

立法會
Legislative Council

LC Paper No. CB(2) 99/04-05

Ref : CB2/H/5/04

House Committee of the Legislative Council

**Minutes of the 3rd meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 15 October 2004**

Members present :

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
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, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP

Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent :

Hon James TIEN Pei-chun, GBS, JP
Hon Margaret NG
Hon Andrew CHENG Kar-foo
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

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
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 Pandora CHAN	Principal Council Secretary (Complaints) (Acting)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Council Secretary (2)5
Mrs Betty LEUNG	Chief Council Secretary (3)1
Ms Miranda HON	Chief Council Secretary (3)2
Miss Anita HO	Assistant Legal Adviser 2
Mr Stephen LAM	Assistant Legal Adviser 4
Ms 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 Council Secretary (2)1
Miss Lolita SHEK	Senior Council Secretary (2)7
Mr Arthur LEUNG	Senior Council Secretary (3)1
Mr Colin CHUI	Senior Council Secretary (3)2
Ms Dora WAI	Senior Council Secretary (3)3

Action

I. Confirmation of the minutes of meetings

- (a) **1st meeting held on 6 October 2004**
(LC Paper No. CB(2) 23/04-05)
- (b) **2nd meeting held on 8 October 2004**
(LC Paper No. CB(2) 24/04-05)

The two set of minutes were confirmed.

II. Matters arising

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

Chief Executive (CE)'s Question and Answer Session

2. The Chairman said that she had conveyed to CS Members' requests that each CE's Question and Answer Session should last one and a half hours and such Sessions should be held once a month. CS had responded that meetings between CE and Members were not confined to CE's Question and Answer Sessions, and CE also made efforts to meet with Members in other forums. The Chairman further said that she had asked CS to convey Members' requests to CE.

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) **Vocational Training Council (Amendment) Bill 2004**
(*LC Paper No. LS 5/04-05*)

3. The Legal Adviser explained that the Bill sought to enable the Vocational Training Council to perform its statutory functions outside Hong Kong. It also sought to provide that any one of the Deputy Chairmen could sign the statement of income and expenditure and balance sheet in the absence of the Chairman.

4. The Legal Adviser said that the Vocational Training Council (Amendment) Bill 2003 was introduced into the Legislative Council (LegCo) in the last term and a Bills Committee was formed to scrutinise the Bill. However, due to the unavailability of a Bills Committee slot, the Bill lapsed at the end of the second term of LegCo. The Bill was now re-introduced into LegCo.

5. The Legal Adviser further said that as the Bill involved certain policy and technical issues which had not been fully addressed, the Legal Service Division recommended that a Bills Committee be formed to scrutinise the Bill.

6. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr Howard YOUNG and Mr WONG Kwok-hing.

7. The Chairman said that the Bills Committee could commence work immediately.

(ii) **Construction Industry Council (No. 2) Bill**
(*LC Paper No. LS 6/04-05*)

8. The Legal Adviser said that the Construction Industry Council Bill was introduced into LegCo in the last term, and a Bills Committee was formed. However, due to the unavailability of a Bills Committee slot, the Bill lapsed at the end of the second term of LegCo. The Bill was now re-introduced into LegCo.

9. The Legal Adviser further said that the Bill mainly sought to provide for the establishment of a statutory body to be known as the Construction Industry Council, which was to be funded by construction levies, to take over the functions of the Construction Industry Training Authority established under the Industrial Training (Construction Industry) Ordinance (Cap. 317).

Action

10. The Legal Adviser added that as the Bill involved an important policy matter which affected the whole construction industry, the Legal Service Division recommended that a Bills Committee be formed to scrutinise the Bill.

11. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Ir Dr Raymond HO, Mrs Selina CHOW, Mr Howard YOUNG, Ms Emily LAU, Mr Andrew CHENG (as advised by Mr SIN Chung-kai), Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Mr Alan LEONG, Mr Patrick LAU and Mr KWONG Chi-kin.

12. The Chairman said that the Bills Committee could commence work immediately.

(iii) Bankruptcy (Amendment) Bill 2004
(*LC Paper No. LS 7/04-05*)

13. The Legal Adviser said that the Bankruptcy (Amendment) Bill 2003 was introduced into LegCo in the last term, and a Bills Committee was formed. However, due to the unavailability of a Bills Committee slot, the Bill lapsed at the end of the second term of LegCo. The Bill was now re-introduced into LegCo.

14. The Legal Adviser explained that the Bill sought to enable the Official Receiver to outsource bankruptcy cases to private-sector insolvency practitioners where the value of the property of the bankrupt was not more than \$200,000.

15. The Legal Adviser added that the Legal Service Division recommended that a Bills Committee be formed to study the Bill.

16. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Mr Albert HO (as advised by Mr SIN Chung-kai), Mr CHAN Kam-lam, Ms Miriam LAU, Mr LI Kwok-ying, Mr TONG Ka-wah, Mr KWONG Chi-kin and Miss TAM Heung-man.

17. The Chairman said that the Bills Committee could commence work immediately.

(iv) Companies (Amendment) Bill 2004
(LC Paper No. LS 2/04-05)

18. The Legal Adviser said that the Bill sought to amend provisions in the Companies Ordinance (Cap. 32) relating to group accounts and introduce the “true and fair override” provisions relating to preparation of company’s or group accounts.

19. The Legal Adviser explained that the proposed legislative amendments in the Bill were originally contained in Schedule 2 and Part 2 of Schedule 5 (the Schedules) of the Companies (Amendment) Bill 2003. The 2003 Bill was passed on 7 July 2004, with the Schedules removed due to insufficient time for scrutiny by the Bills Committee formed to study the Bill.

20. The Legal Adviser said that in view of Members’ concerns raised in the last term, the Legal Service Division recommended that a Bills Committee be formed to study the Bill in detail.

21. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Mr SIN Chung-kai, Mr CHAN Kam-lam, Ms Miriam LAU, Ms Audrey EU, Mr WONG Ting-kwong, Mr TONG Ka-wah and Miss TAM Heung-man.

22. The Chairman said that the Bills Committee could commence work immediately.

(v) Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004
(LC Paper No. LS 3/04-05)

23. The Legal Adviser said that the Undesirable Medical Advertisements (Amendment) Bill 2004 was introduced into LegCo in the last term, and a Bills Committee was formed. However, due to the unavailability of a Bills Committee slot, the Bill lapsed at the end of the second term of LegCo. The Bill was now re-introduced into LegCo.

24. The Legal Adviser explained that the Bill sought to widen the scope of the Undesirable Medical Advertisements Ordinance (Cap. 231) so as to regulate the advertising of six types of undesirable claims for orally consumed products.

25. The Legal Adviser added that in view of the concerns raised by Members in the last term, the Legal Service Division recommended that a Bills Committee be formed to study the Bill.

Action

26. The Chairman proposed that a Bills Committee be formed. Members agreed. The following Members agreed to join: Mr Fred LI, Mrs Selina CHOW, Ms CHAN Yuen-han, Mr TAM Yiu-chung, Mr Vincent FANG (as advised by Mrs Selina CHOW), Mr LI Kwok-ying, Mr Joseph LEE, Dr KWOK Ka-ki and Mr WONG Ting-kwong.

27. The Chairman said that the Bills Committee could commence work immediately.

(b) **Legal Service Division report on subsidiary legislation gazetted on 8 October 2004 and tabled in Council on 13 October 2004**
(*LC Paper No. LS 8/04-05*)

28. The Legal Adviser said that only one item of subsidiary legislation, i.e. the Companies (Amendment) Ordinance 2004 (30 of 2004) (Commencement) Notice 2004, was gazetted on 8 October 2004 and tabled in Council on 13 October 2004.

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

30. The Chairman said that the deadline for amending this item of subsidiary legislation was 10 November 2004, or 1 December 2004 if extended by resolution of the Council.

IV. Further business for the Council meeting on 20 October 2004

Government motion

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

(a) **the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2004;**
and

(b) **the Poisons List (Amendment) (No. 3) Regulation 2004**

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 29/04-05 dated 6 October 2004.)

(LC Paper No. LS 4/04-05)

31. The Legal Adviser explained that the motion sought LegCo's approval of the Pharmacy and Poisons (Amendment) (No.3) Regulation 2004 and the Poisons List (Amendment) (No.3) Regulation 2004.

Action

32. The Legal Adviser further explained that four new drugs/medicines were added to the First and Third Schedules to the Pharmacy and Poisons Regulations and the Poisons List. Their addition meant that pharmaceutical products containing any of these four new drugs/medicines must be sold in pharmacies by or under the supervision of a registered pharmacist and in his presence, with the support of prescriptions given by a registered medical practitioner, registered dentist or registered veterinary surgeon.

33. The Legal Adviser said that the Administration had provided supplementary information on the four new drugs/medicines. The two Amendment Regulations were in order from the legal point of view. The Legal Adviser added that the two Amendment Regulations would come into operation on the day they were published in the Gazette after being approved by LegCo.

34. Dr KWOK Ka-ki asked whether the Administration had provided other information such as the record of discussion of the Pharmacy and Poisons Board on the two Regulations and whether the relevant professional bodies had been consulted.

35. The Chairman said that the information provided by the Administration did not include details of consultation with the relevant professional bodies. The Chairman further said that if Members considered a subcommittee should be set up to enable Members to obtain further information from the Administration, the Secretary for Health, Welfare and Food (SHWF) would be requested to withdraw his notice for moving the proposed resolution at the Council meeting on 20 October 2004.

36. Mrs Selina CHOW said that similar regulations were made in the past to add new drugs and medicines to the Schedules to the Pharmacy and Poisons Regulations and the Poisons List. As these additions would affect the pharmacy trade, she had consulted the wholesalers and retailers in the pharmacy trade in the past. Mrs CHOW suggested that the Administration be requested to provide information on its consultation with the relevant professional and trade associations on these two Regulations.

37. The Chairman proposed that a subcommittee be formed. Members agreed. The following Members agreed to join: Ms Audrey EU, Mr Vincent FANG (as advised by Mrs Selina CHOW), Dr KWOK Ka-ki and Mr Albert CHENG.

38. The Chairman said that SHWF would be requested to withdraw his notice for moving the proposed resolution.

V. Business for the Council meeting on 27 October 2004

(a) Questions

(LC Paper No. CB(3) 49/04-05)

39. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 27 October 2004.

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

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

(c) Government motion

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

(d) Members' motions

(i) Motion on “Public inquiry on irregularities in the 2004 Legislative Council Election”

(Wording of the motion issued vide LC Paper No. CB(3) 53/04-05 dated 12 October 2004.)

(ii) Motion on “Civil service policy”

(Wording of the motion issued vide LC Paper No. CB(3) 54/04-05 dated 13 October 2004.)

42. The Chairman said that the above motions would be moved by Ms Margaret NG and Mr WONG Kwok-hing respectively, and the wording of the motions had been issued to Members.

43. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Tuesday, 19 October 2004.

VI. Position on Bills Committees/subcommittees

(LC Paper No. CB(2) 30/04-05)

44. The Chairman said that there was one subcommittee in action.

Action

VII. Election of Members for appointment to the Public Accounts Committee, Committee on Members' Interests and Committee on Rules of Procedure
(LC Paper No. CB(3) 10/04-05 issued vide LC Paper No. CB(2) 5/04-05 dated 7 October 2004)

45. The Chairman said that at the last meeting of the House Committee on 8 October 2004, Members endorsed the procedure for nomination and election of Members to the Public Accounts Committee (PAC), Committee on Members' Interests (CMI) and Committee on Rules of Procedure (CRoP).

(a) Election of seven Members to the Public Accounts Committee

46. The Chairman invited Members to make nominations. The following Members were nominated –

Mr Bernard CHAN
Dr Philip WONG
Mr LAU Kong-wah
Mr Andrew CHENG
Mr Jeffrey LAM
Mr Albert CHENG
Miss TAM Heung-man

47. Dr YEUNG Sum said that as Mr Bernard CHAN was a Member of the Executive Council (ExCo), there would be a conflict of roles if he was to sit on PAC which was tasked to examine reports of the Director of Audit on the accounts of the Government. Dr YEUNG further said that as an ExCo Member, Mr CHAN was part of CE's "cabinet". He doubted whether Mr CHAN could perform his duties of a PAC member independently when he was among those responsible for making decisions on Government policies and public spending. Dr YEUNG requested Mr CHAN to re-consider whether it was appropriate for him to accept the nomination for appointment to PAC.

48. Mr Abraham SHEK disagreed that there would be a conflict of roles if Mr CHAN was appointed a member of PAC. He said that Mr CHAN would be discharging the duties of a LegCo Member, but not those of an ExCo Member, when serving on PAC.

49. Mr Bernard CHAN said that he had considered the concern raised by Dr YEUNG. His role of an ExCo Member was to advise Government on its policies. It was different from the role of a PAC member, which was to examine whether public moneys were spent in a cost-effective manner. Mr CHAN further said that as a LegCo Member, his duties included scrutinising public spending and legislative proposals. His joining PAC was no different from his joining Bills Committees or other LegCo committees.

Action

50. Mr Martin LEE, Mr Fred LI, Mr LEE Wing-tat and Mr TONG Ka-wah, shared the views expressed by Dr YEUNG Sum. They considered that there would be a conflict of roles if Mr Bernard CHAN was appointed to PAC. Mr Martin LEE asked whether there were precedents of a Member with dual membership of LegCo and ExCo being appointed to PAC.

51. The Legal Adviser said that he did not recall any precedents of a Member with dual membership of LegCo and ExCo being appointed to PAC. However, there were precedents of such Members serving on other LegCo committees. The Legal Adviser further said that the Rules of Procedure (RoP) did not restrict any Member from serving on PAC because of dual membership of LegCo and ExCo. The Legal Adviser added that PAC had developed practices to deal with conflict of interest situations.

52. Mr TONG Ka-wah said that if Mr Bernard CHAN was to serve on PAC, a conflict of interest situation would arise when PAC examined a report on misuse of public moneys in the implementation of a policy approved by ExCo. Mr TONG asked whether Mr CHAN would withdraw from the discussion of PAC if such a situation arose. Mr Bernard CHAN responded that if appointed to PAC, he would declare any such interests at the meetings of PAC.

53. The Legal Adviser explained that the operation of PAC was determined by the committee itself in accordance with RoP 72. The Legal Adviser further explained that PAC was responsible for examining any report of the Director of Audit which dealt with examinations (i.e. value for money audit) carried out by the Director relating to the economy, efficiency and effectiveness of any government department or public body or any organisation which received public moneys by way of subvention. The work of PAC seldom involved discussion on the merits of government policies. However, it might be necessary for PAC to examine whether any misleading or incomplete information had been provided by the relevant policy bureau during the formulation of a policy which resulted in a waste of public funds.

54. Dr YEUNG Sum said that there was no precedent of Members with dual membership of LegCo and ExCo serving on PAC because such Members had refrained from joining PAC in the past. Dr YEUNG further said that in overseas legislatures, it was the opposition party which dominated the membership of their public accounts committees in order to maintain the impartiality of such committees. He urged Members to have regard to this important principle of maintaining the impartiality of PAC when nominating Members to serve on it.

Action

55. Ir Dr Raymond HO said that there were no provisions in RoP prohibiting a LegCo Member from being appointed to ExCo, or prohibiting Members from joining any standing or select committees of LegCo because of dual membership of LegCo and ExCo. Ir Dr HO further said that it was the duty of LegCo Members to carry out the functions of LegCo as stipulated in Article 73 of the Basic Law, which included raising questions on how public moneys were used. Moreover, PAC had developed practices for PAC members to declare interests and withdraw from discussions to avoid any conflict of interest. Ir Dr HO considered it in order for Mr Bernard CHAN to serve on PAC.

56. Mr Martin LEE said that Members should consider how the public would perceive the appointment of a LegCo Member who was also an ExCo Member to PAC. Mr LEE further said that such a Member would be in a difficult position if a government policy was being criticised by PAC.

57. Mr LEE Wing-tat said that as an ExCo Member, Mr Bernard CHAN was part of the Government and CE's cabinet. His position was comparable to "a minister of no portfolio" in the United Kingdom (UK), and it would not be appropriate for Mr CHAN to examine the spending of public moneys by other ministers. Mr LEE further said that the work of PAC was different from that of other LegCo committees. He urged Mr Bernard CHAN not to depart from the LegCo convention that a Member with dual membership of LegCo and ExCo would not serve on PAC.

58. Mr Fred LI said that he had served on PAC for four years and was very familiar with the work of the committee. Mr LI further said that sometimes PAC would need to examine the decision-making process in respect of a particular policy when discussing the value for money reports. Moreover, PAC often found it necessary to criticise the policies and work of the Government. A Member with dual membership of LegCo and ExCo and serving on PAC would be in a difficult situation, because an ExCo Member was expected to defend the Government's position. Mr LI pointed out that after Mrs Selina CHOW was appointed to ExCo in 2003, she did not seek to be re-elected as Chairman of the House Committee.

59. Mr LI added that out of the seven nominations, only Mr LAU Kong-wah had served on PAC before. He expressed concern that there would be a lack of continuity in the membership of PAC and this would affect its work. He suggested that Mr Abraham SHEK, who had served on PAC in the last term, should consider serving on PAC again.

60. Mr LAU Kong-wah also expressed concern about the lack of continuity in the membership of PAC. He urged Mr Abraham SHEK to consider joining PAC again.

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61. At the request of Mr Abraham SHEK, the Chairman suspended the meeting for five minutes to enable Members to discuss among themselves the membership of PAC.

(The meeting resumed at 3:15 pm.)

62. Referring to the earlier remarks made by Mr LEE Wing-tat, Mr KWONG Chi-kin said that the political system of UK was different from that of Hong Kong. He did not agree that an ExCo Member in Hong Kong was comparable to that of a minister in the UK Government.

63. Mr Jasper TSANG declared that he was an ExCo Member. Mr TSANG shared the views of Mr KWONG Chi-kin. He said that it was not appropriate to compare the political system of UK with that of Hong Kong, because there were no ruling or opposition parties in Hong Kong.

64. Mr TAM Yiu-chung declared that he was a former ExCo Member. He believed that Mr Bernard CHAN would discharge his duties as a PAC member responsibly, if appointed to the Committee.

65. Mrs Selina CHOW declared that she was an ExCo Member. Mrs CHOW pointed out that unofficial Members of ExCo were not members of CE's "cabinet" as they were only advisers to the Government. She could not see any conflict between the work of an unofficial Member of ExCo and that of a PAC member.

66. Mrs Selina CHOW further said that the question of whether a Member who was also an ExCo Member should be appointed to PAC was not raised at the last meeting of the House Committee when the procedure for the nomination and election of PAC members was discussed. Mrs CHOW added that there were also no rules prohibiting a Member who was also an ExCo Member from joining any standing committees of LegCo. Mrs CHOW considered it unfair that the question was raised at this meeting after Members had endorsed the nomination and election procedure.

67. Ms Emily LAU said that the question of whether Members who were also ExCo Members should be appointed to PAC was not raised at the last meeting because it was the convention that Members with such dual membership would not join PAC. She hoped that Mr Bernard CHAN would follow this convention.

68. Mr Jasper TSANG objected to Ms Emily LAU's remarks. Mr TSANG said that the so-called convention described by Ms LAU had not been agreed to by Members.

Action

69. Mr Abraham SHEK said that Members belonging to The Alliance had nominated Mr Bernard CHAN to serve on PAC, because they did not consider that it would give rise to any conflict of interest or conflict of roles. Nevertheless, in view of the concerns expressed by some Members, Mr SHEK said that he was willing to replace Mr Bernard CHAN to serve on PAC.

70. Mr Bernard CHAN said that he withdrew his acceptance of the nomination. Mr Abraham SHEK was nominated. There being no other nominations, the Chairman declared that the following seven Members were nominated for appointment by the President to PAC –

Dr Philip WONG
Mr LAU Kong-wah
Mr Andrew CHENG
Mr Abraham SHEK
Mr Jeffrey LAM
Mr Albert CHENG
Miss TAM Heung-man

71. Mr LEUNG Kwok-hung commented that it was a waste of time for the meeting to have been suspended for five minutes at the request of Mr Abraham SHEK. Mr Albert HO responded that it was sometimes necessary for the House Committee to suspend its meeting to enable Members to discuss among themselves before a decision was made on an important matter.

(b) Election of seven Members to the Committee on Members' Interests

72. The following Members were nominated for appointment by the President to CMI –

Mrs Sophie LEUNG
Mr SIN Chung-kai
Ms Emily LAU
Mr Abraham SHEK
Mr LI Kwok-ying
Mr Alan LEONG
Mr Albert CHENG

(c) Election of 12 Members to the Committee on Rules of Procedure

73. The following Members were nominated for appointment by the President to CRoP –

Action

Mr James TIEN
Mr Martin LEE
Ms Margaret NG
Mrs Selina CHOW
Mr Jasper TSANG
Ms Emily LAU
Ms LI Fung-ying
Mr LAM Wai-keung
Mr MA Lik
Mr TONG Ka-wah
Mr Patrick LAU
Mr KWONG Chi-kin

74. The Chairman suspended the meeting for 10 minutes to allow the Members nominated to nominate from among themselves the Chairmen and Deputy Chairmen of the committees concerned.

(The meeting resumed at 3:50 pm.)

75. The Chairman informed Members that –

- (a) Dr Philip WONG and Miss TAM Heung-man were nominated to be the Chairman and the Deputy Chairman of PAC respectively;
- (b) Mrs Sophie LEUNG and Mr SIN Chung-kai were nominated to be the Chairman and the Deputy Chairman of CMI respectively; and
- (c) Mr Jasper TSANG and Ms Margaret NG were nominated to be the Chairman and the Deputy Chairman of CRoP respectively.

VIII. Election of Members to the Parliamentary Liaison Subcommittee

(LC Paper No. CB(3) 9/04-05 issued vide LC Paper No. CB(2) 5/04-05 dated 7 October 2004)

76. The Chairman said that at the meeting of the House Committee on 8 October 2004, Members agreed to the procedure for election of Members to the Parliamentary Liaison Subcommittee, and that the size of the Subcommittee should be nine members. The Chairman invited Members to make nominations.

Action

77. The following 10 Members were nominated –

Mr Fred LI
Dr LUI Ming-wah
Mr James TO
Mr Howard YOUNG
Ms Emily LAU
Ms CHOY So-yuk
Mr LI Kwok-ying
Mr Jeffrey LAM
Dr CHEUNG Chiu-hung
Mr Patrick LAU

78. Ms Emily LAU and Mr James TO said that they withdrew their acceptance for nomination. Mr TO requested Ms Emily LAU not to withdraw her acceptance for the nomination, as she had always been a very hardworking member of the Subcommittee. Mr TO further said that members of the Parliamentary Liaison Subcommittee had the responsibility to meet with lawmakers and senior officials from overseas legislatures and governments. He reminded Members elected to the Subcommittee to make themselves available for such meetings.

79. Ms Emily LAU agreed not to withdraw her acceptance of the nomination. There being no other nominations, the Chairman announced that the following nine Members were elected to the Subcommittee –

Mr Fred LI
Dr LUI Ming-wah
Mr Howard YOUNG
Ms Emily LAU
Ms CHOY So-yuk
Mr LI Kwok-ying
Mr Jeffrey LAM
Dr CHEUNG Chiu-hung
Mr Patrick LAU

IX. Meetings-cum-luncheons with District Council members
(*LC Paper No. CB(2) 3/04-05*)

80. Members agreed that the proposed arrangements in paragraphs 4 and 5 of the paper should be adopted for holding meetings-cum-luncheons with members of District Councils in the third LegCo term.

81. The Chairman said that the LegCo Secretariat would contact the 18 District Councils through the Home Affairs Department.

Action

X. Meetings between Legislative Council Members and Heung Yee Kuk Councillors

(LC Paper No. CB(2) 4/04-05)

82. Members agreed that the proposed arrangements in paragraph 3 of the paper should be adopted for holding meetings with Councillors of Heung Yee Kuk in the third LegCo term.

83. The Chairman said that the LegCo Secretariat would proceed to organise the first meeting with Heung Yee Kuk in this term.

84. Mr Daniel LAM thanked Members for holding meetings with Councillors of Heung Yee Kuk in the last term. He said that Councillors of Heung Yee Kuk would like to invite LegCo Members to make site visits to the New Territories to facilitate discussion on the issues of concern.

85. The Chairman suggested Councillors of Heung Yee Kuk to raise the matter at their next meeting with LegCo Members.

XI. Nomination and election of Members of the Legislative Council to governing bodies of educational institutions and advisory bodies

(LC Paper No. CB(2) 28/04-05)

86. The Chairman invited Members to consider the proposals set out in paragraph 18 of the paper.

87. Referring to paragraph 11 of the paper, Mr CHEUNG Man-kwong said that the English Schools Foundation (ESF) had still not amended its Regulations to the effect that LegCo Members serving on ESF would be deemed to have resigned from ESF if they ceased to be LegCo Members. Mr CHEUNG asked whether the Regulations could only be amended with ESF's agreement.

88. Mr Jasper TSANG said that he was elected to serve on ESF in the last term and he had requested ESF to clarify the matter. ESF had indicated that the nominated Members would serve on ESF for a period of three years, regardless of whether they remained LegCo Members during that period.

89. The Chairman said that paragraph 11 of the paper proposed that the Members nominated to serve on ESF should request ESF to review its Regulations.

90. Mr Tommy CHEUNG said that when he was elected to serve on ESF in 2001, some Members had queried the need for LegCo to nominate Members to serve on ESF. Mr CHEUNG pointed out that sometimes the meetings of ESF clashed with LegCo meetings.

Action

91. Ms Emily LAU suggested that the purpose of nominating LegCo Members to serve on these governing and advisory bodies be reviewed.

92. Mr Albert CHENG said that Members should continue to serve on these bodies as long as there were Members willing to do so.

93. The Chairman said that except for ESF, it was stipulated in the respective ordinances of the organisations concerned that a certain number of LegCo Members would be elected from amongst themselves to serve on these governing or advisory bodies.

94. The Legal Adviser explained that with the exception of ESF, the respective ordinances of the educational institutions concerned set out the composition of their governing bodies, and it included LegCo Members. The Legal Adviser further explained that the composition of ESF was specified in its Regulations made under section 10 of The English Schools Foundation Ordinance (Cap. 1117), but the Regulations were not required to be tabled in LegCo. The Legal Adviser added that the references to LegCo Members in the ESF Regulations needed updating, and it was proposed in the paper that the Members nominated to serve on ESF should request ESF to review and amend its Regulations.

95. Mr CHEUNG Man-kwong said that it was stipulated in the relevant ordinances that a certain number of LegCo Members were members of these governing or advisory bodies. It would pose difficulties to the organisations concerned if the required number of LegCo Members were not nominated to serve on these bodies in this term.

96. Members endorsed the nomination and election procedure proposed in paragraph 14 of the paper, and that the nomination and election should take place at the next meeting of the House Committee on 29 October 2004. Members also agreed to the proposal in paragraph 11 of the paper that the Members nominated should request ESF to review its Regulations to specify that the Members concerned would be deemed to have resigned from ESF if they ceased to be LegCo Members.

97. Mr Abraham SHEK said that there were criticisms in the reports of the Director of Audit about the low attendance of persons nominated or appointed to serve on the governing bodies of tertiary education institutions. Ms Emily LAU said that Members should take this into consideration when making nominations at the next meeting of the House Committee.

98. Mr LEE Wing-tat requested the LegCo Secretariat to provide the attendance records of the Members serving on these governing and advisory bodies in the last term for the House Committee's reference. Ms Emily LAU suggested the LegCo Secretariat to obtain these records from the relevant bodies.

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XII. Proposals to set up the following subcommittees -

(Hon Emily LAU's letter dated 12 October 2004 to the Chairman of the House Committee (LC Paper No. CB(2) 25/04-05(01), together with LC Paper No. AS 298/03-04 - Report of the "Subcommittee to consider a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement claims" for the House Committee meeting on 18 June 2004)

[Previous papers:

Paper on "Reimbursement of operating expenses for Members of the Legislative Council" for the House Committee meeting on 19 December 2003 (LC Paper No. AS93/03-04);

Extract from the minutes of the House Committee meeting on 19 December 2003 (LC Paper No. CB(2) 25/04-05(02)); and

Extract from the minutes of the House Committee meeting on 18 June 2004 (LC Paper No. CB(2) 25/04-05(03))]

(a) Subcommittee on Members' Remuneration and Operating Expenses Reimbursement

99. Ms Emily LAU said that a Subcommittee on Members' Remuneration and Operating Expenses Reimbursement was formed in the last term to examine issues such as the mechanism of annual adjustment to the level of Members' remuneration and Operating Expenses Reimbursements (OER), and retirement benefits for Members. The Subcommittee had proposed that a retirement protection scheme be established for LegCo Members, and the proposal was conveyed to the Administration by the Chairman of the House Committee. The Administration had indicated that it would study the proposed scheme and revert to Members in this term.

100. Ms LAU suggested that such a subcommittee should be set up again in this term. Ms LAU also suggested that in addition to the retirement protection scheme for Members, the subcommittee should also examine whether Members should be allowed to rent offices owned by themselves or their respective political parties.

101. The Chairman proposed that a subcommittee be formed to examine matters relating to Members' remuneration and OER, including the mechanism of annual adjustment to the level of Members' remuneration and OER, retirement benefits for Members and the use of OER to rent offices owned by Members themselves or their respective political parties. Members agreed.

102. The Chairman said that the LegCo Secretariat would issue a circular to invite Members to join the subcommittee.

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103. The Chairman advised that when deciding whether to join the subcommittee, Members should have regard to the need to ensure that the membership was balanced and broadly representative of the membership of the Council.

(b) Subcommittee to consider a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement claims

104. Ms Emily LAU said that a subcommittee was set up under the House Committee in December 2003 to consider a mechanism to handle complaints and allegations concerning improper use of OER. At the House Committee meeting on 18 June 2004, Members agreed to the Subcommittee's recommendation that the need to establish a mechanism for handling complaints and allegations relating to Members' OER claims be further considered in the third LegCo term.

105. Ms LAU further said that as there had been some more complaints and allegations relating to Members' OER claims in recent months, a subcommittee should be formed again to continue to study a mechanism for handling such complaints and allegations.

106. Mr Abraham SHEK asked whether such a mechanism, if established, could handle and investigate complaints relating to the misuse of OER in previous terms.

107. Ms Emily LAU suggested that the issue be considered by the proposed subcommittee. Ms LAU clarified that the proposed subcommittee was not to formulate new rules on Members' OER claims, as there were already established guidelines. The subcommittee would focus on considering a mechanism for handling complaints and allegations relating to Members' OER claims.

108. The Chairman proposed that a subcommittee to consider a mechanism for handling complaints and allegations relating to Members' OER claims be formed. Members agreed. The Chairman said that the LegCo Secretariat would issue a circular to invite Members to join the subcommittee.

109. The Chairman advised that when deciding whether to join the subcommittee, Members should have regard to the need to ensure that the membership was balanced and broadly representative of the membership of the Council.

XIII Conduct of Members

(Paper on “Relevant rules in the Rules of Procedure relating to the conduct of Members and the existing arrangements for handling complaints relating to Members’ conduct” prepared by the Legislative Council Secretariat (LC Paper No. CB(2) 40/04-05); and

Two letters dated 12 October 2004 from Hon LAU Kong-wah to the Chairman of the House Committee (LC Paper Nos. CB(2) 25/04-05(04) & (05))

110. The Chairman drew Members’ attention to the paper prepared by the LegCo Secretariat on the relevant rules in RoP relating to the conduct of Members and the existing arrangements or mechanism for handling complaints relating to Members’ conduct. The Chairman said that the purpose of the paper was to assist Members in considering which committee or mechanism should follow up the matters raised in Mr LAU Kong-wah’s two letters. The Chairman further said that Members should not discuss the cases per se at the meeting.

111. The Chairman highlighted the following points made in the paper –

- (a) CMI was responsible for considering and investigating any complaints made in relation to the regulation and declaration of Members’ interests or any complaint of a failure to do so;
- (b) where there was a complaint against the improper use of OER, the existing arrangement was for the Secretariat to seek clarification or explanation from the Member concerned; and
- (c) where a Member considered that a particular conduct of another Member constituted misbehaviour and should be censured under Article 79(7) of the Basic Law, he could move a motion under RoP 49B(1A). The matter would be referred to an investigation committee upon adjournment of the debate on that motion.

112. Referring to his first letter dated 12 October 2004, Mr LAU Kong-wah said that there had been much public concern about whether Members should be allowed to use OER to rent offices owned by themselves or their respective political parties. Mr LAU further said that in Mr James TO’s case, there were media reports that the amount of rental claimed by Mr TO was higher than the market rental, and that Mr TO had failed to declare to the LegCo Secretariat his shares in a certain company. Mr LAU said that if the subcommittee formed under agenda XII(b) above was to recommend a mechanism to deal with complaints and allegations of Members’ OER claims, he had no objection to Mr TO’s case being dealt with under that mechanism.

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113. Mr James TO apologised for his not reporting to the LegCo Secretariat his shares in a certain company. Mr TO added that as a DC member, he had reported to the DC Secretariat concerned of such interests.

114. Ms Emily LAU said that the Subcommittee to consider a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement claims set up in the last term recommended that the terms of reference of CMI be expanded to include the monitoring and handling of complaints and allegations relating to Members' OER claims. It would be for the subcommittee set up in this term to consider this recommendation.

115. Mrs Selina CHOW said that Members belonging to the Liberal Party agreed that the subcommittee should continue the discussion on a mechanism for handling complaints and allegations relating to Members' OER claims.

116. Mr LEE Wing-tat said that he supported the proposal that the subcommittee should consider a mechanism for handling complaints and allegations concerning Members' OER claims. Mr LEE further said that he had sent a letter to the Chairman of the House Committee in the morning concerning the improper use of OER by Miss CHOY So-yuk, Ir Dr Raymond HO and Miss CHAN Yuen-han. He added that if the mechanism, when established, would deal with the case of Mr James TO, it should also deal with the cases of Miss CHOY, Ir Dr Raymond HO and Miss CHAN. He requested that his letter be included in the agenda of the next meeting for record purpose.

117. The Chairman explained that Mr LEE's letter was received just before the meeting and could not be included in the agenda of this meeting due to insufficient notice. She said that the cases of all the four Members could be dealt with by the mechanism when established.

118. Regarding his second letter, Mr LAU Kong-wah said that the Democratic Alliance for Betterment of Hong Kong had received complaints from members of the public about Mr LEUNG Kwok-hung raising his middle finger at the meeting of the Finance Committee (FC) on 6 October 2004. Mr LAU considered it inappropriate for Mr LEUNG to make an indecent gesture during a meeting, and that Mr LEUNG should apologise for such conduct.

119. Mr LAU further said that he would like to know whether other Members considered such conduct acceptable and what actions should be taken should this happen again in future. Mr LAU requested the House Committee to follow up the matter.

120. The Chairman advised that the House Committee did not have the power or function to deal with complaints relating to a Member's conduct. Other than CMI and an investigation committee, as explained in paragraph 111 above, no LegCo committee was empowered to investigate allegations of

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misconduct of Members. The Chairman added that CMI had issued a set of Advisory Guidelines on Matters of Ethics in relation to the conduct of Members, which were detailed in Appendix II of the paper prepared by the LegCo Secretariat.

121. Mr LEUNG Kwok-hung explained that he was only illustrating the inappropriate gesture made by Dr Philip WONG on 9 July 2003 when a mass protest was in progress, and his raising the middle finger at the FC meeting was relevant to the discussion at that time. Mr LEUNG said that no Member present at the FC meeting, including the Chairman, had pointed out to him that his gesture was unacceptable. He further said that he had not brought LegCo into disrepute. He added that Members had more important things to attend to than discussing such a trivial matter which was blown out of proportion by a single newspaper.

122. Mr Albert CHAN said that the paper prepared by the Secretariat had explained the present rules and arrangements for handling complaints relating to Members' conduct. It was clear that the House Committee did not have the power or function to deal with such complaints. Mr CHAN expressed regret that Mr LAU should have raised the matter of Mr LEUNG's raising his middle finger for discussion at this meeting for his own political motive. Mr CHAN further said that LegCo should not investigate the conduct of individual Members, as Members themselves had different ethical standards.

123. Mrs Selina CHOW said that the matter raised by Mr LAU Kong-wah touched on an important principle. Mrs CHOW pointed out that apart from the powers and privileges enjoyed by Members during meetings of the Council, RoP also set out how Members should behave during meetings. Mrs CHOW further said that to show respect to the Council and the public, Members should behave in such a way so as not to place themselves in a position which was contrary to the standard of conduct expected of a Member of the Council.

124. Mrs CHOW further said that while Mr LEUNG Kwok-hung might not consider it inappropriate to raise his middle finger, many members of the public, including parents, felt strongly that such a gesture was unacceptable. Mrs CHOW suggested that CROp should be invited to consider whether repeating an inappropriate act of another person by a Member during an open meeting should be allowed.

125. Mr Jasper TSANG said that he disagreed with the remarks made by Mr Albert CHAN and Mr LEUNG Kwok-hung. Mr TSANG further said that the crux of the matter was whether a Member should make an indecent gesture in the Chamber during an open meeting which was being broadcast on television. Mr TSANG said that many people, and not just one newspaper, had expressed their dissatisfaction about Mr LEUNG's indecent gesture. He considered that LegCo had the responsibility to clarify whether repeating an indecent act of another person at LegCo meetings was acceptable, and how such conduct

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should be dealt with if this was considered not acceptable. Mr TSANG asked whether the House Committee could set up a subcommittee to follow up the matter.

126. The Legal Adviser advised that the functions of the House Committee were set out in RoP, and that the House Committee would not normally deal with matters which fell within the terms of reference of another committee of LegCo. The Legal Adviser added that the matter raised in Mr LAU's second letter appeared to fall within the terms of reference of both CMI and CRoP.

127. Mr LAU Kong-wah said that he disagreed with Mr Albert CHAN's remarks about his motive for raising the matter for discussion. He agreed that the matter could be referred to an appropriate committee for consideration, but the matter should not be left unresolved.

128. Dr KWOK Ka-ki said that although individual Members had their own ethical standards, there should be rules or standards governing Members' conduct or behaviour. He supported the proposal of referring the matter to an appropriate committee for consideration.

129. Mr LEUNG Kwok-hung said that there should not be hard and fast rules governing Members' conduct, and that each case should be considered on its own circumstances.

130. Mr Albert CHAN said that if Mr LEUNG's case was to be referred to a committee, the committee concerned should also look into cases of Members sleeping or speaking nonsense at meetings after drinking too much, and cases of Members placing horseracing bets in the Ante-Chamber during Council meetings.

131. The Chairman said that the committee concerned would only consider whether there should be clearer rules to govern Members' conduct during meetings, and it would not investigate or determine whether a Member had behaved inappropriately in a particular incident.

132. Mr James TO agreed that the question of whether it was appropriate for a Member to repeat an indecent gesture or remark at LegCo meetings should be referred to a committee for consideration. He considered that CRoP to be the more appropriate committee to take up the matter if clearer rules were to be laid down.

133. Dr YEUNG Sum agreed that the House Committee did not have the power or function to deal with complaints relating to Members' behaviour. He said that the matter could be referred to either CRoP or CMI or both, and that they should present their recommendations to the House Committee after deliberation on the matter.

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134. Mr Albert CHENG asked whether the case of Dr Philip WONG raising his middle finger in July 2003 had been referred to a committee for consideration. Mr Jasper TSANG responded that Dr WONG had apologised to the public the day after the incident.

135. Mr TONG Ka-wah said that it would be more effective to refer the matter to one committee first, instead of having two committees deliberating on the same matter at the same time.

136. The Chairman proposed that CRoP be invited to consider whether clearer rules to govern Members' conduct should be laid down. Members agreed.

XIV. Any other business

Use of "cocktail language" at meetings (rule 24(m) of the House Rules)

137. The Chairman reminded Members to refrain from using "cocktail language" at meetings to facilitate the work of simultaneous interpreters. Ms Emily LAU suggested that the various committees should also be reminded by their respective chairmen accordingly.

138. There being no other business, the meeting ended at 5:05 pm.