13 and 14 would be amended to the effect that an extension of a period of three months each would be granted in certain specified circumstances. As regards Rules 15 and 16, they would be amended to provide for a one-off two-month extension for the filing of notice of opposition or counter-statement. Miss NG added that the Subcommittee and the practitioners supported the amendments.

56. Miss NG further said that the Administration would move a motion on the amendments at the Council meeting of 2 April 2003.

57. The Chairman reminded Members that the deadline for giving notice of amendments was 26 March 2003.

**(c) Report of the Subcommittee on Import and Export (General) (Amendment) Regulation 2003, Import and Export (Registration) (Amendment) Regulation 2003, Import and Export (Removal of Articles) (Amendment) Regulation 2003, Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003, Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2003 and Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (Commencement) Notice 2003**  
*(LC Paper No. CB(1) 1158/02-03)*

58. Mr Kenneth TING, Chairman of the Subcommittee, said that the

Action

Subcommittee had completed scrutiny of the six items of subsidiary legislation and its deliberations were detailed in the report.

Action

59. Mr Kenneth TING further said that concern had been raised on the disagreement between some users and Tradelink over the fees to be charged for the electronic services for processing cargo manifest (EMAN). According to the Administration, Tradelink had secured the acceptance by air, rail and river carriers of the proposed fees to be charged. As regards ocean carriers, Tradelink had reached an agreement with 80 major ocean carriers. A subcommittee member had, however, pointed out that river carriers were not entirely satisfied with the proposed fees. Given that many of the river carriers were small and medium enterprises which might not be ready to adopt EMAN, consideration should be given to extending the transitional period in which both paper and electronic submission of cargo manifests were allowed to the end of 2003.

60. Mr Kenneth TING pointed out that the Administration had responded that the duration of the transitional period would depend on the readiness of the industry. In deciding when to end the transitional period, the Commissioner of Customs and Excise would consider the take-up rate by users of the EMAN service, the operation of the system and the views of the trade. The end date of the transitional period would be specified by the Commissioner by notice in the Gazette, and the notice was subsidiary legislation subject to negative vetting by LegCo.

61. Mr Kenneth TING informed Members that questions had been raised on the legal status of the notice, notification or information given under section 20A or 20B of the Import and Export Ordinance consequent upon the removal of the requirement for an officer's signature in the proposed Schedules 1 and 2 to the Import and Export (Removal of Articles) (Amendment) Regulation 2003. The Administration had explained that the signature was not necessary since a built-in mechanism was in place to establish accountability and ensure data accuracy.

62. Mr Kenneth TING said that question had also been raised on how the Administration could ensure that Tradelink would abide by its contractual obligation to adhere to the use of digital signature. According to the Administration, the Government required all electronic service providers to adopt a reliable authentication system. Should Tradelink wish to make any changes to the digital signature requirement, prior consent of the Government was required.

63. Mr TING added that the scrutiny period of these four Regulations and two Commencement Notices had been extended to 9 April 2003, and the deadline for giving notice of amendments, if any, was 1 April 2003.

64. Ms Miriam LAU said that some ocean carriers were dissatisfied with the proposed fees to be charged by Tradelink for EMAN. She would closely monitor the situation and raise the issue again, if necessary, when the

Action

electronic submission of cargo manifest became mandatory.

**(d) First report of the Subcommittee on subsidiary legislation relating to Village Representative elections**  
*(LC Paper No. CB(2) 1531/02-03)*

65. Mr Andrew WONG, Chairman of the Subcommittee, reported that the Subcommittee had completed scrutiny of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation and the Village Representative Election (Registration of Electors) (Appeals) Regulation, and recommended that they be supported. Mr WONG also informed Members that three more items of subsidiary legislation relating to Village Representative elections would be introduced into LegCo.

66. Regarding the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation, Mr Andrew WONG said that since the provision of an address was not part of the eligibility criteria for registration in the Indigenous Villages and Composite Indigenous Villages register (IV and CIV register), the address of an applicant for elector registration for Indigenous Inhabitant Representative elections would not be entered in the register if this was not provided. In addition, provision of the name of the applicant in Chinese was not mandatory. Mr WONG further said that the Subcommittee had expressed concern that the entries in the IV and CIV register might not be adequate for identification purposes. The Administration had undertaken to make administrative arrangements to follow up with an applicant for elector registration to ensure that either the residential or postal address of the applicant, and his name in Chinese, if available, would be shown on the register.

67. Mr Andrew WONG added that the legal adviser to the Subcommittee had observed that a reference to section 24 of the Village Representative Election Ordinance was included by mistake in section 32(7) and (8) of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation in respect of offences and penalties, as there was no prescribed offence under that provision in the principal Ordinance. The Administration had proposed that as amendments to delete the reference were of a technical nature, they would be made in the next legislative exercise to be conducted by the Department of Justice for the purpose of making miscellaneous amendments to the Laws of Hong Kong.

68. As regards the Village Representative Election (Registration of Electors) (Appeals) Regulation, Mr Andrew WONG said that the provisions on the functions and duties of the Revising Officers and appeal procedures were similar to those in the Registration of Electors (Appeals) Regulation relating to the appeals against decision of the Electoral Registration Officer in LegCo and

Action

District Council elections.

69. Mr Andrew WONG pointed out that it was the practice in previous Village Representative elections for electors to be identified by the part of the village in which they resided or by their respective clans. In addition, if a village had two or more Village Representatives, they could be elected separately. However, under Schedule 2 to the Village Representative Election Ordinance, the names of all electors in the same village were shown in the IV and CIV register in a single division without further groupings. Mr WONG further pointed out that a spouse or a surviving spouse of an indigenous inhabitant was eligible to be registered as an elector for Indigenous Inhabitant Representative elections. However, it would be difficult to ascertain whether the indigenous inhabitant was in fact an indigenous inhabitant, if only the name of the spouse was shown on the register. Mr WONG said that he would raise these two issues with the Administration at future meetings of the Subcommittee with a view that they would be followed up by the Panel on Home Affairs if necessary.

**(e) Report of the Subcommittee to study the proposed resolutions under section 48A of the Employees' Compensation Ordinance and section 40 of the Pneumoconiosis (Compensation) Ordinance**  
*(LC Paper No. CB(2) 1529/02-03)*

70. Mr Kenneth TING, Chairman of the Subcommittee, explained that the two proposed resolutions sought to revise the maximum daily rates of reimbursement for medical expenses under section 48A of the Employees' Compensation Ordinance (ECO) and section 40 of the Pneumoconiosis (Compensation) Ordinance (PCO), to coincide with the new fee structure for public health care services to be implemented on 1 April 2003.

71. Mr Kenneth TING said that some members had expressed concern about the implications of the proposed adjustment in medical expenses payable under the ECO and PCO on the premium level of employers' compensation insurance policies. According to the information provided by the Administration, the revision of the fee structure of public health care services and the adjustment of the levels of medical expenses under the ECO would have an impact on the claim costs by about 4%. The actual impact on insurance premium would, however, be subject to the market mechanism in the light of individual employer's claims experience and individual insurer's pricing policy. The Administration had also advised that some individual insurance companies might choose to absorb the claim cost instead of raising the insurance premium, having regard to individual employer's claim history.

72. Mr Kenneth TING further said that as the Secretary for Economic Development and Labour had withdrawn his notice for moving the proposed

Action

resolutions at the Council meeting on 19 March 2003, the proposed resolutions could not come into operation on 1 April 2003. According to the Administration, a small number of employees who required medical treatment due to pneumoconiosis or injuries at work during the interim period might not be able to claim full reimbursement of the medical expenses incurred. For these cases, the Administration was exploring the possibility for some charitable funds to provide financial assistance, where necessary, to the employees or pneumoconiotics concerned.

73. Mr Kenneth TING said that the Subcommittee supported the two proposed resolutions. Mr TING further said that to minimise the impact on injured employees and pneumoconiotics after the new medical fees became effective on 1 April 2003, the Administration had proposed to move the two proposed resolutions at the Council meeting commencing on 2 April 2003, and to make a request to the President for the 12-day notice requirement to be waived. Mr TING added that the Subcommittee had recommended that the Administration's proposal be supported. Members expressed support for the Administration's proposal.

**VII. Follow-up work in respect of the incident of the Financial Secretary purchasing a vehicle shortly before the announcement of the increase in motor vehicles first registration tax**

*(Dr Hon YEUNG Sum's letter dated 10 March 2003 to the Chairman of the House Committee)*

**(a) Dr Hon YEUNG Sum's motion**

"That this Committee demands that the Government should appoint an independent Commission of Inquiry to inquire into whether the Financial Secretary's purchase of a car has constituted a breach of the Code for Principal Officials under the Accountability System and affected the integrity of the Government."

*(Dr Hon YEUNG Sum's letters dated 17 and 20 March 2003 to the Chairman of the House Committee)*

74. The Chairman referred Members to Dr YEUNG Sum's letters dated 10, 17 and 20 March 2003, and Miss Margaret NG's letter dated 19 March 2003. The Chairman further drew Members' attention that a copy of Ms Emily LAU's letter dated 18 March 2003 to CE was sent to Members on 19 March 2003 and also tabled at the meeting. The Chairman pointed out that the Administration had just provided a response to certain matters and queries raised by Members at the meeting of the Panel on Constitutional Affairs (CA Panel) on 17 March 2003, and the response had been circulated to all Member

Action

vide LC Paper No. CB(2) 1571/02-03.

Action

75. The Chairman said that to facilitate discussion, she would invite Members to express their views separately on the respective motions proposed by Dr YEUNG Sum and Miss Margaret NG.

76. Dr YEUNG Sum said that on behalf of Members belonging to the Democratic Party (DP), he would like to propose a motion at this meeting that the House Committee should demand the Government to appoint a Commission of Inquiry to inquire into whether FS's purchase of a car constituted a breach of clauses 1.2(6) and 1.2(7) of the Code for Principal Officials under the Accountability System. Dr YEUNG explained that he had revised the wording of his motion given in his letter dated 17 March 2003 in view of recent developments of the incident. Dr YEUNG added that the revised wording of his motion was set out in his letter dated 20 March 2003.

77. Dr YEUNG said that the Government should appoint a Commission of Inquiry to inquire into FS's purchase of a car shortly before the increase in the motor vehicles first registration tax. This was because DP had doubts about FS's integrity given that FS had not disclosed all the relevant information in his first report dated 10 March 2003 to CE. Dr YEUNG pointed out that certain important facts were only revealed in FS's second report dated 13 March 2003 to CE. For instance, it was in his second report, and not the first report, that FS informed CE that at its meeting on 14 January 2003, the Budget Strategy Group (BSG) had considered a list of 18 revenue measures/options, and agreed to review several items including the first registration tax revision. Dr YEUNG was of the view that FS had been selective in providing information in his first report to CE.

78. Dr YEUNG Sum pointed out that at the meeting of the Executive Council (ExCo) on 5 March 2003, FS had still failed to declare his purchase of a new car before the tax increase, even after Dr E K YEOH, Secretary for Health, Welfare and Food (SHWF), had reported the purchase of a car. Dr YEUNG said that it was only fair to the community that a Commission of Inquiry, chaired by a judge, should be appointed to inquire into the incident, and to establish whether the Government's credibility had been affected by what FS had done.

79. Dr YEUNG Sum further said that although the Administration had stated in paragraph 6 of its response (LC Paper No. CB(2) 1571/02-03(01)) that CE had decided, in all circumstances, not to appoint a statutory or non-statutory committee to inquire into the matter, he hoped that his motion would still be discussed at this meeting.

80. Mr Albert CHAN said that although some Members might have already made up their minds about the incident, it was important to look at how the incident affected the overall operation of the Government and its systems.

Action

Mr CHAN further said that the Government had given the public the impression that in considering disciplinary actions against misconduct, it was harsh on the junior staff but lenient to the senior officials. Mr CHAN pointed out that there had been cases where junior government officers who were involved in minor misconduct, such as brief absence from duty, were warned that they could be removed from office. Mr CHAN said that it would be unfair to the 170 000 civil servants, if the Government took a lenient approach in FS's case.

81. Mr CHEUNG Man-kwong said that after studying FS's two reports to CE, and CE's letter to FS, he considered that a Commission of Inquiry should be appointed as some important pieces of information were missing in these documents. Mr CHEUNG pointed out that CE had mentioned in his letter dated 15 March 2003 to FS that FS had offered to resign on 10 March, but he had not accepted FS's resignation. However, it could not be seen from FS's two reports to CE that FS had actually tendered his resignation. Mr CHEUNG said that he would like to know the actual sequence of events relating to when and how FS offered his resignation.

82. Mr CHEUNG further pointed out that in his first report to CE, FS had only mentioned the BSG meeting on 11 February 2003, but not the one on 14 January 2003 at which revenue proposals including the motor vehicles first registration tax were reviewed. In addition, when FS met with the press on 9 March 2003, he did not tell reporters that the possibility of an increase in the first registration tax had been considered by the BSG as early as 31 October 2002. Mr CHEUNG added that it was essential that FS should explain why there were such important omissions in his earlier public statements about the incident.

83. Referring to Mr CHEUNG Man-kwong's queries, Ms Emily LAU said that FS had explained at the CA Panel meeting on 17 March 2003 that he had forgotten about the BSG discussions on the first registration tax when making his earlier statements, but he had provided supplementary information in his reports. Ms LAU further said that the Government should provide proof that FS had actually tendered his resignation, e.g. copies of other correspondence between CE and FS, if any.

84. Ms Emily LAU said that a Commission of Inquiry should be appointed to inquire into the matter; otherwise, the matter would be left to be judged by the media, which was inappropriate. Ms LAU added that in simply relying on FS's two written reports which did not provide all the relevant facts, CE had been too hasty in coming to a conclusion on the matter.

85. Referring to paragraph 3 of the Administration's response (LC Paper No. CB(2) 1571/02-03(01)), Ms LAU said that the Administration had not

Action

mentioned at the CA Panel meeting on 17 March 2003 that CE had sought legal advice from the Department of Justice before coming to his conclusion. Ms LAU requested that copies of the request for legal advice and the legal advice should be provided to Members. Ms LAU pointed out that if a Commission of Inquiry was appointed, all such missing facts and information could be revealed. Ms LAU further said that if Members did not support the appointment of a Commission of Inquiry, any requests for further information should still be followed up.

86. Mr IP Kwok-him said that he did not support Dr YEUNG's proposal. Mr IP further said that there was detailed discussion on the incident at the CA Panel meeting on 17 March 2003, and Members had also sought clarification on the information provided by the Administration. Mr IP pointed out that CE had already come to the conclusion that FS had breached parts of the Code for the Principal Officials under the Accountability System, and CE was of the view that what FS had done amounted to gross negligence, warranting a formal criticism from CE but not resignation.

87. Mr IP said that Members belonging to the Democratic Alliance for the Betterment of Hong Kong were of the view that what FS had done constituted gross negligence. However, they did not consider that FS had acted out of greed to save a few hundred thousand dollars or there were problems with FS's personal integrity. Mr IP further said that the present priority should be on getting Hong Kong through the difficult times, such as putting in place arrangements to strengthen economic ties with Guangdong, and minimising the adverse impact of the war between the United States (US) and Iraq on Hong Kong's economy.

88. Mr LEE Cheuk-yan said that the incident had caused the public to question the integrity of FS and the Government led by CE, and had affected public confidence. Mr LEE further said that it was only fair to both FS and the public that an independent inquiry into the matter should be conducted, and that FS might be exonerated from any wrongdoings upon conclusion of the inquiry. Mr LEE added that Dr YEUNG Sum's proposal, which was only a mild measure to address wide public concern over the incident, should be supported.

89. Mr LEE pointed out that according to the Administration's response (LC Paper No. CB(2) 1571/02-03(01)), the BSG had discussed the first registration tax at its meetings on 31 October 2002 and 14 January 2003. Mr LEE asked whether LegCo could obtain the relevant papers and minutes of the BSG meetings, and those of the ExCo meetings on 5 and 11 March 2003 by exercising the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance.

Action

90. The Chairman advised that Mr LEE's point would be dealt with after Members had taken a decision on the respective motions proposed by Dr YEUNG Sum and Miss Margaret NG.

Action

91. Referring to the views expressed by Mr IP Kwok-him, Mr CHEUNG Man-kwong said that he failed to see how the appointment of a Commission of Inquiry to inquire into the incident would have any impact on Hong Kong's economy. Mr CHEUNG further said that instead of relying on the Administration to provide further information in a piecemeal fashion, an impartial inquiry would reveal the full picture of the incident, and whether FS's integrity was in question. Mr CHEUNG also shared Ms LAU's view that to simply rely on the incomplete information provided in FS's two written reports, CE had been too hasty in coming to a conclusion on the incident.

92. Mr Eric LI said that there were different bodies of opinion in the community about the incident, and many accountants had reflected to him that the matter should be concluded as early as possible. Mr LI further said that Hong Kong was going through very difficult times, and the priority should be on dealing with the deficit budget, the outbreak of atypical pneumonia, and the impact of the war between US and Iraq on Hong Kong's economy. Mr LI reiterated that professionals and the business sector hoped that the matter could be settled soon, so that everyone could get on with their normal business.

93. Mr Eric LI added that while he had no objection to requests for further information made by some Members, he considered that the Administration had been very cooperative in attending the CA Panel meeting on 17 March 2003 and in providing information to Members. Mr LI reckoned that the Administration had provided 90%, if not all, of the relevant information about the incident. He therefore did not consider it necessary for the Council to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance to obtain such information. Mr LI pointed out that from his long experience serving on the Public Accounts Committee, there would be difficulties in obtaining ExCo papers. Mr LI added that a Commission of Inquiry would not necessarily be able to reach a more useful conclusion on the incident.

94. Mr Martin LEE said that FS apparently did not consider that there was any conflict of interest in his purchasing a new car shortly before the increase in the motor vehicles first registration tax. This was because in his two reports to CE, FS had only referred to the incident as a "perceived" conflict of interest.

95. Mr Martin LEE also expressed doubts as to whether FS had actually offered to resign. Mr LEE pointed out that according to the chronology of events on FS's purchase of a car, FS only told CE around noontime on 10 March 2003 that he was "willing to resign if necessary", and he "decided to formally tender resignation" after further reflection that evening, but there was no mention of his resignation in his second report to CE on 13 March 2003.

Action

Mr LEE further said that under normal circumstances, a subordinate would tender his resignation in writing to the supervisor. In FS's case, it seemed strange that FS did not submit his resignation in writing, but instead CE recorded FS's intention to resign in CE's letter dated 15 March 2003 to FS. Mr LEE added that he and his fellow legal professionals found it difficult to accept that FS had actually tendered his resignation and CE had not accepted FS's resignation.

96. Mr Martin LEE further said that he would like to know the specific matters on which CE had sought legal advice from the Department of Justice, and details of the legal advice given to CE.

97. Mr James TO said that he did not agree with Mr Eric LI that the Administration had already provided 90% of the information on the incident. Mr TO considered that there were still many unanswered queries, and an independent inquiry would assist Members and the public in finding out whether FS's purchase of a car before the tax increase amounted to gross negligence or a deliberate act to evade tax. For instance, FS had explained at the CA Panel meeting on 17 March 2003 that he had not related his purchase of a car to his official duty of considering an increase in the first registration tax. However, according to some media reports, a staff member of a car company had actually asked FS about the first registration tax, when FS visited the car company to look at new cars in January 2003. Mr TO pointed out that if a Commission of Inquiry was appointed, this piece of very useful information could be substantiated or otherwise by inviting the staff member of the car company to give evidence before the Commission.

98. Mr TO pointed out that it was also not known whether CS, who was Acting CE on 5 March 2003, had reminded principal officials to declare any possible conflict of interest at the ExCo meeting on 5 March 2003, and whether any other principal officials had declared interest at that meeting. He would also like to know whether it was FS himself who had, at the ExCo meeting on 11 March 2003, questioned whether it was necessary for SHWF to make a declaration of his purchase of a new car. Mr TO considered that such information was crucial to judging whether FS had a "guilty mind", i.e. whether FS had acted intentionally to evade tax, when he purchased a new car in January 2003. Mr TO stressed that it was in the public interest to obtain the information by way of summons issued by LegCo using powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance or by a Commission of Inquiry appointed to inquire into the incident.

99. Mr HUI Cheung-ching said that the matter had been discussed in detail for almost three hours at the CA Panel meeting on 17 March 2003. Mr HUI further said that Members belonging to the Hong Kong Progressive Alliance did not consider it necessary to appoint a Commission of Inquiry to inquire

Action

into FS's purchase of a car, as CE had already come to the conclusion that what FS had done amounted to gross negligence. Mr HUI pointed out that CE had accepted FS's explanation that he had no intention of evading tax, and it was more important for FS to focus on getting the Budget passed by the Council, and implementing the Budget proposals.

100. Mr Andrew WONG, Chairman of the CA Panel, said that he had ruled Dr YEUNG Sum's motion on the appointment of a Commission of Inquiry out of order when Dr YEUNG proposed the motion at the CA Panel meeting on 17 March 2003. Mr WONG further said that he had advised Dr YEUNG to pursue his motion at a meeting of the House Committee or the Council, because the CA Panel should only deal with issues of policy of the accountability system, and not matters relating to the conduct of individual principal officials under the accountability system. Mr WONG added that he had made it clear at the CA Panel meeting on 17 March 2003 that the meeting was to provide a forum for FS to explain the incident and for Members to seek clarification from FS. The Administration had also provided supplementary information in response to certain matters and queries raised by Members at that meeting.

101. Mr Andrew WONG said that he shared the view of some Members that the Administration had provided information in a piecemeal fashion, and that FS's two reports to CE on 10 and 13 March 2003 had raised some important questions that should be answered. For instance, FS's offer of resignation was a critical piece of information, but it was nowhere mentioned in FS's two reports. Mr WONG further said that he agreed with Ms Audrey EU's analysis made at the CA Panel meeting on 17 March 2003 that the incident could constitute the common law offence of misconduct in public office.

102. Mr WONG was of the view that it was necessary to conduct an inquiry, as questions and doubts about the incident should not be left unanswered. However, as he had said in a recent radio interview, the matter should be brought to an end as soon as possible, hence a Commission of Inquiry might not be the best option. He was therefore inclined not to support the appointment of a Commission of Inquiry, but he would like to listen to the views of other Members first before taking a decision on Dr YEUNG's motion.

103. Mr Albert HO pointed out that a Commission of Inquiry could work very efficiently. It would only be fair to FS and the community that an inquiry into the incident should be independent, impartial and non-political. Mr HO said that the incident was not just about FS's integrity, it also had implications on the operation of the accountability system for principal officials. If FS had not done anything wrong, he should be exonerated. However, FS must resign should the inquiry find that his integrity was in

Action

question. Mr HO added that cases involving breaches of the Code for Principal Officials under the Accountability System should be dealt with under proper procedures, and not by CE acting alone.

Action

104. Mr Albert HO further said that he could not agree to the argument that it would not be possible for a wealthy person like FS to have the motive to evade such a small amount of tax, as this implied that rich people were not capable of committing crimes involving small sums of money. Mr HO added that an independent inquiry would be able to establish whether FS's failure to disclose the purchase of a car before the tax increase was due to his negligence or other reasons, such as dishonesty or "reckless" disregard of the Code and other rules on avoidance of conflict of interest.

105. Referring to Mr Eric LI's earlier remarks, Mr LEUNG Yiu-chung said that he did not agree that the Administration had been cooperative and had provided 90% of the information on the incident. Mr LEUNG also disagreed with Mr IP Kwok-him that FS did not have any motive to evade tax. Mr LEUNG said that it would be more appropriate for a Commission of Inquiry to make the judgement after a full inquiry into the matter. He added that an independent inquiry would help restore public confidence in the integrity of the Government, and Members should support Dr YEUNG's proposal.

106. Mr NG Leung-sing said that as CE had already given his conclusion in writing, he did not see the need for CE to appoint a Commission of Inquiry to inquire into the incident. Mr NG pointed out that a complaint against FS had already been lodged with the Independent Commission Against Corruption (ICAC), and there would be technical difficulties in obtaining evidence from witnesses if the incident was under ICAC investigation. Mr NG further said that no one was disputing that FS had not declared his purchase of a new car before the increase of the first registration tax. However, the crux of the matter was whether FS had the motive or intention to evade tax, and this was very much a matter of judgement of individual Members. Mr NG added that he did not see any need to seek further information relating to the ExCo meetings on 5 and 11 March 2003, as such information was not relevant.

107. Mr NG Leung-sing asked whether it was in order for the House Committee to discuss Dr YEUNG's motion. The Legal Adviser explained that according to Rule 75(11) of the Rules of Procedure, the House Committee could consider any item relating to the business of the Council. The Chairman added that the House Committee had, on numerous occasions in the past, considered proposals from Members requesting the Government to take certain courses of actions.

108. Ms Miriam LAU said that in addition to the three-hour discussion at the CA Panel meeting on 17 March 2003, the Administration had provided supplementary information to Members, including information relating to the ExCo meetings on 5 and 11 March 2003, and FS's two written reports to CE. Ms LAU believed that based on such information, many Members had already made up their minds on the matter. Ms LAU further said that Members

Action

belonging to the Liberal Party did not consider it necessary for CE to appoint a Commission of Inquiry to inquire into FS's purchase of a car before the tax increase.

109. Dr YEUNG Sum requested that the names of Members voting on his motion be recorded.

110. The Chairman put the following motion proposed by Dr YEUNG Sum to vote:

“That this Committee demands that the Government should appoint an independent Commission of Inquiry to inquire into whether the Financial Secretary’s purchase of a car before the tax increase has constituted a breach of sections 1.2(6) and 1.2(7) in Chapter 1 of the Code for Principal Officials under the Accountability System which state respectively that ‘Principal officials shall observe the highest standards of personal conduct and integrity at all times’ and ‘Principal officials shall ensure that no actual or potential conflict arises between their public duties and their private interests’, as well as a violation of the conduct and integrity of a principal official under the accountability system.”

111. The following 21 Members voted in favour of Dr YEUNG Sum's motion:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU.

112. The following 28 Members voted against Dr YEUNG Sum's motion:

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Ir Dr Raymond HO, Mr Eric LI, Mr NG Leung-sing, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr TSANG Yok-sing, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok.

113. The Chairman declared that Dr YEUNG Sum's motion was negated.

Action

(b) **Hon Margaret NG's motion**

"That the Chief Executive Mr Tung Chee-hwa be asked to attend this Council to give an explanation on the propriety of the course of action he has adopted in the matter of the Financial Secretary's breach of Code of Conduct and to answer members' questions thereon."

*(Hon Margaret NG's letter dated 19 March 2003 to the Chairman of the House Committee)*

114. Referring to her letter dated 19 March 2003, Miss Margaret NG said that her proposal was to request CE to attend a meeting of the Council to explain the propriety of the course of action he had adopted in the matter of FS's breach of the Code for Principal Officials under the Accountability System, and to answer Members' questions.

115. Miss NG further said that she agreed with the view expressed earlier at the meeting by some Members that the matter of FS's breach of the Code should be resolved as soon as possible. However, the recent disclosure of further information had raised certain questions and doubts which needed to be answered. Miss NG believed that a personal explanation by CE at a Council meeting could help put an end to the matter.

116. Miss NG pointed out that in his letter dated 15 March 2003 to FS, CE had stated that what FS had done amounted to gross negligence, but nothing was said about FS's personal integrity. However, information made public after 15 March 2003 had cast doubts on FS's claim that he had not related the purchase of a new car in January 2003 to his official duty of considering an increase in the motor vehicles first registration tax. For instance, the chronology of events relating to discussions by the BSG on the first registration tax provided by the Administration for the CA Panel meeting on 17 March 2003 clearly indicated that the BSG had, at its meeting on 14 January 2003, agreed that the magnitude of increase in the motor vehicles first registration tax should be further reviewed. Miss NG was of the view that the purchase of a car shortly before the announcement of an increase in the motor vehicles first registration tax constituted a direct conflict of interest.

117. Miss NG further said that at the CA Panel meeting on 17 March 2003, Members raised questions on whether any principal official(s) had made a declaration of interest at the ExCo meeting on 5 March 2003, and whether the minutes of the meeting relating to the declaration, if any, were subsequently amended. After the Panel meeting, the Government made a statement confirming that apart from SHWF, no other ExCo Members had declared at the ExCo meeting on 5 March 2003 that they had ordered a private car which had not yet been registered. It was also stated that no ExCo Members had

Action

proposed at the meeting on 11 March 2003 that the minutes of the meeting on 5 March 2003 be amended. Miss NG added that it was very important for CE to let the public know what his view was in the matter of FS's breach of Code, given the disclosure of such information after 15 March 2003.

118. Miss NG pointed out that under the Securities and Futures Ordinance, which would come into operation on 1 April 2003, FS could institute proceedings before the Market Misconduct Tribunal if it appeared to FS that market misconduct, such as insider trading, had or might have taken place. Miss NG said that it would be difficult for the public to have confidence in FS undertaking such an important responsibility, if his own personal integrity was in question.

119. Miss Margaret NG reiterated that it would be in the public interest to resolve the matter of FS's breach of the Code as early as possible. It was therefore of utmost importance for CE to explain to LegCo and the public the propriety of the course of action he had taken in the matter.

120. Ms Cyd HO expressed support for Miss NG's motion. Ms HO said that when CE promulgated the introduction of the accountability system for principal officials, CE had stressed that the accountability system would improve the communication between the executive authorities and LegCo. Ms HO stressed that inviting CE to attend a LegCo meeting was nothing new. In fact, CE should make use of LegCo meetings to discuss important matters with Members, and not rely on the issuance of press releases to disseminate information to Members. Ms HO pointed out that as CE had earlier indicated that he would come to LegCo four times a year, two more CE's Question and Answer Sessions should be held in the current session. Ms HO added that to allow sufficient time for Members to ask questions, the relevant Council meeting should last for two hours, if Miss Margaret NG's proposal was agreed to.

121. Ms Cyd HO further said that Hong Kong was facing hard times, and the Government would be in a difficult position to implement new proposals if the public had doubts about the integrity of the responsible government officials. Ms HO stressed that both the Government and the community would stand to lose, if CE refused to face the public and give a full account of the incident.

122. Dr YEUNG Sum said that Members belonging to the Democratic Party supported Miss Margaret NG's motion. Dr YEUNG further said that he recalled that CE was once asked under what circumstances would he consider removing a principal official. CE had categorically responded that such action would be considered when the integrity of a principal official was in doubt.

Action

123. Dr YEUNG pointed out that CE had recently agreed to make public information relating to the declaration of interest made at the ExCo meetings on 5 and 11 March 2003. Dr YEUNG added that instead of releasing the relevant information in a piecemeal manner, CE should attend a meeting of the Council to explain to the public how he came to his conclusion about the incident, in particular, what information and evidence he had considered. Dr YEUNG stressed that the integrity of FS was crucial to the implementation of future government policies.

124. Mr James TO said that he had written two letters to CE on 18 and 19 March 2003 raising a number of queries on the press statement made by the CE's Office on the declaration of interest made in ExCo. A response was still awaited, although he had requested that it should be provided before the House Committee meeting. Mr TO further said that he supported Miss Margaret NG's proposal, as the matter was too important for questions on the matter to be answered by any person other than CE himself. Mr TO added that as CE had earlier indicated that he would come to LegCo four times a year, it was about time for the third CE's Question and Answer Session in the current session to be held.

125. Mr Martin LEE said that the incident had attracted international attention. If the matter of FS's breach of the Code was not dealt with properly and satisfactorily, FS would become a laughing-stock of the international community, and the reputation of Hong Kong and the Hong Kong Special Administrative Region Government would also be adversely affected.

126. Ms Emily LAU said that she supported Miss NG's motion. In fact, she had made a similar proposal at the CA Panel meeting on 17 March 2003, but the Administration had not responded to her proposal. Ms LAU further said that the Administration had responded selectively to some issues and queries, and not others, raised by Members at the CA Panel meeting. She considered that CE had handled the matter poorly, and he owed the public a full explanation on the course of action he had taken in the matter. Ms LAU pointed out that based on past experience, CE would still refuse to come even if Miss NG's motion was agreed to. However, as there would be two more Question and Answer Sessions to be held in the current session, CE would have to meet with Members, sooner or later.

127. Mr Albert CHAN said that the incident which started off as a "political storm" had now become a "political disaster". Given that more and more information had been released, and more and more people were found to be involved in the incident, the general public had expressed grave concern about the matter of FS's breach of the Code. Mr CHAN further said that the attendance of CE at a Council meeting would provide a forum for CE to

Action

convince the public that the matter had been handled properly and there was nothing to hide. He could not see why any Member should oppose Miss NG's motion, unless there were doubts that CE would not be able to answer Members' questions satisfactorily. In his view, the attendance of CE at a Council meeting to answer questions on the matter of FS's breach of the Code would help restore public confidence in the Government.

128. Miss Margaret NG requested the names of Members who voted be recorded. Members agreed.

129. The Chairman put the following motion proposed by Miss Margaret NG to vote:

"That the Chief Executive Mr Tung Chee-hwa be asked to attend this Council to give an explanation on the propriety of the course of action he has adopted in the matter of the Financial Secretary's breach of Code of Conduct and to answer members' questions thereon."

130. The following 20 Members voted in favour of Miss Margaret NG's motion:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Ms Emily LAU, Mr SZETO Wah, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU.

131. The following 26 Members voted against Miss NG's motion:

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Ir Dr Raymond HO, Mr Eric LI, Mr NG Leung-sing, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr TSANG Yok-sing, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok.

132. The Chairman declared that Miss Margaret NG's motion was negatived.

133. Dr YEUNG Sum informed Members that he would give notice to move a motion to seek the Council's approval for a select committee to be appointed and for the select committee to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance to

Action

inquire into the incident.

Action

134. Ms Cyd HO requested the Chairman to ask CS when the next CE's Question and Answer Session would be held. The Chairman undertook to do so.

135. Mr LEE Cheuk-yan asked whether the Administration could refuse to provide the papers and minutes of meetings of ExCo, even if the powers conferred by section 9(1) of the Legislative Council (Power and Privileges) Ordinance were invoked.

136. The Legal Adviser responded that a witness summoned under section 9(1) of the Legislative Council (Power and Privileges) Ordinance could claim immunity under certain circumstances including on the ground of public interest immunity. However, it would be too early to determine whether a witness summoned could successfully make such a claim.

137. Ms Emily LAU asked how requests for further information, such as details of the legal advice that CE had sought from the Department of Justice, should be followed up.

138. The Chairman suggested that as the supplementary information and papers were provided by the Administration in response to requests made at the meeting of CA Panel on 17 March 2003, the Panel should follow up any requests for further information. Members agreed.

139. Mr Andrew WONG said that he had no strong views on the CA Panel following up requests for further information, but he was not sure how far the Panel should follow up the matter itself.

140. The Chairman responded that the CA Panel could revert to the House Committee if it had problems in determining how far the matter should be followed up.

**VIII. Any other business**

141. There being no other business, the meeting ended at 5:16 pm.